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RASHELLE HOBBS
Recorder, Salt Lake County, UT
INTEGRATED TITLE INS SERVICES
BY: eCASH, DEPUTY - EF 23 P.

Prepared by, and
after recording return to:

Dorsey & Whitney LLP
111 South Main Street, Suite 2100
Salt Lake City, Utah 84111
Attn: Ken Logsdon

APN: See Exhibit A

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

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

Trustor: **RU SUNNY LLC**, a Utah limited liability company

Trustee: **INTEGRATED TITLE INSURANCE SERVICES,
LLC**

Beneficiary: **ALLY BANK**, a Utah state chartered bank

Property Tax Parcel Numbers: See Exhibit A attached hereto

For purposes of Article 9a of the Utah Uniform Commercial Code, this Security Instrument constitutes a Security Agreement and Financing Statement with Trustor being the Debtor and Beneficiary being the Secured Party. This Security Instrument shall also constitute a Financing Statement filed as a fixture filing pursuant to Article 9 of the Utah Uniform Commercial Code.

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Security Instrument**") is made as of December 23, 2020, by **RU SUNNY LLC**, a Utah limited liability company ("**Trustor**"), whose mailing address is 1600 South State Street, Salt Lake City, Utah 84115, to **INTEGRATED TITLE INSURANCE SERVICES, LLC**, as trustee ("**Trustee**"), whose mailing address is 1092 East South Union Avenue, Midvale, Utah 84047, for the benefit of **ALLY BANK**, a Utah state chartered bank (together with its successors and assigns, "**Beneficiary**"), whose mailing address is 200 West Civic Center Drive, Suite 201, Sandy, Utah 84070.

RECITALS:

A. Pursuant to that certain Loan Agreement dated as of December 23, 2020 among Trustor, certain of Trustor's Affiliates party thereto, and Beneficiary (collectively, together with all amendments, modifications, restatements and replacements thereof, the "**Loan Agreement**"), Beneficiary agreed to make a loan to Trustor in the maximum principal amount of \$12,815,000 (the "**Loan**") in connection with the financing of residential properties located in the State of Utah.

B. The Loan is evidenced by that certain Promissory Note dated as of December 23, 2020 in the stated principal amount of \$12,815,000 made by Trustor payable to the order of Beneficiary (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced or supplemented from time to time, the "**Note**"). This Security Instrument, the Loan Agreement, the Note, and any of the other documents evidencing or securing the Loan made to Trustor, as amended, supplemented or otherwise modified from time to time, are collectively referred to as the "**Loan Documents**".

NOW, THEREFORE, in consideration of the Indebtedness (as hereinafter defined), the Other Obligations (as hereinafter defined) and the trust created by this Security Instrument, Trustor hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Trustor's interest in the Mortgaged Property described on Exhibit A attached to this Security Instrument.

TO SECURE TO BENEFICIARY the repayment of the Indebtedness (subject to Section 2.12 of the Loan Agreement), and all renewals, extensions and modifications of the Indebtedness, together with the Other Obligations, including without limitation the payment of all sums advanced by or on behalf of Beneficiary to protect the security of this Security Instrument, and the performance of the covenants and agreements of Trustor contained in the Loan Documents.

For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, Yield Maintenance Fees, and similar amounts, if any, owing from time to time under the Note, the Loan Agreement, this Security Instrument, and other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Mortgaged Property and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Mortgaged Property pursuant to this Security Instrument.

ARTICLE I
DEFINITIONS; RECITALS.

All capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Loan Agreement. All recitals to this Security Instrument are hereby incorporated by reference as if expressly set forth herein. The defined terms below shall have the following meanings:

“Event of Default” means the occurrence of any of the following, regardless of the cause thereof, or the circumstances giving rise thereto:

(a) (i) any Debt Service payment due under the Loan Agreement or the Note is not paid when due, or (ii) any payment of principal due under the Loan Agreement or the Note or the payment due on the Maturity Date is not paid when due, or (iii) any other portion of the Indebtedness, or any other amount required to be paid by Trustor to Beneficiary, is not paid when due, or, if no due date is stated, within five (5) days of written demand;

(b) Trustor fails to perform or cause to be performed any obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Trustor contained in this Security Instrument and not specifically identified as an Event of Default in Section 6.1 of the Loan Agreement or in any other Loan Document; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Security Instrument or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Trustor shall have a period (**“Cure Period”**) of thirty (30) days after Trustor obtains actual knowledge of such failure to cure the same (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money) and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if such failure cannot be cured by the payment of money and Trustor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(c) Any **“Event of Default”**, as defined in the Loan Agreement or any other Loan Document.

