

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Coachella  
Civic Center  
53990 Enterprise Way  
Coachella, CA 92236  
Attention: City Manager

Recorder's Use

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**DEED OF TRUST AND FIXTURE FILING**  
(With Security Agreement)

THIS DEED OF TRUST AND FIXTURE FILING (With Security Agreement) (as it may be amended and modified from time to time, the "Deed of Trust") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020 by Jesus R. Gonzalez, whose address is P.O. BOX 1144, Coachella, CA 92236 (referred to herein as "Trustor"), in favor of First American Title Company ("Trustee"), and for the benefit of CITY OF COACHELLA, a California municipal corporation (the "Beneficiary"), whose mailing address is 53990 Enterprise Way, Coachella, CA 92236.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, that certain real property located in the City of Coachella, County of Riverside, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

TOGETHER WITH Trustor's interest in any and all buildings and other improvements now or hereafter erected on the Premises including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements including but not limited to all current and future air rights, development rights, zoning rights and other similar rights or interests, easements, roads, streets, alleys, sewer rights, and appurtenances related to or benefiting the Premises and/or the Improvements or both;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) all personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter affixed to the Premises or the Improvements, and (ii) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property");

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages); and

TOGETHER WITH all proceeds of the foregoing.

The entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "Obligations"):

(a) Payment of indebtedness in the original principal amount of up to TWENTY THOUSAND DOLLARS (\$20,000.00) ("Loan"), with interest thereon, evidenced by that certain promissory note of even date herewith (as it may be amended, modified, extended, and renewed from time to time, the "Note") executed by Trustor, as maker, in favor of Beneficiary;

(b) Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the interest rate as set forth in the Note (which rate of interest is hereinafter referred to as the "Agreed Rate");

(c) Performance of every obligation of Trustor contained in the Loan Documents (as defined below); and

(d) Performance of every obligation of Trustor contained in the Operating Covenant Agreement dated of even date herewith (as it may be amended from time to time) (the "Operating Covenant Agreement").

This Deed of Trust, the Note, the Operating Covenant Agreement and any other agreements or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents".

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I  
COVENANTS AND AGREEMENTS OF TRUSTOR

1.01 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or cause to be performed each of the Obligations.

1.02 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Except as provided herein, Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary, which consent shall not be unreasonably withheld; provided, however, that Trustor may remove items in the ordinary course of operations, provided that such items are replaced with items similar in quality and value to the original condition of the items so removed and Beneficiary continues to have a perfected security interest therein. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restores in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease. “Requirement” and “Requirements” mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Trust Estate, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected, and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.03 Required Insurance. Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Trust Estate, at no expense to Trustee or Beneficiary, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as is reasonably required by Beneficiary. All such policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor or any party holding under Trustor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Trustor, other than deductibles reasonably approved by Beneficiary.

1.04 Indemnification; Subrogation; Waiver of Offset

(a) If Beneficiary is made a party to or is threatened with any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said threat and/or litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such threat and/or litigation, whether or not any such threat and/or litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach of the foregoing obligation by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or

destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. “Person” means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.05 Impositions. Trustor shall pay, or cause to be paid, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, non-governmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an “Imposition” and collectively as “Impositions”), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

1.06 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all reasonable costs and expenses (including, without limitation, costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

1.07 Actions By Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, after the giving of any required notice under the Loan Documents and the expiration of any applicable cure periods, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider reasonably necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary reasonable expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective reasonable costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and reasonable attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.08 Transfer of Trust Estate by Trustor. Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, 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. Beneficiary may grant or deny such consent in its sole discretion and, 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 shall not, however, release Trustor or any maker of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (with a term of more than three (3) years) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise.

1.09 Eminent Domain.

(a) In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "Taking"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the "Condemnation Proceeds") are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds, Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary's option and in Beneficiary's sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking; provided, however, that so long as no Event of Default is continuing, Trustor shall be entitled to reasonably participate in any action, proceeding or settlement relating to such Taking.

(b) Condemnation proceeds shall be subject to and disbursed for the repair and restoration of the Trust Estate under such terms and conditions as may be reasonably required by Beneficiary, or upon the occurrence and during the continuance of an Event of Default, such proceeds may be applied to the Obligations at Beneficiary's election.

