

WHEN RECORDED, RETURN TO:

Dan W. Egan
SUITTER AXLAND
175 South West Temple, Suite 700
Salt Lake City, Utah 84101-1480

E 1406681 B 2295 P 595
JAMES ASHAUER, DAVIS CNTY RECORDER
1998 MAY 21 4:15 PM FEE 22.00 DEP DJW
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

NE-24-2N-1W
pt. 06-037-0165
-0164

ASSIGNMENT OF LESSOR'S INTEREST IN LEASES

THIS ASSIGNMENT OF LESSOR'S INTEREST IN LEASES (the "Assignment"), is made and entered effective as of the 21 day of May, 1998, by and between BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company ("Borrower"), and U.S. BANK NATIONAL ASSOCIATION ("Lender").

RECITALS:

A. Borrower owns that certain real property situate in Davis County, Utah (the "Property"), as more particularly described on Exhibit "A" attached to and incorporated in this Assignment by reference.

B. Borrower applied to Lender for a loan (the "Loan") in the original principal amount of FOUR MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$4,424,000.00).

C. The proceeds of the Loan will be used by Borrower to construct improvements on the Property.

D. Lender requires, as a condition precedent to making the Loan, that Borrower assign to Lender, as additional security for the Loan and for any other obligation and indebtedness of Borrower to Lender, whether presently existing or incurred in the future, all right, title and interest of Borrower in and to all leases now or hereafter affecting all or a portion of the Property, and the rents derived or to be derived therefrom.

NOW, THEREFORE, in consideration of Lender making the Loan to Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Assignment. Borrower hereby grants, transfers, sets over and assigns to Lender all right, title and interest of Borrower in and to all leases now or hereafter affecting Borrower's interest in the Property (such leases and all other leases that Borrower, as lessor, has previously entered into or may enter into after the date hereof, affecting all or a portion of the Property are hereinafter collectively referred to as the "Leases"). In addition, Borrower hereby assigns to Lender:

(a) All rents, income and profits arising from the Leases, and all renewals, modifications and extensions thereof, whether present or future and whether affecting all or a portion of the Property; and

(b) All right, power and authority of Borrower to alter, modify or change the terms of the Leases or to surrender, cancel or terminate the same without the prior consent of Borrower.

2. Obligations Secured. This Assignment is given for the purpose of securing the following obligations of Borrower:

(a) The payment of the indebtedness evidenced by the Construction Loan Promissory Note dated the same date as this Assignment (the "Note") in the original principal amount of FOUR MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$4,424,000.00) executed by Borrower, as maker, and payable to the order of Lender, as payee, and all extensions, renewals and modifications thereof. The Note is secured, in part, by a Construction Loan Deed of Trust and Security Agreement of even date herewith (the "Deed of Trust") encumbering the Property.

(b) The payment of all other sums, with interest thereon, becoming due and payable to Lender under the provisions hereof or under the provisions of the Note, the Deed of Trust, the Construction Loan Agreement of even date herewith between Lender and Borrower (the "Loan Agreement"), or any other instrument or document evidencing or securing the Loan (collectively, the "Loan Documents").

(c) The performance and discharge of each and every obligation, covenant and agreement of Borrower herein and in the Note and the Deed of Trust.

3. Representations and Covenants of Borrower. Borrower hereby represents to and covenants with Lender as follows:

(a) Borrower shall observe and perform all of the obligations imposed upon the lessor in the Leases and shall not do or permit to be done anything to impair the security thereof;

(b) Any existing Leases are valid and, except as disclosed by Borrower to Lender in writing, enforceable and the lessees thereunder are not in default under any of the material terms thereof;

(c) If requested by Lender, Borrower shall obtain and deliver to Lender, as soon as reasonably possible after such request, tenant estoppel certificates pertaining to all existing Leases, duly executed and acknowledged by such tenants in form and substance acceptable to Lender;

(d) Except as disclosed to Lender in writing, no rent has been reserved, anticipated or assigned in any of the existing Leases, and no rent in any of the future Leases shall be reserved, anticipated or assigned;

