

177293-DMM
WHEN RECORDED, RETURN TO:

America First Federal Credit Union
4051 South 1900 West
Roy, Utah 84067
Attn: Commercial Real Estate Department

Loan No. 4695055601

Tax Parcel Nos. 51-511-0001 and 51-511-0002

**DEED OF TRUST
AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS
AND FIXTURE FILING**

THIS DEED OF TRUST AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND FIXTURE FILING (“Deed of Trust”), made this 2 day of July, 2024, by **KC GARDNER RIVERWOODS 2, L.C.**, a Utah limited liability company, as TRUSTOR, whose address is 201 South Main Street, Suite 2000, Salt Lake City, UT 84111; Cottonwood Title Insurance Agency, Inc., as TRUSTEE, whose address is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121; and **AMERICA FIRST FEDERAL CREDIT UNION d/b/a AMERICA FIRST CREDIT UNION**, whose address is 4051 South 1900 West, Roy, Utah 84067, Attn: Commercial Real Estate Department, as BENEFICIARY.

WITNESSETH:

Trustor, hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, and hereby grants to Beneficiary, as secured party, a security interest in the following described real and personal property:

A. **Real Property.** All right, title, interest and estate of Trustor in and to the real property in Utah County, Utah legally described on Exhibit “A” attached to and incorporated in this Deed of Trust by reference (the “Property”):

B. **Assigned Contracts.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to the following (the “Contract Rights”) to the extent applicable to the Property or the improvements constructed or to be constructed thereon (the “Improvements”) to the extent the same are assignable:

(1) All contracts and agreements relating to the planning, design, engineering, or architecture of the Improvements;

(2) All drawings, models, plans, specifications, budgets, cost estimates, bid packages, bids, and other related documents relating to the development or construction of the Improvements;

(3) All rights of Trustor as developer, declarant or otherwise under any restrictive covenants, planned unit development, condominium or other documents relating to the design, construction, use and sale of improvements on the Property;

(4) All contracts and agreements relating to the installation, construction or demolition of any of the Improvements, including all retainages, payment and performance bonds, performance escrows, and reimbursement agreements with any governmental agencies described in or required by any of the foregoing;

(5) All contracts and agreements relating to the development of the Property or the Improvements, including all contracts with government authorities granting entitlements or development or reimbursement rights with respect to the Property, appraisals, soils reports, feasibility studies, environmental assessment reports, and engineering, mechanical and wetlands reports;

(6) All contracts and agreements between Trustor and any utility company, water company or user association, or telecommunications company for the purpose of: (a) furnishing electricity, natural gas or oil, telephone, sewer, water, cable television, internet or other such services to the Property; (b) providing hook-ups, connections, lines or other necessary laterals or tie-ins to the Property and the Improvements constructed or to be constructed on the Property, including any "will serve" letters benefiting the Property; or (c) granting any such utility or other company access to the Improvements or to space in or on the Property or the Improvements to provide service to the Property;

(7) All contracts and leases granted by Trustor, as lessor, to any individual or entity for the use of roof-top space or other areas on the Improvements or the Property for the placement of telecommunications equipment, antennae or transmission devices, or for the placement of billboards, signs or other advertising media;

(8) All contracts and agreements for marketing, leasing, advertising, use, or sale of the Improvements or any portion of the Improvements;

(9) All contracts and agreements relating to the management of the Property and the Improvements, or with any franchisor relating to the operation or use of the Improvements;

(10) All security deposits, connection fees, prepayments, reservation fees and other payments made by Trustor with respect to any of the foregoing; and

(11) All modifications, amendments, substitutions and replacements of any of the foregoing.

C. **Awards.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property or of any Improvements now or hereafter situate thereon or of any estate or easement in the Property (including any awards for change of grade of streets); and

(2) The proceeds of insurance paid on account of partial or total destruction of the Improvements now or hereafter located upon the Property or any portion thereof (regardless of whether or not Trustor is required to carry such insurance under this Deed of Trust or any other Loan Document).

D. **Construction Materials.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all building materials, supplies and inventories acquired by Trustor and delivered to the Property for use in connection with or for incorporation into the Improvements on the Property.

