

Loan No. 254-1077635-01-001

WHEN RECORDED, RETURN TO:

Zions First National Bank  
Real Estate Department  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attn: Larry R. Hintze

## ASSIGNMENT OF LEASES

This Assignment of Leases (the "Assignment") is made and executed this 29<sup>th</sup> day of December, 2008 (the "Closing Date"), by Block 29 Developers, LLC, a Utah limited liability company ("Borrower") and Zions First National Bank, a national banking association ("Lender").

### RECITALS

A. Pursuant to the Promissory Note dated the Closing Date in which Borrower appears as "Borrower" and Lender appears as "Lender" and which is in the original principal amount of Seventeen Million Eight Hundred Thousand Dollars (\$17,800,000.00) (the "Note"), and pursuant to the Construction Loan Agreement dated the Closing Date wherein Borrower appears as "Borrower" and Lender appears as "Lender" (the "Loan Agreement"), Lender has loaned the proceeds of the Note to Borrower.

B. Pursuant to the Construction Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated the Closing Date (the "Trust Deed") in which Borrower appears as "Trustor" and Lender appears as "Trustee" and "Beneficiary" and which encumbers the real property (the "Property") together with the improvements thereon located in Utah County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Project"), Borrower has granted to Lender a lien on the Project to secure the Note.

C. There have been and/or may be lease agreements entered into by Borrower and tenants of the Project, and other leases affecting the Project, or any building or improvement located on the Property, all subject to the terms and conditions of the Loan Documents.

D. Lender desires and Borrower agrees to further secure the Note and the Loan Agreement with an assignment of the leases.

## AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Assignment. Borrower hereby absolutely and unconditionally assigns and transfers unto Lender all right, title, and interest of Borrower in and to all leases of the Project or any portion of the Project, now existing or hereafter created, together with all room rents and other amounts received for the use of any rooms in the Project, including the Improvements, and any and all room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such leases and room rents, covering the Project or any portion of the Project, now or hereafter existing or entered into, together with all right, title and interest of Borrower in and to all other leases or subleases covering the Project or any portion of the Project, now or hereafter existing or entered into, together with all security deposits made by the lessees thereunder (the "Lessee" or "Lessees") and together with all extensions, renewals, modifications or replacements thereof, as well as all guaranties of Lessee's obligations under any provisions thereof and under any and all extensions and renewals thereof (collectively the "Lease").

2. License to Collect. This Assignment shall inure to the benefit of Lender, its successors and assigns for the payment of the principal and interest provided to be paid in or by the Note, the performance of the agreements of Borrower contained in the Loan Agreement and the Trust Deed, and the performance of the agreements of Borrower contained in the Loan Documents and any other document evidencing, securing, or relating to the disbursal or administration of the proceeds of the Note (all of which agreements and obligations are collectively referred to as the "Obligation"), reserving to Borrower, however, a revocable, temporary right and license only to collect, except as hereinafter provided, the rents, income, and profits accruing by virtue of the Lease as they respectively become due (the "License"), but not in advance, and to enforce the agreements of the Lease, as long as Borrower does not default under the Obligation, or this Assignment.

3. Lender as Creditor of Lessee. Lender, and not Borrower, shall be the creditor of each Lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessee. Lender, however, shall not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Lender shall have the option to apply any monies received by it as such creditor towards the reduction of the principal or interest of the Obligation.

4. Default Remedies of Lender. If Borrower defaults on the Obligation or this Assignment, and until such default shall have been fully cured, the License of Borrower to collect rents, income, and profits shall cease and terminate. Lender would thereby be authorized at its option to enter and take possession of all or part of the Project, and to perform all acts necessary for the operation and maintenance of the Project in the same manner and to the same extent that Borrower might reasonably so act. In furtherance thereof, Lender shall be authorized, but shall be under no obligation, to collect the rents, income, and profits arising from the Lease, and to enforce performance of any other terms of the Lease including, but not limited to, Borrower's rights to fix

or modify rents, sue for possession of the Project, or any part thereof, relet all or part of the Project, and collect all rents, income, and profits under such new lease. Lender shall, after payment of all proper costs, charges, and any damages, apply the net amount of income to the sums then due to Lender under the Obligation as set forth in the Loan Agreement. Lender shall have sole discretion as to the manner in which such net income is applied, and the items that shall be credited thereby.