“Fixtures” has the meaning given to such term in the definition of **“Mortgaged Property”**.

“Improvements” has the meaning given to such term in the definition of **“Mortgaged Property.”**

“Indebtedness” means, subject to Section 2.12 of the Loan Agreement, all present and future indebtedness evidenced by or arising under the Note or the Loan Agreement with respect to the Loan, or under any other Loan Document, together with interest thereon and all other sums due to Beneficiary in respect of the Loan under any Loan Document (including sums added to the principal balance of the Loan in accordance with the terms of any Loan Document, all

Protective Advances, Yield Maintenance Fees, Past Due Charges, and all other charges, fees, costs and expenses payable pursuant any Loan Document).

“**Leases**” means all leases, licenses, concessions, tenancies, occupancy agreements and other agreements entered into by or on behalf of Trustor (or any predecessor of Trustor, to the extent Trustor or the Mortgaged Property (hereinafter defined) remain subject thereto), whether made before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”), demising, leasing or granting rights of possession or use of all or any portion of the Mortgaged Property, together with all modifications, extensions or renewals thereof now existing or hereafter permitted under the Loan Documents.

“**Loan Documents**” means this Security Instrument, the Loan Agreement, the Note, and all other documents and instruments now and hereafter evidencing or securing the Loan or the obligations secured by this Security Instrument, as amended, supplemented or otherwise modified from time to time.

“**Mortgaged Property**” means all of Trustor’s right, title and interest in: the real property described in Exhibit A attached hereto and incorporated herein by reference, together with all buildings and other improvements (“**Improvements**”) now or hereafter located thereon, and any and all right, title or interest in any other real property or improvements comprised in such real property, which right, title or interest is acquired by Trustor after the date of this Security Instrument (such real property, buildings, other Improvements and after-acquired interest being hereinafter collectively referred to as the “**Real Property**”); the Personal Property; all development rights transferred or appurtenant to the Real Property, and all easements and other rights now or hereafter made appurtenant to the Real Property; all additions and accretions to the Real Property; all fixtures, machinery, equipment, and appliances at any time attached to, or located in or on the Real Property in which Trustor has an interest (the “**Fixtures**”); all rights of Trustor in or to existing or future streets or public places of Trustor; all existing and future minerals, oil, gas and other hydrocarbon substances upon, under or through the Real Property; all water and water rights, pumps and pumping plants, and existing and future water stock relating thereto; all existing and future shares of stock or other evidence of ownership of any part of the foregoing property and all intangible property and rights relating to the foregoing property, or the operation thereof or used in connection therewith, including all options, sales contracts and rights of first refusal of any nature whatsoever, covering all or any portion of such property, together with any deposits or other payments made in connection therewith, existing and future development rights, permits and approvals, air rights and other similar land use permits, approvals or entitlements; and all proceeds of any of the foregoing. Any reference in this Security Instrument to the “**Mortgaged Property**” shall mean the Mortgaged Property described in this Section, any part thereof, or any interest therein.

“**Obligations**” means the Indebtedness and the Other Obligations, collectively.

“**Other Obligations**” means, subject to Section 2.12 of the Loan Agreement, the performance of all obligations (other than payment of the Indebtedness) of Trustor or any Borrower Party under any of the Loan Documents.

“Personal Property” means all “Accounts”, “Cash proceeds”, “Chattel paper”, “Collateral”, “Commercial tort claims”, “Deposit accounts”, “Documents”, “Electronic chattel paper”, “Equipment”, “Fixtures”, “General intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment property”, “Letter-of-credit rights”, “Noncash proceeds”, “Payment intangibles”, “Proceeds”, “Software”, “Supporting Obligations”, and “Tangible chattel paper”, as defined in the Uniform Commercial Code, in which Trustor has any interest, whether currently owned or hereafter acquired, including but not limited to all such property relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Real Property (whether or not subsequently removed from the Real Property (other than that portion of the Mortgaged Property consisting of the Real Property)), including, without limitation, all (i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, conduits, compressors, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, dishwashers, garbage disposals, washers and dryers, other customary apartment equipment; (viii) rights, royalties, Rents, security deposits, advance rentals, revenues, profits and benefits, credit card receipts collected from tenants, license, lease, sublease and concession fees and rentals, service charges, vending machine sales and any other items of revenue, receipts and/or income; (ix) Leases, lease guarantees, contracts, contract rights, franchise agreements, licenses, permits and certificates; (x) deposits, funds, money and deposit accounts; (xi) tenements, hereditaments and appurtenances; (xii) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (xiii) names under or by which the Mortgaged Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof; (xiv) trademarks, other intellectual property and good will; (xv) management agreements, service contracts, supply contracts or other contracts or agreements; (xvi) warranties; (xvii) water stock; (xviii) shares of stock or other evidence of ownership of any part of the Mortgaged Property or Improvements that is owned by Trustor in common with others, and all documents of membership in any owners’ or members’ association or similar group having responsibility for managing, maintaining or operating any part of the Mortgaged Property or Improvements; (xix) plans and specifications prepared for construction of Improvements on the Mortgaged Property, or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Mortgaged Property, all environmental audits, studies and reports, approvals and agreements, and contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of Improvements on the Mortgaged Property; (xx) sales agreements, marketing studies, feasibility studies, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Mortgaged Property and other proceeds of the sale thereof; (xxi) damages, royalties and revenue of every kind, nature and description whatsoever that Trustor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights

