

12645555
10/26/2017 4:20:00 PM \$54.00
Book - 10613 Pg - 1991-2003
ADAM GARDINER
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 13 P.

WHEN RECORDED RETURN TO:

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

Parcel Identification Number:

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (the "Assignment") is entered into as of the 26th day of October, 2017, by and between **BRICKCREEK, LLC**, a Utah limited liability company ("Assignor"), and **TCF NATIONAL BANK**, a national banking association ("Assignee"), and is consented to by **PROPERTY ENHANCEMENT GROUP, INC.**, a Utah corporation (the "Developer"), pursuant to that certain Consent attached hereto as Exhibit B.

RECITALS

A. On or about the date hereof, Assignor and Assignee entered into that certain Construction and Term Loan Agreement ("Loan Agreement") whereby the Assignee has agreed to make a loan to Assignor (the "Loan") evidenced by a Promissory Note of even date herewith, by Assignor and payable to Assignee, in the maximum principal amount of **\$9,430,000.00** (as amended, modified, extended, and renewed from time to time, the "Note"), to finance the construction of 55-units of multi-family and approximately 16,000 square feet of office space located at 3098 South Highland Drive, Salt Lake City, Utah 84106 (the "Project"). The Project is legally described in Exhibit A attached hereto and made a part hereof. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan and to secure the Note, Assignor has executed and delivered (i) a Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents (the "Mortgage") made by Assignor to the trustee named therein for the benefit of Assignee and encumbering the Project, and (ii) the other Loan Documents. 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. In connection with the Project, Assignor and the Developer have entered into that certain Development Agreement for the Brickcreek Project Located at 3098 South Highland Drive, Salt Lake City, Utah 84106, dated September 27, 2017 (the "Development Agreement"), whereby, *inter alia*, the Assignor and the Developer, as their respective rights, duties and obligations are more particularly described therein, intend to develop and operate the Project and certain improvements to be constructed thereon (the "Improvements") in accordance with the Development Agreement, all subject to the terms and conditions of the Development Agreement.

E. 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 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, the parties hereto covenant and agree as follows:

1. Assignment; Security Interest. As additional security for Assignor's obligations under the Loan Documents and all other obligations of Assignor which are secured by the Mortgage in favor of Assignee, 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. It is expressly understood and agreed by Assignor and Developer, by its execution of the attached Developer Consent, 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.

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 until the occurrence and continuation 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, upon written notice to Developer expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Assignor's obligations under the Development Agreement, exercise any or all of the rights and remedies granted to Assignor under the Development Agreement as if Assignee had been an original party to the Development Agreement. Upon giving such notice expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Assignor's obligations under the Development Agreement to Developer, Assignee shall satisfy all obligations of Assignor, including all defaults of Assignor under the Development Agreement occurring prior to the time Assignee gives such notice to Developer; provided, however, in the event a default by Assignor is not reasonably curable by Assignee within any time limitations or deadlines under the Development Agreement, Assignee shall have such longer period of time as may be reasonably necessary to effect such cure, so long as Assignee promptly cures such defaults and at all times diligently pursues such cure. Any notice given by Assignee to Developer under this Assignment shall be given in the same manner and at the same address for Developer as set forth in the Development Agreement.

4. Power of Attorney. Upon the occurrence and continuation 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, 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 is in full force and effect.
- (b) Assignor has full title and right to assign its interest in the Development Agreement to Assignee pursuant to this Assignment.

(c) No consent or approval of any person, other than Development Agreement, is required for the execution and delivery of this Assignment.

(d) Assignor has delivered to Assignee a true and complete copy of the executed counterpart of the 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) There exists no monetary default under the Development Agreement, nor, to the best 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) 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, alters, 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 Assignor shall have consented to such amendment or modification and as long as such amendment or modification does not materially and adversely affect Assignee's security for the Loan or the rights and benefits of Assignor under the Development Agreement.

(j) Assignor agrees to perform and comply in all respects with all the terms, conditions, covenants and requirements by it to be performed or observed in this Assignment and the Loan Documents.

6. Performance by Assignor. Assignor shall at all times diligently enforce its rights in, under and to the Development Agreement, unless otherwise directed by Assignee in writing, 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.

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 it obtains title to the Project by power of sale or judicial foreclosure or deed in lieu thereof or obtains possession of the Project pursuant to the terms of the Mortgage or otherwise.

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 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 COLORADO WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF BORROWER OR LENDER OR ANY PRINCIPAL THEREOF).

15. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

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.

19. Priority. The parties acknowledge and agree that that the lien and charge of Assignee's Mortgage is superior to the lien and charge, if any, of the Development Agreement upon the Project.

[Remainder of Page Intentionally Left Blank.]