5. Termination of Assignment. When Borrower pays Lender for the full amount of the Obligation and such payment is evidenced by a recorded satisfaction or release of the Trust Deed, this Assignment shall no longer be in effect and shall be void.

6. Notice to Lessees of Borrower's Default. Borrower shall irrevocably authorize each Lessee, upon demand and notice from Lender of Borrower's default under the Obligation, to pay all rents, income, and profits under the Lease to Lender. In such situation, Lender shall not be liable to Lessee for the determination of the actual existence of any default claimed by Lender. Lessees shall have the right to rely upon any such notices of Lender that Lessees shall pay all rents, income, and profits to Lender, without any obligation or right to inquire as to the actual existence of the default, notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim against Lessees for any rents paid by Lessees to Lender. Upon the curing of all defaults caused by Borrower under the Obligation, Trust Deed, or Assignment, Lender shall give Lessees written notice of such cure, and thereafter, until further notice from Lender, Lessees shall pay the rents, income, and profits to Borrower.

7. Assignment of Borrower's Interest in Lease. Lender shall have the right to assign Borrower's right, title, and interest in the Lease to any subsequent holder of the Trust Deed and to any person acquiring title to the mortgaged premises through foreclosure or otherwise. After Borrower shall have been barred and foreclosed of all right, title, interest, and equity of redemption in the premises, no assignee of Borrower's interest in the Lease shall be liable to account to Borrower for the rents, income and profits thereafter accruing.

8. Indemnification of Lender. Borrower shall pay, protect, defend, indemnify and hold Lender harmless of and from any and all liability, loss, or damage that Lender may incur under the Lease or by reason of this Assignment other than such liability, loss, or damage as may be occasioned by Lender's gross negligence or willful misconduct. Such indemnification shall also cover any and all claims that may be asserted against Lender by reason of any alleged obligation to be performed by Lender under the Lease or this Assignment. Nothing in this paragraph shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender including, without limitation, any liability under the Lease's covenant of quiet enjoyment in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Trust Deed and shall have been barred thereby of all right, title, interest, and equity of redemption in the premises. This Assignment shall not impose liability upon Lender for the operation and maintenance of the premises or for carrying out the Lease terms before Lender has entered and taken possession of the premises. Any loss or liability incurred by Lender by reason of actual entry and taking possession under the Lease or this Assignment or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower. Such reimbursement shall include

interest at the default rate set forth in the Note, costs, expenses, and reasonable attorneys' fees. Lender may, upon entry and taking of possession, collect the rents, income, and profits, and apply them toward reimbursement for the loss or liability.

9. Quality of Borrower's Title to Lease. Borrower represents itself to be the absolute owner of the Lease, with absolute right and title to assign it and the rents, income, and profits due or to become due thereunder; that the Lease is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof or of the rents, income, and profits due or to become due thereunder; that there are no existing defaults under the provisions thereof on the part of any party; that Lessees have no defense, setoff or counterclaim against Borrower, that Lessees are in possession and paying rent and other charges under the Lease as provided therein; and that no rents, income, and profits payable thereunder have been or will hereafter be anticipated, discounted, released, waived, compromised, or otherwise discharged except as may be expressly permitted by the Lease. Borrower covenants not to cancel, abridge, surrender, or terminate the Lease or change, alter, or modify it, either to reduce the amount of the rents, income, and profits payable thereunder, or otherwise change, alter, abridge or modify the Lease, or make any subsequent assignment of the Lease, or consent to subordination of the interest of any Lessee in the Lease without the prior written consent of Lender, which consent shall not be unreasonably withheld. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease without the written consent of Lender shall be null and void.

10. Delivery of Necessary Instruments to Lender. Borrower shall execute and deliver to Lender and hereby irrevocably appoints Lender, its successors, and assigns as its attorney in fact to execute and deliver during the term of this Assignment, all further instruments as Lender may deem necessary to make this Assignment and any further assignment effective. The power hereby granted is coupled with an interest in the Project and is irrevocable.