E. **Equipment.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All machinery, equipment, goods, supplies, appliances, floor coverings, furnishings, window coverings, security systems, communications systems and equipment, artwork, light fixtures, and other articles of tangible personal property of Trustor used or acquired for use on the Property;

(2) All attachments, accessories and accessions thereto and all substitutions and replacements thereof and all parts therefor.

F. **Fixtures And Interests.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All buildings, improvements, renovations, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments upon, and all renewals and replacements of, any of the foregoing and which are owned or acquired by Trustor and which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property;

(2) All easements, licenses, streets, ways, alleys, roads, passages, rights-of-way (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or any portion of the Property; and

(3) All decreed and undecreed water or water rights, ditches or ditch rights, reservoirs or reservoir rights, well, spring, seepage and pond rights, and all other types of rights to the ownership of water, tributary, nontributary and not nontributary, which are underlying, appurtenant to or customarily or historically used upon or associated with the Property, all water and ditch company stock relating to the Property, and all rights to naturally occurring oil, gas, minerals, geothermal resources, timber and crops under, through, upon, or appurtenant to the Property.

G. **Intangibles.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All general intangibles of every nature and intellectual property owned by Trustor pertaining to the Property or the Improvements including, without limitation, any software, and any trade names, service names, trademarks, service marks, marketing materials, telephone numbers, domain names and any other names, numbers or materials used solely to identify, advertise or promote the Property or the Improvements excluding the name "Gardner," "Gardner Group" or any derivations thereof; and

(2) All now existing or hereafter acquired chattel paper, accounts, deposit accounts, payment intangibles, letter of credit rights, supporting obligations, good will and other intangible personal property owned by Trustor and pertaining to the Property or the Improvements.

H. **Permits and Licenses.** All right, title, interest and estate of Trustor, now existing or hereafter acquired, in and to all permits, franchises, privileges, grants, consents, licenses, authorizations and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities (including, without limitation, the City of Provo, Utah, and Utah County, Utah) to or for the benefit of Trustor and utilized in connection with the development, construction or operation of the Improvements.

I. **Rents, Leases, Issues, Etc.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Property or any portion of the Property;

(2) All cleaning, security and other deposits and any prepaid rent held or received by Trustor from tenants pursuant to or under the terms of any leases affecting the Property; and

(3) All rights of Trustor under guaranties made by third-parties with respect to leases affecting the Property, including, but not limited to, the right to enforce and receive payment under such guaranties.

J. **Tenements and Hereditaments.** All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, rights, privileges and appurtenances belonging, relating, or in any way appertaining to any of the Property, or any portion of the Property, or which shall hereafter in any way belong, relate or in any way appertain thereto (including, without limitation, any and all development rights, air rights or similar or comparable rights), and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property or any portion of the Property.

K. **Proceeds and Products.** All cash and noncash proceeds and all products of any of the foregoing, including, without limitation, insurance proceeds.

All of the foregoing is called the "Trust Estate."

FOR THE PURPOSE OF SECURING: (1) payment of all obligations now or hereafter arising pursuant to or otherwise related or connected to the Term Loan Promissory Note, dated the same date as this Deed of Trust, executed by Trustor (as the same may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Note"), which Note evidences an indebtedness of Trustor to Beneficiary (the "Loan") in the original principal sum of TWELVE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$12,300,000.00) together with interest, costs, and expenses, as provided in the Note, payable to the order of Beneficiary at the times, and in the manner and with interest as set forth in the Note, together with any extensions, renewals, modifications, and future advances thereof or thereunder; (2) the performance of each agreement of Trustor contained in this Deed of Trust; (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms of this Deed of Trust or the Note (collectively with any other document or instrument evidencing or securing the Loan, as each may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Documents"), together with interest as provided in the Loan Documents; and (4) payment of all obligations under any other promissory note or evidence of indebtedness of Trustor in favor of Beneficiary which recite that they are secured by the lien of this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. **Preservation of Trust Estate.** To keep the Trust Estate in good condition and repair; except as contemplated by the approved plans and specifications for the improvements to the Property, not to remove or demolish any building thereon; subject to the provisions of Sections 2 and 9 below, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Trust Estate; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; and to do all other acts which from the character or use of the Trust Estate may be reasonably necessary, the specific enumerations herein not excluding the general.