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

ASSIGNOR:

BRICKCREEK, LLC
a Utah limited liability company

By: 
Name: Cameron Gunter
Title: Manager

ASSIGNEE:

TCF NATIONAL BANK
a national banking association

By: _____
Name: Erik A. Frandsen
Title: Vice President

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

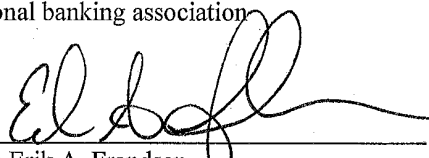
ASSIGNOR:

BRICKCREEK, LLC
a Utah limited liability company

By: _____
Name: Cameron Gunter
Title: Manager

ASSIGNEE:

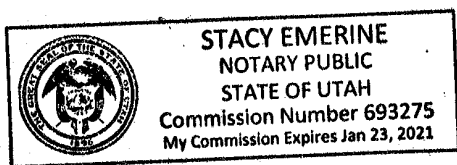
TCF NATIONAL BANK
a national banking association

By:  _____
Name: Erik A. Frandsen
Title: Vice President

STATE OF Utah)
) SS.
COUNTY OF Utah)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Cameron Gunter, the Manager, of **BRICKCREEK, LLC**, a Utah limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of September, 2017.



Stacy Emerine
Notary Public

My Commission Expires: Jan 23, 2021

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Erik A. Frandsen, a Vice President of **TCF NATIONAL BANK**, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2017.

Notary Public

My Commission Expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Cameron Gunter, the Manager, of **BRICKCREEK, LLC**, a Utah limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2017.

Notary Public

My Commission Expires:

STATE OF Colorado)
) SS.
COUNTY OF Arapahoe)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Erik A. Frandsen, a Vice President of **TCF NATIONAL BANK**, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20th day of September, 2017.

[Signature]

Notary Public

My Commission Expires: 1/7/2020

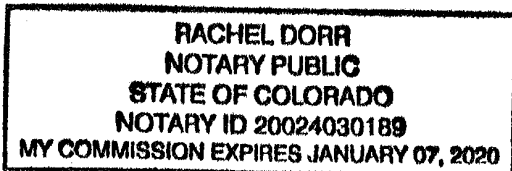


EXHIBIT A

LEGAL DESCRIPTION OF LAND

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

PARCEL 1

Suites 101, 102, 103, 104, 201, 202, 203, 204, 401, 403, 404, 406, and 408 shown in the Record of Survey Map for the Highland Park Plaza II Condominiums appearing in the records of the Salt Lake County Recorder, as Entry No. 10979283, Map No. 2010P-110 and as identified and described in the Declaration of Condominium, as amended and supplemented, appearing as Entry No. 10979284, in Book 9836, at Page 2494, of the official records of Salt Lake County Recorder together with an undivided interest in and to the Common Areas appertaining to said Suite as established in said Declaration, as amended, and Map. Subject to the provisions of the aforesaid Declaration of Condominium for Highland Park Plaza II Condominiums, include and amendments thereto.

PARCEL 2

Suites 301, 302, 305, 405, 407, and 409 shown in the Record of Survey Map for the Highland Park Plaza II Condominiums appearing in the records of the Salt Lake County Recorder, as Entry No. 10979283, Map No. 2010P-110 and as identified and described in the Declaration of Condominium, as amended and supplemented, appearing as Entry No. 10979284, in Book 9836, at Page 2494, of the official records of Salt Lake County Recorder together with an undivided interest in and to the Common Areas appertaining to said Suite as established in said Declaration, as amended, and Map. Subject to the provisions of the aforesaid Declaration of Condominium for Highland Park Plaza II Condominiums, include and amendments thereto.

PARCEL 3

Suites 303 and 304 shown in the Record of Survey Map for the Highland Park Plaza II Condominiums appearing in the records of the Salt Lake County Recorder, as Entry No. 10979283, Map No. 2010P-110 and as identified and described in the Declaration of Condominium, as amended and supplemented, appearing as Entry No. 10979284, in Book 9836, at Page 2494, of the official records of Salt Lake County Recorder together with an undivided interest in and to the Common Areas appertaining to said Suite as established in said Declaration, as amended, and Map. Subject to the provisions of the aforesaid Declaration of Condominium for Highland Park Plaza II Condominiums, include and amendments thereto.

Tax ID: 16-28-313-011, 16-28-313-012, 16-28-313-009, 16-28-313-010, 16-26-313-013
16-28-313-018, 16-28-313-020, 16-28-313-022, 16-28-313-001, 16-28-313-002
16-28-313-003, 16-28-313-004, 16-28-313-005, 16-28-313-006, 16-28-313-007
16-28-313-008, 16-28-313-014, 16-28-313-016, 16-28-313-017, 16-28-313-019
16-28-313-021

Exhibit A-1

EXHIBIT B

CONSENT TO ASSIGNMENT AND ESTOPPEL AGREEMENT

[See Attached.]

