



# Arbor Realty Trust – Fraud.

Arbor makes substantial equity investments in off-balance sheet entities controlled by associates to refinance its own purchase of distressed portfolios.

## PLEASE READ IMPORTANT DISCLAIMER – PAGE 14

**May 9, 2024** – Viceroy Research today bestows the F-word upon Arbor and its management team: “fraud”. Viceroy’s investigations have discovered an elaborate and intentional con, where Arbor has financed purchases of assets from its own foreclosures, with Arbor loans, via off-balance sheet entities run by former Arbor associates, and entirely financed with Arbor equity capital.

- Arbor has financed 99% of the “non-controlling interest” equity of an off-balance sheet entity run by a former VP of Arbor, whose investment in the entity was also financed by Arbor. They share an office.
- The off-balance sheet entity acquires foreclosed Arbor properties at an apparent premium.
- **The purchase of the foreclosed properties is financed by an Arbor bridge loan**, supplementary to the off-balance sheet entity’s deposit, also financed by Arbor. **Arbor does not disclose related party transactions of this nature** (the related party being itself).
- **Arbor does not recognize losses on these foreclosures** by financing the sale of foreclosed properties to off-balance sheet entities.
- These transactions allow Arbor to feign arm’s-length transactions with off-balance sheet entities without disclosing conflicts of interest. Arbor retains 100% of the risk involved in these transactions.
- **Arbor has fraudulently overstated the value of its loan book through undisclosed, off-balance sheet, related party transactions.**
- Approximately half of Arbor’s Q1 2024 loan originations were to these off-balance sheet entities, to buy foreclosed properties.

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**This is FRAUD**

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This report will also provide a review of Arbor’s Q1 2024 10-Q, and statements made by management in their earnings call. Viceroy note the we have attempted to clarify numerous specific, poignant questions directly with Arbor management. Instead of answering any of our questions: management attempted to front-run this report with a press release asking investors to avoid our work.

- Arbor’s borrowers are almost exclusively distressed. The underlying DSCR of Arbor’s CLOs is now significantly below 0.6x and represents a majority of Arbor’s book.
- Kaufman claims that Arbor successfully modified 40 loans in the first quarter totaling \$1.9b. We note that there were \$2.05b of modifications in the CLOs alone to mid-April 2024<sup>1</sup>. Therefore, it appears that Arbor have made \$1.9b of modifications to distressed loans in its CLOs, and have either not disclosed or not modified an enormous number of unencumbered, self-funded loans in its book:
- Despite making modifications to distressed loans to the value of \$1.9b, or 25% of its CLO portfolios in *one quarter alone*, >\$800m of CLO loans remain delinquent.
- Viceroy have obtained Capital Call letters from syndicates, confirming that Arbor is accepting modifications with significant PIK accruals.
- PIK accruals appear to contribute to an otherwise large and unknown working capital account titled “other assets”, which is a \$400m black hole.
- An analysis of Arbor’s net debt spread vs SOFR shows Arbor’s earnings quality and asset efficiency have deteriorated sharply since mid-2022.

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<sup>1</sup> CLO data received on mid-month time frames. We note that a vast majority of modifications were made in the month to mid-April 2024.



## Fraud – Arbor’s Off-Balance Sheet Debt-Restructuring Entities

In December 2023, Arbor committed to a \$24m investment in AWC Real Estate Opportunity Partners I LP.

**AWC Real Estate Opportunity Partners I LP ("AWC").** In the fourth quarter of 2023, we committed to a \$24.0 million investment (of which \$13.0 million was funded at December 31, 2023) for an initial 99% noncontrolling interest in a fund whose objective is to make investments in sustainable affordable housing structures, with the intention to bring in additional partners. In addition, we entered into an agreement with the general partner to provide a loan, up to a maximum of \$0.9 million, to fund a portion of their equity contributions. In the fourth quarter of 2023, this fund purchased our equity interest in North Vermont Avenue (described below) at a discount for \$1.3 million, which was recorded as a reduction to our investment in AWC. The remaining capital contribution was used to fund additional qualified purchases.

Figure 1 – Arbor 2023 Annual Report extract

Arbor controls 99% of the “initial” “non-controlling” interest and funded the GP’s contribution via a loan up to \$0.9m. The GP of this project is Arbor’s former Vice President of Originations, Austin Walker:

**Austin Walker** · 2nd  
Providing private equity to emerging developers focused on sustainable and affordable housing investments across the US  
New York City Metropolitan Area · [Contact info](#)  
500+ connections

**Experience**

**A. Walker & Co.**  
Chief Executive Officer  
A. Walker & Co. · Full-time  
Dec 2022 - Present · 1 yr 6 mos  
New York City Metropolitan Area · On-site

**Arbor Realty Trust**  
7 yrs 2 mos

- VP, Originations | Multifamily Loan Originator | Commercial Real Estate Lending**  
Full-time  
Nov 2015 - Dec 2022 · 7 yrs 2 mos  
375 Park Ave New York, NY

I'm responsible for the origination, structuring and closing of loans across Arbor's multifamily and commercial product lines, including Fannie Mae, Freddie Mac, FHA, Bridge, Mezzanine, Preferred Equity and CMB! ...see more

Figure 2 – Austin Walker LinkedIn extract<sup>2</sup>

A. Walker & Co. (AWC) announced their launch with Arbor in October 2023, citing the \$24m institutional investment from Arbor and a transaction pipeline even at the early stage of \$64m, despite Arbor being the only investor.

**A. Walker & Co.** →  
Oct 05, 2023, 10:00 ET

The vehicle will target equity investments into primarily small- and middle-market multifamily and affordable housing transactions via joint ventures with emerging operators nationally.

NEW YORK, Oct. 5, 2023 /PRNewswire/ -- **A. Walker & Co.**, a minority-owned and operated, institutionally-backed investment manager, is proud to announce the launch of its inaugural vehicle, A. Walker & Co. Real Estate Opportunity Partners I, LP ("REOP I"). The vehicle launched with a \$24 million capital commitment from an institutional investor. As of today, REOP I has deployed \$2.282 million into two transactions located in Los Angeles, CA and New Port Richey, FL. REOP I has a pipeline of approximately \$64 million in transactions under active review for potential investment; they consist of 14 properties totaling 2,381 units and a total capitalization of \$937 million.

Figure 3 – Austin Walker LinkedIn extract<sup>3</sup>

<sup>2</sup> <https://www.linkedin.com/in/austinwalker16/>

<sup>3</sup> <https://www.prnewswire.com/news-releases/a-walker-co-launches-new-joint-venture-equity-investment-vehicle-301948294.html>



AWC shares an office with Arbor's New York main office.

2. Principal Place of Business and Contact Information			
Name of Issuer AWC Real Estate Opportunity Partners I LP			
Street Address 1 375 PARK AVENUE, SUITE 3000		Street Address 2	
City NEW YORK	State/Province/Country NEW YORK	ZIP/Postal Code 10152	Phone No. of Issue 646-963-6366
3. Related Persons			
Last Name A. Walker & Co GP, LLC	First Name General Partner	Middle Name	
Street Address 1 375 Park Avenue, Suite 3000		Street Address 2	
City New York	State/Province/Country NEW YORK	ZIP/Postal Code 10152	

General: 800.ARBOR.10 | Financing: 833.5

**ARBOR**

**New York**

375 Park Avenue, Suite 3000  
New York, NY 10152  
800.ARBOR.10

AWC, through a Delaware shell company, bought a Houston Multifamily Portfolio, **Westchase Houston**, with a further \$95.25m "loan" from Arbor Realty.

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

**THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust") is made as of April 2, 2024 by **WESTCHASE HOUSTON PROPERTY OWNER LLC**, a Delaware limited liability company ("Vista Grantor"), **SA GRAND PROPERTY OWNER LLC**, a Delaware limited liability company ("Grand Grantor"), **SA ESTATES PROPERTY OWNER LLC**, a Delaware limited liability company ("Estates Grantor"), and **SA PRESERVE PROPERTY OWNER LLC**, a Delaware limited liability company ("Preserve Grantor"); and together with Vista Grantor, Grand Grantor, and Estates Grantor, collectively, jointly and severally, and individually, as the context may require, "Grantor", each having an address at c/o The Grados Law Firm PLLC, 5 Castle Road, Irvington, New York 10533, to **ROBERT D. ROYSE, ESQ.**, a natural person (together with his successors hereunder, collectively "Trustee"), having an address 2001 Bryan Street, Ste. 4000, Dallas, Texas 75201, for the benefit of **ARBOR REALTY SR, INC.**, a Maryland corporation (together with its successors and assigns, collectively, "Beneficiary"), having an address at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553.

**WHEREAS**, Grantor and Beneficiary are entering into that certain Loan Agreement, dated as of even date herewith (as amended, supplemented or modified from time to time, the "Loan Agreement"), pursuant to which Beneficiary will make a loan (the "Loan") to Grantor in the maximum principal amount of \$95,250,000.00. The Loan also will be evidenced by that certain Promissory Note, dated as of even date herewith, made by Grantor to the order of Beneficiary in the original principal amount of \$95,250,000.00 (as amended, consolidated, supplemented or modified from time to time, the "Note"), together with interest as therein provided and having a maturity date of April 1, 2027, subject to extension as set forth in Section 2.06 of the Loan Agreement; and

**GRANTOR:** **WESTCHASE HOUSTON PROPERTY OWNER LLC**, a Delaware limited liability company

By: Westchase Holdings LLC, a Delaware limited liability company, its Managing Member

By: **AWC Westchase LLC**, a Delaware limited liability company, its Managing Member


By:   
Name: **Austin Walker**  
Title: **Authorized Signatory**

Figure 4 – Westchase Deed Extract

A full copy of the Westchase Deed extract can be found in Annexure 1.





Arbor foreclosed on the Westchase portfolio, representing one of the largest failures in Jay Gajavelli's Applesway Group.

## Arbor Realty pursues foreclosure of Applesway-linked apartments

Latest case comes on the heels of delinquency on a \$60M loan



Arbor Realty's Ivan Kaufman and The Estates at Westchase (LinkedIn, The Estates at Westchase, Getty)

APR 3, 2024, 1:00 PM

By Brandon Sams

Arbor Realty is set to foreclose on a piece of a Westchase multifamily portfolio linked to Applesway Investment Group after the group became delinquent on a \$60 million loan.