11. Transfer of Title to Lessees; Cancellation of Lease. The Lease shall remain in full force and effect despite any merger of Borrower's and any Lessee's interest thereunder. In the event the Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Lender to be applied, at the election of Lender, to reduce the amount of the principal of the Obligation in the inverse order of maturity or to be held in trust by Lender as further security without interest for the payment of the principal and interest provided to be paid on the Obligation.

12. Lease Guaranties; Assignment of Lease; Alterations of Premises. Borrower shall not alter, modify, cancel or terminate any guaranties of the Lease without the written consent of Lender, which consent shall not be unreasonably withheld. Nor shall Borrower consent to any Lease assignment or subletting, nor agree to a subordination of the Lease to any mortgage or other encumbrance, other than that of Lender, now or hereafter affecting the Project without Lender's prior written consent. Borrower shall not permit a material alteration of or addition to the Project by any Lessee without Lender's prior written consent unless the right to alter or enlarge is expressly reserved by such Lessee in the Lease.

13. Borrower to Ensure Continued Performance under Lease. Borrower shall not execute any other assignment of the Lease, of any interest therein, or of any rents payable thereunder. Borrower shall perform all of its covenants as Lessor under the Lease, and shall not permit to occur any release of liability of any Lessee, or any withholding of rent payments by any Lessee. Lender shall promptly receive from Borrower copies of all notices of default Borrower has sent to any Lessee. Borrower shall, at Lender's request, enforce the Lease and all remedies available to Borrower thereunder upon any Lessee's default thereunder.

14. Changes in Obligation Terms. Notwithstanding any variation of the terms of the Obligation and/or the Trust Deed including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the real property subject to the Trust Deed, the Lease and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment.

15. Additions to and Replacement of Obligation. Lender may take security in addition to the security already given Lender for the payment of the principal and interest provided to be paid in or by the Obligation or by the Trust Deed or release such other security, and may release any party primarily or secondarily liable on the Obligation, may grant or make extensions, renewals, modifications, or indulgences with respect to the Obligation or Trust Deed and replacements thereof, which replacement of the Obligation or Trust Deed may be on the same or on terms different from the present terms of the Obligation or Trust Deed, and may apply to any other security thereof held by it to the satisfaction of the Obligation, without prejudice to any of its rights hereunder.

16. Future and Additional Leases. This Assignment shall apply and be effective with respect to any and all leases entered into by Borrower and any lessee which may cover or affect any portion of the Project, which lease(s) may be entered into at any time during the period the Obligation remains outstanding and secured by the Trust Deed, regardless of whether such lease(s) is/are in effect on the date this Assignment is executed. Upon the written request of Lender, Borrower shall give Lender prompt notice and provide Lender with a copy of any lease covering any portion of the Project it enters into, if the lease is not listed in this Assignment or is not in effect on the date of this Assignment. Upon notice from Lender to that effect, such lease shall be deemed included in this Assignment as though originally listed therein, and shall be subject to this Assignment in all respects.

17. Exercise of Lender's Rights. Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Obligation and Trust Deed. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

18. Amendment, Modification, or Cancellation of Assignment. No amendment, modification, cancellation, or discharge hereof, or of any part hereof, shall be enforceable without Lender's prior written consent, which consent shall not be unreasonably withheld.

19. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender: Zions First National Bank  
Real Estate Department  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attn: Larry R. Hintze

With copies to: Callister Nebeker & McCullough  
Zions Bank Building  
10 East South Temple, Suite 900  
Salt Lake City, Utah 84133  
Attn: Lynda Cook

Borrower: Block 29 Developers, LLC  
One East Center Street, Suite 300  
Provo, Utah 84606  
Attn: Cameron S. Gunter

With copies to: Jeffs & Jeffs, P.C.  
P.O. Box 888  
90 North 100 East  
Provo, Utah 84603  
Attn: David D. Jeffs

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

20. Binding Effect. All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Borrower and Lender.

21. Governing Law. This Assignment shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

22. Attorney Fees. Upon the occurrence of an Event of Default, Lender may employ an attorney or attorneys to protect Lender's rights under this Assignment, and Borrower shall pay Lender reasonable attorney fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such breach. Borrower shall also pay to Lender any attorney fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Borrower or any guarantor as a debtor. If Lender exercises the

power of sale contained in the Trust Deed or initiates foreclosure proceedings, Borrower shall pay all costs incurred and attorney fees and costs as provided in the Trust Deed.