and reservations of the Mortgaged Property; (xxii) deposits made with or other security given to utility companies by Trustor with respect to the Mortgaged Property and/or Improvements; (xxiii) advance payments of insurance premiums made by Trustor with respect to, and all claims or demands with respect to, insurance; (xxiv) negotiable certificates of deposit of Trustor in Beneficiary's possession and all accounts of Trustor maintained with Beneficiary and each deposit account of Trustor assigned or pledged to Beneficiary pursuant to any agreement; (xxv) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Security Instrument); (xxvi) condemnation awards; (xxvii) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Mortgaged Property and/or Improvements or for any loss or diminution in value of the Mortgaged Property and/or Improvements; (xxviii) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxix) guaranties of and security for any of the foregoing; (xxx) all reserve, deposit and impound accounts including without limitation the Reserves (as defined in the Loan Agreement) and all Loan accounts established pursuant to the Loan Agreement either as reserves or accounts for the Loan; (xxxi) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing; and all "**Proceeds**" (as such term is defined in the Uniform Commercial Code), collections, insurance proceeds and products of any of the property listed in (i) through (xxxi) above, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any of the foregoing.

"**Real Property**" has the meaning given to such term in the definition of Mortgaged Property.

"**Rents**" means all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Trustor or any of its Affiliates, or any of their agents or employees, from any and all sources arising from or attributable to the Mortgaged Property, including all credit card receipts collected from tenants, parking charges, and other 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 Mortgaged Property, service charges, vending machine sales, laundry charges and any other items of revenue, receipts and/or income and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code.

"**Uniform Commercial Code**" means the Uniform Commercial Code as enacted in the State of Utah, as amended from time to time.

ARTICLE II
ASSIGNMENT OF RENTS.

Trustor absolutely, unconditionally and irrevocably assigns to Beneficiary the Leases and the Rents. This assignment is an absolute and present assignment from Trustor to Beneficiary and not merely the passing of a security interest. Notwithstanding the immediately preceding sentence, Beneficiary confers upon Trustor the license to collect and retain the Rents as they become due and payable and otherwise deal with the Leases, subject, however, to the right of Beneficiary to revoke such license at any time upon the occurrence of and during the continuation of an Event of Default in its sole discretion and without notice to Trustor. Beneficiary shall, concurrently with the revocation of such license, inform Trustor of its revocation to avoid duplicate demands for Rents. Beneficiary shall have the absolute right to revoke such authority and collect and retain the Rents without taking possession of all or any part of the Mortgaged Property. To the full extent permitted by applicable law, the right to collect Rents herein provided shall not cause Beneficiary to be a "mortgagee in possession" for any purpose, nor shall such right impose upon Beneficiary the duty to produce Rents or maintain the Mortgaged Property in whole or in part. Possession of the Mortgaged Property by a receiver appointed by a court of competent jurisdiction shall not be considered possession of the Mortgaged Property by Beneficiary for purposes hereof. Following the occurrence of an Event of Default, Beneficiary may apply, in its sole discretion and in any order of priority, any Rents collected against the costs of collection and any Indebtedness of Trustor arising under the Loan Documents. Collection of any Rents shall not cure or waive any Event of Default or notice of Event of Default, or invalidate any acts done pursuant to such notice. This Section is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, § 57-26-101 et seq., and in the event of any conflict or inconsistency between the provisions of this Section and the provisions of such act, the provisions of such act shall control.

ARTICLE III
SECURITY AGREEMENT AND FIXTURE FILING.

Section 3.1 **Grant of Security Interest.** Trustor hereby grants to Beneficiary a security interest in the Personal Property to secure all of the Obligations, subject to Section 2.12 of the Loan Agreement. This Security Instrument constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity.