Figure 5 – Arbor Realty pursues foreclosure of Applesway-linked apartments<sup>4</sup>

**This is FRAUD**

- Arbor financed 99% of the “non-controlling interest” equity of an off-balance sheet entity run by a former VP of Arbor.
- The off-balance sheet entity acquires foreclosed Arbor properties at an apparent premium.
- The purchase of the foreclosed properties is financed by an Arbor bridge loan**, supplementary to the off-balance sheet entity’s deposit, also financed by Arbor. **Arbor does not disclose related party transactions of this nature** (the related party being itself).
- By financing the sale of foreclosed properties, financed by Arbor, to off-balance sheet entities: **Arbor does not recognize losses on these foreclosures.**
- These transactions allow Arbor to feign arm’s-length transactions with off-balance sheet entities without disclosing conflicts of interest.
- Arbor has fraudulently overstated the value of its loan book through undisclosed, off-balance sheet, related party transactions.**
- Approximately half of Arbor’s Q1 2024 loan originations were to itself, to buy foreclosed properties.

Viceroy have found this example entirely by chance. There is no way to scan for this well-thought-out, intentional fraud. Now we know where to look, we believe we will find more.

<sup>4</sup> <https://therealdeal.com/texas/houston/2024/04/03/arbor-realty-to-foreclose-on-more-applesway-apartments-in-houston/>





## A Review of Management's Claims

Arbor's borrowers are almost exclusively distressed.

Arbor's interest income has growth ~6x since 2018 due to:

- An 8x growth<sup>5</sup> of Arbor's structured book, during 2020 to mid-2022 0% rate environments.
- A ~2x growth in effective interest rates on loans issued due to 530bps swing of underlying SOFR from mid-2022.

Arbor Realty Trust - Analysis	2018	2019	2020	2021	2022	2023	Q1 2024
Interest Income - Structural Business	227	290	306	427	904	1,279	1,232
Structured book	3,255	4,114	5,250	8,244	14,964	14,441	13,543

*\*Annualized Q1 2024*

Figure 6 – Viceroy Analysis

While a 530bps increase in SOFR provided an excellent income boost to Arbor's almost exclusively floating-rate bridge loan book, it concurrently made almost every single loan in Arbor's book unaffordable to the borrowers. The underlying DSCR of Arbor's CLOs is now significantly below 0.6x, and represents a majority of Arbor's book.

Weighted avg NOI DSCR	ARCLO 2021-FL1	ARCLO 2021-FL2	ARCLO 2021-FL3	ARCLO 2021-FL4	ARCLO 2022-FL1	ARCLO 2022-FL2
Apr-2021	1.18x					
Jul-2021	1.54x	1.44x				
Oct-2021	1.30x	1.68x	1.47x			
Jan-2022	1.39x	1.55x	1.62x	1.39x	1.39x	
Apr-2022	1.33x	1.46x	1.53x	1.35x	1.34x	1.30x
Jul-2022	1.22x	1.42x	1.45x	1.22x	1.14x	1.10x
Oct-2022	1.01x	1.12x	1.35x	0.93x	0.88x	0.93x
Jan-2023	0.82x	0.76x	1.09x	0.72x	0.64x	0.76x
Apr-2023	0.91x	0.72x	0.90x	0.79x	0.82x	0.84x
Jul-2023	0.75x	0.67x	0.78x	0.68x	0.76x	0.78x
Oct-2023	0.66x	0.59x	0.64x	0.57x	0.62x	0.64x
Jan-2024	0.61x	0.61x	0.59x	0.61x	0.56x	0.60x
<b>Apr-2024</b>	<b>0.63x</b>	<b>0.59x</b>	<b>0.56x</b>	<b>0.57x</b>	<b>0.56x</b>	<b>0.61x</b>
q/q change	3%	-3%	-4%	-6%	-1%	1%

Figure 7 – Viceroy Analysis

The result of Arbor's almost-exclusively unprofitable underlying projects is that borrowers are falling into delinquencies and require uncommercial (to Arbor and/or borrower) loan modifications en-masse.

April 2024 Update (\$m)	ARCLO 2021-FL1	ARCLO 2021-FL2	ARCLO 2021-FL3	ARCLO 2021-FL4	ARCLO 2022-FL1	ARCLO 2022-FL2	Total
< 1 Month	-	17,900	58,570	146,043	101,705	30,000	<b>354,218</b>
30 Days	-	-	87,775	31,145	32,500	81,700	<b>233,120</b>
60 Days	-	-	44,240	-	-	87,850	<b>132,090</b>
90+ Days	10,802	-	12,413	34,500	6,760	22,575	<b>87,050</b>
Modified	200,318	118,857	269,045	503,240	538,128	418,430	<b>2,048,018</b>
<b>Total delinquent &amp; modified</b>	<b>211,120</b>	<b>136,757</b>	<b>472,043</b>	<b>714,928</b>	<b>679,093</b>	<b>640,555</b>	<b>2,854,495</b>

Figure 8 – Viceroy Analysis

- The weighted DSCR of modified loans is ~55%, about 500bps lower than the average CLO weighted DSCR.
- The nature of many extended loans are various, high leverage loans secured against the same assets.
  - Adjusting for this: the LTV of loans modified in 2024 ranges between ~60% to 121%, with the average at about 85%.

<sup>5</sup> At its peak in Q3 2022



## Modification stats

As we have noted in the past: Arbor frequently transacts with its CLOs to move bad loans off public CLO trustees, and away from prying eyes of nasty short sellers, and tops them up with “good” non delinquent loans.

### Plugging Holes – CLO intra-period deal flow

A comparison of December underlying CLO data against October underlying CLO data shows that Arbor transacts with CLOs frequently. Per our case studies, we can show that Arbor buys several non-performing loan assets from the CLO (seemingly, at par) and plugs performing loans back into the CLOs.

Many delinquent loans remain delinquent, with only one loan over this period rehabilitated “30 day” to “<1 month” delinquency status.

We note that 4 loans that were formerly delinquent have been removed from the CLO. Arbor is adding performing loans to the CLO as the total number of loans has increased to 361 from 357 in our original report.

Loan delinquency change analysis	Number	Original balance	Weighted average DSCR
Existing delinquencies	33	626,991,821	0.43x
add: New delinquencies	39	667,164,230	0.46x
less: Formerly delinquent, removed	4	52,022,340	5.03x
<b>Total current delinquencies</b>	<b>68</b>	<b>1,242,133,711</b>	<b>0.46x</b>
of which:			
Longer delinquency	14	181,879,981	0.39x
Shorter delinquency	1	32,200,000	0.80x

Figure 5 – Viceroy Analysis

Figure 9 – Viceroy Research December CLO Update<sup>6</sup>

This means that the continued, rapid deterioration of these books comes despite Arbor plugging holes in this leaky CLO ship. It also leads us to believe that the CLO sample we analyze is *better* performing than Arbor’s self-funded book.

In Q1 2024, Arbor CEO Kaufman claimed that the company had successfully modified 40 loans in the first quarter totaling \$1.9b. We note that there were \$2.05b of modifications in the CLOs alone to mid-April 2024<sup>7</sup>. Therefore, it appears that Arbor have made \$1.9b of modifications to distressed loans in its CLOs, and have either not disclosed or not modified an enormous number of unencumbered, self-funded loans in its book:

Modifications	Count	Value
1: Maturity Date Extension	4	148,825,000
2: Amortization Change	0	-
3: Principal Write-Off	0	-
5: Temporary Rate Reduction	2	53,375,000
6: Capitalization on Interest	8	293,990,000
7: Capitalization on Taxes	0	-
8: Other	19	450,441,787
9: Combination	39	1,005,867,841
10: Forbearance	1	43,989,000
Unspecified	1	51,529,015

Figure 10 – Viceroy Analysis

Despite making modifications to distressed loans to the value of \$1.9b, or 25% of its CLO portfolios in *one quarter alone*, >\$800m of CLO loans remain delinquent.

Arbor’s implicit admission that the only parts of its books that are delinquent, impaired, and require modifications are its CLO portfolio is a verifiable lie. Arbor has made zero disclosures on the performance of its unencumbered loan book.

<sup>6</sup> <https://viceroyresearch.org/wp-content/uploads/2023/12/Arbor-December-Update.pdf>

<sup>7</sup> CLO data received on mid-month time frames. We note that a vast majority of modifications were made in the month to mid-April 2024.





## Distressed Equity Injections & the Mezz / Pref business

Arbor boldly claims that it required its (effectively bankrupt, functionally insolvent) borrowers to put up equity against “every single one” of Arbor’s \$1.9m of loan modifications and amount equal to \$45m.

due loans current and paid down balances where appropriate. In fact, borrowers injected approximately \$45 million of new capital into these deals, with \$1.65 billion of these loans purchasing new interest rate caps.

Figure 11 – Arbor Q1 2024 Conference Call Extract

We reluctantly gave into coincidence that that Arbor’s historically non-existent Mezz/Pref structured financing divisions boomed as rates skyrocketed and borrowers became distressed.

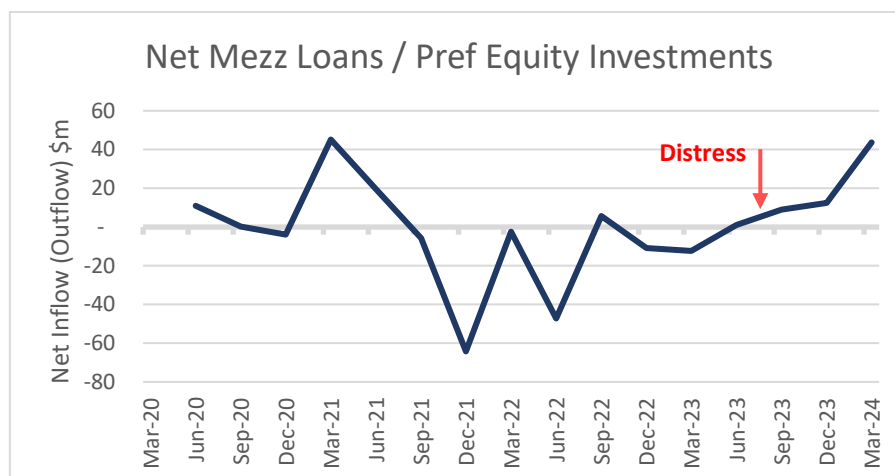


Figure 12 – Viceroy Analysis

We do not buy the story that Arbor’s Mezz/Pref structured finance division originated \$45m of new business this quarter: the exact same amount of equity Arbor claims distressed tenants put forward to modify their loans.

	Three Months Ended March 31,	
	2024	2023
<b>Origination Data:</b>		
<u>Structured Business</u>		
<b>Bridge:</b>		
Multifamily	\$ 39,235	\$ 186,100
SFR	171,490	76,089
	210,725	262,189
<u>Mezzanine / Preferred Equity</u>		
	45,129	5,845
<b>Total New Loan Originations</b>	<b>\$ 255,854</b>	<b>\$ 268,034</b>

Figure 13 – Viceroy Analysis

On Tuesday, May 7, 2024, Viceroy reached out to Arbor CFO Paul Elenio to clarify and answer our questions:

We intend to publish an article on Arbor to this effect. We request your answer to the following questions:

Mr Kaufman claims that \$45m of new capital was injected into Arbor, into “every single one” of the \$1.9b in modified deals.

