



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE**

When recorded return to:

**FIDELITY NATIONAL TITLE
ATTN: MICHELLE BURTON**

**One E. Washington St.
Suite 450
Phoenix, AZ 85004**

DATE/TIME: 09/07/2010 1358
FEE: \$16.00
PAGES: 7
FEE NUMBER: 2010-084018



Escrow No. Z1008479

**Assignment and Assumption of
Developer Rights**

Unofficial

WHEN RECORDED RETURN TO:

Landsmith Appreciation Fund, LLC
1900 University Avenue, 2d Floor
E. Palo Alto, CA 94303
Attn: Acquisitions

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPER RIGHTS**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPER RIGHTS ("Assignment") is dated as of the 2d day of September, 2010 by and between FNBN-RESCON I LLC, a Delaware limited liability company ("Assignor") and Landsmith Appreciation Fund, LLC, a California limited liability company ("Assignee").

A. Assignor, by reason of that certain Assignment and Assumption of Declarant's Rights and Developer's Rights dated as of the 23rd day of August, 2010 by and between SunWest Valley Developers, Inc. and Assignor and recorded September 7, 2010 in the Official Records of Pinal County, Arizona as Document No. Unrecorded hereto is the Declarant and Developer under that certain Declaration of Covenants, Conditions, Restrictions and Easements for McClellan Meadows recorded March 28, 2006 in the Official Records of Pinal County, Arizona as Document No. 2006-043290 (together with any amendments or supplements thereto, collectively, "Declaration"). All capitalized terms in this Assignment shall have the same meanings given them in the Declaration unless otherwise indicated.

B. Assignor desires to assign, transfer, convey and set over to Assignee, pursuant to Section 1.19 of the Declaration, the rights, privileges and obligations of Developer under the Declaration, and Assignee desires to accept and assume such assignment, in accordance with the terms and conditions hereinafter set forth.

C. Concurrently herewith, Assignee is acquiring from Assignor, the real property described in Exhibit "A" attached hereto (the "Property").

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

1. Incorporation of Recitals. Recitals A and B are incorporated herein and made a part hereof.

2. Assignment of Developer Rights. Effective as of the date hereof, Assignor does hereby, sell, transfer, assign, convey and deliver to Assignee "as is" and without

representation, warranty or recourse, all of Assignor's right, title and interest, if any and to the extent held by Assignor, its rights as Developer in and under the Declaration.

3. Assumption of Developer Rights. Effective as of the date hereof, Assignee hereby accepts the Assignment from Assignor described in Section 2. and assumes and accepts the above assignment, and agrees to perform all the covenants, agreements, duties, responsibilities and obligations of Assignor arising from and after the date hereof resulting from such assignment and assumption and to be liable for all liabilities and obligations of Assignor so assigned arising from and after the date hereof.

4. Indemnification. Assignor agrees to indemnify, defend and hold harmless Assignee from and against any and all losses, costs, damages, expenses, claims, suits or demands (including reasonable attorneys' fees) arising from any obligation of the Assignor assigned and assumed hereunder arising prior to the date hereof in connection with the Declaration. Assignee agrees to indemnify, defend and hold harmless Assignor from and against any and all losses, costs, damages, expenses, claims, suits or demands (including reasonable attorneys' fees) arising any obligation assigned and assumed hereunder from and after the date hereof in connection with the Declaration.

5. Miscellaneous.

A. Further Assurances. Assignor further covenants and agrees that, from time to time, at Assignee's request and without further consideration, Assignor shall execute and deliver to Assignee such other documents and instruments and take such further actions as Assignee may reasonably request to more effectively vest in Assignee all of Assignor's rights and benefits contemplated hereby.

B. Authority. Each of the parties signing this Assignment hereby warrants and represents that each party has the full legal power, authority and right to execute, deliver and perform the obligations under this Assignment, that this Assignment has been duly authorized by all requisite actions on the part of such warranting party, and that no remaining action or third party action is required to make this Assignment binding upon such party.

C. Representations and Warranties. Assignor represents and warrants to Assignee that Assignor has not previously assigned, pledged or transferred any of Assignor's rights as the Declarant or the Developer under the Declaration with respect to the Property.

D. Successors and Assigns. This Assignment shall inure to the benefit, and be binding upon, each of the parties hereto and their respective successors and assigns.

E. Choice of Law. This Assignment and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Arizona, without regard to choice or conflict of laws rules.

F. Counterparts. This document may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one

and the same agreement.

ASSIGNOR:

FNBN-RESCON I LLC, a Delaware limited liability company

By: STEARNS BANK NATIONAL ASSOCIATION,
servicing agent for FNBN-RESCON I LLC

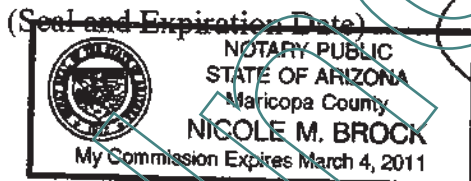
By: Thomas Hosier

Name: Thomas Hosier, CCIM

Its: Vice President

State of ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this 2nd day of September
2010 by Thomas Hosier, Vice President of Stearns Bank National
Association.



Nicole Brock
Notary Public

ASSIGNEE:

LANDSMITH APPRECIATION FUND, LLC,
a California limited liability company

By: _____

Name: James L. Breitenstein

Its: MANAGER

State of California
County of Santa Clara

On Sep 1, 2010 before me, Lisa Werderman, a notary public, personally appeared James L. Breitenstein, 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 is true and correct.

Witness my hand and official seal.

Signature [Signature] (Seal)



EXHIBIT "A"

THE 102 LOTS (THE PROPERTY)

Unofficial

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel No. 1:

Lots 196 through 298 inclusive of McClellan Meadows, according to plat of record in the Office of the County Recorder of Pinal County, Arizona in Cabinet F, Slide 175.

Unofficial