Section 3.2 **Perfection.** Trustor will execute, acknowledge, deliver and cause to be recorded or filed, in the manner and place required by any present or future law, any instrument that may be requested by Beneficiary to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Security Instrument or the interest of Beneficiary in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Trustor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Beneficiary in connection with the preparation, execution, and acknowledgement of

all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of such instruments. Trustor hereby irrevocably constitutes and appoints Beneficiary as the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, file with the appropriate filing officer or office any such instruments if Trustor should fail to do so within five (5) days of written demand by Beneficiary. In addition, Trustor hereby (y) consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof, and (z) authorizes Beneficiary to cause any additional financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Beneficiary.

Section 3.3 **Place of Business.** Trustor maintains a place of business, as set forth as the address of Trustor in Section 6.1 below, and Trustor will notify Beneficiary in writing of any change in its place of business within five (5) days of such change. Trustor is organized under the laws of the State of Delaware.

Section 3.4 **Fixtures.** This Security Instrument is also to be recorded as a “fixture filing” in accordance with Utah Uniform Commercial Code Section 9a-502, and covers goods that are or are to become Fixtures.

ARTICLE IV **COVENANTS.**

Trustor covenants and agrees that:

Section 4.1 **Performance of Obligations.** Trustor shall promptly pay when due the Indebtedness and shall perform and comply with in a timely manner all Other Obligations.

Section 4.2 **Title.** Trustor warrants and represents that (a) Trustor lawfully owns a fee simple interest in the Real Property, the Improvements and all other Mortgaged Property and has the right to encumber the same; (b) the person executing this Security Instrument on behalf of Trustor has the full right, power and authority to do so on behalf of Trustor; (c) this Security Instrument, as so executed and delivered, is a valid and fully binding obligation of Trustor, enforceable in accordance with its terms; and (d) Trustor, its authorized employees, agents and representatives, have all reviewed, approved, and been fully advised with respect to this Security Instrument, the Loan, the Loan Documents, and any other document or instrument executed and delivered in connection therewith or as security therefor.

Section 4.3 **Incorporation by Reference.** All the covenants, conditions and agreements contained in the Loan Agreement and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. In the event of any inconsistency between the provisions of this Security Instrument or any of the other Loan Documents and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

Section 4.4 **Insurance.** Trustor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Trustor and the Mortgaged Property as required pursuant to the Loan Agreement.

Section 4.5 **Maintenance of Mortgaged Property.** Trustor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures and the Personal Property shall not be removed, demolished or materially altered without the consent of Beneficiary, except as expressly permitted or provided in the Loan Agreement. Provided Beneficiary makes insurance proceeds available to Trustor in accordance with the Loan Documents, Trustor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Real Property.

Section 4.6 **Waste.** Trustor shall not commit or suffer any physical waste of the Mortgaged Property or make any change in the use of the Mortgaged Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Mortgaged Property, or take any action that is reasonably likely to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Mortgaged Property or the security of this Security Instrument. Trustor will not, without the prior written consent of Beneficiary which consent shall not be unreasonably withheld, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 4.7 **Performance of Other Agreements.** Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by Trustor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property and any amendments, modifications or changes thereto.

Section 4.8 **Change of Name, Identity or Structure.** Trustor shall not change Trustor's name, identity (including its trade name or names) or its corporate, partnership or other structure without notifying Beneficiary of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Trustor's structure, except as otherwise may be permitted or provided in the Loan Agreement, without first obtaining the prior written consent of Beneficiary. Trustor hereby authorizes, prior to or contemporaneously with the effective date of any such change, any financing statement or amendment to financing statement required by Beneficiary to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Trustor intends to operate the Mortgaged Property, and representing and warranting that Trustor does business under no other trade name.

Section 4.9 **Mechanics Liens.** If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Trustor covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice and Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished before the recording of this Security Instrument.

Section 4.10 **Contest of Liens.** Trustor may contest any lien, encumbrance or other charge on the Mortgaged Property in accordance with the terms of Section 5.7 of the Loan Agreement so long as Trustor: (i) previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated Section 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated Section 38-1a-804 to release the Mortgaged Property from such lien or claim, and (ii) otherwise complies with all applicable requirements in the Loan Agreement. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Mortgaged Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Annotated Section 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the Default Rate.

