

APN:

PREPARED BY AND UPON
RECORDATION RETURN TO:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

509705
10.220.0404

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (the "Assignment") is entered into as of November 6, 2019, by 7TH WEST PARTNERS, LLC, a Utah limited liability company ("Assignor"), in favor of WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION ("Assignee"), and is consented to by LAYTON CITY, a municipal corporation of the State of Utah (the "City"), pursuant to that certain Consent attached hereto as Exhibit B.

RECITALS

A. On or about the date hereof, Assignor and Assignee entered into that certain Construction Loan Agreement of approximately even date herewith ("**Loan Agreement**") whereby the Assignee agreed to extend to Assignor a construction loan (the "**Loan**") evidenced by a Promissory Note of even date herewith, by Assignor and payable to Assignee, in the principal amount of SIXTEEN MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$16,850,000.00) (as amended, modified, extended, and renewed from time to time, the "**Note**"), to finance the development of certain real property located in Davis County, State of Utah (the "**Project**"). The Project is legally described in Exhibit A attached hereto and made a part hereof. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan and to secure Assignor's obligations under the Note, Assignor has executed and delivered (i) Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing (the "**Deed of Trust**") made by Assignor to the trustee named therein for the benefit of Assignee and encumbering the Project, and (ii) the other Loan Documents. All instruments, agreements and certificates governing, evidencing, guaranteeing or securing the Loan, as the same may be amended, modified, supplemented, extended, or renewed from time to time, are referred to in this Assignment as the "**Loan Documents**."

C. In connection with the Project, Assignor's predecessor in interest (**HARRIS ENTERPRISES, L.L.C.**, a Utah limited liability company ("**Harris**")) and City have entered into that certain Agreement for Development of Land Between Layton City and Harris Enterprises LLC dated as of February 14, 2019 and recorded on March 1, 2019 in the official records of Davis County, Utah as Entry No. 3145909 (the "**Development Agreement**"), whereby, *inter alia*, City agreed to rezone the Project in exchange for Harris agreeing to develop the Project in accordance with applicable City rules, regulations and codes.

D. As a condition precedent to the funding of the Loan by Assignee, Assignee has required, as security for the performance of Assignor's obligations under the Loan Documents, that Assignor execute and deliver to Assignee an assignment of Assignor's interest in the Development Agreement, and that the City consent to said assignment on the terms and conditions contained in the attached Consent.

NOW, THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in order to induce Assignee to enter into the Loan Agreement and make the advances thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment; Security Interest.

(a) Assignment and Security Interest. As additional security for Assignor's obligations under the Loan Documents and all other obligations of Assignor which are secured by the Deed of Trust in favor of Assignee, Assignor hereby assigns, conveys and transfers to Assignee, and grants to Assignee a first priority security interest in, all of Assignor's right, title, interest, privileges, benefits and remedies in, to and under the Development Agreement and any amounts to be paid thereunder. It is expressly understood and agreed by Assignor and the City, by its execution of the attached City Consent, that Assignee does not hereby assume any of Assignor's obligations or duties concerning the Development Agreement, unless and until Assignee exercises its rights hereunder and under the Development Agreement.

(b) Performance of Obligations by Assignee. As more particularly set forth in Section 3 below, and subject to the conditions set forth therein, Assignee may, at its option, upon written notice to the City expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Assignor's obligations under the Development Agreement, exercise any or all of the rights and remedies granted to Assignor under the Development Agreement as if Assignee had been an original party to the Development Agreement. City, by its execution of the attached City Consent, agrees that any required consent of the City or any third party has been given or is waived by City.

2. Definitions. For purposes of this Assignment, terms which are denoted in this Assignment by the first letter of each word being capitalized, but which are not otherwise defined in this Assignment, shall have the respective meanings assigned to such terms in the Loan Agreement.