1.10 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.11 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

1.12 Inspections. Subject to the rights of tenants at the Trust Estate, during normal business hours and upon reasonable advance notice (except in the event of an emergency, in which event entry shall not be limited to normal business hours and no advance notice shall be necessary), Beneficiary, and its agents, representatives, officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.13 Ownership. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate.

1.14 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof. Upon payment of all amounts due under the Obligations, Trustee and Beneficiary shall record a release and reconveyance of this Deed of Trust.

1.15 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

## ARTICLE II ENVIRONMENTAL PROVISIONS

### 2.01 Definitions.

“De Minimis Amounts” shall mean any Hazardous Substance either (1) being transported on or from the Premises or being stored for use on the Premises within a year from original arrival on the Premises in accordance with industry practice or (2) used that both (a) does not constitute a violation of any Environmental Law and (b) is consistent with customary business practice in the state where the Premises is located.

“Hazardous Substance”: (a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that: (i) poses a hazard to the Trust Estate or to persons on the Trust Estate, or (ii) causes the Trust Estate to be in violation of any Hazardous Substance Law; (b) asbestos in any form; (c) urea formaldehyde foam insulation; (d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls; (e) radon gas; (f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, and/or any other chemical, material, or substance that may pose a hazard to the environment.

“Hazardous Substance Claim”: Any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders threatened, instituted, or completed pursuant to any Hazardous Substance Law, together with all claims made or threatened by any third party against Trustor or the Trust Estate relating to damage, contribution, cost-recovery compensation, loss, or injury resulting from the presence, release or discharge of any Hazardous Substance.

“Hazardous Substance Law”: Any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety now or hereafter existing, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Trust Estate, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; and the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time.

“Release”: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that

goes into the soil, surface water, or groundwater of the Premises, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Trustor.

2.02 Representations and Warranties. Except as disclosed in writing to Beneficiary or in any environmental reports delivered to Beneficiary as of the date of this Deed of Trust, Trustor represents and warrants that:

(a) During the period of Trustor's ownership of the Premises: (i) except for De Minimis Amounts, there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by Trustor or, to Trustor's knowledge, any person on or around the Premises, and (ii) except for De Minimis Amounts, there have been no Hazardous Substances transported over or through the Premises by Trustor or, to Trustor's knowledge, any person;

(b) After diligent inquiry, Trustor has no knowledge of, or reason to believe that, there has been: (i) other than De Minimis Amounts, any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Premises or by any third parties onto the Premises, or (ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) To Trustor's knowledge, no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Hazardous Substance Laws are present in or about the Premises or any nearby real property that could migrate to the Premises;

(d) To Trustor's knowledge, no Release or threatened Release exists or has occurred;

(e) To Trustor's knowledge, no underground storage tanks of any kind are or ever have been located in or about the Premises;

(f) To Trustor's knowledge, the Premises and all operations and activities at, and the use and occupancy of, the Premises comply with all applicable Hazardous Substance Laws;

(g) Trustor and, to Trustor's knowledge, every prior use of the Premises has, and is now in strict compliance with, every permit, license, and approval required by all applicable Hazardous Substance Laws for all activities and operations at, and the use and occupancy of, the Premises;

(h) To Trustor's knowledge, there are no Hazardous Substance Claims pending or threatened with regard to Premises or against Trustor;

(i) To Trustor's knowledge, the Premises has not been nor is it within 2,000 feet of any other property designated as hazardous waste property or border zone property pursuant to California Health and Safety Code §§ 25220 et seq., and no proceedings for a determination of this designation are pending or threatened;

(j) To Trustor's knowledge, there exists no occurrence or condition on any real property adjoining or within 2,000 feet of the Premises that would cause the Premises or any part of it to be designated as hazardous waste property or border zone property under the provisions of California Health and Safety Code §§ 25220 et seq. and any regulation adopted in accordance with that section; and

(k) To Trustor's knowledge, any written disclosure submitted by or on behalf of Trustor to Beneficiary concerning any Release or threatened Release, past or present compliance by Trustor, or any User or other person of any Hazardous Substance Laws applicable to the Premises, the past and present use and occupancy of the Premises, and any environmental concerns relating to the Premises, was true and complete when submitted and continues to be true and complete as of the date of this Deed of Trust.