ARTICLE V **DEFAULT PROVISIONS.**

Section 5.1 **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Trustor from complying with the terms of this Security Instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) **Acceleration.** Beneficiary may declare the Indebtedness to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) **Uniform Commercial Code.** Beneficiary shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Trustor at its address set forth in Section 6.1 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Beneficiary elects. The Trustor hereby agrees that if the Beneficiary demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Trustor will promptly turn over and deliver possession thereof to the Beneficiary, and the Trustor authorizes, to the extent the Trustor may now or hereafter lawfully grant such authority to the Beneficiary, its employees and agents, and potential bidders or purchasers to enter upon the Real

Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Beneficiary may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Real Property and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations hereunder and shall be payable upon demand, with interest thereon at the Default Rate until paid.

(c) Foreclosure Sale. Beneficiary may invoke the power of sale and any other remedies permitted by Utah law or provided in this Security Instrument or in any other Loan Document. Trustor acknowledges that the power of sale granted in this Security Instrument may be exercised by Beneficiary without prior judicial hearing. Beneficiary shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports. If the power of sale is invoked, for any sale under the power of sale granted by this Security Instrument, Beneficiary or Trustee shall execute a written notice of the occurrence of an Event of Default and of Beneficiary's election to cause the Mortgaged Property to be sold and shall record such notice in each county in which the Mortgaged Property is located. Beneficiary or Trustee shall mail notice of default in the manner provided by the laws of Utah to Trustor and to such other persons as the laws of Utah prescribe. Trustee shall give public notice of sale and shall sell the Mortgaged Property according to the laws of Utah. Trustor acknowledges that the power of sale granted by this Security Instrument may be exercised by Beneficiary without prior judicial hearing. Trustor has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Trustor to acceleration and sale. Beneficiary shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale in accordance with the laws of Utah. Beneficiary or Beneficiary's designee may purchase the Mortgaged Property at any sale. If the Mortgaged Property includes several lots or parcels, Trustor has the right, under Utah law, if present at the sale, to direct the order in which the Mortgaged Property shall be sold and to sell different lots or parcels of the Mortgaged Property individually and/or to different purchasers, and Trustee shall follow such directions. With respect to such lots or parcels, Beneficiary in its discretion may elect to sell all of them as an entirety or may elect to sell a portion of such lots or parcels, in which case the lien of this Security Instrument shall remain in full force and effect with respect to the remaining lots or parcels in accordance with the laws of Utah. The Mortgaged Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Mortgaged Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of the Beneficiary in selling such Mortgaged Property. Any person permitted by law, including Beneficiary, may purchase such Mortgaged Property at any sale, and Beneficiary may credit its bid price against the amounts due to Beneficiary under the Loan Documents in lieu of the payment of cash. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers

a deed or deeds conveying the Mortgaged Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(d) Appointment of Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Trustor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to applicable law of all or any part of the Mortgaged Property and the Rents, with such power as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Trustor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all Rents accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise. Trustor agrees to promptly deliver to any such receiver all Leases, Rents, documents, financial data and other information requested by such receiver in connection with the Mortgaged Property and, without limiting the foregoing, Trustor hereby authorizes Beneficiary to deliver to any such receiver any or all of the Leases, Rents, documents, data and information in Beneficiary's possession relating to the Mortgaged Property.

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

- (i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Trustor;
- (ii) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Trustor to cancel the same;

- (iii) elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property made subsequent to this Security Instrument without Beneficiary's prior written consent;
- (iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Trustor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;
- (v) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Beneficiary, to insure and reinsure the Mortgaged Property and all risks incidental to Beneficiary's possession, operation and management thereof, and to receive all Rents therefrom;
- (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Obligations in such order and manner as Beneficiary shall select; and
- (vii) receive and collect the Rents personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Trustor agrees to consent to a receiver if this is believed necessary or desirable by the Beneficiary to enforce its rights under this subsection. The collection of Rents by the Beneficiary shall in no way waive the right of the Beneficiary to foreclose this Security Instrument in the event of any said Event of Default
- (viii) Nothing herein contained shall be construed as constituting Beneficiary a "mortgagee in possession" in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and

improve the same, and to collect the Rents, shall be in addition to all other rights or remedies of Beneficiary hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Trustor promises to pay upon demand together with interest thereon at the Default Rate until paid. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto other than to account for any Rents actually received by Beneficiary. Without taking possession of the Mortgaged Property, Beneficiary may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Obligations payable upon demand with interest thereon at the Default Rate until paid.

(f) Exercise Other Rights and Remedies. To exercise or invoke any and all other rights and remedies as may be available to Beneficiary now or hereafter at law or in equity, including, without limitation, foreclosing this Security Instrument as a mortgage.

(g) Indemnity. The Trustor hereby agrees to indemnify, defend, protect and hold harmless the Beneficiary and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, lease or consumption of any of the Mortgaged Property, or any part thereof, or as a result of the Beneficiary seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property, except from such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Beneficiary or its employees, officers or agents.

