

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

Wade R. Budge
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

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Rhonda Francis Summit County Recorder
09/04/2020 04:11:06 PM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.
Electronically Recorded

APN(s): See Exhibit A

CTA 121413 CAF

(Space Above For Recorder's Use)

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT ("*Agreement*") is entered into as of August 26, 2020, by **REDUS PARK CITY LLC**, a Delaware limited liability company ("*Lender*"), with a mailing address of 333 Market Street, 17th Floor, San Francisco, CA 94105; **RB 248 LLC**, a Utah limited liability company ("*Original Borrower*"), with a mailing address of 2265 East Murray Holladay Road, Holladay, UT 84117; and **NB 248 LLC**, a Delaware limited liability company ("*New Borrower*"), with a mailing address of 2265 East Murray Holladay Road, Holladay, UT 84117.

RECITALS

A. Original Borrower has signed and is obligated to Lender under the following documents:

1. A Secured Promissory Note dated as of August 24, 2020 (as amended, the "*Note*"), in the original principal amount of **NINE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$9,500,000.00)**, made by Original Borrower payable to the order of Lender, evidencing a loan ("*Loan*") in the same principal amount;
2. A Deed of Trust executed by Original Borrower, as trustor, to Cottonwood Title Insurance Agency, Inc., as Trustee, for the benefit of Lender, as beneficiary, and dated as of August 24, 2020, securing the Note, that was recorded on August 26, 2020, as Instrument No. 01140003 in the Official Records of Summit County, Utah (as amended, the "*Security Instrument*"). The land, which is more particularly described in **Exhibit A** attached hereto, the improvements and other real property which are subject to the Security Instrument are hereinafter defined as the "*Property*";

The above documents, including any modifications and amendments thereto and all other documents, instruments and agreements executed by Original Borrower with respect to the Loan, together with this Agreement are hereinafter collectively defined as the "*Loan Documents*".

B. As of **August 26, 2020**:

1. The outstanding principal balance under the Note was **\$9,500,000.00**;
2. The undisbursed proceeds of the Loan were equal to **\$0.00**; and
3. Accrued but unpaid interest on the Note was **\$0.00**.

C. Subject to the terms and conditions hereof, Lender is willing to waive any right of acceleration of the maturity date of the Note upon assumption by New Borrower of the obligations of Original Borrower under the Loan Documents.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, including, without limitation, the mutual covenants and promises contained herein, the parties agree as follows:

1. **INCORPORATION.** The foregoing recitals are incorporated by this reference.

2. **CONDITIONS PRECEDENT.** Each of the following is a condition precedent to Lender's obligations under this Agreement:

2.1. Receipt and approval by Lender of: (i) the executed original of this Agreement; and (ii) any other documents and agreements which are required pursuant to this Agreement or which Lender has requested in relation to this Agreement;

2.2. New Borrower's reimbursement to Lender of Lender's costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, title insurance costs, including but not limited to the cost of any title insurance endorsements required by Lender, recording fees, attorneys' fees, and documentation costs and charges, whether such services are furnished by Lender's employees or agents or independent contractors;

2.3. Evidence satisfactory to Lender in its sole discretion that all of Original Borrower's rights, title, and interests, now or hereafter existing, to, in, and under all leases, plans, drawings, specifications, reports, options, insurance policies, contracts, agreements, permits, licenses, and approvals related to the operation, construction, management, occupancy, ownership, or use of the Property have been assigned to New Borrower; and

2.4. The representations and warranties contained in this Agreement are true and correct as of the date on which the other conditions precedent defined above are satisfied, and, to the extent requested by Lender, Lender has received evidence satisfactory to Lender in its sole discretion confirming the truthfulness and correctness of such representations and warranties.