2. **Hazard Insurance.** To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on the Property in the amounts and types described below:

(a) During any period of construction, builder's risk extended coverage insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, motor vehicles, aircraft, smoke, theft, vandalism, malicious mischief, and other risks from time to time included under extended coverage policies in an amount not less than one hundred percent (100%) of the full replacement value of the Improvements. All policies secured and carried in accordance with this Section 5.1(a) shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Beneficiary as loss payee, and shall name Beneficiary as an additional insured.

(b) During any period of construction, workmen's compensation insurance against liability arising from claims of workmen with respect to and during the period of any work on or about the Property.

(c) Following any period of construction, insurance against loss or damage to the Property, the buildings, improvements and fixtures thereon and all personalty used in connection with the Property by fire, vandalism, malicious mischief, and any of the risks covered by insurance of the type now known as "Causes of Loss - Special Form" or comparable insurance in an amount not less than 100% of the full replacement value of the Property, the buildings, improvements and fixtures thereon. Such insurance policy or policies shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Lender as loss payee, and shall name Beneficiary as an additional insured.

(d) Equipment and machinery insurance covering vessels, machinery, piping and other equipment, provided the Property contains equipment of such nature, and insurance against loss of use arising from any such breakdown, in such amounts as are reasonably satisfactory to Beneficiary.

(e) If the Property is located in a special flood hazard area as identified by the Federal Insurance Administration, federally subsidized flood insurance covering the risk of damage to the buildings, fixtures, personalty and other improvements located upon the Property caused by flooding in the total initial principal amount of the Note or for the maximum amount of subsidized insurance available, whichever is less. In lieu of such flood insurance, Trustor shall submit to Beneficiary evidence satisfactory to Beneficiary that no part of the Property is, or will be, within an area designated as a flood hazard area by the Federal Insurance Administration.

(f) Commercial General Liability insurance applicable to the Trust Estate in the minimum amounts of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Such

liability insurance shall be issued by one or more insurance companies reasonably satisfactory to Beneficiary and shall name Beneficiary as an additional insured.

(g) Such other insurance and in such amounts as may from time to time reasonably be required by Beneficiary against the same or other hazards.

All policies of insurance shall be issued by insurance companies approved by Beneficiary and such approval shall not be unreasonably withheld, conditioned or delayed. All policies of casualty insurance shall have included therein a standard mortgagee protection clause. All such policies shall contain a provision that such policies will not be canceled or materially amended or altered, including reduction of coverage, without at least 30 days prior written notice to Beneficiary. In event of loss, Trustor shall give immediate notice to Beneficiary, who, if such loss is in excess of \$250,000, may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss if such loss is in excess of \$250,000 directly to Beneficiary instead of to Trustor and Beneficiary jointly. So long as no Event of Default has occurred and is continuing, (a) if the insurance proceeds are less than \$250,000, such proceeds shall be paid directly to Trustor to be held and used to restore the Property to as near as possible to the condition of the Property prior to such event of loss, but only to the extent the Property is susceptible to such restoration, (b) if the insurance proceeds are greater than \$250,000 or if the preceding item (a) does not apply, such proceeds will be paid to Beneficiary, and (i) so long as no Event of Default has occurred and is continuing, Beneficiary will make insurance proceeds available to reimburse Trustor on a work-in-progress basis for the out-of-pocket costs and expenses incurred by Trustor in restoring the Property to as near as possible to the condition of the Property prior to such event of loss, to the extent the Property is susceptible to such restoration, and (ii) if an Event of Default has occurred and is continuing or if the preceding item (b)(i) does not apply, Beneficiary may elect to either make such proceeds available for restoration of the Property or apply such proceeds to the Trustor's obligations under the Loan.