(e) Borrower shall not collect any of the rent, income and profits arising or accruing from the Leases in advance of the time when the same become due under the terms of the Leases, and shall not discount any future accruing rents;

(f) Borrower has made no prior assignment of any security or other interest in any of the Leases to any person or entity;

(g) Borrower shall not execute any other assignment of leases or assignment of rents of all or a portion of the Property unless the same shall recite that it is subject to the terms hereof;

(h) Borrower shall not alter, modify, or change the material terms of the Leases, or surrender, cancel or terminate the same without the prior consent of Lender, which consent shall not be unreasonably withheld;

(i) Borrower shall assign and transfer to Lender any and all further Leases and shall execute and deliver, at the request of Lender, all such further assurances and assignments of the Leases as Lender may from time to time reasonably require;

(j) Borrower possesses all requisite power and authority to enter into the Leases and to make the assignment of the Leases herein contained; and

(k) Borrower shall promptly send to Lender a copy of all additional Leases affecting the Property entered into after the date of this Assignment.

4. Effect of Assignment. Borrower shall have the right to collect, when due, all rents, issues and profits from the Leases and to retain, use and enjoy the same so long as there is no default by Borrower under the Leases and so long as no Event of Default (as defined in the Loan Agreement) has occurred or continued beyond any applicable notice or grace period, or in the performance of any other terms, covenants or conditions of Borrower contained in any other promissory note, deed of trust or security agreement between Borrower and Lender.

5. Rights of Lender upon Default by Borrower. Upon or at any time after default in the payment of any indebtedness secured hereby or in the performance of any material term, covenant or condition contained herein or in the Loan Documents, or in the performance of any other material term, covenant or condition to be performed by Borrower or any guarantor contained in any other document evidencing or securing the Loan, Lender, without in any way waiving such default, may, at Lender's option, take possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper. In addition, Lender may collect and receive all rents, issues and profits of the Leases, with full power to make from time to time all alterations, renovations, repairs or replacements thereto as may be necessary to protect the interests of Lender with respect to the Leases. In furtherance of the foregoing, Lender may apply such rents, issues and profits to the payment of the following:

(a) The cost of all such alterations, renovations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof, and keeping the same properly insured;

(b) All taxes, charges, claims, assessments, water rents and any other liens which may be prior to the lien of the Deed of Trust or have priority of payment over the Note, and to premiums for insurance, with interest on all such items; and

(c) The indebtedness secured hereby together with all costs and attorney fees, in such order of priority as to any of such items, as Lender in Lender's sole discretion may determine, subject, however, to any statutory rights of Borrower with respect to such applications.

6. Reinstatement after Default. If Lender, upon any default or breach by Borrower hereunder, shall exercise Lender's option herein and if such default or breach shall be remedied and all necessary charges and expenses incurred by reason thereof paid, then Lender and Borrower shall each be restored to and reinstated in their respective rights and estates as if a default or breach had not occurred. Borrower shall thereupon hold the Property subject to the Deed of Trust and this Assignment as if Lender had not exercised any option hereunder. Nothing contained in this Assignment shall impair any right of Lender to exercise Lender's remedies upon any subsequent breach or require Lender to refund to Borrower any rents, issues or profits of the Leases collected or received by Lender during any period of default.

7. Indemnification. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Borrower shall and does hereby agree to indemnify Lender for and to hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in the Leases. Lender and Borrower agree to cooperate in the defense of all such claims and demands. Should Lender incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including cost, expenses and reasonable attorney fees, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand, and upon the failure of Borrower so to do Lender may declare all sums secured hereby immediately due and payable.

8. Termination of Assignment. Upon the payment in full of all indebtedness secured hereby evidenced by a deed of reconveyance of the trust estate granted by the Deed of Trust, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, supervisor or attorney of Lender showing any part of the indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon. A demand on any lessee by Lender for the payment of the rent on any default claimed by Lender shall be sufficient notice to such lessee to make future payments of rent to Lender without the necessity for further consent by Borrower.

9. Releases and Extensions. Lender may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by Lender to the satisfaction of such indebtedness without prejudice to any of Lender's rights hereunder.