1. How much capital did Arbor inject into the same deals?
2. Viceroy have obtained financial statements for various modified entities which indicate they can neither afford nor have they injected any equity into these deals. How can this coexist with Mr Kaufmann’s statement?
3. Is there any reason why borrowers would have advised Viceroy that they were advanced pref/mezz financing by Arbor in order to “rehabilitate” existing loans?
4. Has Arbor issued Mezz/Pref financing to existing borrowers? If yes: were any of these borrowers delinquent >0 days?
5. How do these equity injections into projects reflect on borrowers’ accounts?

Figure 14 – Viceroy email to Paul Elenio – 7 May 2024



- **Viceroy has access to financial data of every single entity in the Arbor CLO**, and has made endeavors, where possible, to obtain more complete accounts.
  - **The average DSCR of these borrowers is <0.6x**, and there are less than a handful of borrowers breaking even. How have these distressed borrowers fronted \$45m of fresh equity into these projects?
- Arbor has claimed that it has required its borrowers have purchased rate caps with equity infusions against \$1.65b of modified loans.
  - We have priced rate caps of 2% (which we do not think would even bring these projects into breakeven DSCR), at over 300bps over one year via Chatham.
  - Why did Arbor not insist that this equity was used to pay down loans?
- **Viceroy has access to live reserve accounts of every loan in Arbor's CLO.**
  - We note that **the reserve accounts of modified loans at mid-April 2024 amounted to \$87m, down from \$90m the previous month.** Outside of rate caps: **where are these equity injections going?**
- Viceroy understands from discussions with industry members that Arbor issue Mezz/Pref financing to existing borrowers to prop the quality of their book. This is routinely discussed on property web-forums. We asked this question directly.

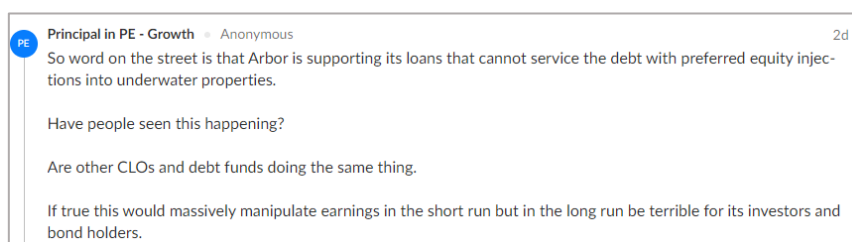


Figure 15 – Extract – WallStreetOasis.com

**Neither Arbor nor their management team responded to our questions.**

These are not trick questions, nor are they vague. Most questions require simple yes/no answers. Instead, Arbor published a press release to get ahead of their own negative press, claiming that we make opinions based on certain select data (which is true).

If Arbor anticipates more short seller reports in the future it is because management refuse to answer any of the pertinent questions.

Arbor Realty Trust Points to its Public Disclosures and Strong Performance in Light of Continued Negative Press from Short Interest

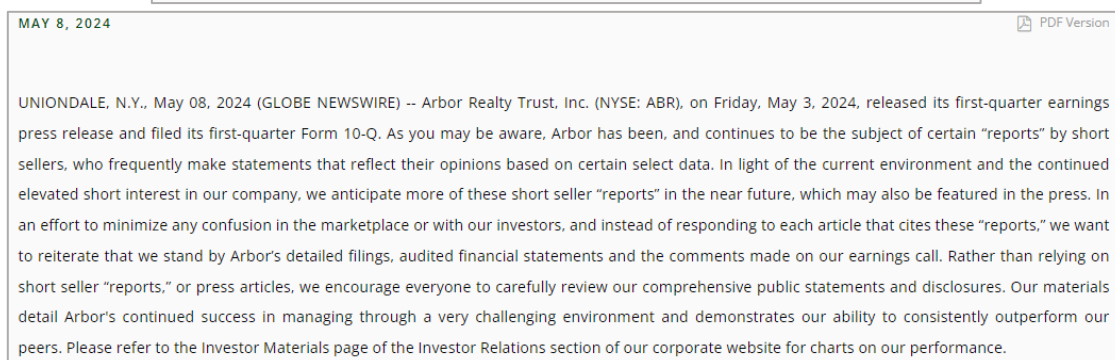


Figure 16 – Arbor Press Release, May 8, 2024

Arbor then bizarrely state that it should not be a target of skepticism or criticism because they have succeeded in a “very challenging environment” and “consistently outperform peers”. These are red flags (obviously).





## Capital Call Letters

Various parties have sent Viceroy documents outlining the terms offered by Arbor to distressed borrowers who require loan modifications.

This syndicate project, for instance, requested a further \$11.7m from its LPs (we understand that they did not meet this figure).

considered represented a viable solution for [REDACTED]. Accordingly, after weeks of negotiations with our lender, a favorable compromise was achieved, which will grant us the time we need to increase the property's value while ensuring sufficient cash flow for operations. In that respect, the property will require a capital infusion from investors to preserve the investment and ensure operations remain unaffected for the next 36 months. The required funding amounts to \$11,700,000 to be raised from all investors.

Figure 17 – Extract – GP request for additional capital contribution

The GP claims that Arbor have agreed to waive all debt covenant testing and agreed to a **PIK accrual 1.75% of the debt service payments to the next capital event**.

lender, further demonstrating the upwards potential of the asset. To remain in good standing under our loan agreement, we will be purchasing a new rate cap with a 1.50% strike rate. This will fix our interest rate on the loan at 5.45% (3.95 + 1.50). In exchange, the lender has agreed to accrue 1.75% of the debt service payments to the next capital event (sale, refinancing etc.), in addition to waiving all debt covenant testing and loan extension fees, thus providing us with a three-year extension until December 2026.

Figure 18 – Extract – GP request for additional capital contribution

This suggests that despite purchasing a 2% rate cap, the project would *still be cashflow negative*, only becoming positive when ABR allows the PIK accrual of interest to the “next capital event”.

**Working with our lender for the best possible solution.** Purchasing a one-year interest rate cap with a 1.50% strike brings our interest rate to 5.45%. With the lender agreeing to accrue 1.75%, our actual debt service payments will amount to 3.70% fixed. This will have a large impact on the property's operations, allowing it to cash flow positively during Q2 of 2024.

Figure 19 – Extract – GP request for additional capital contribution

We point out the following:

- Modified investors appear to have been effectively loan sharked into loan modifications.
- Modifications, even with expensive, extreme rate caps, will not bring projects into operational break-even DSCRs of >1.
- There remains little cash available to rehabilitate the properties which serve as collateral to Arbor's loans and are valued at 3.8% cap rates.
- A compounding accrual of interest will further encumber LPs, who are already driving non-performing projects.

This process of drawing out failures is exactly the definition of kicking the can. At some stage, someone must bite the bullet:

### Ivan Kaufman

Founder, Chairman & Chief Executive Officer, Arbor Realty Trust, Inc.

A

I mean, generally not, generally by the time we foreclose the thing has been pre-baked and pre-done in those sense. You really get to see assets that haven't had the right management. And that's why it's so important to us when an asset isn't performing to not just kick the can down the road because your asset will deteriorate, but to really accelerate either a change in management or a change in ownership.

Figure 20 – Arbor Q4 2023 Conference Call Extract



## Other Assets

Another mystery box is Arbor's ballooning "Other Assets" line which has almost doubled in the past year.

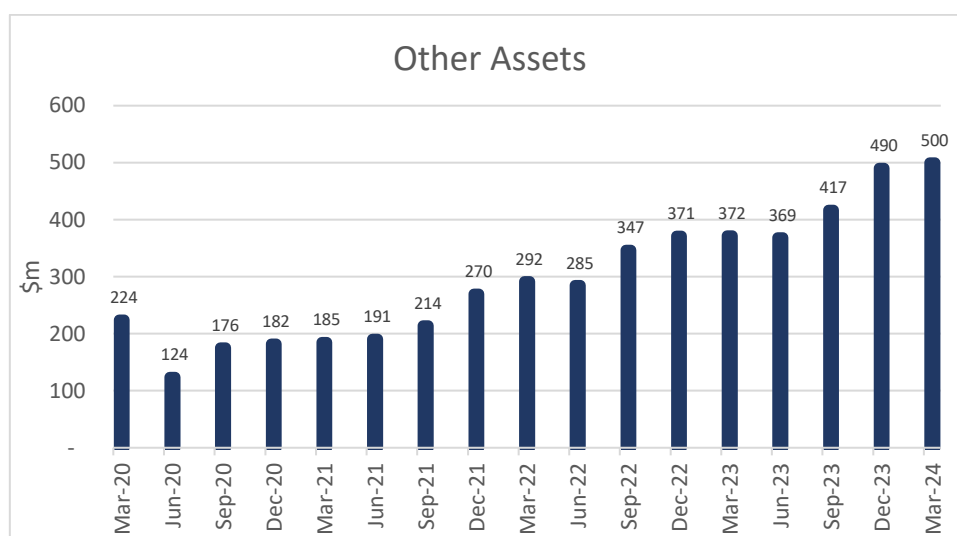


Figure 21 – Viceroy Analysis

Many have questioned management regarding the contents of this working capital account, and many have failed to provide a response beyond: "there's a lot of things netted in there". This is management-speak for "I don't want to tell you".

<p><b>Jade Rahmani</b></p> <p>Okay. Turning to cash flow performance. I understand that when we look at the cash flow statement, there's timing of loan originations for Fannie and Freddie and then the loan sales, which take place 30 to 60 days after that. So adjusting for that, were there any items that drove negative working capital? <b>There is a category called other assets and liabilities, that working capital account. I think in the quarter was negative \$200 million, which doesn't usually occur. I wanted to see if you could provide any color on that.</b></p>	<p><b>Paul Elenio</b></p> <p>Yes. I have to look at what items you're talking about, a lot of things get netted into the cash flow. <b>I'll take a look at the details, Jade, and I can call you after because there's a lot of things netted in there. But the cash flows were, I think, pretty stable compared to last quarter, but I'll get back to you on that item.</b></p> <p><b>Jade Rahmani</b></p> <p>Okay. But just overall, your feeling about cash flow performance is that it remains strong and steady. Is that how you would characterize it?</p>
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Figure 22 – Arbor Q1 2024 Conference Call Extract

We note the following:

- Other assets comprise at least \$131m of PIK accruals. Arbor do not disclose what project(s) these relate to.

