

WHEN RECORDED RETURN TO:

Brian D. Cunningham, Esq.
Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

APN: 26-24-257-003-0000

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ADAM GARDINER
Recorder, Salt Lake County, UT
NORTH AMERICAN TITLE LLC
BY: eCASH, DEPUTY - EF 7 P.

PARTIAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS PARTIAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (the "Assignment") is entered into as of August 30, 2018, by **SOUTH STATION APARTMENTS LLC**, a Utah limited liability company ("Assignor"), for the benefit of **WASHINGTON FEDERAL, NATIONAL ASSOCIATION** ("Assignee").

RECITALS

A. On or about the date hereof, Assignor and Assignee entered into that certain Construction Loan Agreement ("Loan Agreement") whereby the Assignee agreed to extend to Assignor a construction loan ("Loan") evidenced by a Secured Promissory Note of even date herewith, by Assignor and payable to Assignee, in the principal amount of **THIRTY-THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$33,300,000.00)** (the "Note"), to construct a 243-unit Class A Apartment project, together with related improvements and amenities, located on certain real property in Salt Lake County, Utah (the "Project"), which real property is legally described in Exhibit A attached hereto and made a part hereof.

B. In connection with the Loan and to secure the Note, Assignor has executed and delivered (i) a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") made by Assignor to the trustee named therein for the benefit of Assignee and encumbering the Project, and (ii) the other Loan Documents (as hereinafter defined). All instruments, agreements and certificates governing, evidencing, guaranteeing or securing the Loan, as the same may be amended, modified, supplemented, extended, or renewed from time to time, are referred to in this Assignment as the "Loan Documents."

C. The Project is subject to that certain Master Development Agreement for the Kennecott Master Subdivision #1 Project dated March 18, 2003 by and between South Jordan City, a Utah municipal corporation ("City") and OM Enterprises Company, a Utah corporation ("OME"), as master developer, and recorded in the Salt Lake County Recorder's Office on March 26, 2003 as Instrument No. 8581557, as the same has been and may hereafter be further amended, supplemented and assigned from time to time (the "Development Agreement").

D. VP Daybreak Operations, LLC, a Delaware limited liability company ("Master Developer"), is the successor in interest to OME's rights and obligations as master developer under the Development Agreement.

E. In connection with the Project, Assignor and Master Developer have entered into that certain Partial Assignment and Assumption of Master Development Agreement dated October 13, 2017 and recorded in the Salt Lake County Recorder's Office on October 16, 2017 as Instrument No. 12637547, whereby, *inter alia*, the Assignor agrees to assume certain rights and obligations of Master Developer under the Master Development Agreement to the extent such rights and obligations relate to the Project (the "Partial Assignment").

F. As a condition precedent to the funding of the Loan by Assignee under the Loan Agreement, Assignee has required, as security for the performance of Assignor's obligations under the Loan Documents, that Assignor execute and deliver to Assignee an assignment of Assignor's interest in the Development Agreement, and that the City and Master Developer consent to said assignment on the terms and conditions contained in the attached Consent.

NOW, THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in order to induce Assignee to enter into the Loan Agreement and make the advances thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignee covenants and agrees as follows:

1. Assignment; Security Interest.

(a) Assignment and Security Interest. As additional security for Assignor's obligations under the Loan Documents and all other obligations of Assignor which are secured by the Deed of Trust, Assignor hereby assigns, conveys and transfers to Assignee, and grants to Assignee a first priority security interest in, all of Assignor's right, title, interest, privileges, benefits and remedies in, to and under the Development Agreement, as assigned to Assignor pursuant to the Partial Assignment, including, but not limited to, (i) all rights to develop the Project in the manner set forth in the Development Agreement and (ii) all impact fee credits and/or reimbursements (if any) relative to the Project accruing to the owner thereof under the Development Agreement. It is expressly understood and agreed by Assignor that Assignee does not hereby assume any of Assignor's obligations or duties concerning the Development Agreement, unless and until Assignee exercises its rights hereunder and under the Development Agreement and assumes such obligations in writing. Notwithstanding any assumption of obligations by Assignee, pursuant to Section 32(d) of the Development Agreement, in no event shall Assignee or Purchaser (as defined below) be liable for any defaults or monetary obligations of Assignee arising prior to acquisition of title to the Project by Purchaser.