3. **Evidence of Title.** To deliver to, pay for and maintain with Beneficiary until the indebtedness and other obligations secured by this Deed of Trust are paid and performed in full, such evidence of title as Beneficiary may reasonably require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. **Defense of Title.** To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Trust Estate, or the rights or powers of Beneficiary or Trustee, and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all actual out-of-pocket court costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. **Taxes and Assessments.** To pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Trust Estate, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Trust Estate, if any; to pay, when due, all encumbrances, charges, and liens with interest on the Trust Estate or any part thereof, which at any time appear to be prior or superior to the lien of this Deed of Trust and have not been previously consented to in writing by Beneficiary; and to pay all costs, fees and expenses of this Trust.

6. **Repayment of Advances by Beneficiary.** To pay immediately upon written demand from Beneficiary all sums expended under this Deed of Trust by Beneficiary or Trustee which are required by the terms hereof or the other Loan Documents to be reimbursed to Beneficiary with interest from the date of expenditure at the rate specified in the Note until paid, the repayment of which shall be secured by this Deed of Trust.

7. **No Junior Liens.** Subject to Trustor's contest rights set forth in Section 5.3 of the Term Loan Agreement between Borrower and Lender dated as of the date hereof (the "Loan Agreement"), to refrain from creating, authorizing or suffering the creation of any encumbrance against the Trust Estate unless Trustor has first obtained the written consent of Beneficiary.

IT IS MUTUALLY AGREED THAT:

8. **Protection of Beneficiary's Rights in Trust Estate.** Should Trustor fail to make any payment or to do any act provided in this Deed of Trust beyond all applicable notice or cure periods, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the Trust Estate, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the Trust Estate or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior to the lien of this Deed of Trust and not previously consented to in writing by Beneficiary; and (d) in exercising any such power, incur any liability, expend whatever amounts in their absolute discretion they may deem necessary therefor, including cost of evidence of title, employment of counsel, and payment of reasonable counsel fees.

9. **Condemnation.** Trustor shall provide Beneficiary with prompt notice of any actual commencement, or Trustor's receipt of written notice of any threatened commencement, of any proceedings under eminent domain, and of any event by which the Trust Estate or any part thereof is taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner. Upon any such instance, so long as no Event of Default has occurred and is continuing, (a) if the condemnation award is less than \$250,000 and does not include a taking of any portion of the Improvements, such proceeds shall be paid directly to Trustor to be held and used to restore the Property to as near as possible to the condition of the Property prior to such condemnation, but only to the extent the Property is susceptible to such restoration, (b) if the condemnation award is greater than \$250,000 or if the preceding item (a) does not apply, such proceeds will be paid to Beneficiary, and (i) so long as no Event of Default has occurred and is continuing and such taking does not include a taking of any portion of the Improvements, Beneficiary will make award proceeds available to reimburse Trustor on a work-in-progress basis for the out-of-pocket costs and expenses incurred by Trustor in restoring the Property to as near as possible to the condition of the Property prior to such taking, to the extent the Property is susceptible to such restoration, and (ii) if an Event of Default has occurred and is continuing or if the preceding item (b)(i) does not apply, Beneficiary may elect to either make such proceeds available for restoration of the Property or apply such proceeds to the Trustor's obligations under the Loan.

10. **Actions by Trustee.** At any time, and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Note for cancellation and retention, without affecting the liability of any person for the payment of the indebtedness secured by this Deed of Trust, Trustee may: (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction on the Property; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge of this Deed of Trust; (d) grant any extension or modifications of the terms of the Note; (e) reconvey without warranty all or any part of the Trust Estate; (f) take other or additional security for the payment of the obligations secured by this Deed of Trust. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters of fact shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

11. **Insurance Proceeds and Awards.** The collection of the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Trust Estate, and the application or release thereof as described above, shall not cure or waive any default or notice of default or Event of Default under this Deed of Trust or invalidate any act done pursuant to such notice.

12. **Non-Waiver.** Failure on the part of Beneficiary to enforce promptly any right under this Deed of Trust shall not operate as a waiver of such right and the waiver by Beneficiary of any default or acceptance of payment of any sum secured by this Deed of Trust after its due date shall not constitute a waiver of any other subsequent default.