3. **MODIFICATION OF LOAN DOCUMENTS.** The Loan Documents are hereby supplemented and modified to incorporate the following, which shall supersede and prevail over any conflicting provisions of the Loan Documents:

3.1. **Borrower.** All references in the Loan Documents, including but not limited to the Security Instrument and Note to Original Borrower, as "Maker", "Trustor", or otherwise, are hereby amended to refer to (i) New Borrower or (ii) New Borrower as assignee of Original Borrower, as applicable.

3.2. **Conforming Modifications.** Each of the Loan Documents is modified to be consistent herewith and to provide that it shall be a default or an Event of Default thereunder if New Borrower or Original Borrower shall fail to comply with any of the covenants herein or if any representation or warranty by New Borrower or Original Borrower herein is materially incomplete, incorrect, or misleading as of the date hereof.

3.3. **References.** Each reference in the Loan Documents to any of the other Loan Documents shall be a reference to such document as modified herein.

4. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date of this Agreement set forth above in the preamble.

5. **ASSIGNMENT.** Original Borrower hereby irrevocably and unconditionally assigns and transfers to New Borrower all of its rights and obligations arising under the Loan Documents, and New Borrower hereby irrevocably and unconditionally assumes the same.

6. **ASSUMPTION.** In furtherance of Section 5 above, New Borrower hereby irrevocably and unconditionally assumes and agrees to pay when due all sums now due and owing or which hereafter become due and owing under the Note and the other Loan Documents and shall hereafter faithfully perform all of Original Borrower's obligations under and be bound by all of the provisions of the Loan Documents as if New Borrower were an original signatory thereto, and the execution of this Agreement by New Borrower shall be deemed its execution of the Note, Security Instrument and other Loan Documents.

7. **ORIGINAL BORROWER TO REMAIN OBLIGATED.** The parties acknowledge and agree that Original Borrower shall, notwithstanding the aforementioned assignment and assumption, remain fully liable on a joint and several basis with New Borrower for all maker/trustor/borrower obligations arising under the Note or other Loan Documents (collectively, the "Obligations"). Accordingly, Original Borrower and New Borrower shall be jointly and severally liable for the Obligations and each shall be a direct, primary and independent obligor under the Note and other Loan Documents, and shall not be deemed to be a guarantor, accommodation party or other person secondarily liable for the Obligations under the Loan Documents, and Lender may enforce any Loan Document against New Borrower or Original Borrower, without first having sought enforcement of any Loan Documents against the other party.

8. **ASSIGNMENT.** Original Borrower and New Borrower each represent and warrant to Lender that Original Borrower has irrevocably and unconditionally assigned to New Borrower all of Original Borrower's right, title and interest in and to:

8.1. The Property;

8.2. The Loan Documents;

8.3. All reciprocal easement agreements, operating agreements, and declarations of conditions, covenants and restrictions related to the Property;

8.4. All leases related to the Property;

8.5. All rights as named insured under all casualty and liability insurance policies (and all endorsements in connection therewith) relating to the Property;

8.6. All prepaid rents and security deposits, if any, held by Borrower in connection with leases of any part of the Property; and

8.7. All plans, drawings, specifications, reports, options, contracts, agreements, permits, licenses, and approvals related to the operation, construction, management, occupancy, ownership, or use of the Property.

Original Borrower further represents and warrants to Lender that Original Borrower has obtained all consents to such assignments which are required by any agreement respecting any of the above.