3. Actions by Assignee. Assignee shall not exercise its rights under this Assignment until the occurrence and continuation of an Event of Default (as defined in the Loan Agreement) under the Loan Documents. Upon the occurrence of such an Event of Default, Assignee may, at its option, upon written notice to the City expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Assignor's obligations under the Development Agreement, exercise any or all of the rights and remedies granted to Assignor under the Development Agreement as if Assignee had been an original party to the Development Agreement. Upon giving such notice expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Assignor's obligations under the Development Agreement, Assignee shall satisfy all obligations of Assignor, including all defaults of Assignor under the Development Agreement occurring prior to the time Assignee gives such notice to the City; provided, however, in the event a default by Assignor is not reasonably curable by Assignee within any time limitations or deadlines under the Development Agreement, Assignee shall have such longer period of time as may be reasonably necessary to effect such cure, so long as Assignee promptly cures such defaults and at all times diligently pursues such cure. Any notice given by Assignee to the City under this Assignment shall be given in the same manner and at the same address for the City as set forth in the Development Agreement.

4. Power of Attorney. Upon the occurrence and continuation of an Event of Default, Assignee shall have the right (and Assignor hereby irrevocably constitutes and appoints Assignee as its attorney-in-fact, which power is coupled with an interest, to do so) to demand, receive and enforce Assignor's rights with respect to the Development Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of Assignor, and to do any and all acts in the name of Assignor in the name of Assignee with the same force and effect as Assignor could do if this Assignment had not been made.

5. Representations, Warranties and Covenants of Assignor. Assignor hereby certifies, represents, warrants and covenants to Assignee as follows:

(a) The Development Agreement is in full force and effect.

(b) Assignor has full title and right to assign its interest in the Development Agreement to Assignee pursuant to this Assignment.

(c) Other than City's consent, no consent or approval of any person is required for the execution and delivery of this Assignment.

(d) Assignor has delivered to Assignee a true and complete copy of the executed counterpart of the Development Agreement, together with all amendments and modifications thereto.

(e) Except for this Assignment, no other assignment of all or any part of any interest of Assignor in and to the Development Agreement has been made which remains in effect.

(f) There exists no monetary default under the Development Agreement, nor, to the best knowledge of Assignor, any non-monetary default or any event or conditions which, with notice or the passage of time or both, would constitute such a monetary or non-monetary default or would result in a breach of the Development Agreement or would give any party thereto the right to terminate the Development Agreement.

(g) No offsets, credits or defenses to the payment or performance of any obligation under the Development Agreement exist.

(h) Assignor shall not assign, transfer or hypothecate (other than to Assignee) the whole or any part of its interest under the Development Agreement.

(i) Assignor shall obtain the prior written consent of Assignee, before entering into any agreement that amends, alters, modifies or terminates the Development Agreement. Assignee shall not unreasonably withhold or delay its consent to an amendment or modification of the Development Agreement, so long as Assignor shall have consented to such amendment or modification and as long as such amendment or modification does not materially and adversely affect Assignee's security for the Loan or the rights and benefits of Assignor under the Development Agreement.

(j) Assignor agrees to perform and comply in all respects with all the terms, conditions, covenants and requirements by it to be performed or observed in this Assignment and the Loan Documents.

6. Performance by Assignor. Assignor shall at all times diligently enforce its rights in, under and to the Development Agreement, unless otherwise directed by Assignee in writing, and shall, at Assignor's sole cost and expense, appear in and defend Assignee in any action or proceeding in any way connected with the Development Agreement, and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Development Agreement.

7. Indemnification by Assignor. Assignor hereby agrees to pay and protect, defend, and indemnify and hold Assignee harmless from, for and against, any and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) to which Assignee may become exposed, or which Assignee may incur, in connection with the Development Agreement exercising its rights under this Assignment.

8. Limitation on Liability. Nothing in this Assignment shall be deemed to be or construed to be an agreement by Assignee to perform any covenant of Assignor under the Development Agreement unless and until it obtains title to the Project by power of sale or judicial foreclosure or deed in lieu thereof or obtains possession of the Project pursuant to the terms of the Deed of Trust or otherwise.

9. Waiver. No course of dealing on the part of Assignee and no delay or failure by Assignee to exercise any right which Assignee may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its respective rights, remedies or powers hereunder unless so agreed in writing by Assignee, and the waiver by Assignee of a default by Assignor hereunder shall not constitute a continuing waiver or any other default or of the same default on any other occasion.