2.03 Covenants. Trustor agrees, except in the ordinary course of business and in strict compliance with all applicable Hazardous Substance Laws, as follows: (a) not to cause or permit the property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any

Hazardous Substance; (b) not to cause, contribute to, permit, or acquiesce in any Release or threatened Release; (c) not to change or modify the use of the Premises without the prior written consent of Beneficiary; (d) to comply with and to cause the Premises and every current user of the Premises to comply with all Hazardous Substance Laws; (e) upon becoming aware of the same, to immediately notify Beneficiary in writing of and to provide Beneficiary with a reasonably detailed description of: (i) any noncompliance of the Premises with any Hazardous Substance Laws; (ii) any Hazardous Substance Claim; (iii) any Release or Threatened Release; (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that would cause the Premises or any part of it to be designated as "hazardous waste property" or "border zone property" under the provisions of Health and Safety Code §§ 25220 et seq. and any regulation adopted in accordance with that section; (f) if Trustor discovers a Release or the presence of any Hazardous Substance on or about the Premises in violation of any Hazardous Substance Law, to: (i) notify Beneficiary of that discovery together with a reasonably detailed description; (ii) engage promptly after a request by Beneficiary, a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Trustor, and (iii) take, at Trustor's sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Hazardous Substance Laws or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims, these actions to be performed: (A) in accordance with Hazardous Substance Laws, (B) in a good and proper manner, (C) under the supervision of a qualified environmental engineer approved in writing by Beneficiary, which approval shall not be unreasonably withheld, in accordance with plans and specifications for these actions approved in writing by Beneficiary, which approval shall not be unreasonably withheld, and (E) using licensed and insured qualified contractors approved in writing by Beneficiary, which approval shall not be unreasonably withheld; (g) immediately furnish to Beneficiary copies of all written communications received by Trustor from any governmental authority or other person or given by Trustor to any person and any other information Beneficiary may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Premises in violation of any Hazardous Substance Law; and (h) keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Premises in violation of any Hazardous Substance Law.

2.04 Inspection and Receivership Rights. Upon Beneficiary's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Trustor in connection with the making of the Loan or the execution of this Deed of Trust or upon Beneficiary's reasonable belief that Trustor has failed to comply with any environmental provision of this Deed of Trust or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Trustor, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Trust Estate and every part of it (including all samples of building materials, soil, and groundwater and all books, records, and files of Trustor relating to the Trust Estate) and perform those acts and things that Beneficiary reasonably deems necessary or desirable to inspect, investigate, assess, and protect the security of this Deed of Trust, for the purpose of determining:

- (a) The existence, location, nature, and magnitude of any such past or present Release or threatened Release,
- (b) The presence of any Hazardous Substances on or about the Trust Estate in violation of any Hazardous Substance Law, and
- (c) The compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document.

In furtherance of the purposes above, without limitation of any of its other rights, Beneficiary may: (i) obtain a court order to enforce Beneficiary's right to enter and inspect the Trust Estate; and/or (ii) to have a receiver appointed to enforce Beneficiary's right to enter and inspect the Trust Estate for the purpose set forth above.

All costs and expenses incurred by Beneficiary pursuant to this Section 2.04 with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, will be paid by Trustor. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including without limitation court



costs, consultant's fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could reasonably be expected to constitute a breach of any of Trustor's obligations under any environmental provision contained in this Deed of Trust or any Loan Document; provided, however, that Beneficiary shall provide Trustor with reasonable advance notice of any such communication.

2.05 Release and Indemnity. Trustor hereby:

(a) Releases and waives any future claims against Beneficiary for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any Hazardous Substance Laws or under any Hazardous Substance Claim; provided, however, that the foregoing release and waiver shall not apply to Hazardous Materials that were Released on the Premises during the time that Beneficiary or its nominee holds title to the Premises;

(b) Agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Deed of Trust together with interest and which are reimbursable to Beneficiary pursuant to the terms of this Deed of Trust, after demand, at the Agreed Rate; and

(c) Agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, reasonable attorney fees and other reasonable legal expenses, costs of evidence of title, cost of evidence of value, and other reasonable expenses (collectively, "Expenses"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Deed of Trust, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Deed of Trust or in any Loan Document or as a consequence of any Release or threatened Release on the presence, use, generation, manufacture, storage, disposal, transportation, Release, or threatened Release of any Hazardous Substance on or about the Trust Estate, including the soils and ground waters, caused or permitted by Trustor, any prior owner or operator of the Trust Estate, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any Hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Deed of Trust.