At March 31, 2024 and December 31, 2023, accrued interest receivable related to our loans totaling \$131.0 million and \$124.2 million, respectively, was excluded from the estimate of credit losses and is included in **other assets** on the consolidated balance sheets.

Figure 23 – Arbor Q1 2024 10-Q extract

- These PIK assets are accruing at ~\$6m a quarter or annualized at \$24m a year. Given the nature of the terms Arbor has extended to its borrowers: the quantum of loans supporting these PIK accruals could be enormous. Investors should immediately seek guidance on how many loans Arbor has moved into PIK.
- As for the remainder of this apparently working capital account: we know very little, and therefore sent a list of questions to management to demystify this account. You know the rest.

Arbor records an ever-increasing "other assets" line item, which consists of ~\$120m due from related parties.

- Can you explain dramatic fluctuations in amounts due from related parties.
- What assets make up the remaining ~\$400m of other assets?
- Is there any reason why borrowers would indicate to Viceroy that these amounts likely include PIK (payment in-kind), including accrued interest?

Figure 24 – Viceroy email to Paul Elenio – 7 May 2024





## Q1 2024 Earnings Analysis

### P&L Impact

Let us end the uneducated delusion that Arbor's financials have not yet seen the impact of distress. Viceroy note that Arbor's earnings quality, effective interest income, and its interest coverage metrics have suffered drastically since mid 2022.

To put it plainly: Arbor is highly levered. It borrows money to lend money. It receives interest income against dollars let, and pays interest expenses on the dollar borrowed.

Arbor has granted concessions to its floating-rate borrowers as interest income spreads against SOFR have dropped sharply. The interest income spread against SOFR in Q1 2024 has fallen 33% against 2020-2021 glory-days.

This would not necessarily be problematic if Arbor did not have floating rate debt, but it does. Conversely: Arbor's interest spread to SOFR has sharply **increased**.

Viceroy Analysis Arbor Realty Trust	Q1	2020 Q2	Q3	Q4	Q1	2021 Q2	Q3	Q4	
SOFR EOP (%)	0.01%	0.10%	0.08%	0.09%	0.01%	0.05%	0.05%	0.05%	
Interest Income - Structural Business	314	297	302	311	333	386	459	530	
Structured book	5,022	5,187	5,331	5,457	6,176	6,992	8,574	11,174	
Effective Interest	6.25%	5.73%	5.66%	5.69%	5.39%	5.52%	5.35%	4.75%	
Spread (bps) - interest inflow	624	563	558	560	538	547	530	470	
Interest Expense	200	165	152	160	169	186	222	272	
Interest bearing liabilities	5,357	4,818	5,036	5,825	6,103	6,748	9,618	12,057	
Effective Interest	3.73%	3.43%	3.01%	2.75%	2.76%	2.75%	2.31%	2.25%	
Spread (bps) - interest outflow	372	333	293	266	275	270	226	220	
...									
Viceroy Analysis Arbor Realty Trust	Q1	2022 Q2	Q3	Q4	Q1	2023 Q2	Q3	Q4	2024 Q1
SOFR EOP (%)	0.30%	1.50%	3.00%	4.30%	4.80%	5.10%	5.30%	5.30%	5.30%
Interest Income - Structural Business	625	768	998	1,223	1,270	1,288	1,291	1,269	1,232
Structured book	13,781	15,405	16,011	14,638	15,017	14,577	14,249	13,934	13,543
Effective Interest	4.54%	4.99%	6.23%	8.36%	8.45%	8.84%	9.06%	9.10%	9.09%
Spread (bps) - interest inflow	424	349	323	406	365	374	376	380	379
Interest Expense	330	428	642	830	877	909	917	910	871
Interest bearing liabilities	13,089	14,206	14,378	13,501	12,994	12,504	12,155	11,934	11,368
Effective Interest	2.52%	3.01%	4.46%	6.15%	6.75%	7.27%	7.54%	7.62%	7.66%
Spread (bps) - interest outflow	222	151	146	185	195	217	224	232	236

Figures 25 & 26 – Viceroy Analysis\*<sup>8</sup>

This suggests that:

- Arbor has made significant concessions to its tenants in a rising rate environment. We know Arbor's tenants have **not** become more creditworthy, thus these spread concessions appear to be relief.
- Arbor's cost of debt has increased, suggesting its own creditors see Arbor as less creditworthy.

<sup>8</sup> Structured book represents period-averages.

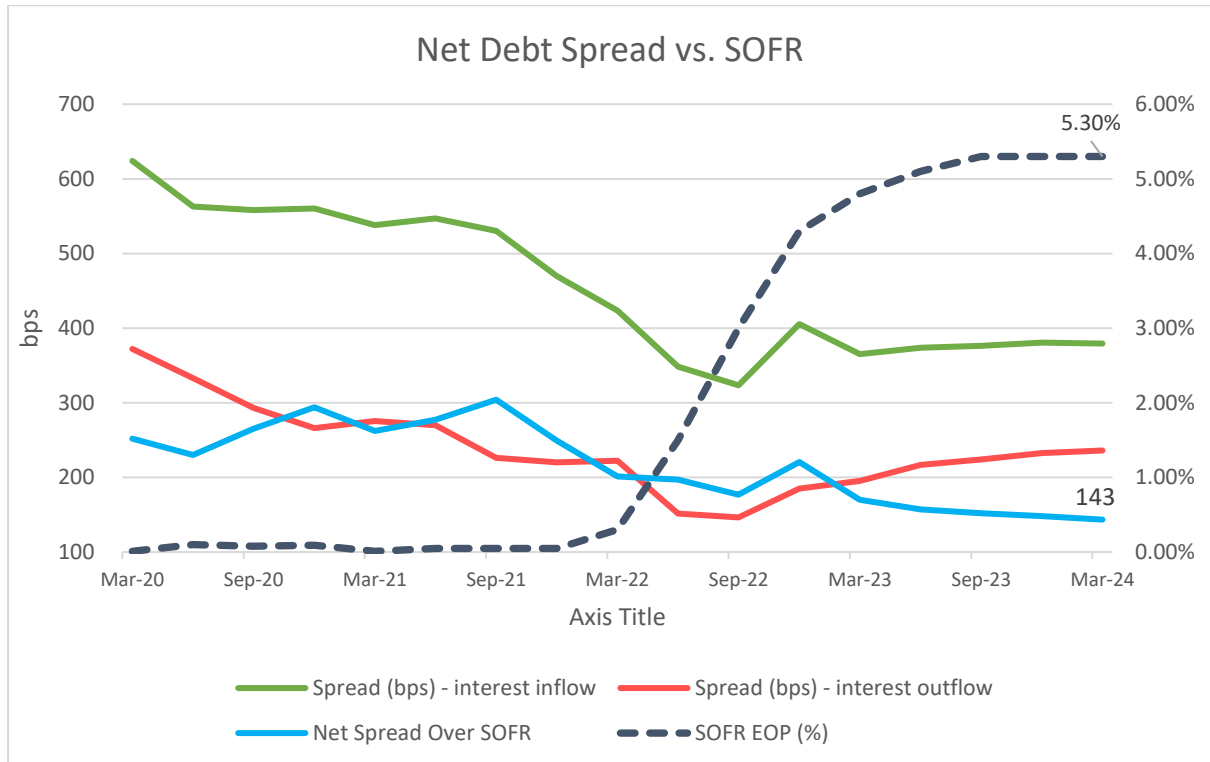


Figure 27 – Viceroy Analysis

*Arbor's earnings quality has significantly deteriorated over the last year.*

## Balance Sheet Impact

Arbor new business originations per quarter have fallen over 95% from peaks in December 2021.

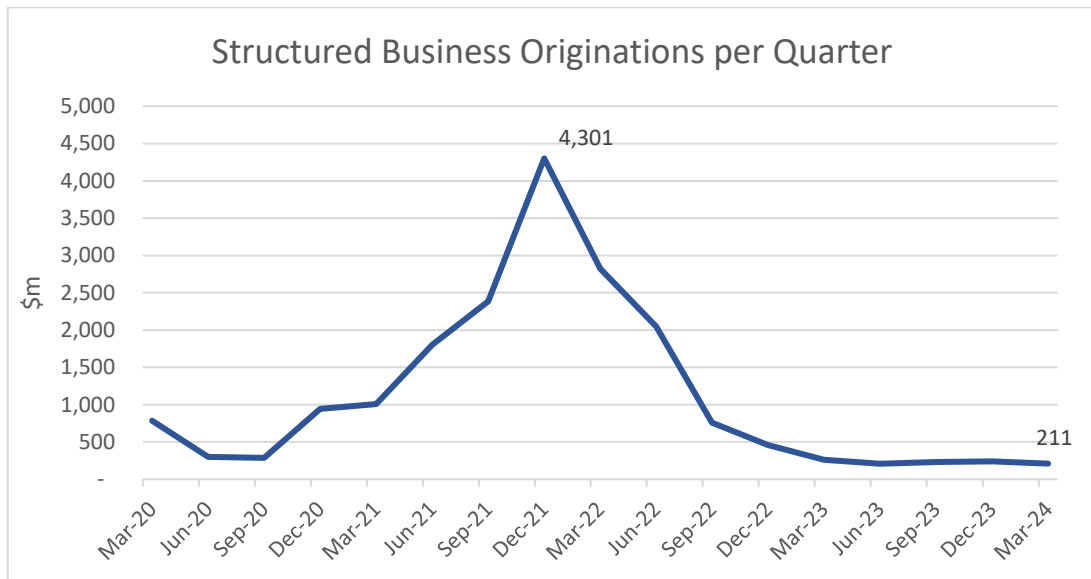
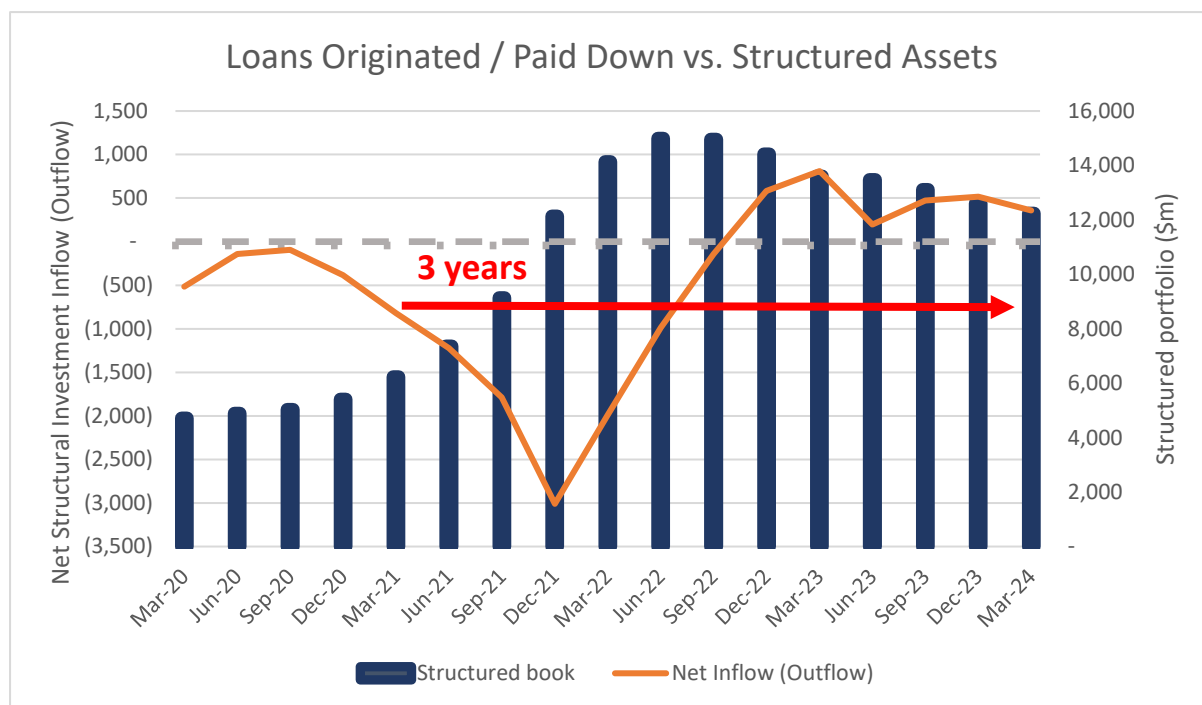


