

Loan No. <sup>032</sup>~~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  
Attention: Larry R. Hintze

## ASSIGNMENT OF DEVELOPMENT AGREEMENT FOR SECURITY

This Assignment of Joint Development Agreement For Security (the "Agreement") is made and entered into this 18<sup>th</sup> day of December, 2008 (the "Closing Date"), by Block 29 Developers, LLC, a Utah limited liability company ("Borrower"), in favor of Zions First National Bank, a national banking association ("Lender").

### RECITALS

A. Pursuant to a Promissory Note dated the Closing Date (the "Loan") from Borrower to 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 a Construction Loan Agreement dated the Closing Date, between Borrower and Lender (the "Loan Agreement"), Lender is loaning the proceeds of the Note to Borrower.

B. Pursuant to the Loan Agreement, the Loan is secured, among other things, by a Construction Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated the Closing Date, which encumbers the real 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 "Property").

C. Borrower and Provo City Corporation, a Utah municipal corporation ("Provo City") entered into a Development Agreement dated July 9, 2008 in connection with the development of the Property, together with all the attachments and exhibits thereto (the "Development Agreement").

D. As a condition to making the Loan, Lender requires an assignment for security of all of Borrower's right, title and interest under the Development Agreement.

## 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 and Grant of Security Interest. Borrower hereby assigns, sells, and transfers to Lender all of Borrower's right, title and interest in and to the Development Agreement, and all proceeds thereof and all benefits thereunder, to secure all of Borrower's obligations to Lender under the Note and all other Loan Documents.

2. No Further Assignment. Borrower covenants not to further encumber the Development Agreement, or effect or attempt to effect any other assignment, pledge, mortgage, disposition or other transfer of the Development Agreement, and Borrower hereby undertakes to take all action commercially reasonably necessary to keep the Development Agreement in full force and effect.

3. Representations and Warranties of Borrower. Borrower represents and warrants to Lender the following: (a) there have been no assignments of the Development Agreement, except to Lender as set forth in this Agreement; (b) the Development Agreement is a valid and binding agreement, enforceable in accordance with its terms; (c) none of the parties to the Development Agreement are, or with the giving of notice of passage of time, or both, would be, in default under the Development Agreement; (d) all covenants, conditions and agreements have been performed as required in the Development Agreement, except those not due to be performed until after the date of this Agreement; (e) Borrower has not and shall not terminate or amend any of the terms or provisions of the Development Agreement without the prior written consent of Lender, which consent shall not unreasonably be withheld, and (f) Borrower shall, in the manner provided for in this Agreement, give notice to Lender of any notice or information that Borrower receives which indicates that Provo City believes there has been an occurrence, event, omission or act that causes (or with the passage of time would cause) a default or breach under the Development Agreement. Lender shall have the right to cure any default under the Development Agreement and a reasonable time to undertake such cure.

4. Default. Time is of the essence of this Agreement. The occurrence of any of the following events shall constitute a default under this Agreement:

a. Any representation or warranty made by or on behalf of Borrower in this Agreement is materially false or materially misleading when made;

b. Borrower fails in the payment or performance of any obligation, covenant, agreement or liability created by or contemplated by this Agreement or secured by this Agreement; or

c. An Event of Default occurs under any of the Loan Agreement or any of the other Loan Documents.

No course of dealing or any delay or failure to assert any default shall constitute a waiver of that default or of any prior or subsequent default.

