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8/5/2009 12:16:00 PM \$24.00  
Book - 9752 Pg - 4693-4700  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 8 P.

RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:

OM Enterprises Company  
c/o Kennecott Land Company  
P.O. Box 95550  
South Jordan, Utah 84095  
Attn: Senior Contracts and Revenue Analyst

NCS - 370762

Above Space for Recorder's Use

**PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT**

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement")** is made as of ~~July 3<sup>rd</sup>~~<sup>August 3<sup>rd</sup></sup>, 2009, by and between **OM ENTERPRISES COMPANY**, a Utah corporation ("**Assignor**"), and **DAYBREAK APARTMENT VENTURE I, LLC**, a Delaware limited liability company ("**Assignee**"); individually, a "**Party**", and collectively, the "**Parties**".

**RECITALS**

- A.** Kennecott Land Investment Company LLC, a Delaware limited liability company ("**KLIC**") is an indirect wholly owned subsidiary of Assignor.
- B.** KLIC and WNG Daybreak Apartments LLC, a Delaware limited liability company, are parties to that certain Operating Agreement of Daybreak Apartment Venture I, LLC dated April 23, 2008 (as amended, the "**Operating Agreement**"). Pursuant to the Operating Agreement, KLIC is concurrently herewith conveying to Assignee fee title to certain real property located in the City of South Jordan, County of Salt Lake, State of Utah, as more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Property**"). The Property is within a planned development known as the "Kennecott Master Subdivision #1 Project" ("**Project**").
- C.** The Property and the Project are subject to that certain Master Development Agreement for the Kennecott Master Subdivision #1 Project dated March 18, 2003, by and between Assignor and South Jordan City, a Utah municipal corporation ("**City**"), which was recorded on March 26, 2003 in the Salt Lake County Recorder's Office as Instrument No. 8581557, as amended by that certain Agreement Regarding Daybreak Development dated as of July 9, 2007, which was recorded on November 19, 2007, in the Salt Lake County Recorder's Office as Instrument No. 10279353 (as amended, the "**MDA**").
- D.** In connection with the conveyance of the Property by KLIC to Assignee, Assignor desires to assign certain rights and to delegate certain of its obligations under the MDA, to the

extent they relate to the Property, to Assignee, and Assignee desires to accept such assignment and delegation.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

**1. ASSIGNMENT OF MDA.** Pursuant to Section 11.b. of the MDA, Assignor (as "Master Developer" thereunder) hereby assigns to Assignee (as "Developer" thereunder) all of its rights under the MDA with respect to the Property including, without limitation, (a) all rights to develop the Property in the manner set forth in the MDA; and (b) all impact fee credits and/or reimbursements relative to the Property and accruing to the owner thereof under the MDA after the date hereof, if any ("**Assignment**"), subject, however, to the following:

**1.1** As set forth in Section 11.b.(2) of the MDA, Assignee shall not in each case without the prior written consent of Assignor, which may be granted or withheld in Assignors' sole and absolute discretion:

- (i) submit any design guidelines to the City with respect to the Property, and/or propose any amendments, modifications or other alterations to any design guidelines previously submitted by Assignor to the City with respect to the Property;
- (ii) process any final subdivision plats or site plans for the Property, and/or propose any amendments, modifications or other alterations of any approved final subdivision plats and/or site plans procured by Assignor for the Property; or
- (iii) propose any amendments, modifications or other alterations to the MDA.

**1.2** Assignee acknowledges that the City has agreed (pursuant to Section 11.b.(2) of the MDA) not to accept or process any of the foregoing matters from Assignee unless the matter has been previously approved by Assignor.

**2. DELEGATION AND ASSUMPTION.** Assignor hereby delegates to Assignee all of its obligations under the MDA to the extent such obligations relate to the Property and accrue from and after the date hereof and Assignee hereby accepts such delegation. Assignee hereby assumes, agrees to be bound by, and agrees to perform all such obligations under the MDA as the same specifically relate to the Property, including, without limitation, the indemnification obligation of Assignor with respect to the Property set forth in Section 8.c. of the MDA.

**3. RETAINED RIGHTS.** Assignor retains all rights under the MDA to modify, amend or terminate the MDA with respect to all other areas within the Project excluding the Property; provided, however, that Assignor shall not modify or alter the MDA in a manner which would materially interfere with Assignee's rights under the MDA with respect to the Property without Assignee's prior written consent, which shall not be unreasonably withheld or delayed. Assignee acknowledges and agrees that all matters regarding the Project (excluding the Property) and the

development thereof shall be determined by Assignor in its sole and absolute discretion and Assignee shall have no interest or right to participate therein.

**4. NOTICES.** Section 12 of the MDA is incorporated herein as if fully set forth in this Agreement. The address for notices to Assignee is as follows:

Daybreak Apartment Venture I, LLC  
8 Executive Circle  
Irvine, CA 92614

**5. GOVERNING LAW.** This Agreement shall be governed by and construed under the laws of the State of Utah without regard to choice of law rules.