Figure 28 – Viceroy Analysis





Naturally, we would expect a significant number of loans issued 12-36 months ago to fall due in 2024. This does not appear to be the case. Net cash inflows from loan expiries and payouts is insignificant against net outflows Arbor has experienced in 12-36 months prior.



Arbor's is rapidly shrinking its loan book as dividends being paid out are substantially funded by a wind down of a floating-rate bridge financing loan book whose underlying borrowers and projects are underwater. We have shown this time and time again.

*Arbor trades above book value, which is not recoverable.*

*Arbor is valued by analysts on short-term cash flows which cannot be realized.*

Despite this, Arbor's aggregate provision for impairments is a meager \$50m across a ~\$12b multifamily portfolio. This is less than 1%.

Loans Considered	Dec-22	Mar-23	Jun-23	Sep-23	Dec-23	Mar-24	q/q increase
Impaired							
MF Loans Impaired	-	-	36,377	90,070	272,493	352,223	29%
Carrying Value	-	-	36,202	87,995	260,291	338,772	30%
Allowance for Loss	-	-	5,000	17,750	37,750	50,500	34%

Figure 7 – Viceroy Analysis

In what we believe is an inevitable wave of defaults across Arbor's books, we believe that Arbor will inevitably rely on recovery from collateral. We note the following:

- The current 10-year Treasury Bond Rate is ~4.5%, down from 4.6% when we began our investigations.
- The 2-year Treasury Bond rate is ~4.85%
- The 1-year Treasury Bond rate is ~5.14%
- The implied weighted cap rate of underlying CLO properties is ~3.9%.
- Arbor's loan book is inherently short-term.

There is no conceivable way that Arbor realizes the underlying value of the collateral in the event of mass default of almost exclusively loss-making clients at a discount to the 10-year rate.



### **Attention: Whistleblowers**

Viceroy encourage any parties with information pertaining to misconduct within Arbor Realty Trust, its affiliates, or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on [viceroy@viceroyresearch.com](mailto:viceroy@viceroyresearch.com).

### **About Viceroy**

Viceroy Research are an investigative financial research group. As global markets become increasingly opaque and complex – and traditional gatekeepers and safeguards often compromised – investors and shareholders are at greater risk than ever of being misled or uninformed by public companies and their promoters and sponsors. Our mission is to sift fact from fiction and encourage greater management accountability through transparency in reporting and disclosure by public companies and overall improve the quality of global capital markets.

### **Important Disclaimer – Please read before continuing**

This report has been prepared for educational purposes only and expresses our opinions. This report and any statements made in connection with it are the authors' opinions, which have been based upon publicly available facts, field research, information, and analysis through our due diligence process, and are not statements of fact. All expressions of opinion are subject to change without notice, and we do not undertake to update or supplement any reports or any of the information, analysis and opinion contained in them. We believe that the publication of our opinions about public companies that we research is in the public interest. We are entitled to our opinions and to the right to express such opinions in a public forum. You can access any information or evidence cited in this report or that we relied on to write this report from information in the public domain.

To the best of our ability and belief, all information contained herein is accurate and reliable, and has been obtained from public sources we believe to be accurate and reliable, and who are not insiders or connected persons of the stock covered herein or who may otherwise owe any fiduciary duty or duty of confidentiality to the issuer. We have a good-faith belief in everything we write; however, all such information is presented "as is," without warranty of any kind – whether express or implied.

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Any examples or interpretations of investments and investment strategies or trade ideas are intended for illustrative and educational purposes only and are not indicative of the historical or future performance or the chances of success of any particular investment and/or strategy. As of the publication date of this report, you should assume that the authors have a direct or indirect interest/position in all stocks (and/or options, swaps, and other derivative securities related to the stock) and bonds covered herein, and therefore stand to realize monetary gains in the event that the price of either declines.

The authors may continue transacting directly and/or indirectly in the securities of issuers covered on this report for an indefinite period and may be long, short, or neutral at any time hereafter regardless of their initial recommendation.



## Annexure 1: The Westchase Deed

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PREPARED BY AND UPON  
RECORDATION RETURN TO: ✓  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, New York 10112-0015  
Attention: Brian N. Gurtman, Esq.

RP-2024-115865  
04/02/2024 RP1 \$153.00

**WESTCHASE HOUSTON PROPERTY OWNER LLC, SA GRAND PROPERTY  
OWNER LLC, SA ESTATES PROPERTY OWNER LLC, and SA PRESERVE  
PROPERTY OWNER LLC,**  
AS GRANTOR

To

**ROBERT D. ROYSE, JR., ESQ.,**  
AS TRUSTEE

FOR THE BENEFIT OF

**ARBOR REALTY SR, INC.,**  
AS BENEFICIARY

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

Dated as of April 2, 2024

(i) Estates at Westchase 2305 Hayes Road Houston, Harris County, Texas 77077	(ii) Preserve at Westchase 10615 Meadowglen Lane Houston, Harris County, Texas 77042
(iii) Vista at Westchase 3435 Walnut Bend Lane Houston, Harris County, Texas 77042	(iv) Grand at Westchase 10881 Richmond Avenue Houston, Harris County, Texas 77042

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON,  
YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING  
INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN  
THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S  
LICENSE NUMBER.**

SMRH:4875-6586-9998.3  
Deed of Trust

65AD-387092





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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of April 2, 2024 by **WESTCHASE HOUSTON PROPERTY OWNER LLC**, a Delaware limited liability company ("Vista Grantor"), **SA GRAND PROPERTY OWNER LLC**, a Delaware limited liability company ("Grand Grantor"), **SA ESTATES PROPERTY OWNER LLC**, a Delaware limited liability company ("Estates Grantor"), and **SA PRESERVE PROPERTY OWNER LLC**, a Delaware limited liability company ("Preserve Grantor"; and together with Vista Grantor, Grand Grantor, and Estates Grantor, collectively, jointly and severally, and individually, as the context may require, "Grantor"), each having an address at c/o The Grados Law Firm PLLC, 5 Castle Road, Irvington, New York 10533, to **ROBERT D. ROYSE, ESQ.**, a natural person (together with his successors hereunder, collectively "Trustee"), having an address 2001 Bryan Street, Ste. 4000, Dallas, Texas 75201, for the benefit of **ARBOR REALTY SR, INC.**, a Maryland corporation (together with its successors and assigns, collectively, "Beneficiary"), having an address at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553.

ITR  
lll

**WITNESSETH:**

**WHEREAS**, Grantor is the fee owner of the Property (as hereinafter defined).

**WHEREAS**, Grantor and Beneficiary are entering into that certain Loan Agreement, dated as of even date herewith (as amended, supplemented or modified from time to time, the "Loan Agreement"), pursuant to which Beneficiary will make a loan (the "Loan") to Grantor in the maximum principal amount of \$95,250,000.00. The Loan also will be evidenced by that certain Promissory Note, dated as of even date herewith, made by Grantor to the order of Beneficiary in the original principal amount of \$95,250,000.00 (as amended, consolidated, supplemented or modified from time to time, the "Note"), together with interest as therein provided and having a maturity date of April 1, 2027, subject to extension as set forth in Section 2.06 of the Loan Agreement; and

**WHEREAS**, the obligations of Grantor under the Note are to be secured, in part, by this Deed of Trust, and this Deed of Trust secures in whole the purchase money for the Property (as hereinafter defined).

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

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COPY



## ARTICLE 1 DEFINED TERMS

Capitalized terms used in this Deed of Trust and not specifically defined in this Deed of Trust have the meanings provided in the Loan Agreement.

## ARTICLE 2 OBLIGATIONS SECURED

This Deed of Trust is given to secure the payment of all of the following obligations (the “**Secured Obligations**”): (a) the indebtedness evidenced by the Note, (b) all interest, fees and other payment obligations under this Deed of Trust and the other Loan Documents (including, without limitation, default interest, exit fees, prepayment fees and/or premiums, and yield maintenance and/or premiums), (c) payment and performance of all covenants, obligations and liabilities of Grantor under this Deed of Trust and each of the other Loan Documents, (d) all sums advanced pursuant to this Deed of Trust or any other Loan Document to protect and preserve the Property (as defined below) and the Lien created by this Deed of Trust and (e) all costs and expenses incurred by Beneficiary that Grantor is required to pay to Beneficiary in accordance with the terms of this Deed of Trust or any other Loan Document.