5. Remedies. Upon the occurrence of any default by Borrower under this Agreement, Lender shall have the following rights and remedies, in addition to all other rights and remedies existing at law, in equity, or by statute or provided in the Loan Agreement:

a. Lender shall have all the rights and remedies available under the Uniform Commercial Code;

b. Lender shall have the right to enter upon any premises where the Development Agreement or records pertaining to the Development Agreement may be and take possession of copies of the records and make copies of the records relating thereto;

c. Upon request of Lender, Borrower shall, at the expense of Borrower, assemble the records relating to the Development Agreement at a place designated by Lender and tender the records to Lender;

d. Lender shall have the right to direct that payment of any and all payments under the Development Agreement be made directly to Lender and to accept such payments and apply the same to the obligations of Borrower owing to Lender; and

e. May, in Lender's sole discretion, immediately step into the shoes of Borrower under the terms of the Development Agreement, provided Lender sends a written notice to Provo City consistent with the notice provisions of this Agreement and specifically agrees to perform, or cause to be performed, the obligations of Borrower under the Development Agreement accruing or arising from and after, and with respect to the period commencing on the effective date of such notice.

Borrower shall be liable for all deficiencies owing on any obligations secured by this Agreement after termination or expiration of the Development Agreement.

The rights and remedies herein conferred are cumulative and not exclusive of any other rights and remedies and shall be in addition to every other right, power and remedy herein specifically granted or hereafter existing at law, in equity, or by statute which Lender might otherwise have, and any and all such rights and remedies may be exercised from time to time and as often and in such order as Lender may deem expedient. No delay or omission in the exercise of any such right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver thereof or of any default or to be an acquiescence therein.

In the event of breach or default under the terms of this Agreement by Borrower, Borrower agrees to pay all reasonable attorneys fees and legal expenses incurred by or on behalf of Lender in enforcement of this Agreement, in exercising any remedy arising from such breach or default, or

otherwise related to such breach or default. Borrower additionally agree to pay all reasonable costs and out-of-pocket expenses.

Regardless of any breach or default, Borrower agrees to pay all expenses, including reasonable attorneys fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Borrower, the Development Agreement, or this Agreement, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

In the event of breach or default under the terms of this Agreement by Borrower, Borrower agrees to pay all reasonable attorneys fees and legal expenses incurred by or on behalf of Lender in enforcement of this Agreement, in exercising any remedy arising from such breach or default of this Agreement, or otherwise related to such breach or default of this Agreement. Borrower additionally agrees to pay all reasonable costs and out-of-pocket expenses related to the enforcement of this Agreement, in exercising any remedy arising from such breach or default of this Agreement, or otherwise related to such breach or default of this Agreement.

Regardless of any breach or default, Borrower agrees to pay all expenses, including reasonable attorneys fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Borrower, the Development Agreement, or this Agreement, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

6. Amendments to Development Agreement. Borrower covenants to make no changes in the terms or conditions of or to enter into any modification or amendment of the Development Agreement without the prior written consent of Lender, which consent shall not be unreasonably withheld by Lender. Borrower agrees that no change, modification or amendment shall be valid unless it is in writing and has been approved in advance in writing by Lender.

7. Attorney-in-Fact. Borrower hereby irrevocably constitutes and appoints Lender as their respective attorneys-in-fact coupled with an interest to demand, receive, exercise and enforce Borrower's rights and options with respect to the Development Agreement, to perform under the Development Agreement, and give and receive appropriate payments, releases, subsidies, satisfactions, notices for and on behalf of and in the name of Borrower, at the option of Lender, in the name of Lender, with the same force and effect as Borrower could do if the assignment under this Agreement had not been made. However, Borrower agrees that Lender does not assume any of the obligations or duties of Borrower under or with respect to the Development Agreement. Lender shall not be authorized to act hereunder unless and until Lender shall have given to Borrower written notice that Lender is exercising its rights hereunder upon or after the occurrence of an Event of Default as that term is defined in the Loan Agreement. The failure of Lender to so exercise its rights, however, shall not be deemed a waiver of its right to exercise same at any future time.

8. Indemnification. Borrower hereby agrees to indemnify and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, and judgments and

expenses (including without limitation attorneys' fees and costs) to which Lender may become exposed, or which Lender may incur, in exercising any of its rights under this Agreement.

9. No Partnership. Borrower and Lender agree that this Agreement is not intended to create any partnership or joint venture between Borrower and Lender, and Borrower shall indemnify and hold Lender harmless, as set forth in this Agreement, if any such claim is made.