To the extent permitted by law, no action taken, or right or remedy invoked, by Beneficiary under this Section 5.1, including the appointment of a receiver for the Mortgaged Property, or the entry into possession of the Mortgaged Property, or any part thereof, by such receiver, or otherwise, shall be deemed to make Beneficiary a "mortgagee in possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property, or the use, occupancy, enjoyment or operation of all or any part thereof. In no event shall Beneficiary be required to accept a cure of any default beyond the applicable grace, notice and cure periods provided in the Loan Documents, if any, notwithstanding any statement or provision to the effect that rights or remedies are available while an Event of Default "exists", "continues" or is "outstanding", or during the "existence" or "continuation" of an Event of Default (or any similar statement or provision) in any of the Loan Documents, or anything else in the Loan Documents.

Section 5.2 Payment of Costs, Expenses and Attorneys' Fees. All costs and expenses incurred by Beneficiary pursuant to Section 5.1 (including court costs and attorneys' fees and costs of both in house and outside counsel, whether or not incurred in litigation and whether or not foreclosure is concluded, including, without limitation, attorney's fees and costs

of both in house and outside counsel incurred in connection with any judicial or nonjudicial foreclosure of this Security Instrument or the other Loan Documents, or in connection with both judicial and nonjudicial foreclosure, if Beneficiary shall elect to pursue each such remedy whether concurrently or independently) shall be secured by this Security Instrument and shall bear interest at the Default Rate, from the date of expenditure until such sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Mortgaged Property held pursuant to Section 5.1(c) above, the amount of all such costs, expenses, and interest in addition to the amount of all other Obligations by a credit bid as the equivalent of cash.

Section 5.3 Protective Advances.

(a) Advances, disbursements and expenditures made by Beneficiary for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Security Instrument, constitute "Protective Advances":

- (i) all advances by Beneficiary in accordance with the terms of this Security Instrument to: (A) preserve or maintain, repair, restore or rebuild the Improvements upon the Mortgaged Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument;
- (ii) payments by Beneficiary of: (i) when due, installments of principal, interest or other obligations; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) when due, rents and other amounts payable under any Lease; (iv) other obligations authorized by this Security Instrument; or (v) any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of Beneficiary as holder of a first priority lien on the Real Property;
- (iii) advances by Beneficiary in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Security Instrument; (ii) in connection with any action, suit or proceeding brought by or against the Beneficiary for the enforcement of this Security Instrument or arising from the interest of the Beneficiary hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

- (v) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Security Instrument;
- (vi) expenses incurred and expenditures made by Beneficiary for any one or more of the following: (i) premiums for casualty and liability insurance paid by Beneficiary whether or not Beneficiary or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Beneficiary to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the mortgaged real estate; (v) pursuant to any lease or other agreement for occupancy of the mortgaged real estate;

(b) All Protective Advances shall be additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded.

(d) All Protective Advances shall apply to and be included in:

- (i) determination of the amount of the Obligations at any time;
- (ii) the Indebtedness found due and owing to the Beneficiary in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) application of income in the hands of any receiver or mortgagee in possession; and

computation of any deficiency judgment pursuant to applicable law.

Section 5.4 **Remedies Cumulative; No Waiver.** All rights and remedies of Beneficiary hereunder and under the other Loan Documents are cumulative and not alternative, and are in addition to all rights and remedies otherwise provided by law, and any or all of such rights and remedies shall be concurrent and may be pursued singly, successively or together

against Trustor, any Borrower Party, the Mortgaged Property, any other collateral securing the Obligations, or any other Persons who are, or may become liable for all or any part of the Obligations, and any other funds, property or security held by Beneficiary for the payment hereof, or otherwise, at the sole and absolute discretion of Beneficiary. No exercise of any right or remedy by Beneficiary shall constitute a waiver of any other right or remedy. No delay or omission by Beneficiary to exercise any right, power or remedy hereunder shall impair any such right or remedy, or be construed as a waiver of any Event of Default, or any acquiescence therein. Without limiting the generality of the foregoing, Trustor agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Beneficiary is not subject to any "one action," "anti-deficiency" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Beneficiary shall remain in full force and effect until Beneficiary has exhausted all of its remedies against the Mortgaged Property, this Security Instrument has been foreclosed, the Mortgaged Property has been sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full. Nothing contained herein or in any other Loan Document shall be construed as requiring Beneficiary to resort to any particular portion of the Mortgaged Property for the satisfaction of any of the Obligations in preference or priority to any other portion of the Mortgaged Property, and Beneficiary may seek satisfaction out of the entire Mortgaged Property or any part thereof, in its sole and absolute discretion, in respect of the Obligations. By accepting payment of any part of the Indebtedness after its due date or later performance of any Obligation, Beneficiary shall not waive its right against any Person obligated directly or indirectly under the Loan Agreement, this Security Instrument or any other Loan Document, or on any Obligation, either to require prompt payment when due of all other Indebtedness or to declare an Event of Default for failure to make such prompt payment or render such performance; and Beneficiary's acceptance of partial payment of any portion of the Indebtedness after its due date (which may be applied to such outstanding payment obligations as Beneficiary may elect, notwithstanding Trustor's instructions to the contrary), or acceptance of partial performance of any Obligation in default, shall not cure such payment failure or default, or affect any notice of an Event of Default or sale heretofore given or recorded, unless such notice is expressly revoked in writing by Beneficiary.

