

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

Wells Fargo Bank, National
Association
Real Estate Group (AU #07572)
1512 Eureka Road, Suite 350
Roseville, CA 95661

Ent 104713 Bk 236 Pg 520
Date: 03-OCT-2006 3:25PM
Fee: \$21.00 Check
Filed By: LRH
BRENDA NELSON, Recorder
MORGAN COUNTY
For: MOUNTAIN VIEW TITLE & ESCROW I

Attn: Denise Latta
Loan No. 103651

PT M72756
03-005-108

00-0002-0734

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT ("Assignment") is made as of September 29, 2006, by Gardner Cottonwood Creek, L.C., a Utah limited liability company ("Assignor"), to Wells Fargo Bank, National Association, as ("Lender").

RECITALS

- A. Lender has agreed to make a loan to Assignor in the principal sum of Seven Million Seven Hundred Fifty Thousand and 00/100ths Dollars (\$7,750,000.00) (the "Loan") pursuant to the terms of a Building Loan Agreement by and between Assignor and Lender of even date herewith (the "Loan Agreement"). Lender has agreed to make the Loan to Assignor for the purposes specified in the Loan Agreement, which purposes are related to the real property and improvements described in the Loan Agreement (which real property and improvements are collectively referred to herein as the "Property") as more particularly described in Exhibit "A" attached hereto. The Loan Agreement provided that the Loan shall be evidenced by a promissory note (the "Note") of Assignor payable to the order of Lender in the principal amount of the Loan and shall be secured by a Deed of Trust on Assignor's interest in the Property (the "Deed of Trust").
- B. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement.
- C. The execution and delivery of this Assignment to Lender is a condition of Lender making the Loan.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.** For value received, Assignor hereby absolutely and irrevocably conveys, transfers and assigns to Lender all of Assignor's right, title and interest in and to that certain Development Agreement, dated as of August 9, 2006, between Assignor and Morgan County, a political subdivision of the State of Utah, by and through its County Council (the "County"), as now or hereafter modified or amended (the "Development Agreement"), together with all amendments and modifications thereto, (the "Development Documents"), including, without limitation, any "Reimbursement Costs" (as defined in the Development Agreement) paid or payable to Assignor pursuant to the Development Documents.

The foregoing assignment, transfer and conveyance is intended to be and constitutes a present assignment, transfer and conveyance by Assignor to Lender.

2. **Obligations Secured.** This Assignment is given for the purpose of securing:
 - 2.1 Performance and observance of all covenants and obligations of Assignor under the provisions hereof.
 - 2.2 Performance and observance of all covenants and obligations of Assignor under the Loan Documents.
3. **Covenants of Assignor.** To protect the security of this Assignment, Assignor covenants and agrees:
 - 3.1 To perform each of its obligations under the Development Documents.
 - 3.2 To defend at Assignor's sole cost any action in any manner connected with the Development Documents, or the rights or obligations thereunder, and to pay all costs of Lender, including attorneys' fees in a reasonable sum, in any such action in which Lender may appear. If Assignor fails to take action as herein provided, then Lender, may take action in such manner and to such extent as Lender may deem necessary to protect the security described herein. Lender shall first provide notice to Assignor at the address set forth on the signature page of this Assignment setting forth the nature of the actions not taken, and require Assignor to cure the default. Assignor will have 10 days from the receipt of such notice to take all actions necessary to cure the default. In exercising such powers, Lender may employ attorneys and other agents, and pay necessary costs and reasonable attorneys' fees. Assignor agrees to give prompt notice to Lender of any default on the part of Assignor with respect to the Development Documents, together with an accurate and complete description thereof.

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4. **Assignor's Warranties.** Assignor represents and warrants to Lender that Assignor has good right, title and interest in Assignor's interest in and to the Development Documents hereby assigned and the right to assign the same, and that Assignor has not previously assigned any right, title or interest therein to any other person or entity; and, to the best of Assignor's knowledge, Assignor is not in default in the performance of the terms, covenants, conditions and warranties set forth in the Development Documents which are to be kept, observed and performed by Assignor.
5. **Agreement of Assignor and Lender.** It is mutually agreed that:
- 5.1 Lender shall not be obligated to perform nor does it hereby undertake to perform any obligation under the Development Documents and all claims which may be asserted against it by persons other than Assignor by reason of any alleged obligation to perform any of the terms in the Development Documents; should Lender incur any such liability, loss or damage under the Development Documents, or this Assignment, or in the defense of any such claims, the amount thereof, including costs and reasonable attorneys' fees, shall be secured hereby and by the Deed of Trust, and Assignor shall reimburse Lender therefore immediately upon demand, and upon failure of Assignor to do so Lender may declare all sums secured hereby immediately due and payable.
- 5.2 Until all indebtedness secured hereby has been paid in full, any subsequent Development Documents shall be deemed to be assigned to Lender hereby, upon the terms and conditions herein contained, and Assignor agrees to execute all instruments necessary therefor.
- 5.3 Upon the payment in full of all indebtedness secured hereby and the full reconveyance of the Deed of Trust, this Assignment shall automatically terminate and shall be of no effect. In such an event, Lender agrees to promptly execute any document reasonably necessary to release its interest hereunder. The affidavit of any officer of Lender showing any part of said indebtedness to remain unpaid shall be conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.
- 5.4 This Assignment inures to the benefit of, and binds, all parties hereto, their heirs, administrators, executors, successors and assigns. In this Assignment, whenever the context so requires, the masculine gender includes feminine and neuter, and singular number includes plural and conversely.
- 5.5 All notices hereunder shall be in writing and will be effective upon delivery to the appropriate party at the address set forth in the Loan Agreement.