10. Notice. 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:

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

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

If to 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

If to Provo City:                          Provo City Corporation  
P. O. Box 1849  
Provo, Utah 84603  
Attn: Community Development Director

With copies to:                          Mayor's Office  
P.O. Box 1849  
Provo, Utah 84603

11. No Third Party Beneficiaries. Borrower and Lender further agree this Agreement is not intended to and does not create any derivative rights or claims in any third parties, including without limitation, Provo City.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns and successors in the respective interests of Borrower and Lender, subject to the limitation on assignment set forth in this Agreement.

13. Consent and Additional Documents. Borrower agrees to give notice of this Agreement to Provo City, and obtain the consent of Provo City, in form and substance acceptable to Lender and substantively in the form set forth in the attached Exhibit B, which is incorporated into this Agreement by this reference.

14. Further Assurances. Borrower agrees to execute a Financing Statement, which may be filed in order to provide other creditors with notice of this Agreement and to sign such further and additional documents and instruments as Lender may require to give further effect to this Agreement and the granting to Lender of a security interest in the Development Agreement, and any modifications, extensions, revisions or replacements thereof.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart. Copies of this Agreement, and fax signatures thereon, shall have the same force, effect and legal status as an original.

16. Defined Terms. Unless otherwise defined in this Agreement, capitalized terms hereinafter used have the meanings given them in the Loan Agreement.

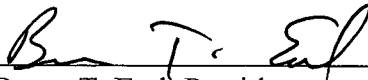
***[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]***

DATED: December 18, 2008.

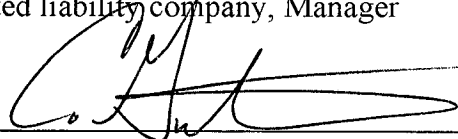
BORROWER

**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 SALT LAKE )

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.

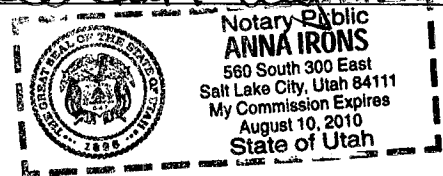
Anna Irons  
NOTARY PUBLIC

My Commission Expires:

8-10-2010

Residing At:

Salt Lake City



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

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.

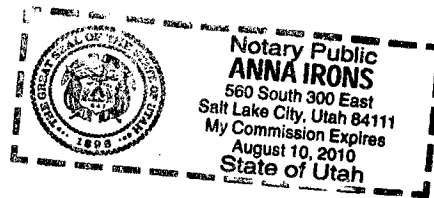
Anna Irons  
NOTARY PUBLIC

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.

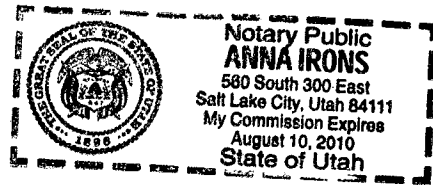
Anna Irons  
NOTARY PUBLIC

My Commission Expires:

8-10-2010

Residing At:

Salt Lake City



**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

The real property located in Utah County, State of Utah, and more particularly described as follows:

**[SEE ATTACHED]**

**EXHIBIT B****CONSENT AGREEMENT  
(Provo City Corporation)**

This Consent Agreement (the "Consent Agreement") is made and executed by Provo City Corporation, a Utah municipal corporation ("Provo City"), to and for the benefit of Zions First National Bank, a national banking association ("Lender").

Block 29 Developers, LLC, a Utah limited liability company ("Borrower"), and Provo City entered into a Development Agreement dated July 9, 2008 in connection with the development of certain improvements on real property located in Utah County, State of Utah (the "Development Agreement").