(b) Direct Payment to Assignee Upon Default. Upon the occurrence of an Event of Default, Assignee may give written notice to City that an Event of Default has occurred and, upon receipt of such notice, Borrower authorizes the City to make all payments due and owing to Assignor under the Development Agreement (if any) directly to Assignee (and not to Assignor) at such address as Assignee shall specify. Payment to Assignee of any such amount shall constitute payment under the Development Agreement for all purposes. Once given to the City, such notice and payment instructions shall be revoked, modified or amended only by Assignee.

(c) Foreclosure/Transfer; Subsequent Assignment of Assignee's Rights. Notwithstanding anything to the contrary contained in the Development Agreement, upon any transfer of the Project through foreclosure, deed in lieu of foreclosure, short sale, or bankruptcy sale or other remedy, the Development Agreement shall remain in full force and effect as a direct agreement between the City, Master Developer and the subject purchaser or transferee of the Project (Assignee, or such other purchaser or transferee being hereinafter referred to as the "Purchaser") and, without the consent of the City or the Master Developer, Assignee may assign or transfer its interest in the Development Agreement to the extent related to the Project to any person owning or acquiring the fee interest in the Project.

2. Definitions. For purposes of this Assignment, terms which are denoted in this Assignment by the first letter of each word being capitalized, but which are not otherwise defined in this Assignment, shall have the respective meanings assigned to such terms in the Loan Agreement.

3. Actions by Assignee. Assignee shall not exercise its rights under this Assignment except upon the occurrence of an Event of Default (as defined in the Loan Agreement) under the Loan Documents. Upon the occurrence of such an Event of Default, Assignee may, at its option, exercise any or all of the rights and remedies granted to Assignor under the Development Agreement to the extent related to the Project as if Assignee had been an original party to the Development Agreement.

4. Power of Attorney. Upon the occurrence of an Event of Default, Assignee shall have the right (and Assignor hereby irrevocably constitutes and appoints Assignee as its attorney-in-fact, which power is coupled with an interest, to do so) to demand, receive and enforce Assignor's rights with respect to the Development Agreement as it relates to the Project, to give appropriate receipts, releases and satisfactions for and on behalf of Assignor, and to do any and all acts in the name of Assignor in the name of Assignee with the same force and effect as Assignor could do if this Assignment had not been made.

5. Representations, Warranties and Covenants of Assignor. Assignor hereby certifies, represents, warrants and covenants to Assignee as follows:

- (a) The Development Agreement as it relates to the Project is in full force and effect.
- (b) Assignor has full title and right to assign its interest in the Development Agreement, as it relates to the Project, to Assignee pursuant to this Assignment.
- (c) No consent or approval of any person is required for the execution and delivery of this Assignment except those which have been obtained.
- (d) Assignor has delivered to Assignee a true and complete copy of the executed Development Agreement, together with all amendments and modifications thereto.
- (e) Except for this Assignment, no other assignment of all or any part of any interest of Assignor in and to the Development Agreement has been made which remains in effect.
- (f) To Assignor's knowledge, there exists no monetary default by the City, Master Developer or Assignor under the Development Agreement, nor, to the knowledge of Assignor, any non-monetary default or any event or conditions which, with notice or the passage of time or both, would constitute such a monetary or non-monetary default or would result in a breach of the Development Agreement or would give any party thereto the right to terminate the Development Agreement.
- (g) To Assignor's knowledge, no offsets, credits or defenses to the payment or performance of any obligation under the Development Agreement exist.
- (h) Assignor shall not assign, transfer or hypothecate (other than to Assignee) the whole or any part of its interest under the Development Agreement.
- (i) Assignor shall obtain the prior written consent of Assignee, before entering into any agreement that amends, modifies or terminates the Development Agreement. Assignee shall not unreasonably withhold or delay its consent to an amendment or modification of the Development Agreement so long as such amendment or modification does not materially and adversely affect Assignee's security for the Loan or the rights and obligations of Assignor under the Development Agreement.