Trustor's obligations will survive the satisfaction, release, or cancellation of the Obligations, the release and reconveyance or partial release and reconveyance of this Deed of Trust, and the foreclosure of the lien of this Deed of Trust or deed in lieu of the Deed of Trust. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to (i) matters resulting from the gross negligence or willful misconduct of Beneficiary or Trustee, or (ii) matters resulting solely from the actions of Beneficiary or Trustee taken after such parties have taken title to, or exclusive possession of the Premises, provided that, in both cases, such matters shall not arise from or be accumulated with any condition of the Premises, which condition was not caused by Beneficiary or Trustee.

2.06 Requests for Information. Trustor and Beneficiary agree that:

(a) This Section 2.06 is intended as Beneficiary's written request for information and Trustor's written response concerning the environmental condition of the Trust Estate as provided by California Code of Civil Procedure § 726.5; and

(b) Each representation, warranty, covenant, or indemnity made by Trustor in this Article or in any other provision of this Deed of Trust or any Loan Document that relates to the environmental condition of the Trust Estate is intended by Trustor and Beneficiary to be an "environmental provision" for purposes of California Code of Civil Procedure § 736 and will, subject to the limitations set forth in Section

2.05 above with respect to the indemnity set forth therein, survive the payment of the Obligations and the termination or expiration of this Deed of Trust and will not be affected by Beneficiary's acquisition of any interest in the Trust Estate, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any Transfer of any portion of Trustor's interest in the Trust Estate, any successor in interest to Trustor agrees by its succession to that interest that the written request made pursuant to this Article will be deemed remade to the successor in interest without any further or additional action on the part of Beneficiary and that by assuming the debt secured by this Deed of Trust or by accepting the interest of Trustor subject to the lien of this Deed of Trust, the successor remakes each of the representations and warranties in this Deed of Trust and agrees to be bound by each covenant in this Deed of Trust, including, but not limited to, any indemnity provision.

### ARTICLE III SECURITY AGREEMENT

3.01 Grant of Security Interest. Trustor also grants to Beneficiary a security interest in all of Trustor's right, title, and interest now owned or later acquired to the Improvements and/or the Personal Property. The security interest also includes all additions to, substitutions for, changes in, or replacements of the whole or any part of these articles of property, together with all contract rights of Trustor in construction contracts, bonds, agreements for purchase and sale of the Premises, all policies of insurance arising out of the improvement or ownership of the Premises, and all accounts, contract rights, chattel paper, instruments, general intangibles, and other obligations of any kind now or later existing, arising out of, or in connection with the operation or development of the Premises. The security interest also includes all rights of Trustor now or later existing in all security agreements, leases, and other contracts securing or otherwise relating to any accounts, contract rights, chattel paper, instruments, general intangibles, or obligations; all causes of action and recoveries now or later existing for any loss or diminution in value of the Premises; all proceeds of any of the Collateral; and, to the extent not otherwise included, all payments under insurance (whether Beneficiary is the loss payee), or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to any of the Collateral (collectively, "Collateral").

3.02 Representations, Warranties and Covenants of Trustor. Trustor hereby represents warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

- (a) The Collateral is not used or bought for personal, family or household purposes.
- (b) The tangible portion of the Collateral will be kept on or at the Premises and Trustor will not, without the prior written consent of Beneficiary, remove the Collateral or any portion thereof therefrom except such portions or items of Collateral which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of equal or greater value.
- (c) Trustor hereby authorizes Beneficiary to file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of California (or the corresponding Uniform Commercial Code of such other state whose law shall apply) (the "Uniform Commercial Code") now or hereafter in effect, in form reasonably satisfactory to Beneficiary, and will pay the cost of recording and filing the same in all public offices wherever recording or filing is reasonably deemed by Beneficiary to be necessary or desirable.