9. **NO CONSENTS NECESSARY.** New Borrower and Original Borrower each hereby represent and warrant to Lender, each to the best of its respective knowledge, that: (i) no Event of Default, breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under any of the Loan Documents (as modified by this Agreement), and that all representations and warranties herein and in the other Loan Documents are true and correct as of the date hereof; and (ii) no consent to the transfer of the Property to New Borrower is required under any agreement to which Original Borrower or New Borrower is a party, including, without limitation, under any lease, construction agreement, operating agreement, deed of trust, mortgage or security instrument (other than the Loan Documents).
10. **WAIVER OF ACCELERATION.** Lender hereby agrees that it shall not exercise its right to cause all sums secured by the Security Instrument to become immediately due and payable because of the conveyance of the Property from Original Borrower to New Borrower, provided, however, Lender reserves its right under the terms of the Security Instrument to accelerate all principal and interest in the event of any subsequent sale, transfer, encumbrance or other conveyance of the Property.
11. **KNOWLEDGE OF LOAN DOCUMENTS.** New Borrower represents and warrants to Lender that New Borrower has personal knowledge of all terms and conditions of the Loan Documents, and further agrees that Lender has no obligation or duty to provide any information to New Borrower regarding the terms and conditions of the Loan Documents. New Borrower further understands and acknowledges that, except as expressly provided in a writing executed by Lender, Lender has not waived any right of Lender or obligation under the Loan Documents, and Lender has not agreed to any modification of any provision of any Loan Document or to any extension of the Loan.
12. **ADDITIONAL WAIVERS.** In further consideration of Lender entering into this Agreement, New Borrower waives, with respect to the any and all rights to which New Borrower is or may be entitled pursuant to Utah Code Ann. Section 57-1-32 (the so-called "*Antideficiency Rule*"), and Utah Code Ann. Section 78B-6-901 (the so-called "*One Form of Action Rule*"), as the foregoing may be amended or recodified from time to time, together with any other antideficiency or similar laws which limit, qualify or reduce New Borrower's obligations under the Loan Documents. Additionally, Original Borrower acknowledges and agrees it has no rights of notice, consent, or otherwise with respect to the Loan Documents and Lender may take any action with respect to the Loan Documents or Loan Collateral (as defined below) without notice to or consent of Original Borrower. Furthermore, Original Borrower and New Borrower each waive any and all rights and benefits under any applicable law that limit the liability or exonerate guarantors or sureties and any other similar or replacement statutes or rules now or hereafter in effect and any other statutes or rules now or hereafter in effect that purport to confer specific rights upon or make specific defenses or procedures available to either such party. Original Borrower and New Borrower also waive (i) any rights that require Lender, and Lender shall have no obligation, to provide either party any information concerning the performance of the other party, the Obligations, or the ability of the either party to perform the Obligations or any other matter, regardless of what information Lender may from time to time have, and (ii) any and all present and future claims, remedies and rights against the other party, the collateral for the Loan (the "*Loan Collateral*"), and any other property, interest in property or rights to property of the other party: (A) arising from any performance hereunder or any Loan Document, (B) arising from any application of any Loan Collateral or any

other property, interest in property or rights to property of either party, or (C) otherwise arising in respect of the Loan Documents, regardless of whether such claims, remedies and rights arise under any present or future agreement, document or instrument or are provided by any applicable law (including, without limitation, any and all rights of contribution, exoneration, indemnity, reimbursement, and subrogation and any and all rights to participate in the rights and remedies of Lender, against any New Borrower or Original Borrower). To the extent that rights of contribution, exoneration, indemnity, reimbursement and subrogation are not waivable, such rights are hereby made subordinate and subject to all rights, liens and claims of Lender.

- 13. MULTIPLE PARTIES.** If more than one person or entity has signed this Agreement as New Borrower or Original Borrower, then all references in this Agreement to New Borrower or Original Borrower shall mean each and all of the persons so signing, as applicable. The liability of all persons and entities signing shall be joint and several.
- 14. CONFIRMATION OF SECURITY INTEREST.** Nothing contained herein shall affect or be construed to affect any lien, charge or encumbrance created by any Loan Document or the priority of any such lien, charge or encumbrance over any other liens, charges or encumbrances. All assignments and transfers by Original Borrower to New Borrower are subject to any security interest(s) held by Lender.
- 15. INTEGRATION; INTERPRETATION.** The Loan Documents, including this Agreement, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations and shall not be modified except by written instrument executed by all parties.
- 16. SUCCESSORS AND ASSIGNS.** Subject to all prohibitions against transfer contained in any Loan Document, this Agreement is binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties.
- 17. ATTORNEYS' FEES; ENFORCEMENT.** If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, or as a consequence of any default under this Agreement, with or without the filing of any legal action or proceeding, New Borrower shall pay to Lender, immediately upon demand, all attorneys' fees and all costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 18. MISCELLANEOUS.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah, except to the extent preempted by federal law. Any term of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be deemed severed here from and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had not been a part hereof. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. Time is of the essence. The parties may execute this Agreement in one or more counterparts. All counterparts shall be construed together and shall constitute one Agreement.