6. Performance by Assignor. Assignor shall at all times use commercially reasonable efforts to enforce its rights in, under and to the Development Agreement, and shall, at Assignor's sole cost and expense, appear in and defend Assignee in any action or proceeding in any way connected with the Development Agreement, and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Development Agreement.

7. Indemnification by Assignor. Assignor hereby agrees to pay and protect, defend, and indemnify and hold Assignee harmless from, for and against, any and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) to which Assignee may become exposed, or which Assignee may incur, in connection with the Development

Agreement exercising its rights under this Assignment, except to the extent arising out of Assignee's gross negligence or willful misconduct.

8. Limitation on Liability. Nothing in this Assignment shall be deemed to be or construed to be an agreement by Assignee to perform any covenant of Assignor under the Development Agreement unless and until (a) it obtains a fee interest in the Project or (b) it obtains possession of the Project pursuant to the terms of the Deed of Trust or otherwise and Assignee exercises its rights hereunder and under the Development Agreement and assumes such obligations in writing.

9. Waiver. No course of dealing on the part of Assignee and no delay or failure by Assignee to exercise any right which Assignee may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its respective rights, remedies or powers hereunder unless so agreed in writing by Assignee, and the waiver by Assignee of a default by Assignor hereunder shall not constitute a continuing waiver or any other default or of the same default on any other occasion.

10. Cumulative Remedies. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Assignee may have under the Loan Agreement or the other Loan Documents at law, or otherwise.

11. Severability. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Assignment or of the other Loan Documents.

12. Amendment. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

14. Successors and Assigns. This Assignment shall be binding upon Assignee and Assignor and their respective successors and assigns, and shall inure to the benefit of Assignee and its respective successors and assigns.

13. Termination. Upon the satisfaction of all obligations of Assignor to Assignee under the Loan Agreement, the Note and the other Loan Documents and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing said obligations, this Assignment shall automatically terminate. Assignee hereby agrees, upon termination of this Assignment and receipt of a written request from Assignor, to execute a release of this Assignment and all further documents, if any, necessary or required in order to evidence the termination of this Assignment.

14. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF ASSIGNOR, ASSIGNEE, OR ANY PRINCIPAL THEREOF).

15. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested (except for any notice address which is a post office box, in which case notice may be given by first class mail), through the United States Postal Service to the addresses shown below, or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail, shall be deemed given two (2) Business Days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Assignee: Washington Federal, National Association
1207 East Draper Parkway
Draper, Utah 84020
Attention: James Endrizzi

with a copy to: Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

To Assignor: South Station Apartments LLC
KC Gardner Company, L.C.
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111
Attention: Christian Gardner

with a copy to: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Lamont R. Richardson

18. Counterpart. This Assignment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but also such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth above.

ASSIGNOR:

SOUTH STATION APARTMENTS LLC
a Utah limited liability company

By: KC Gardner Company, L.C.,
a Utah limited liability company,
its Manager

By: [Signature]
Name: Christian Gardner
Title: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 21 day of AUGUST, in the year 2018, before me, SONIA C. PEREZ a notary public, personally appeared CHRISTIAN GARDNER, a Manager of KC GARDNER COMPANY, L.C., a Utah limited liability company, a Manager of **SOUTH STATION APARTMENTS LLC**, a Utah limited liability company proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he/she/they executed the same, for and on behalf of said company.

Witness my hand and official seal.



[Signature]
NOTARY PUBLIC

[Seal]

EXHIBIT A

PROPERTY DESCRIPTION

That certain real property located in Salt Lake County, State of Utah, and more particularly described as follows:

LOT C-115, DAYBREAK SOUTH STATION, PLAT 1, AMENDING LOT T4, OF THE KENNECOTT MASTER SUBDIVISION #1, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

Tax ID / Parcel No. 26-24-257-003-0000