Section 5.5 **Releases, Extensions, Modifications and Additional Security.** Without affecting the liability of any person for payment of the Indebtedness, or the lien or priority of this Security Instrument or any other Loan Document upon the Mortgaged Property, Beneficiary may, in its sole and absolute discretion, from time to time, with or without notice, do one or more of the following: release the liability of any person for the payment of all or any portion of the Indebtedness; make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of all or any portion of the Indebtedness; and accept additional security, or release all or a portion of the Mortgaged Property and other security held to secure the Indebtedness. If Beneficiary holds any other or additional security for the payment of the Indebtedness or performance of any Other Obligation, then any sale or foreclosure of such security upon any Event of Default, in the sole discretion of Beneficiary, may be prior to, subsequent to, or contemporaneous with, any sale or foreclosure hereunder and any property in which Beneficiary holds a security interest may be sold as a unit with the Mortgaged Property.

Section 5.6 **Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc.** To the extent permitted by law, Trustor waives (i) the benefit of all present or future laws providing for any appraisal before sale of any portion of the Mortgaged Property, (ii) all

Sandy, Utah 84070
Attn: CRA Department

With a copy to: Ally Bank
1100 Virginia Drive
Ft. Washington, PA 19034
Attn: Irene Belot-Pave

Section 6.2 **Time of the Essence.** Time is of the essence with respect to this Security Instrument and the other Loan Documents, and each representation, warranty, covenant and condition hereunder and thereunder.

Section 6.3 **Successors and Assigns; Beneficiary as Agent.** This Security Instrument and all provisions hereof shall be binding upon and enforceable against the Trustor and its assigns and other successors. This Security Instrument and all provisions hereof shall inure to the benefit of the Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Obligations, or any interest therein. Notwithstanding anything to the contrary in this Security Instrument, if the Obligations are held by more than one holder, the parties agree that Beneficiary shall act as agent for the pro rata benefit of such holders.

Section 6.4 **Amendments.** This Security Instrument may be amended at any time and from time to time only by an amendment in writing executed by Beneficiary and Trustor.

Section 6.5 **Rules of Construction.** When the identity of the parties or other circumstances make appropriate, the neuter gender shall include the feminine and masculine, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Beneficiary and of acts which they may do and of acts Trustor must do or not do shall not exclude or limit the general. The headings of each Section are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Security Instrument shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of these grants. The use in this Security Instrument (including any Exhibit hereto) of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter; the use herein of the words "costs" or "expenses" shall include the cost of title evidence and fees and costs of attorneys for Beneficiary (both in house and outside counsel); and the use herein of the word "prompt", or "immediately" in any form, or words of similar import, when used with reference to any notice required to be given or act to be undertaken by Trustor shall mean notice given or act performed not later than five (5) days after the occurrence of the specified event for which notice or action is required, unless another time period is made expressly applicable. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument. If Trustor is composed of more than one person or entity, then the obligations of Trustor under this Security Instrument, the Loan Agreement and under the other Loan

Documents are joint and several; and each covenant, warranty, representation and agreement of Trustor hereunder and thereunder shall be deemed made by each such person or entity comprising Trustor, both individually and collectively.

Section 6.6 **Severability**. If any term of this Security Instrument, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Security Instrument shall be valid and enforceable to the fullest extent permitted by law.

Section 6.7 **Substitute Trustee**. Beneficiary, at Beneficiary's option, may from time to time, by a written instrument, appoint a successor trustee, which instrument, when executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of the successor trustee. The successor trustee shall, without conveyance of the Mortgaged Property, succeed to all the title, power and duties conferred upon the Trustee in this Security Instrument. The instrument of substitution shall contain the name of the original Beneficiary, Trustee and Trustor under this Security Instrument, the book and page where this Security Instrument is recorded, and the name and address of the successor trustee. If notice of default has been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee have been paid to such Trustee, who shall endorse receipt of those costs, fees and expenses upon the instrument of substitution. The procedure provided for substitution of trustee in this Security Instrument shall govern to the exclusion of all other provisions for substitution, statutory or otherwise.