3.03 Use of Collateral by Trustor. Other than during the continuance of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Collateral and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.04 Remedies Upon an Event of Default.

- (a) In addition to the remedies provided in Section 4.02 hereof, during the continuance of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:
  - (i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Trustor and all others claiming under Trustor,

and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Collateral or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Collateral in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may reasonably deem necessary to protect its security interest in the Collateral (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Collateral or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Collateral and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Collateral at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

(b) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 5.05.

(c) The proceeds of any sale under Section 3.04(a) (vi) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and reasonable attorneys' fees) and the discharge of all Impositions, and claims thereof, if any, on the Collateral prior to the security interest granted herein (except any Impositions subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Beneficiary shall determine; and

(iii) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

3.05 Security Agreement. This Deed of Trust constitutes and shall be deemed to be a “security agreement” for all purposes of the Uniform Commercial Code and Beneficiary shall be entitled to all the rights and remedies of a “secured party” under such Uniform Commercial Code.

3.06 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Premises is located with respect to all fixtures included within the term "Trust Estate" as used in this Deed of Trust and with respect to any goods, Collateral, or other personal property that may now be or later become fixtures.

#### ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Each of the following shall constitute an event of default (“Event of Default”):

(a) An “Event of Default” under any Loan Document, including, without limitation, the Note.

(b) The failure by Trustor to perform any of the other terms, provisions, and obligations of the Trustor, pursuant to this Deed of Trust within thirty (30) days from the receipt of written notice from the Lender (the “30 Day Notice”) that such performance was due; provided, however that if such failure is not reasonably susceptible to cure within thirty (30) days from receipt of the 30 Day Notice and provided that (i) Trustor shall have in good faith undertaken such cure within said thirty (30) day period and (ii) Trustor shall have diligently prosecuted such cure thereafter, Trustor shall have additional time to prosecute such cure, such additional time not to exceed one hundred twenty (120) days, from receipt by Trustor of the 30 Day Notice.

(c) The failure by Trustor to perform any of the terms, provisions, and obligations of the Operating Covenant Agreement.

4.02 Acceleration Upon Default; Additional Remedies. If one or more Event of Default occurs and is continuing, then Beneficiary may declare all the Obligations to be due and the Obligations will become due without any further presentment, demand, protest, or notice of any kind and Beneficiary may:

(a) in person, by agent, or by a receiver, and without regard to the adequacy of security, the solvency of Trustor, or the existence of waste, enter on and take possession of the Trust Estate or any part of it in its own name or in the name of Trustee, sue for or otherwise collect the rents, issues, and profits, and apply them, less costs and expenses of operation and collection, including reasonable attorney fees, upon the Obligations, all in any order that Beneficiary may determine. The entering on and taking possession of the Trust Estate, the collection of rents, issues, and profits, and the application of them will not cure or waive any default or notice of default or invalidate any act done pursuant to the notice;

(b) Commence an action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages of real property;

(c) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Trust Estate to be sold, which notice Trustee or Beneficiary will cause to be filed for record;

(d) with respect to any Personal Property, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Premises, or proceed to sell the Personal Property separately and without regard to the Premises in accordance with Beneficiary's rights and remedies; or

(e) Exercise any of these remedies in combination or any other remedy at law or in equity.

4.03 Exercise of Power of Sale. If Beneficiary elects to foreclose by exercise of the power of sale in this Deed of Trust:

(a) Beneficiary will deposit with Trustee this Deed of Trust, the Note, and any receipts and evidence of expenditures made and secured as Trustee may require. If notice of default has been given as then required by law, and after lapse of the time that may then be required by law, after recordation of the notice of default, Trustee, without demand on Trustor, will, after notice of sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels as Trustee determines, and in any order that it may determine, at public auction to the highest bidder. Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at the time and place of sale, and from time to time after that may postpone the sale by public announcement at the time fixed by the preceding postponement, and without further notice make the sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any notice of default at any time before Trustee's sale by executing a notice of rescission and recording it. The recordation of the notice will constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of Obligations affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission will not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Trust Estate to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations, or remedies of Beneficiary or Trustee. After sale, Trustee will deliver to the purchaser its deed conveying the property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts will be conclusive proof of their truthfulness. Any Person, including Trustor, Trustee, or Beneficiary, may purchase at that sale. If allowed by law, Beneficiary, if it is the purchaser, may turn in the Note at the amount owing on it toward payment of the purchase price (or for endorsement of the purchase price as a payment on the Note if the amount owing exceeds the purchase price). Trustor expressly waives any right of redemption after sale that Trustor may have at the time of sale or that may apply to the sale.