The Development Agreement is being assigned by Borrower to Lender pursuant to an Assignment of Development Agreement for Security dated the Closing Date and entered into between Lender and Borrower (the "Assignment of Development Agreement") in connection with a construction loan (the "Loan") made by Lender to Borrower pursuant to a Construction Loan Agreement dated the Closing Date and entered into between Lender and Borrower (the "Loan Agreement"). Capitalized terms not defined in this Consent Agreement shall have the meanings given them in the Loan Agreement.

There is adequate consideration for, and it is in the interests of Provo City to enter into this Consent Agreement since Provo City will recognize substantial direct and indirect benefits from Lender making the Loan evidenced by the Loan Agreement to Borrower.

Provo City agrees, in the manner provided for in the Development Agreement, to give notice to Lender at One South Main Street, Suite 470, Salt Lake City, Utah 84133, Attention: Real Estate Department Manager, of any notice or information that Borrower receives which indicates that Provo City believes there has been an occurrence, event, omission or act that causes (or with the passage of time would cause) a default or breach under the Development Agreement. Lender shall have the right to cure any default under the Development Agreement and a reasonable time to undertake such cure.

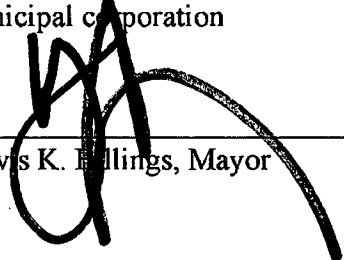
Notwithstanding anything to the contrary in the Development Agreement, including, without limitation, any express prohibition to or limitation on any assignment of the Development Agreement by any party to the Development Agreement, Provo City hereby consents to the assignment by Borrower to Lender of the Development Agreement, approves the assignment to Lender, and its successors and assigns for all purposes for which approval of a successor or assign of "Developer" under the Development Agreement may be required under the Development Agreement, and consents to all other arrangements and transactions described in the Assignment of Development Agreement, the Loan Agreement and the other Loan Documents.

Provo City further agrees that no change, modification or amendment to the Development Agreement shall be valid unless it is in writing and has been approved in advance in writing by Lender, which approval shall not be unreasonably withheld by Lender. Upon Lender's exercise of its rights under the Assignment of Development Agreement, Provo City agrees to recognize Lender and its successors or assigns as an approved assignee all of the rights, title and interests of Developer and owner of the Site under the Development Agreement for the unexpired term of the Development Agreement upon the same terms and conditions as set forth in the Development Agreement, without the requirement of further review or approval by Provo City. Upon request of Lender, Provo City agrees to execute such other documents, instruments or agreements as reasonably necessary to accomplish the purposes of the Assignment of Development Agreement and this Consent Agreement.

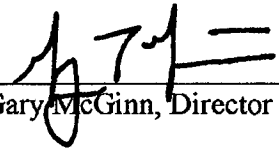
*[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]*

DATED: December 13<sup>TH</sup>, 2008.

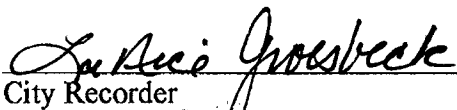
**PROVO CITY CORPORATION,**  
a Utah municipal corporation

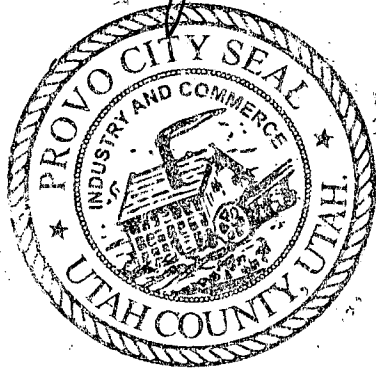
By:   
\_\_\_\_\_  
Lewis K. Fillings, Mayor

COMMUNITY DEVELOPMENT  
DEPARTMENT

By:   
\_\_\_\_\_  
Gary McGinn, Director

Attest:

  
\_\_\_\_\_  
Lucio Grosbeck  
City Recorder



**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: \_\_\_\_\_