10. Cumulative Remedies. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Assignee may have under the Loan Agreement or the other Loan Documents at law, or otherwise.

11. Severability. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Assignment or of the other Loan Documents.

12. Amendment. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

14. Successors and Assigns. This Assignment shall be binding upon Assignee and Assignor and their respective successors and assigns, and shall inure to the benefit of Assignee and its respective successors and assigns.

13. Termination. Upon the satisfaction of all obligations of Assignor to Assignee under the Loan Agreement, the Note and the other Loan Documents and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing said obligations, this Assignment shall automatically terminate. Assignee hereby agrees, upon termination of this Assignment to execute a release of this Assignment and all further documents, if any, necessary or required in order to evidence the termination of this Assignment.

14. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF ASSIGNOR, CITY OR ASSIGNEE OR ANY PRINCIPAL THEREOF).

15. Notices. All notices given under this Assignment shall be in writing and shall be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt (or on the date when proper delivery is refused). Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Assignor shall be effective service on Assignor for all purposes.

To Assignor: **7TH WEST PARTNERS, LLC**
67 S. Main Street, Suite 300
Layton, Utah 84041
Attention: David S. Bailey

To Assignee: **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION**
405 S. Main Street, Suite 100
Layton, Utah 84041
Attention: Justin Thorn

with a copy to: **SNELL & WILMER L.L.P.**
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attn: Brian D. Cunningham, Esq.

18. Counterpart. This Assignment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but also such counterparts shall together constitute one and the same instrument.

19. Priority. The parties acknowledge and agree that the lien and charge of Assignor's Deed of Trust is superior to the lien and charge, if any, of the Development Agreement upon the Project.

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IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the date first set forth above.

7TH WEST PARTNERS, LLC
a Utah limited liability company

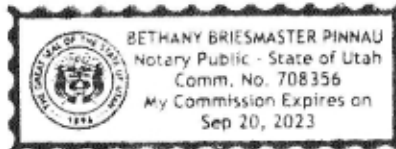
By: *[Signature]*
Name: David Bailey
Title: Manager

"Assignor"

State of Utah)
) :ss.
County of Davis)

On this 4th day of October, in the year 2019, before me Bethany B. Pinnau, a notary public, personally appeared DAVID BAILEY, an individual, the manager of 7TH WEST PARTNERS, LLC, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)



[Signature]
Notary Signature

**ALTA COMMITMENT FOR TITLE INSURANCE
EXHIBIT "A"
LEGAL DESCRIPTION**

ISSUED BY
STEWART TITLE GUARANTY COMPANY

File No.: 509705

PARCEL 1:

Lot 404, LAYTON MARKET CENTER PHASE IV, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah.

PARCEL 1A:

Benefits, if any, accruing to Parcel 1, pursuant to that certain Maintenance and Easement Agreement dated February 11, 1997, and recorded February 19, 1997, as Entry No. 1305042, in Book 2096, at Page 1451, of Official Records.

Tax ID No. 10-220-0404

This page is only a part of a 2016 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.

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File No.: 509705

ALTA Commitment For Title Insurance 8-1-16 (4-2-18)

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CONSENT TO ASSIGNMENT AND ESTOPPEL AGREEMENT

The undersigned, **LAYTON CITY**, a municipal corporation of the State of Utah (the "**City**") acknowledges to **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION** ("**Assignee**"), that the City is party to that certain Agreement for Development of Land Between Layton City and Harris Enterprises LLC dated as of February 14, 2019 and recorded on March 1, 2019 in the official records of Davis County, Utah as Entry No. 3145909 (as the same may be amended, modified, supplemented, extended, or renewed from time to time, the "**Development Agreement**") with the predecessor in interest (**HARRIS ENTERPRISES LLC**, a Utah limited liability company) to **7TH WEST PARTNERS, LLC**, a Utah limited liability company, with respect to certain rights under the Development Agreement (the "**Assignor**"), and that Assignor's rights, title and interests in and to the Development Agreement have been, or will be, further assigned by Assignor to the Assignee pursuant to an Assignment of Development Agreement of approximately even date herewith (as the same may be amended, modified, supplemented, extended, or renewed from time to time, the "**Assignment of Development Agreement**") by and between Assignor and Assignee, the City hereby consents to such assignment to Assignee. Capitalized terms used herein without definition shall have the meanings given to such terms in the Assignment of Development Agreement.