(b) Trustee, upon the sale, will make (without any covenant or warranty, express or implied), execute and, after due payment made, deliver to a purchaser and its heirs or assigns a deed or other record of interest, as the case may be, to the Trust Estate sold, which will convey to the purchaser all the title and interest of Trustor in the Trust Estate and will apply the proceeds of the sale in payment,

(i) First, of the expenses of the sale together with the expenses of the trust, including, without limitation, attorney fees, that will become due on any default made by Trustor, and also any sums that Trustee or Beneficiary have paid for procuring a search of the title to the Premises subsequent to the execution of this Deed of Trust; and

(ii) Second, of the Obligations then remaining unpaid and the amount of all other monies with interest in this Deed of Trust agreed or provided to be paid by Trustor.

Trustee will pay the balance or surplus of the proceeds of sale to Trustor and its successors or assigns as its interests may appear.

4.04 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to the Uniform Commercial Code, Beneficiary, during the continuance of an Event of Default, may proceed under such Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, and treat both real and personal property interests as one parcel or package of security.

4.05 Appointment of Receiver. If an Event of Default occurs and is continuing, Beneficiary, as a matter of strict right and without notice to Trustor or anyone claiming under Trustor and without regard to the then value of the Trust Estate, will have the right to apply ex parte to any court having jurisdiction to appoint a Receiver of the Trust Estate, and Trustor waives notice of any application for that, provided a hearing to confirm the appointment with notice to Trustor is set within fourteen (14) days after the appointment. Any Receiver will have all the powers and duties of receivers in similar cases and all the powers and duties of Beneficiary in case of entry as

provided in this Deed of Trust, and will continue as such and exercise all those powers until the date of confirmation of sale, unless the receivership is terminated sooner. For purposes of this Agreement, "Receiver" shall include any trustee, receiver, custodian, fiscal agent, liquidator, or similar officer.

4.06 Curing of Defaults. If Trustor at any time fails to perform or comply with any of the terms, covenants, and conditions required on Trustor's part to be performed and complied with under this Deed of Trust, the Note, any of the other Loan Documents, or any other agreement that, under the terms of this Deed of Trust, Trustor is required to perform, after the giving of any required notice and the expiration of applicable cure periods (or without notice if Beneficiary determines that an emergency exists) and without waiving or releasing Trustor from any of the Obligations, Beneficiary may, subject to the provisions of any of the agreements:

(a) Make from the Loan or its own funds any payments payable by Trustor and take out, pay for, and maintain any of the insurance policies provided for; and

(b) Perform any other acts on the part of Trustor to be performed and enter on the Trust Estate for that purpose.

The making by Beneficiary of payments out of Beneficiary's own funds will not, however, be deemed to cure the default by Trustor, and it will not be cured unless and until Trustor reimburses Beneficiary for the payments. All sums paid and all reasonable costs and expenses incurred by Beneficiary in connection with the performance of any such act, together with interest on unpaid balances at the Default Rate from the respective dates of Beneficiary's making of each payment, will be added to the principal of the Obligations, will be secured by the Deed of Trust and any and all other documents now or later securing any part of the payment of the Obligations or the observance or performance under the Obligations as well as by the lien of this Deed of Trust, prior to any right, title, or interest in or claim on the Trust Estate attaching or accruing subsequent to the lien of this Deed of Trust, and will be payable by Trustor to Beneficiary on demand.

