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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/21/2014 03:05 PM
FEE \$0.00 Pgs: 7
DEP RTT REC'D FOR CENTERVILLE CITY

When recorded, return to:

Centerville City
Attn: City Recorder
250 North Main Street
Centerville, Utah 84014

Affects Parcel: 07-070-0123

**ASSIGNMENT AND ASSUMPTION AGREEMENT
FOR DEVELOPMENT AGREEMENT WITH CENTERVILLE
CITY FOR THE WOODS PARK PLANNED DEVELOPMENT (PDO) TO
HWD WOODS PARK, LLC**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement") is made and entered into as of the 26 day of February, 2014, by and between **DAVID L. ELLIS**, an individual ("Ellis") and **HENRY WALKER LAND OF NORTHERN UTAH, LLC**, a Delaware limited liability company ("HWL of Northern Utah") (collectively referred to as "Assignors"), **HWD WOODS PARK, LLC**, a Utah limited liability company ("Assignee"), and **CENTERVILLE CITY**, a Utah municipal corporation ("City"). The City, Assignee and Assignors may collectively be referred to herein as the "Parties", or individually, as a "Party".

RECITALS:

WHEREAS, the City, Ellis, Val D. Wood, Trustee of the Val D. Wood Revocable Trust and Val D. Wood, as their interests appear ("Wood Trust"), and William J. Wright and Suzanne B. Right, as joint tenants ("Wrights"), previously entered into that certain Development Agreement, dated April 4, 2013, as recorded in the Davis County Recorder's Office as Entry No. 2731793, Book No. 5743, Pages 390-430 ("Development Agreement") regarding the development of a planned residential development on real property located at the southeastern corner of 2250 North (Lund Lane) and 800 West (Frontage Road) in Centerville City, Davis County, State of Utah, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the City, Ellis, Woods Trust and the Wrights previously entered into that certain Assignment and Assumption Agreement assigning all rights and obligations under the Development Agreement to HWL of Northern Utah, subject to and conditioned upon HWL of Northern Utah obtaining fee title ownership of the Property; and

WHEREAS, HWL of Northern Utah never acquired fee title ownership to the Property and the parties now desire to assign all rights and obligations under the Development Agreement to Assignee, as more particularly provided herein; and

WHEREAS, HWL of Northern Utah is included as a party to this Assignment Agreement as an Assignor only to the extent necessary to effectuate a transfer any rights and obligations under the Development Agreement that HWL of Northern Utah acquired under the previous Assignment Agreement, although no such interest is suspected as having been acquired as more particularly provided herein; and

WHEREAS, Woods Trust and the Wrights are not a party to this Assignment Agreement because, pursuant to Section 44 of the Development Agreement, all of their rights and obligations under the Development Agreement were terminated, released and subsumed by Ellis upon closing and transfer of the Woods Trust property and the Wright property to Ellis; and

WHEREAS, Assignors desire to convey their interest in the Property and all existing rights and obligations to develop the Property in accordance with the terms and conditions of the Development Agreement as more particularly provided herein to Assignee, who is under contract to purchase or has purchased the Property; and

WHEREAS, the Parties desire to enter into this Assignment Agreement in order to effect an assignment by Assignors and acceptance and assumption by Assignee of all of the terms and conditions of the Development Agreement as they pertain to the Property and development of the Property as of the date Assignee acquires fee title ownership to the Property, as more particularly provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Assignment and Assumption.** Assignors hereby assign to Assignee all of Assignors' right, title and interest in and to the Development Agreement as it pertains to the Property, together with Assignors' rights, powers and privileges thereunder existing from and after the date Assignee acquires fee title ownership to the Property ("Effective Date of Assignment"). Assignee hereby accepts the same and assumes the rights and responsibilities of the Development Agreement as it pertains to the Property and agrees to timely pay and perform each and every obligation to be paid and performed under the Development Agreement as it pertains to the Property from and after the Effective Date of Assignment. Pursuant to Section 23 of the Development Agreement, Assignee agrees to be bound by the terms of the Development Agreement and to be liable for the performance of each of the obligations contained in the Development Agreement as they relate to the Property and any other applicable obligation regarding development of the Property from and after the Effective Date of Assignment.

2. **Acknowledgment of Recording.** Assignors and Assignee hereby acknowledges the recording of the Development Agreement against the Property and authorize the recording of this Assignment Agreement against the Property on or after the date Assignee acquires fee title to the Property.