## ARTICLE 3 GRANT OF SECURITY

**3.01 Deed of Trust Property.** Grantor does hereby irrevocably grant, bargain, sell, alien, demise, release, convey, assign, transfer, deed, hypothecate, pledge, set over, mortgage, grant a security interest in, warrant and confirm to Trustee, forever with the power of sale and assent to decree, all right, title and interest of Grantor in and to all of the following property, rights, interests and estates, now owned or hereafter created or acquired by Grantor (collectively, the “**Property**”):

(a) the real properties described on Exhibit A-1, A-2, A-3, and A-4, respectively, attached hereto and incorporated herein by this reference (individually and collectively, as the context may require, the “**Premises**”);

(b) (i) all buildings, foundations, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements of every kind or nature now or hereafter located on the Premises (collectively, the “**Improvements**”); and (ii) to the extent permitted by Law, the name or names, if any, as may now or hereafter be used for each Improvement, and the goodwill associated therewith;

(c) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, ditches, ditch rights, reservoirs and reservoir rights, air rights and development rights, lateral support, drainage, gas, oil and mineral rights, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises or the Improvements and the reversion and reversions, remainder and remainders, whether existing or hereafter acquired, and 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 any and all sidewalks, drives, curbs,





passageways, streets, spaces and alleys adjacent to or used in connection with the Premises and/or the Improvements and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both in law and in equity, of Grantor of, in and to the Premises and Improvements, and every part and parcel thereof, with the appurtenances thereto;

(d) all machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including, but not limited to, all heating air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other personal property and other property of every kind and nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon, or in, and used in connection with the Premises or the Improvements, or appurtenant thereto, and all building equipment, materials and supplies of any nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon, or in, and used in connection with the Premises or the Improvements or appurtenant thereto, (all of the foregoing items described in this Section 3.01(d) collectively, the "**Equipment**"), all of which, and any replacements, modifications, alterations and additions thereto, to the extent permitted by applicable Law, shall be deemed to constitute fixtures (collectively, the "**Fixtures**"), and are part of the Premises and/or the Improvements and security for the payment of the Secured Obligations and the performance of Grantor's obligations. To the extent any portion of the Equipment is not real property or Fixtures under applicable Law, it shall be deemed to be personal property, and this Deed of Trust shall constitute a security agreement creating a security interest therein in favor of Beneficiary under the UCC;

(e) all awards or payments, including interest thereon, which may hereafter be made with respect to the Premises, the Improvements, the Fixtures, or the Equipment, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Premises, the Improvements or the Equipment or refunds with respect to the payment of property taxes and assessments, and all other proceeds of the conversion, voluntary or involuntary, of the Premises, Improvements, Equipment, Fixtures or any other Property or part thereof into cash or liquidated claims;

(f) all leases, subleases, tenancies, licenses and other agreements affecting the use, enjoyment or occupancy of the Premises, the Improvements, the Fixtures, or the Equipment or any portion thereof now or hereafter entered into and all reciprocal easement agreements, license agreements, and other agreements with Tenants or occupants and fee owners of property contiguous to or surrounding the Premises (collectively, the "**Leases**"), whether before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, together with all cash or security deposits, advance rentals and payments of similar nature and guarantees or other security held by Grantor in connection therewith (collectively, the "**Entity Guaranties**") to the extent of Grantor's right or interest therein and all remainders, reversions and other rights and estates appurtenant thereto, and all rents (including additional rents of any kind and percentage rents), subrents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a bankruptcy proceeding) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and

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consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or any of its agents or employees from any and all sources arising from or attributable to the Premises, the Improvements, the Fixtures or the Equipment, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for taxes, operating expenses or other amounts payable to Grantor (or for the account of Grantor), revenues from telephone services, laundry, vending, television and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or rendering of services by Grantor, Property Manager or any of their respective agents or employees and proceeds, if any, from business interruption or other loss of income insurance (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents and the Entity Guaranties to the payment of the Secured Obligations;

(g) all proceeds of and any unearned premiums on any insurance policies covering the Premises, the Improvements, the Fixtures, or the Equipment, 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, the Improvements, the Fixtures or the Equipment and all refunds or rebates of Imprestments and interest paid or payable with respect thereto;

(h) all right, title and interest of every nature of Grantor in all monies deposited or to be deposited in any funds or accounts maintained or deposited with Beneficiary, or its assigns, in connection herewith;

(i) all Property Agreements, accounts receivable, contract rights, franchises, interests, estate or other claims, both at law and in equity, relating to the Premises, the Improvements, the Fixtures or the Equipment, not included in Rents;

(j) all claims against any Person with respect to any damage to the Premises, the Improvements, the Fixtures or Equipment including, without limitation, damage arising from any defect in or with respect to the design or construction of the Improvements, the Fixtures or the Equipment and any damage resulting therefrom;

(k) all deposits or other security or advance payments, including rental payments made by or on behalf of Grantor to others, with respect to (i) insurance policies, (ii) utility services, (iii) cleaning, maintenance, repair or similar services, (iv) refuse removal or sewer service, (v) parking or similar services or rights and (vi) rental of Equipment, if any, relating to or otherwise used in the operation of the Premises, Improvements, the Fixtures or Equipment;

(l) all intangible property relating to the Premises, the Improvements, the Fixtures or the Equipment or its operation, including, without limitation, trade names, trademarks, logos, building names and goodwill;

(m) all advertising material, guaranties, warranties, building permits, other permits, licenses, plans and specifications, shop and working drawings, soil tests, appraisals and

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Deed of Trust

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other documents, materials and/or personal property of any kind now or hereafter existing in or relating to the Premises, the Improvements, the Fixtures, and the Equipment;

(n) all surveys, drawings, designs, plans and specifications prepared by the architects, engineers, interior designers, landscape designers and any other consultants or professionals for the design, development, construction, repair and/or improvement of the Property, as amended from time to time;

(o) the right, in the name of and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Premises, the Improvements, the Fixtures or the Equipment and to commence any action or proceeding to protect the interest of Beneficiary in the Premises, the Improvements, the Fixtures or the Equipment; and

(p) all proceeds of each of the foregoing.

TO HAVE AND TO HOLD the Property unto Trustee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof;

### **3.02 Assignment of Leases.**

3.02.1 In order to further secure payment and performance of the Secured Obligations, Grantor absolutely, presently and unconditionally grants, assigns and transfers to Beneficiary all of Grantor's right, title, interest and estate in, to and under (a) all of the Leases and Entity Guaranties affecting the Property and (b) the Rents. Unless and until an Event of Default occurs, Grantor shall have a revocable license to collect the Rents (except as otherwise provided in this Deed of Trust) as and when they become due and payable. This assignment is a present and absolute assignment and not an assignment for security purposes only, and Beneficiary's right to the Leases, Entity Guaranties and Rents and the proceeds thereof is not contingent upon, and may be exercised without possession of, the Property. During the continuance of an Event of Default, the license granted hereinabove shall be automatically revoked, and Beneficiary or a receiver appointed in accordance with this Deed of Trust may enter upon the Property, and collect, retain and apply the Rents toward payment of the Secured Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper. Beneficiary shall be liable to account only for the Rents actually received by Beneficiary pursuant to any provision of any Loan Document. The assignments set forth in this Section 3.02 are not intended to constitute payment to Beneficiary or Trustee unless Grantor's license to collect Rents is terminated, and then only to the extent that the Rents are actually received by Beneficiary (as opposed to constituting a portion of the voluntary payments of principal and interest on the Note) and are not used for the operation or maintenance of the Property or for the payment of costs and expenses payable by Grantor pursuant to the terms of the Loan Documents in connection therewith, taxes, assessments, water charges, sewer rents, and other charges levied, assessed or imposed against the Property, insurance premiums, costs and expenses payable by Grantor pursuant to the terms of the Loan Documents with respect to any litigation affecting the Property, the leases, the concessions, any wages and salaries of employees, commissions of agents and attorneys' fees, all in accordance with the terms of the Loan Agreement. It is further

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shall perform and observe each of the other Secured Obligations, then this Deed of Trust and all the rights granted by this Deed of Trust shall be satisfied and released of record by Beneficiary in accordance with the Laws of the State.

#### ARTICLE 4 GRANTOR'S COVENANTS

**4.01 Payment and Performance.** Grantor will pay the Secured Obligations at the time and in the manner provided in the Loan Documents and fully and punctually perform the Secured Obligations when and as required by the Loan Documents. Grantor may not prepay the Secured Obligations in whole or in part except as provided in the Loan Agreement.

**4.02 Compliance with Loan Agreement.** Grantor shall comply with all covenants and agreements in the Loan Agreement, including, without limitation, all obligations regarding the ownership, operation, management and condition of the Property and the protection and perfection of the Liens hereby created in favor of Beneficiary. All of the covenants in the Loan Agreement are incorporated herein by reference. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, Transfer or encumbering of any or all of the Property or any interest in Grantor without Beneficiary's consent, (b) the obligation to pay when due all Impositions on the Property or assessed against Beneficiary with respect to the Loan, (c) the right of Beneficiary to inspect the Property, (d) the obligation to keep the Property insured, (e) the obligation to enter into Leases for all or any portion of the Property only in accordance with the terms of the Loan Agreement, and (f) the obligation to comply with all legal requirements (including Environmental Laws) and maintain the Property in good condition, and promptly repair any damage or casualty.

**4.03 Warranty of Title.** Grantor warrants that it holds, subject only to the Permitted Encumbrances, good, insurable and marketable fee simple title to the Premises, the Improvements and the Fixtures (together with the Premises and the Improvements, collectively, the "Realty") and to all easements and rights benefitting the Realty and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confine, pledge, assign and/or hypothecate the Property. Grantor further covenants to warrant and forever defend Beneficiary from and against all Persons claiming any interest in the Property (other than Tenants of the Property claiming rights to occupy portions of the Property, as Tenants only).

#### ARTICLE 5 DEFAULT

**5.01 Events of Default.** The occurrence of an "Event of Default" (as that term is defined under the Loan Agreement) shall constitute an "Event of Default" under this Deed of Trust.

**5.02 Remedies.**

(a) If an Event of Default occurs, Beneficiary may, at its option, and without prior notice or demand, exercise and hereby is authorized and empowered by Grantor so to exercise, any or all of the remedies set forth in the Loan Agreement or any other Loan Document





(including, without limitation, the right to accelerate the Loan) or otherwise permitted by law or in equity.

(b) Beneficiary's remedies under this Deed of Trust are cumulative with the remedies provided in the other Loan Documents, by law or in equity and may be exercised independently, concurrently or successively in Beneficiary's sole discretion and as often as occasion therefor shall arise. Beneficiary's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right as remedy. No partial exercise by Beneficiary of any right or remedy will preclude further exercise thereof. Notice or demand given to Grantor in any instance will not entitle Grantor to notice or demand in similar or other circumstances nor constitute Beneficiary's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Deed of Trust to be given). Beneficiary may release other security for the Secured Obligations, may release any party liable for the Secured Obligations, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Secured Obligations, in each case without prejudice to its rights under this Deed of Trust and without such action being deemed an accord and satisfaction or a reinstatement of the Secured Obligations. Beneficiary will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

(c) Grantor shall pay, on written demand by Beneficiary, all costs incurred by Beneficiary in (i) collecting any amount payable under the Loan Documents, or (ii) enforcing its rights under the Loan Documents, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals, law clerks and other hired professionals, a reasonable assessment of the cost of services performed by Beneficiary's default management staff, court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings, including discovery, and costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Beneficiary shall be added to the Secured Obligations, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full, if not paid in full within five (5) days after Beneficiary's written demand for payment.