**6. SUCCESSORS AND ASSIGNS.** Each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of Assignor and the successors, heirs, representatives and assigns of Assignee. As used in this Section, "successors" means successors to the Parties' interest in the Property, successors to all or substantially all of the Parties' assets, and successors by merger or consolidation.

**7. ATTORNEYS' FEES.** If any action, arbitration, judicial reference or other proceeding is instituted between Assignor and Assignee in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

**8. SEVERABILITY.** If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.


**9. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

**10. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the date first written above.

Assignor:

**OM ENTERPRISES COMPANY,**  
a Utah corporation

By:   
Name: W. DON WHITE  
Title: PRESIDENT

Assignee:

**DAYBREAK APARTMENT VENTURE I, LLC**  
a Utah limited liability company

By: WNG Daybreak Apartments, LLC,  
a Delaware limited liability company,  
its Managing Member

By: WESTERN NATIONAL PROPERTIES,  
a California corporation,  
its Manager

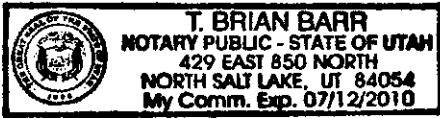
By: \_\_\_\_\_  
Rex F. DeLong, President

ASSIGNOR ACKNOWLEDGMENT

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

On August 3, 2009, personally appeared before me, a Notary Public, W. DON WHYTE, the PRESIDENT of OM ENTERPRISES COMPANY personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of OM ENTERPRISES COMPANY.

WITNESS my hand and official Seal.



T. Brian Barr  
Notary Public in and for said State

My commission expires: 7/12/10

[SEAL]

ASSIGNEE ACKNOWLEDGMENT

State of California )  
 )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (seal)

Assignor:

**OM ENTERPRISES COMPANY,**  
a Utah corporation


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Assignee:

**DAYBREAK APARTMENT VENTURE I, LLC**  
a Utah limited liability company

By: WNG Daybreak Apartments, LLC,  
a Delaware limited liability company,  
its Managing Member

By: WESTERN NATIONAL PROPERTIES,  
a California corporation,  
its Manager

By:  \_\_\_\_\_  
Rex F. DeLong, President

ASSIGNOR ACKNOWLEDGMENT

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

On \_\_\_\_\_, 2009, personally appeared before me, a Notary Public, \_\_\_\_\_, the \_\_\_\_\_ of OM ENTERPRISES COMPANY personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of OM ENTERPRISES COMPANY.

WITNESS my hand and official Seal.

\_\_\_\_\_  
Notary Public in and for said State

My commission expires: \_\_\_\_\_

[SEAL]

ASSIGNEE ACKNOWLEDGMENT

State of California )  
 )  
County of Orange )

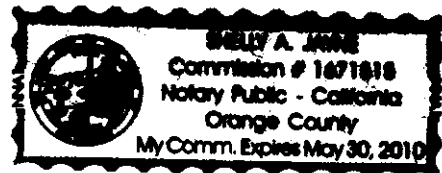
On 8-4-09, before me, Shelly A. Jayne, Notary Public,  
(here insert name and title of the officer)

personally appeared Rex F. DeLong,  
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Shelly A. Jayne (seal)



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of Salt Lake City, County of Salt Lake, State of Utah, described as follows:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 2 WEST SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING NORTH 89°58'42" WEST - 2677.868 FEET BETWEEN THE SOUTHEAST CORNER AND THE SOUTH QUARTER CORNER OF SAID SECTION 24) AND RUNNING NORTH 89°58'42" WEST ALONG THE SOUTH LINE OF SECTION 24 FOR 1169.665 FEET; THENCE NORTH 00°01'18" EAST PERPENDICULAR TO SAID SECTION LINE FOR 2433.686 FEET TO THE POINT OF BEGINNING; THENCE NORTH 36°32'54" WEST FOR 98.922 FEET; THENCE NORTH 40°21'43" WEST FOR 75.177 FEET; THENCE NORTH 36°32'54" WEST FOR 384.067 FEET; THENCE NORTH 53°27'06" EAST FOR 1089.500 FEET; THENCE SOUTH 36°32'54" EAST FOR 434.202 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 43°51'26" (CHORD BEARING AND DISTANCE OF SOUTH 14°37'12" EAST - 56.018 FEET) FOR AN ARC DISTANCE OF 57.409 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 12°45'10" (CHORD BEARING AND DISTANCE OF SOUTH 13°41'06" WEST -16.659 FEET) FOR AN ARC DISTANCE OF 16.693 FEET; THENCE WITH A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 235.640 FEET, WITH A CENTRAL ANGLE OF 13°56'01" (CHORD BEARING AND DISTANCE OF SOUTH 13°05'40" WEST - 57.164 FEET) FOR AN ARC DISTANCE OF 57.305 FEET; THENCE WITH A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 47°19'26" (CHORD BEARING AND DISTANCE OF SOUTH 29°47'23" WEST - 60.201 FEET) FOR AN ARC DISTANCE OF 61.947 FEET; THENCE SOUTH 53°27'06" WEST FOR 952.076 FEET TO THE POINT OF BEGINNING.

APN: 26-24-400-009-0000 and 27-19-100-006-0000