10. Interpretation. The term "Leases" as used herein means the Leases hereby assigned or any extension or renewal thereof, and any leases subsequently executed by Borrower covering all or a portion of the Property. The captions which precede the paragraphs of this Assignment are for convenience only and shall in no way affect the manner in which any provision hereof is construed. In this Assignment, whenever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and conversely. All obligations of Borrower hereunder are joint and several.

11. Notices. Except as otherwise provided herein, all notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

If to Lender, to: U.S. Bank National Association
107 South Main Street, Suite 400
Salt Lake City, Utah 84111
Attn: Jacalyn W. Clayton
Commercial Real Estate Division

If to Borrower, to: Barton Creek Partners, L.L.C.
505 South Main Street
Bountiful, Utah 84010
Attn: Thomas C. Mabey

With a copy to: Stephen M. Tumblin, Esq.
LeBoeuf, Lamb, Greene & MacRae
136 South Main Street, Suite 1000
Salt Lake City, Utah 84101

Such addresses may be changed by notice to the other party given in the same manner as above-provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

12. Miscellaneous. Nothing herein contained and no act done or omitted by Lender pursuant to the powers and rights granted Lender herein shall be deemed to be a waiver by Lender of Lender's rights and remedies under the Loan Documents or under any other promissory note, deed of trust or security agreement evidencing and securing any other obligations of Borrower to Lender. The right of Lender to collect the indebtedness and to enforce any other security therefor owned by Lender may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by Lender hereunder. This Assignment is binding upon and inures to the benefit of Lender and any holder of the Note or the Deed of Trust, and is binding upon and inures to the benefit of Borrower and Borrower's successors and assigns. This Assignment may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute only one instrument. This Assignment shall be construed in accordance with the laws of the State of Utah, and venue for any action relating to this Assignment shall be in Salt Lake County, Utah.

DATED effective as of the date first above written.

BORROWER:

BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company

By: 

THOMAS C. MABEY, Manager

LENDER:

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U.S. BANK NATIONAL ASSOCIATION

By:

JACALYN W. CLAYTON, Vice President

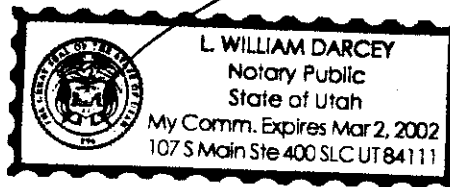
STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 21 day of May, 1998, by THOMAS C. MABEY, who is the Manager of BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company.

NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

3.02.02



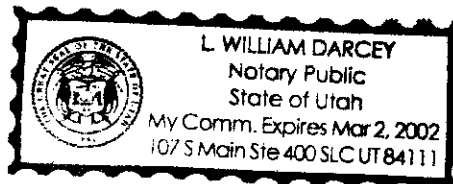
STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 21 day of May, 1998, by JACALYN W. CLAYTON, who is a Vice President of U.S. BANK NATIONAL ASSOCIATION.

NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

3.2.02



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PROPERTY DESCRIPTION

The following real property is located in Davis County, Utah and is more particularly described as follows:

Beginning at a point on the West line of 500 West Street, said point being North $0^{\circ}08'30''$ West 1943.51 feet along the Section line and South $89^{\circ}51'30''$ West 161.15 feet from the East quarter corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North $0^{\circ}22'48''$ East 1547.01 feet along the centerline of 500 West Street and North $89^{\circ}37'12''$ West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence South $0^{\circ}22'48''$ West 291.58 feet along said West line; thence North $89^{\circ}37'12''$ West 462.69 feet to a point on the Easterly right of way line of Interstate 15; thence along said Easterly line the following two courses: North $21^{\circ}35'58''$ East 104.14 feet to a point on a 2776.90 foot radius curve to the right (radius bears South $68^{\circ}58'34''$ East); thence along the arc of said curve 224.68 feet through a central angle of $4^{\circ}38'09''$; thence leaving said Easterly line South $65^{\circ}05'01''$ East 29.67 feet; thence South $89^{\circ}37'12''$ East 310.38 feet to the point of beginning.

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