4.07 Judgment on Environmental Provision. Beneficiary or its agents, representatives, and employees may seek a judgment that Trustor has breached its covenants, representations, or warranties in Article II of this Deed of Trust or any other covenants, representations, or warranties that are deemed to be "environmental provisions" pursuant to the laws of the State of California (each an "Environmental Provision"), by commencing and maintaining an action or actions in any court of competent jurisdiction, whether commenced prior to or within five (5) years after foreclosure of the lien of this Deed of Trust. Beneficiary or its agents, representatives, and employees may also seek an injunction to cause Trustor to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, reasonable expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other reasonable out-of-pocket costs or expenses actually incurred by Beneficiary (collectively, "Environmental Costs") incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action required by any Hazardous Substances Law or any Hazardous Substance Claim, or which Beneficiary reasonably believes necessary to protect the Trust Estate. It will be conclusively presumed between Beneficiary and Trustor that all Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Trust Estate were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees, and reasonable attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Default Rate from the date of expenditure until those sums have been paid in full. Beneficiary will be entitled to bid, at any trustee's or foreclosure sale of the Trust Estate, the amount of the costs, expenses, and interest in addition to the amount of other Obligations.

Notwithstanding anything contained herein to the contrary, the foregoing shall not apply to (i) matters resulting from the gross negligence or willful misconduct of Beneficiary or Trustee, or (ii) matters resulting solely from the actions of Beneficiary or Trustee taken after such parties have taken title to, or exclusive possession of the Premises, provided that, in both cases, such matters shall not arise from or be accumulated with any condition of the Premises, which condition was not caused by Beneficiary or Trustee. In addition, notwithstanding the foregoing, the foregoing shall not apply to Hazardous Materials that were not released on the Premises prior to the date that Beneficiary or its nominee acquired title to the Premises.

4.08 Waive Lien. Beneficiary or its agents, representatives, and employees may waive its lien against the Trust Estate or any portion of it, including the Improvements and the Personal Property, to the extent that the

Trust Estate is found to be environmentally impaired in accordance with the laws of the State of California, and to exercise all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order under applicable laws of the State of California. As between Beneficiary and Trustor, Trustor will have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substances.

4.09 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Deed of Trust and any other security or any guaranty 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 herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law 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, to the extent permitted by law, either of them may pursue inconsistent remedies.

4.10 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder is mailed to it at the address set forth in Section 5.05.

#### ARTICLE V MISCELLANEOUS

5.01 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

5.02 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Trust Estate, waives all rights to have the Trust Estate or any other property that now or later may be security for any Obligation ("Other Property") marshaled on any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Obligations. Beneficiary will have the right to sell, and any court in which foreclosure proceedings may be brought will have the right to order a sale of, the Trust Estate and any of the Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

5.03 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Obligations have been paid in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention (all of which Beneficiary shall promptly do upon satisfaction in full of all Obligations) and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without

warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as “the person or persons legally entitled thereto.”

5.05 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, through the United States Postal Service, or by overnight delivery by a nationally recognized delivery service (e.g., Federal Express) requiring a receipt, to the addresses shown on the first page hereof or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given three (3) Business Days after deposit in the United States mail, one (1) Business Day after the date of sending via overnight delivery, and if delivered by hand, shall be deemed given when delivered.

5.06 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

5.08 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorneys' fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

5.11 Governing Law.

(a) THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) All rights, powers and remedies provided in this instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this instrument or any application thereof shall be invalid or unenforceable, the remainder of this instrument and any other application of the term shall not be affected thereby.

5.12 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.



5.13 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

5.14 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

5.15 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

5.16 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.17 Status of Title. Trustor represents and warrants that it is the lawful owner of the Trust Estate and holds a fee simple estate in the Premises and Improvements, and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust.

5.18 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

5.19 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor may not assign its obligations under the Loan Documents.

5.20 Time of the Essence. Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

5.21 Survival. The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

5.22 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY LAW, TRUSTOR AGREES THAT THIS DEED OF TRUST ALSO CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY PURSUANT TO THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631, AND THE TRUSTOR APPOINTS BENEFICIARY ITS ATTORNEY-IN-FACT, WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, AND TRUSTOR AUTHORIZES BENEFICIARY IN THE NAME, PLACE, AND STEAD OF TRUSTOR TO FILE THIS DEED OF TRUST WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY.

[Signatures on Following Pages]

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

**Trustor:**

INDIVIDUAL

By: \_\_\_\_\_  
JESUS R. GONZALEZ, Owner

**EXHIBIT A**

**Property Legal Description**

.22 ACRES  
Land Use: C05 Commercial, General Office Building  
LOTS 2 BLK 26  
MB 004/052 COACHELLA

APN: 778-060-006

Zoning: CG