23. Defined Terms. Unless otherwise defined in this Assignment, capitalized terms used herein have the meanings given them in the Loan Agreement.

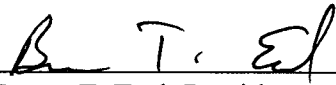
***[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]***

DATED: December \_\_\_\_, 2008.

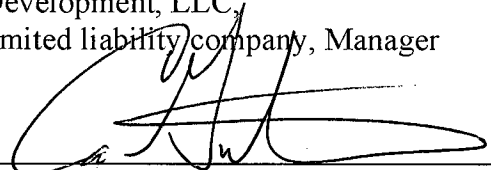
BORROWER

**BLOCK 29 DEVELOPERS, LLC,**  
a Utah limited liability company

By: Earl Corporation,  
a Utah corporation, Manager

By:   
Bruce T. Earl, President

By: P.E.G. Development, LLC,  
a Utah limited liability company, Manager

By:   
Cameron S. Gunter, Manager

LENDER

**ZIONS FIRST NATIONAL BANK,**  
a national banking association

By:   
Larry R. Hintze  
Vice President



STATE OF UTAH )  
 ) SS.  
COUNTY OF UTAH )

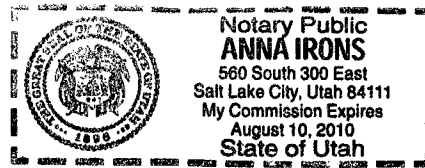
The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2008, by Bruce T. Earl, President of Earl Corporation, a Utah corporation, Manager of Block 29 Developers, LLC, a Utah limited liability company.

Anna Irons  
NOTARY PUBLIC

My Commission Expires:  
8-10-2010

Residing At:  
Salt Lake City

STATE OF UTAH )  
 ) SS.  
COUNTY OF UTAH )

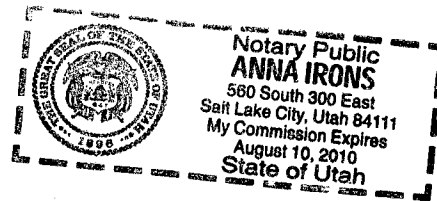


The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2008, by Cameron S. Gunter, Manager of P.E.G. Development, LLC, a Utah limited liability company, Manager of Block 29 Developers, LLC, a Utah limited liability company.

Anna Irons  
NOTARY PUBLIC

My Commission Expires:  
8-10-2010

Residing At:  
Salt Lake City



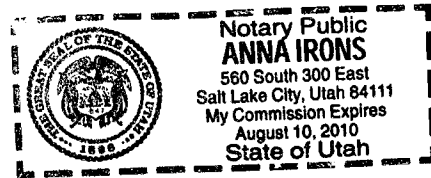
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2008, by Larry R. Hintze, Vice President of Zions First National Bank, a national banking association.

Anna Irons  
NOTARY PUBLIC

My Commission Expires:  
8-10-2010

Residing At:  
Salt Lake City



**EXHIBIT 'A'**

File No.: **NCS-329204-SLC1 (ami)** **12/19/2008**  
Property: **Parcel 1: 150 North University Aven, Parcel 2: 154 North University Aven, Parcel 3:  
166 North University Aven, Parcel 4: 48 East 200 North, Provo, UT 84601**

**LOT 1, OF THAT CERTAIN PLAT ENTITLED "ZIONS BANK FINANCIAL CENTER", WHICH PLAT WAS  
FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF UTAH, STATE OF UTAH ON NOVEMBER  
25, 2008 AS ENTRY NO. 125406:2008.  
A.P.N. 05-029-0004**

Initials: \_\_\_\_\_