3. **Successors and Assigns.** This Agreement shall bind the Parties, their personal representatives, successors and assigns. Any assignment of the rights and duties of Assignee as assigned herein shall be subject to and comply with the terms of the Development Agreement, including, but not limited to Section 23 of the Development Agreement.

4. **Attorneys' Fees.** Should any Party commence a legal proceeding to enforce any of the terms or provisions of this Assignment Agreement, the prevailing Party in such proceeding shall recover reasonable attorneys' fees and costs from the defaulting Party, as fixed by the court in such proceeding.

5. **Effective Date.** The provisions of this Assignment Agreement shall become effective immediately upon proper execution by the Parties. The assignment and assumption provided herein shall become effective on the Effective Date of Assignment as defined in Section 1.

6. **Miscellaneous.** Nothing herein shall be deemed to create the relationship of principal and agent, partnership or joint venture between the Parties. This Assignment Agreement shall be interpreted and construed only by the content hereof, and there shall be no presumption or standard of construction in favor of or against any Party. This Assignment Agreement may be amended or modified only in writing. The invalidity or unenforceability of any provision of this Assignment Agreement, as determined by a court, shall in no way affect the validity or enforceability of any of the remaining provisions hereof. This Assignment Agreement shall be construed according to and governed by the laws of the State of Utah.

[Signature page to follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

"Assignors"

DAVID L. ELLIS

By: David L. Ellis
David L. Ellis

HENRY WALKER LAND OF NORTHERN UTAH,
LLC

By: [Signature]
Its: Manager

"City"

ATTEST:

CENTERVILLE CITY

Marsha L. Morrow
Marsha L. Morrow, City Recorder

[Signature]
Mayor Paul A. Cutler

"Assignee"

HWD WOODS PARK, LLC

By: [Signature]
Its: Manager

CITY ACKNOWLEDGMENT

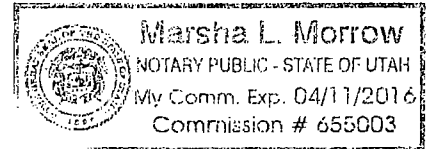
STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 19 day of March, 2014, personally appeared before me Paul A. Cutler, who being duly sworn, did say that he is the Mayor of **CENTERVILLE CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Paul A. Cutler acknowledged to me that the City executed the same.

Marsha L Morrow
Notary Public

My Commission Expires:
4-11-2016

Residing at:
Centerville



ASSIGNEE ACKNOWLEDGMENT

STATE OF Utah)
 : ss.
COUNTY OF Davis)

On the 18 day of March, 2014, personally appeared before me Chad Bessinger, who being by me duly sworn did say that (s)he is the managing member of **HWD WOODS PARK, LLC**, a Utah limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and such signator duly acknowledged to me that said limited liability company executed the same.

Katie M Sales
Notary Public

My Commission Expires:
03/25/2015

Residing at:
2002 W Pennudale
Farm West, UT 84404

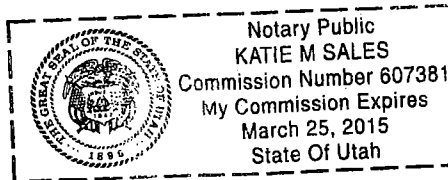


EXHIBIT "A"

Legal Description of Property

Beginning at the intersection of the quarter section line and the east line of a Frontage Road on the east side of the Interstate 15 Freeway, said point being North 89°13'20" East 384.08 feet along the quarter section line from the West Quarter corner of Section 31, Township 3 North, Range 1 East, Salt Lake Meridian, and running;

Thence North 0°11'10" East 396.61 feet along the east line of said Frontage Road to the south line of Lund Lane;
Thence South 89°30'30" East 498.00 feet along the south line of said Lund Lane to a line defined in a Boundary Line Agreement, recorded April 8, 2013, as Entry No. 2731793, in Book 5743, at Page 390;
Thence South 0°11'15" West 418.58 feet along the line defined in said Boundary Line Agreement to a point 33.00 feet south of the quarter section line;
Thence North 89°13'20" East 2.00 feet;
Thence South 0°11'15" West 50.00 feet;
Thence South 89°13'20" West 500.05 feet to the east line of a Frontage Road;
Thence North 0°11'10" East 83.00 feet along the east line of a Frontage Road to the point of beginning.

Contains 236,196 square feet, 5.422 acres.