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IN WITNESS THEREOF, Original Borrower, New Borrower and Lender hereby execute this Agreement.

“LENDER”

REDUS PARK CITY LLC,
a Delaware limited liability company

By: REDUS Properties, Inc.,
a Delaware corporation
Its: Manager

By: 
David L. Ash, Senior Vice President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

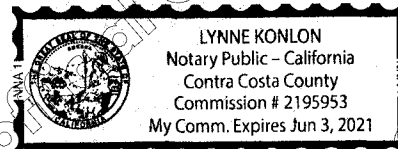
State of California
County of Contra Costa

On September 2, 2020 before me, Lynne Konlon, Notary Public
(insert name and title of the officer)

personally appeared David L. Ash
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

[Signature(s) Continue(s) on Following Page(s)]

Signature Page

"ORIGINAL BORROWER"

RB 248 LLC,
a Utah limited liability company

By: *Nathan Brockbank*
Name: Nathan Brockbank
Title: manager

State of Utah

County of SALT LAKE ss.

On this 4th day of September in the year 2020, before me CORTLUND G. ASHTON, a notary public, personally appeared NATHAN BROCKBANK the MANAGER, of **RB 248 LLC**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same.

(Notary Seal) *Cortlund G. Ashton*

Notary Signature



[Signature(s) Continue(s) on Following Page(s)]

Signature Page

"NEW BORROWER"

NB 248 LLC,
a Delaware limited liability company

By: *Nathan Brockbank*
Name: Nathan Brockbank
Title: Manager

State of Utah

ss.

County of UTAH

On this 4th day of SEPTEMBER in the year 2020, before me CORTLUND G. ASHTON, a notary public, personally appeared NATHAN BROCKBANK the MANAGER, of NB 248 LLC, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same.

(Notary Seal) *Cortlund G. Ashton*

Notary Signature



EXHIBIT A

That certain real property located in Summit County, Utah and more particularly described as follows:

PARCEL 1 EAST

A parcel of land located in the north half of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at a point South 00°44'33" East 2641.90 feet coincident with the section line and West 647.07 feet from the northeast corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the south line of the northeast quarter of Section 1 North 89°50'21" West 1722.59 feet; thence North 36°45'45" East 401.85 feet; thence North 32°35'26" West 1843.40 feet to a point on the southerly right-of-way of Highway U-189; thence coincident with the southerly right-of-way of Highway U-189 the following four (4) courses: 1) South 81°29'38" East 463.60 feet to a right-of-way monument; thence 2) South 78°57'52" East 621.18 feet to a right-of-way monument; thence 3) South 85°29'09" East 193.03 feet to a right-of-way monument; thence 4) North 88°34'36" East 459.30 feet; thence South 1263.44 feet; thence South 89°58'46" East 696.77 feet to the Summit-Wasatch County line; thence coincident with the Summit-Wasatch County line South 07°49'47" East 428.95 feet to the point of beginning.

(Tax Serial No. Part of SS-87)

PARCEL 2

A parcel of land located in the southwest quarter of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at point North 00°43'31" East 2218.71 feet along the center of section line from the south quarter corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the northerly line of the abandoned Union Pacific Railroad right-of-way North 76°40'50" West 450.61 feet; thence along the southerly right-of-way line of the county road (UDOT F.A.P. 93-B) North 79°44'00" East 447.99 feet; thence along the center of section line South 00°43'31" West 183.67 feet to the point of beginning.