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- 5.6 Assignor hereby agrees to indemnify, protect and hold Lender harmless from any and all liability, loss, damage or expense which Lender may incur under or by reason of: (i) this Assignment; and (ii) any action take by Lender hereunder.
- 5.7 Lender's failure to avail itself of any of the rights and remedies set forth in this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right or remedy, and nothing herein contained nor anything done or omitted to be done by Lender pursuant hereto shall be deemed a waiver by Lender of any of its rights and remedies under the Note and Deed of Trust or of the benefit of the laws of the State in which the Property is situated. The rights of Lender to collect the said indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder may be exercised by Lender, either prior to, simultaneously with, or subsequent to, any such other action hereinbefore described, and shall not be deemed an election of remedies.
- 5.8 If any provision of this Assignment or the application therefor to any entity, person or circumstance shall be invalid or unenforceable to any extent, then the remainder of this Assignment and the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- 5.9 No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by and on behalf of such party.
- 5.10 So long as there is no uncured default in the performance of any obligation, covenant or agreement herein, or in the Development Documents, Assignor shall have a license to exercise all rights and powers under the Development Documents.
6. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Utah.

"BENEFICIARY/LENDER"

Wells Fargo Bank, National Association

By: 
Steve Strong, Vice President

"BORROWER/TRUSTOR"

Gardner Cottonwood Creek, L.C., a Utah limited liability
company

By: 
Rulon C. Gardner, Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Assignment of Development Agreement dated as of October 2, 2006 executed by Gardner Cottonwood Creek, L.C., a Utah limited liability company, as "Assignor" in favor of WELLS FARGO BANK, N.A., as "Lender".

All the certain real property located in the County of Morgan, State of Utah, described as follows:

A parcel of land lying within Sections 20 and 29, Township 5 North, Range 2 East, Salt Lake Base & Meridian, being more particularly described as follows:

Beginning at a point that lies 108.21 feet East and 941.79 feet South from the Southwest corner of Section 20, Township 5 North, Range 2 East, Salt Lake Base & Meridian:

Thence North 02 DEG 34 MIN 04 SEC East 888.99 feet, thence North 04 DEG 08 MIN 42 SEC East 905.18 feet; thence North 04 DEG 08 MIN 42 SEC East 188.99 feet; thence South 74 DEG 55 MIN 50 SEC East 512.22 feet; thence South 82 DEG 55 MIN 29 SEC East 127.25 feet; thence South 03 DEG 54 MIN 14 SEC East 366.12 feet; thence South 79 DEG 01 MIN 03 SEC East 146.06 feet; thence South 69 DEG 33 MIN 51 SEC East 55.00 feet; thence South 72 DEG 26 MIN 39 SEC East 279.93 feet; thence North 87 DEG 23 MIN 49 SEC East 291.01 feet; thence North 76 DEG 00 MIN 11 SEC East 275.25 feet; thence South 05 DEG 41 MIN 14 SEC East 475.40 feet; thence South 11 DEG 44 MIN 29 SEC West 277.44 feet; thence South 19 DEG 11 MIN 52 SEC West 632.69 feet; thence South 41 DEG 16 MIN 32 SEC West 616.45 feet; thence South 37 DEG 11 MIN 52 SEC East 191.19 feet; thence South 50 DEG 48 MIN 01 SEC West 779.20 feet; thence North 07 DEG 14 MIN 16 SEC East 292.29 feet; thence North 43 DEG 30 MIN 40 SEC West 1029.56 feet to the point of beginning.

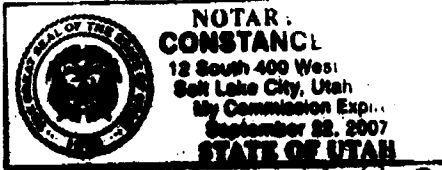
APN: Part of 03-005-108

STATE OF UTAH

SS.

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 2nd day of OCTOBER, 2006, by RULON C. GARDNER, as MANAGER of GARDNER COTTONWOOD CREEK, LC, a UTAH LIMITED LIABILITY COMPANY.



Constance Miller
NOTARY PUBLIC
residing at SALT LAKE COUNTY

My commission expires: 9-22-2007

STATE OF UTAH

SS.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 3rd day of October, 2006, by Steve Strong, as Vice President of Wells Fargo Bank, N.A.

Justin Peterson
NOTARY PUBLIC
residing at _____

My commission expires: 10/1/08