In connection with the Loan and the assignment of the Development Agreement by Assignor to the Assignee, the City hereby certifies, represents, warrants and covenants to the Assignee that:

1. Representations, Warranties and Covenants of City. The City hereby agrees to the terms and conditions of the Assignment of Development Agreement and certify, represent, warrant and covenant to Assignee that:

(a) There are no other agreements in existence between the City and Assignor relating to the Project, other than the Development Agreement.

(b) The Development Agreement has not been altered, amended or modified since the date of its original execution, and is presently in full force and effect.

(c) As of this date, each of City and Assignor have fulfilled all of its duties and obligations under the Development Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Development Agreement. To the best of City's actual knowledge, and as of this date, Assignor has fulfilled all of its duties and obligations under the Development Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Development Agreement.

(d) The City acknowledges and approves the assignment of the Development Agreement to Assignee as security for the Loan, consents to the same and Sections 1(b) and 3 of the Assignment of Development Agreement.

(e) Whenever the City shall deliver any notice or demand to Assignor with respect to the Development Agreement, the City, as applicable, shall, at the same time, deliver to Assignee a copy of such notice or demand.

(f) The City shall take no action to terminate or cancel the Development Agreement for any reason including any breach by Assignor unless and until it shall have given Assignee thirty (30) days prior written notice advising Assignee of the action proposed to be taken and the reasons therefor. During such thirty (30) day period, Assignee may, at its option, and without relieving Assignor of any of its obligations under any Loan Document, the Development Agreement or hereunder, take any actions necessary in order to eliminate the reasons for the proposed action of City.

(g) In the event of a breach or a default by Assignor under the Loan Documents and the subsequent foreclosure of the Project or acceptance of a deed in lieu thereof by Assignee, Assignee, upon satisfying all of Assignor's obligations under the Development Agreement shall be entitled to all of the rights and benefits of Assignor under the Development Agreement. It is expressly understood and agreed that Assignee does not hereby assume any of Assignor's obligations or duties concerning the Development Agreement, unless and until Assignee forecloses on the Property.

(h) The City warrants that this Consent to Assignment and Estoppel Certificate and the Development Agreement have been duly authorized, are legal and binding upon the City, and are enforceable in accordance with their terms against Development Agreement.

(i) During the term of the Loan, the City shall not enter into any agreement with Assignor to modify the Development Agreement or any attachment thereto without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed.

2. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested (except for any notice address which is a post office box, in which case notice may be given by first class mail), through the United States Postal Service to the addresses shown below, or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail, shall be deemed given two (2) Business Days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

To Assignor: **7TH WEST PARTNERS, LLC**
67 S. Main Street, Suite 300
Layton, Utah 84041
Attention: David S. Bailey

To Assignee: **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION**
405 S. Main Street, Suite 100
Layton, Utah 84041
Attention: Justin Thorn

with a copy to: **SNELL & WILMER L.L.P.**
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attn: Brian D. Cunningham, Esq.

If to City: **LAYTON CITY CORPORATION**
437 North Wasatch Drive
Layton, Utah 84041
Attention: Alex R. Jensen, City Manager

[Remainder of Page Intentionally Left Blank.]

The terms of this Consent to Assignment and Estoppel Certificate shall supersede and control over any inconsistent provisions in the Development Agreement.

Dated: October 3, 2019.

LAYTON CITY
a municipal corporation of the State of Utah

Scott Freitag
Mayor, Scott Freitag

Approved as to form:

Angela Crane
October 1, 2019

State of Utah)

County of Davis)
:ss.

On this 3rd day of October, in the year 2019, before me Kimberly S Read, a notary public, personally appeared Scott Freitag, an individual, a Mayor of Layton City, a _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

Kimberly S Read
Notary Signature