Section 6.8 **Governing Law**. THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

Section 6.9 **Venue**. TRUSTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS MORTGAGED PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT IN OR HAVING JURISDICTION WITH RESPECT TO THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND TRUSTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS. TRUSTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECURITY INSTRUMENT SHALL AFFECT ANY RIGHT THAT BENEFICIARY MAY OTHERWISE HAVE TO BRING ANY ACTION

OR PROCEEDING RELATING TO THIS SECURITY INSTRUMENT AGAINST ANY BENEFICIARY OR ITS MORTGAGED PROPERTY IN THE COURTS OF ANY JURISDICTION.

Section 6.10 **Commingling of Funds**. No sums collected or retained by Beneficiary shall be deemed to be held in trust; and Beneficiary may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the minimum extent required by law.

Section 6.11 **Late Charges; Default Rate; Prepayment; Variable Rate**. The Loan Agreement contains provisions imposing a late charge and past due rate of interest if payments are not timely made, and prepayment restrictions and premiums as more particularly described in the Loan Agreement. The Loan bears interest at a variable rate of interest.

Section 6.12 **Waiver of Jury Trial**. TRUSTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, BENEFICIARY, EACH HEREBY (i) EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION ARISING UNDER THIS SECURITY INSTRUMENT OR IN ANY WAY CONNECTED WITH OR INCIDENTAL TO THE DEALINGS OF THE PARTIES WITH RESPECT TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND (ii) AGREES AND CONSENTS THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT SUCH PARTIES MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES TO THE WAIVER OF THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY.

Section 6.13 **Reconveyance**. Upon payment of the Indebtedness, Beneficiary shall request Trustee to reconvey the Mortgaged Property and shall surrender this Security Instrument and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

Section 6.14 **Counterparts**. This Security Instrument may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Security Instrument by facsimile or other electronic transmission shall constitute effective delivery thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Trustor has executed this Security Instrument on the day and year set forth above.

TRUSTOR:

RU SUNNY LLC,
a Utah limited liability company

By: Restore Utah GP II, LLC, a Utah limited liability company

Its: Manager

By: [Signature]
Name: James Schulte
Its: Manager

STATE OF Utah)
) ss.
COUNTY OF Salt Lake

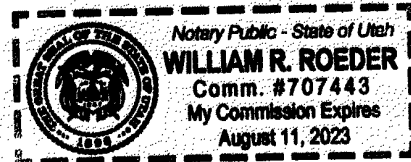
The foregoing instrument was acknowledged before me on December 22, 2020, by James Schulte, in his capacity as a Manager of Restore Utah GP II, LLC, the Manager of RU SUNNY LLC (the "Company"), on behalf of the Company.

[Signature]

(Signature)

William R. Roeder
(Please print name legibly)

NOTARY PUBLIC in and for the State of Utah, residing at Salt Lake City
My commission expires 8/11/23



Signature and Notary Page to Deed of Trust

EXHIBIT A
LEGAL DESCRIPTION

Beginning at a point on the West line of 700 West Street, being South 89°55'00" West 206.07 feet and North 00°02'30" West 1438.64 feet, and South 89°57'30" West 33 feet from the Southeast corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence South 89°57'30" West 681.44 feet; thence along the arc of a 50 foot radius curve to the right 52.36 feet (chord bears North 60°02'30" West for 50.00 feet); thence South 59°57'30" West 5.0 feet; thence along the arc of a 45 foot radius curve to the left 47.09 feet (chord bears North 60°01'29" West 44.98 feet), to the East line of property deeded to Trachyte Oil Company, recorded October 26, 1972, as Entry No. 2494508, in Book 3184, at Page 419, Salt Lake County Recorder's Office; thence North 189.84 feet to the South line of 3900 South Street (Meadowbrooke Expressway); thence South 89°54'15" East 767.87 feet to the West line of 700 West Street; thence South 00°02'30" East 233.00 feet to the point of beginning.

Less and excepting therefrom any portion lying within the bounds of 3900 South Street on the North, 700 West Street on the East and 3950 South Street along the Southerly boundary.

Parcel Identification No. 15-35-400-076.
764 West 3940 South
Salt Lake City, UT 84123

Exhibit s - 1

4811-9625-6725\1

BK 11087 PG 3261