**5.03 Application of Proceeds.** The proceeds from disposition of the Property shall be applied by Beneficiary to the payment of the Secured Obligations (including, without limitation, advances made by Beneficiary and enforcement costs incurred by Beneficiary) in such priority and proportion as Beneficiary determines in its sole discretion.

**5.04 Continuing Lien; Right to Release Property.** If less than all of the Property is, at any time, sold through foreclosure, power of sale, or otherwise, or if Beneficiary releases any portion of the Property (for whatever consideration Beneficiary deems appropriate), this Deed of Trust shall continue as a Lien and security interest on the remaining portion of the Property, unimpaired and without loss of priority.

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## ARTICLE 6 WAIVERS

**6.01 Waiver of Rights of Redemption, Marshalling and Other Rights.** Grantor hereby waives, to the fullest extent permitted by Law, the benefit of all Laws, now or hereafter in force, providing for (a) the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof pursuant to this Deed of Trust or any decree, judgment or order of a court of competent jurisdiction; (b) the right to stay or extend any such proceeding, to have this Deed of Trust reinstated or to redeem the Property or any portion thereof so sold; (c) rights of marshalling relating to any such sale or sales; (d) any right to require that the Property be sold as separate tracts or units in connection with enforcement of this Deed of Trust; (e) the benefit of any moratorium, exemption or homestead rights now or hereafter provided; and (f) the right of redemption from sale under any order or decree of foreclosure of this Deed of Trust. Grantor makes such waivers on its own behalf and on behalf of all parties now or hereafter claiming or having an interest (direct or indirect) by, through or under Grantor.

**6.02 Waiver of Counterclaim.** Grantor hereby waives, to the fullest extent permitted by Law, the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary or its agents arising out of, or in any way connected with, the Secured Obligations, this Deed of Trust, the Note, the Loan Agreement or any of the other Loan Documents or the relationship between the parties as borrower and lender or any claim, counterclaim or other action arising in connection therewith.

**6.03 Waiver of Foreclosure Defense.** Grantor hereby waives, to the fullest extent permitted by Law, any defense Grantor might have by reason of Beneficiary's failure to make any Tenant of the Property a party defendant in any foreclosure instituted by Beneficiary.

**6.04 Waiver of Notices Generally.** Grantor hereby waives, to the fullest extent permitted by Law, its rights to notice from Beneficiary except when this Deed of Trust or the other Loan Documents expressly provides for Beneficiary to give notice to Grantor.

**6.05 Waiver of Statute of Limitations and Laches.** Grantor hereby waives, to the fullest extent permitted by Law, the benefit of any statute of limitations or laches defense to payment or performance of the Secured Obligations.

**6.06 Waiver of Trial by Jury.** GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER OR IN ANY COUNTERCLAIM GRANTOR MAY BE PERMITTED TO ASSERT HEREUNDER OR WHICH MAY BE ASSERTED BY BENEFICIARY OR ITS AGENTS AGAINST GRANTOR OR IN ANY MATTERS WHATSOEVER, ARISING OUT OF OR IN ANY WAY CONNECTED WITH GRANTOR, THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE





AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 6.06 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR.

**6.07 Consent to Jurisdiction.** ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS DEED OF TRUST MAY AT BENEFICIARY'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT SITTING IN THE COUNTY AND STATE WHERE THE PREMISES IS LOCATED, AND GRANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GRANTOR AGREES THAT SERVICE OF PROCESS UPON GRANTOR AT THE ADDRESS FOR GRANTOR SET FORTH IN THE LOAN AGREEMENT AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GRANTOR IN THE MANNER PROVIDED IN THE LOAN AGREEMENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GRANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST GRANTOR IN ANY OTHER JURISDICTION.

#### ARTICLE 7 MISCELLANEOUS

**7.01 Covenants Run with the Land.** All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises, shall be binding upon Grantor and shall inure to the benefit of Beneficiary, subsequent holders of this Deed of Trust and their successors and assigns. Without limitation to any provision hereof, the term "Grantor" shall include and refer to the grantor named herein, any subsequent owner of the Property, and its respective heirs, executors, legal representatives, successors and assigns.

**7.02 Subrogation.** If the Loan is used to pay, satisfy, discharge, extend or renew any indebtedness secured by a pre-existing mortgage, or other Lien encumbering the Property ("Prior Lien"), then to the extent of funds so used, Beneficiary shall automatically, and without further action on its part, be subrogated to all rights, including lien priority, held by the holder of the indebtedness secured by the Prior Lien, whether or not the Prior Lien is released, and such former rights are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for payment of the Secured Obligations and performance of the Secured Obligations.

**7.03 Applicable Law.** THIS DEED OF TRUST AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW) APPLICABLE TO CONTRACTS MADE AND





PERFORMED IN THE STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

**7.04 No Merger.** In the event that Beneficiary should become the owner of the Property, there shall be no merger of the estate created by this Deed of Trust with the fee estate in the Property.

**7.05 Advances.** This Deed of Trust shall cover any and all advances made pursuant to the Loan Documents, rearrangements and renewals of the Secured Obligations and all extensions in the time of payment thereof, even though such advances, extensions or renewals be evidenced by new promissory notes or other instruments hereafter executed and irrespective of whether filed or recorded. Likewise, the execution of this Deed of Trust shall not impair or affect any other security that may be given to secure the payment of the Secured Obligations, and all such additional security shall be considered as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of time of payment of the Secured Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of Grantor and shall not affect or impair the liability of any maker, surety, or endorser for the payment of the Secured Obligations.

**7.06 No Modifications.** This Deed of Trust may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Grantor and Beneficiary.

**7.07 Notices.** Notices shall be given under this Deed of Trust in conformity with the terms and conditions of the Loan Agreement and in conformity with applicable Law.

**7.08 Inconsistencies.** In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling. The terms of the Loan Agreement are hereby incorporated herein and expressly made a part hereof by this reference.

**7.09 Limitation of Liability.** The provisions of this Deed of Trust are, notwithstanding anything to the contrary herein, subject to the provisions of Section 13.26 of the Loan Agreement which are incorporated herein by this reference as if herein set forth in full.

**7.10 Joint and Several Obligations.** If "Grantor" consists of more than one (1) Person, each such Person shall be jointly and severally liable to perform the obligations, covenants, agreements, duties and liabilities of Grantor under this Deed of Trust, and each reference to "Grantor" means all of such Persons and any one or more of them as the context shall permit or require.

**7.11 Inapplicable Provisions.** If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Deed of Trust, such provision shall be fully severable and this Deed of Trust shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Deed of Trust, and the remaining provisions of this Deed of Trust shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its

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severance from this Deed of Trust, unless such continued effectiveness of this Deed of Trust, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**7.12 Time is of the Essence.** Time is of the essence with regard to this Deed of Trust.

## ARTICLE 8 STATE PROVISIONS

**8.01 Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Deed of Trust, the terms and conditions of this Article 8 shall control and be binding, but shall not invalidate or render unenforceable any other provisions of this Deed of Trust that can be construed in a manner consistent with State Law.

### 8.02 Remedies.

(a) **Delivery Upon Sale.** Upon the completion of any sale or sales pursuant hereto, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the Property and rights sold by general warranty of title. Trustee is hereby irrevocably appointed the true and lawful attorney of Grantor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more Persons with like power, Grantor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of Section 5.02 or this Section 8.02, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the Property and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and against any and all Persons claiming or who may claim the same, or any part thereof from, through or under Grantor.

(b) **Option to Bid.** Upon any sale made under or by virtue of Section 5.02 or this Section 8.02, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness the net sales price after deducting therefrom the out-of-pocket expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

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

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(d) **No Waiver of Remedies.** Beneficiary may resort to any remedies and the security given by the Note, this Deed of Trust or any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Beneficiary in its sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Deed of Trust or any of the other Loan Documents. The failure of Beneficiary to exercise any right, remedy or option provided in the Note, this Deed of Trust or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Deed of Trust or the other Loan Documents. No acceptance by Beneficiary of any payment after the occurrence of an Event of Default and no payment by Beneficiary of any obligation for which Grantor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Grantor, or Grantor's liability to pay such obligation, unless simultaneously with such acceptance or payment by Beneficiary, Beneficiary waives in writing the Event of Default cured thereby. No sale of all or any portion of the Property, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Beneficiary to Grantor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Property or the liability of Grantor to pay and perform the Secured Obligations. No waiver by Beneficiary shall be effective unless it is in writing and then only to the extent specifically stated. All out-of-pocket costs and expenses of Beneficiary in exercising its rights and remedies under this Deed of Trust (including attorneys' fees and disbursements to the extent permitted by Law) shall be paid by Grantor within five (5) days after notice from Beneficiary, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Deed of Trust.

(e) **No Waiver Continued.** The interests and rights of Beneficiary under the Note, this Deed of Trust or in any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Secured Obligations, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect to the Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Obligations.

(f) **Foreclosure.** Upon the occurrence of an Event of Default, Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) **Public Sale.** Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable Law, at the time of the sale, governing sales of Texas real property under powers of sale

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conferred by deeds of trust. Trustee or its successor or substitute may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices, and the conduct of sale, but in the name and on behalf of Trustee, its successor or substitute.

(ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, Trustee may require a bidding party (x) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable) and (y) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with Trustee's requirement in this regard, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then Trustee may continue the bidding with reservation; and in such event (A) Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids and (B) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be null and void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Grantor and Beneficiary, and elect to sell the Property (or any portion thereof) for credit or for a combination of cash and credit; provided, however, that Trustee shall have no obligation to accept any bid except an all cash bid. In the event Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee, but in no event later than 5:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Sale Subject to Unmatured Debt. In addition to the rights and powers of sale granted under the other provisions of this Section 8.02(f), if default is made in the payment of any installment of the Debt and is not cured within applicable cure periods, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Debt to be due and payable, orally or in writing direct Trustee to enforce this Deed of Trust and to sell the Property subject to such unmatured Debt and to the rights, powers, Liens, security interests and assignments securing or providing recourse for payment of such unmatured Debt, in the same manner, all as provided in the preceding provisions of this Section 8.02(f). Sales made without maturing the Debt may be made hereunder whenever there is a default in the payment of any installment of the Debt, which continues beyond any applicable cure period, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Section 8.02(f) or any of the other provisions of this Deed of Trust, the unmatured balance of the Debt or the rights,



powers, Liens, security interests and assignments securing or providing recourse for payment of the Debt.