(Tax Serial No. Part of SS-87)

PARCEL 3A

A parcel of land located in the southwest quarter of Section 1, the southeast quarter of Section 2, and the northwest quarter of Section 12, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at the southwest corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence coincident with the section line North 00°34'37" East 1327.29 feet; thence coincident with the south line of the north half of the southeast quarter of Section 2 South 89°58'53" West 188.10 feet; thence North 19°56'15" West 537.89 feet to a point on a non tangent 2914.90 foot radius curve to the left, of which the radius point bears North 07°03'59" West, said point being on the southerly right-of-way of the county road (UDOT F.A.P. 93-B); thence coincident with the southerly right-of-way of the county road (UDOT F.A.P. 93-B) the following two (2) courses: 1) along the arc of said curve 162.81 feet through a central angle of 03°12'01"; thence 2) North 79°44'00" East 236.14 feet; thence South 71°47'16" East 704.98 feet; thence South 82°38'01" East 1191.60 feet; thence North 27°48'26" East 758.25 feet to the southerly line of the abandoned Union Pacific Railroad right-of-way; thence along the

southerly line of the abandoned Union Pacific Railroad right-of-way South 76°40'50" East 451.55 feet to the center line of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence coincident with the center line of Section 1 South 00°43'31" West 2116.24 feet to the south quarter corner of Section 1; thence coincident with the south line of Section 1 North 89°30'05" West 1326.50 feet; thence coincident with the east line of the northwest quarter of the northwest quarter of Section 12 South 00°41'29" East 1332.41 feet; thence coincident with the south line of the northwest quarter of the northwest quarter of Section 12 North 89°23'28" West 1347.55 feet; thence coincident with the west line of the northwest quarter of the northwest quarter of Section 12 North 00°12'46" East 1329.54 feet to the point of beginning.

(Tax Serial No. Part of SS-87, PP-28-A and part of SS-88)

PARCEL 6

A parcel of land located in the north half of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at the northwest corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence coincident with the north boundary of said Section 1 the following two (2) courses: 1) South 89°31'25" East 2666.74 feet; thence (2) North 89°59'53" East 1875.55 feet to the Summit-Wasatch county line; thence coincident with the Summit-Wasatch county line South 03°53'07" East 535.39 feet to the north right-of-way boundary of U.S. Highway 189 (also known as SR-248), said point being on a non tangent curve to the left having a radius of 2139.86 feet, of which the radius point bears South 10°52'23" West; thence coincident with said right-of-way the following ten (10) courses: 1) Westerly along the arc of said curve 201.77 feet through a central angle of 05°24'09"; thence 2) North 87°41'03" West 339.16 feet; thence 3) North 89°19'46" West 540.85 feet to a point on a curve to the right having a radius of 5502.89 feet, of which the radius point bears North 00°40'14" East; thence 4) along the arc of said curve 751.38 feet through a central angle of 07°49'24"; thence 5) North 81°30'46" West 302.59 feet; thence 6) South 87°10'38" West 407.66 feet; thence 7) North 81°30'46" West 1224.14 feet to a point on a non tangent curve to the right having a radius of 5579.56 feet, of which the radius point bears North 08°29'18" East; thence 8) Westerly along the arc of said curve 268.64 feet through a central angle of 02°45'31"; thence 9) North 66°59'31" West 246.59 feet to a point on a non tangent curve to the right having a radius of 5534.58 feet, of which the radius point bears North 13°44'49" East; thence 10) Westerly along the arc of said curve 355.11 feet through a central angle of 03°40'34" to the west boundary of the northwest quarter of said Section 1; thence coincident with said west boundary North 00°34'37" East 4.53 feet to the point of beginning.

(Tax Serial No. Part of SS-87)