CONSENT TO ASSIGNMENT AND ESTOPPEL AGREEMENT

The undersigned, **PROPERTY ENHANCEMENT GROUP, INC.**, a Utah corporation (the "Developer") acknowledges to **TCF NATIONAL BANK**, a national banking association ("Assignee"), that Developer is a party to that certain Development Agreement for the Brickcreek Project Located at 3098 South Highland Drive, Salt Lake City, Utah 84106, dated September 27, 2017 (as the same may be amended, modified, supplemented, extended, or renewed from time to time, the "Development Agreement") with **BRICKCREEK, LLC**, a Utah limited liability company (the "Assignor"), and that the Development Agreement has been, or will be, further assigned by Assignor to the Assignee pursuant to an Assignment of Development Agreement of approximately even date herewith (as the same may be amended, modified, supplemented, extended, or renewed from time to time, the "Assignment of Development Agreement") by and between Assignor and Assignee, and the Developer hereby consents to such assignment to Assignee. Capitalized terms used herein without definition shall have the meanings given to such terms in the Assignment of Development Agreement.

In connection with the Loan and the assignment of the Development Agreement by Assignor to the Assignee, Developer hereby certifies, represents, warrants and covenants to the Assignee that:

1. Representations, Warranties and Covenants of Riverdale. Developer hereby agrees to the terms and conditions of the Assignment of Development Agreement and certifies, represents, warrants and covenants to Assignee that:

(a) There are no other agreements in existence between Developer and Assignor relating to the Project, other than the Development Agreement.

(b) The Development Agreement has not been altered, amended or modified since the date of its original execution, and is presently in full force and effect.

(c) As of this date, Developer and Assignor have each fulfilled all of its duties and obligations under the Development Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Development Agreement. To the best of Developer's actual knowledge, and as of this date, Assignor has fulfilled all of its duties and obligations under the Development Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Development Agreement.

(d) The Developer acknowledges and approves the assignment of the Development Agreement to Assignee as security for the Loan.

(e) During the term of the Loan, Developer shall not enter into any agreement with Assignor to modify the Development Agreement or any attachment thereto without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed.

(f) Whenever Developer shall deliver any notice or demand to Assignor with respect to the Development Agreement, Developer shall, at the same time, deliver to Assignee a copy of such notice or demand.

(g) In the event of a breach or a default by Assignor under the Loan Documents and the subsequent foreclosure of the Project or acceptance of a deed in lieu thereof by Assignee, Assignee, upon satisfying all of Assignor's obligations under the Development Agreement shall be entitled to all of the rights and benefits of Assignor under the Development Agreement. It is expressly understood and agreed 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.

(h) Developer shall take no action to terminate or cancel the Development Agreement for any reason including any breach by Assignor unless and until it shall have given Assignee thirty (30) days prior written notice advising Assignee of the action proposed to be taken and the reasons therefor. During such **thirty (30)** day period, Assignee may, at its option, and without relieving Assignor of any of its obligations under any Loan Document, the Development Agreement or hereunder, take any actions necessary in order to eliminate the reasons for the proposed action of Developer.

(i) Developer warrants that this Consent to Assignment and Estoppel Certificate and the Development Agreement each have been duly authorized, are legal and binding upon Developer, and are enforceable in accordance with their terms against Development Agreement.

(j) As of the date hereof, Assignor has obtained all required approvals and consents from the Developer with respect to zoning, architectural and design plans, landscaping, permitting and other matters with respect to the Project, whether granted by the Design Review Committee described in the Development Agreement or otherwise.

2. 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: TCF National Bank
8085 South Chester Street, Suite 201
Centennial, CO 80112
Attn: Erik A. Frandsen

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: Brickcreek, LLC
180 N University Avenue, Suite 200
Provo, Utah 84601
Attn: Cameron Gunter

With a copy to: PEG Development
180 N. University Avenue, Suite 200
Provo, Utah 84601
Attn: General Counsel

To Developer: Property Enhancement Group, Inc.
180 N. University Avenue, Suite 200
Provo, Utah 84601

The terms of this Consent to Assignment and Estoppel Certificate shall supersede and control over any inconsistent provisions in the Development Agreement.

Dated: October 26
~~Sept 29~~ 2017.

PROPERTY ENHANCEMENT GROUP, INC.
a Utah corporation

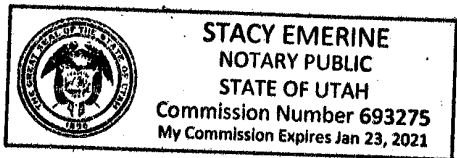
By: [Signature]
Name: Rob Fetzer
Title: COO

STATE OF Utah)
) SS.
COUNTY OF Utah)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Rob Fetzer, the COO, of **PROPERTY ENHANCEMENT GROUP, INC.**, a Utah corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such COO, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of September, 2017.

[Signature]
Notary Public



My Commission Expires: Jan 23, 2021