(iv) **Partial Foreclosure.** Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until all of the Secured Obligations are paid and performed in full. It is intended by each of the foregoing provisions of this Section 8.02(f) that Trustee may, after any request or direction by Beneficiary, sell not only the Premises and the Improvements, but also the Equipment and other interests constituting a part of the Property or any part thereof, along with the Premises and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit such Equipment or personal property at any sale any of the Property. Any sale of personal property made hereunder shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with, or as part of, and upon the same notice as required for the sale of real property under the power of sale granted herein.

(v) **Trustee's Deeds.** After any sale under this Deed of Trust, Trustee shall make good and sufficient deeds, assignments and other conveyances to the purchaser or purchasers thereunder in the name of the applicable Grantor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, absent fraud or gross negligence, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of an Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Debt, the request to sell, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, the due and proper appointment of a substitute trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the Premises by virtue hereof."

**8.03 Inapplicability of Credit Code.** In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the loan evidenced by the Loan Documents and/or secured thereby.

**8.04 Entire Agreement.** THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO.

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THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF.

**8.05 Maturity Date.** The maturity date of the Note secured hereby is not later than April 1, 2027, or the first (1<sup>st</sup>) Business Day thereafter if such date is not a Business Day, as the same may be extended pursuant to the terms, provisions and conditions of Section 2.06 of the Loan Agreement.

**8.06 Notice of Indemnification.** GRANTOR ACKNOWLEDGES THAT THIS DEED OF TRUST AND THE LOAN AGREEMENT PROVIDE FOR INDEMNIFICATION OF BENEFICIARY AND TRUSTEE BY GRANTOR. SUBJECT TO THE TERMS HEREOF AND OF THE LOAN AGREEMENT. IT IS SPECIFICALLY INTENDED BY GRANTOR, BENEFICIARY AND TRUSTEE THAT ALL INDEMNITY OBLIGATIONS AND LIABILITIES ASSUMED BY GRANTOR BE WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF (INCLUDING PREEXISTING CONDITIONS), STRICT LIABILITY OR THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE) OF ANY PARTY OR PARTIES (INCLUDING BENEFICIARY AND TRUSTEE) WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR PASSIVE. FOR THE AVOIDANCE OF DOUBT, THE PARTIES SPECIFICALLY INTEND THAT BENEFICIARY AND TRUSTEE ARE TO BE INDEMNIFIED AGAINST THEIR OWN NEGLIGENCE BUT NOT THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

GRANTOR HEREBY DECLARES AND ACKNOWLEDGES THAT GRANTOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS DEED OF TRUST.

**8.07 Duties of Trustee.** It shall be no part of the duty of Trustee to see to any recording, filing or registration of this Deed of Trust or any other instrument in addition or supplemental thereto, or to give any notice thereof, or to see to the payment of or be under any duty in respect of any tax or assessment or other governmental charge which may be levied or assessed on the Property, or any part thereof, or against Grantor, or to see to the performance or observance by Grantor of any of the covenants and agreements contained herein. Trustee shall not be responsible for the execution, acknowledgment or validity of this Deed of Trust or of any instrument in addition or supplemental hereto or for the sufficiency of the security purported to be created hereby and makes no representation in respect thereof or in respect of the rights of Beneficiary. Trustee shall have the right to advise with counsel upon any matters arising hereunder and shall be fully protected in relying as to legal matters on the advice of counsel. Trustee shall not incur any personal liability hereunder except for its own willful misconduct; and Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine.

**8.08 Substitution of Trustee.** In case of the death, inability, refusal or incapacity of Trustee to act, or at the option of Beneficiary at any time and without cause or notice, a successor or substitute trustee may be named, constituted and appointed. Successor or substitute trustees may be named, constituted and appointed without procuring the resignation of the former trustee and without other formality than the execution and acknowledgment by Beneficiary of a written instrument (which instrument, if Beneficiary is a corporation, shall be executed by the President



or any Vice President and attested by the Secretary or any Assistant Secretary and without the necessity of any action by the Board of Directors authorizing such appointment) appointing and designating such successor or substitute trustee, whereupon such successor or substitute trustee shall become vested with and succeed to all of the rights, titles, privileges, powers and duties of Trustee named herein. Such right of appointment of a substitute or successor trustee shall exist as often and whenever for any of said causes the original or successor or substitute trustee cannot or will not act or has been removed as herein provided.

**8.09 Variable Rate of Interest.** Grantor agrees to pay interest to Lender on the outstanding and unpaid principal amount of the Loan at a variable rate of interest equal to the Applicable Interest Rate in accordance with the terms of Section 2.2 of the Loan Agreement and the Note.

**8.10 Collateral Protection Insurance.** PURSUANT TO TEXAS FINANCE CODE SECTION 307.052, (A) GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT THAT BENEFICIARY SPECIFIES; (ii) PURCHASE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) GRANTOR MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.

#### ARTICLE 9 CONCERNING TRUSTEE

**9.01 No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the Lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourse of Beneficiary.

**9.02 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or





individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith) and (d) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

**9.03 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by Applicable Law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**9.04 Successor Trustee.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or its successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

**9.05 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then,



upon request by Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

**9.06 Succession Instruments.** Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in Trustee's place.

**9.07 No Representation by Trustee or Beneficiary.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

(SIGNATURE PAGE FOLLOWS)

RP-2024-115865

COPY

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Deed of Trust

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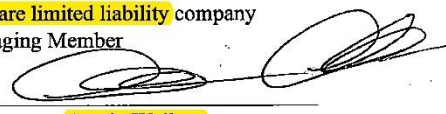
IN WITNESS WHEREOF, Grantor has duly executed this Deed of Trust the day and year first above written.

**GRANTOR:**

**WESTCHASE HOUSTON PROPERTY OWNER LLC,**  
a Delaware limited liability company

By: Westchase Holdings LLC,  
a Delaware limited liability company,  
its Managing Member

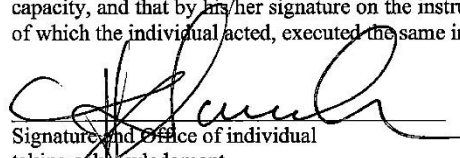
By: **AWC Westchase LLC,**  
**a Delaware limited liability company**  
its Managing Member

By:   
Name: **Austin Walker**  
Title: **Authorized Signatory**

**ACKNOWLEDGMENT**

STATE OF New Jersey )  
COUNTY OF Bergen ) ss.

On the 29th day of March in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared AUSTIN WALKER, as the Authorized Signatory of AWC Westchase LLC, as the Managing Member of Westchase Holdings LLC, as the Managing Member of WESTCHASE HOUSTON PROPERTY OWNER LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the same instrument.

  
Signature and Office of individual  
taking acknowledgment

**HELEN SARIDAKIS**  
Notary Public  
State of New Jersey  
My Commission Expires March 15, 2028  
I.D.# 2457597

Westchase Portfolio (TX)  
Signature Page to Deed of Trust

RP-2024-115865



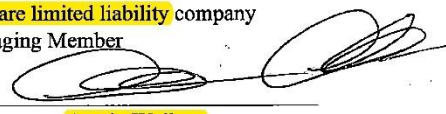
IN WITNESS WHEREOF, Grantor has duly executed this Deed of Trust the day and year first above written.

**GRANTOR:**

**WESTCHASE HOUSTON PROPERTY OWNER LLC,**  
a Delaware limited liability company

By: Westchase Holdings LLC,  
a Delaware limited liability company,  
its Managing Member

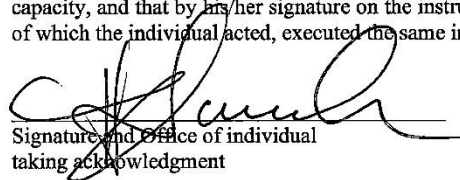
By: **AWC Westchase LLC,**  
a Delaware limited liability company  
its Managing Member

By:   
Name: **Austin Walker**  
Title: **Authorized Signatory**

**ACKNOWLEDGMENT**

STATE OF New Jersey )  
COUNTY OF Bergen ) ss.

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Signature and Office of individual  
taking acknowledgment

**HELEN SARIDAKIS**  
Notary Public  
State of New Jersey  
My Commission Expires March 15, 2028  
I.D.# 2457597

Westchase Portfolio (TX)  
Signature Page to Deed of Trust

RP-2024-115865





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

**GRANTOR:**

**SA GRAND PROPERTY OWNER LLC,**  
a Delaware limited liability company

10R

By: Westchase Holdings LLC,  
a Delaware limited liability company,  
its Managing Member

By: AWC Westchase LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Name: Austin Walker  
Title: Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF New Jersey, ss.:  
COUNTY OF Bergen

On the 29th day of March, in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared AUSTIN WALKER, as the Authorized Signatory of AWC Westchase LLC, as the Managing Member of Westchase Holdings LLC, as the Managing Member of SA GRAND PROPERTY OWNER LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the same instrument.

Signature and Office of individual  
taking acknowledgment

HELEN SARIDAKIS  
Notary Public  
State of New Jersey  
My Commission Expires March 15, 2026  
I.D.# 2457597

Westchase Portfolio (TX)  
Signature Page to Deed of Trust

RP-2024-115865



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

**GRANTOR:**

**SA ESTATES PROPERTY OWNER LLC,**  
a Delaware limited liability company

10R

By: Westchase Holdings LLC,  
a Delaware limited liability company,  
its Managing Member

By: AWC Westchase LLC,  
a Delaware limited liability company  
its Managing Member

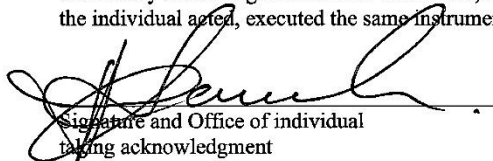
By: 

Name: Austin Walker  
Title: Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF New Jersey  
COUNTY OF Bergen

On the 29<sup>th</sup> day of March in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared AUSTIN WALKER, as the Authorized Signatory of AWC Westchase LLC, as the Managing Member of Westchase Holdings LLC, as the Managing Member of SA ESTATES PROPERTY OWNER LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the same instrument.

  
Signature and Office of individual  
taking acknowledgment

**HELEN SARIDAKIS**  
Notary Public  
State of New Jersey  
My Commission Expires March 15, 2028  
I.D.# 2457597

Westchase Portfolio (TX)  
Signature Page to Deed of Trust

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