13. **Default; Notice.** Time is of the essence hereof. An Event of Default shall occur under this Deed of Trust upon the occurrence and continuance of any of the following events after the applicable notice and cure periods as set forth in this Section 13 below, if any: a default by Trustor in the payment of any indebtedness evidenced by the Note or in the performance of any agreement under the terms of this Deed of Trust or pursuant to any of the Loan Documents; the appointment of a receiver or a trustee for Trustor; an assignment by Trustor for benefit of creditors; the insolvency of Trustor or the filing of a petition by or against Trustor in bankruptcy or pursuant to any law for the relief of debtors which is not dismissed within sixty (60) days; any Event of Default as defined in the Loan Agreement. Unless otherwise expressly provided by the terms of this Deed of Trust or any other Loan Document, if a default occurs, Beneficiary shall give written notice to Trustor and Trustor shall have cure rights with respect to such occurrence to Trustor as follows: (a) Trustor shall not be entitled to any notice regarding defaults with respect to regularly scheduled monthly payments under the Note, however, in the event of any other monetary default, Trustor shall have fifteen (15) days following receipt of written notice from Beneficiary in which to cure such default; and (b) in the event of a nonmonetary default, Trustor shall have thirty (30) days after receipt of written notice from Beneficiary specifying the nonmonetary default in which to effect a cure. However, if the nonmonetary default cannot reasonably be corrected within such thirty (30) day period, Trustor shall have an additional thirty (30) days to remedy such nonmonetary default if Trustor notifies Beneficiary of the manner in which the nonmonetary default shall be cured and if appropriate corrective action is instituted within the initial thirty (30) day period and is diligently pursued thereafter.

14. **Remedies.** If Trustor fails to cure a default following notice and lapse of the applicable cure period (as described above), Beneficiary, at Beneficiary's option, shall have the following nonexclusive, cumulative remedies:

(a) **Acceleration.** Beneficiary may declare all sums secured by this Deed of Trust to be immediately due and payable;

(b) **Exercise of Private Power of Sale.** Beneficiary may cause Trustee to execute a written notice of default and election to sell the Trust Estate to satisfy all obligations secured by this Deed of Trust;

(c) **Personal Property Remedies.** With respect to those portions of the Trust Estate that are personal property, Beneficiary may exercise any right available to Beneficiary as a secured party under the Utah Uniform Commercial Code as then in effect, or any other right available to Beneficiary under other applicable law;

(d) **Receiver.** Beneficiary, as a matter of right and without regard to the then value of the Trust Estate or the interest of Trustor therein, may apply to any court having jurisdiction over the subject matter to appoint a receiver for the Trust Estate;

(e) **Foreclosure as a Mortgage.** Beneficiary may foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court; and

(f) **Remedies Under Loan Documents.** Beneficiary may exercise any remedy available to Beneficiary under the terms of any of the other Loan Documents.

15. **Trustee's Sale.** If Beneficiary directs Trustee to exercise the private power of sale granted under this Deed of Trust, Trustee shall file such notice for record in each county where the Property or some part or parcel thereof is situated. After the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, as directed by Beneficiary and without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which the Trust Estate, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. In every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale or as otherwise provided by law. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Trust Estate so sold, but without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the interest rate provided in the Note from date of expenditure; (d) all other sums then secured by this Deed of Trust; and (e) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the Court Clerk of the District Court of the county in which the sale took place.

16. **Surrender of Possession After Foreclosure.** Trustor agrees to surrender possession of the Trust Estate to the Purchaser at the Trustee's sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

17. **No Remedy Exclusive.** No remedy conferred upon or reserved to Beneficiary or Trustee under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and concurrent and shall be in addition to every other remedy given under this Deed of Trust, the Note or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Beneficiary and Trustee may exercise their remedies singly, successively or concurrently against Trustor, any guarantor of Trustor's obligations under the Loan, the Trust Estate, and any other security for the Loan, at the sole and absolute discretion of Beneficiary. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In addition, Beneficiary or Trustee may proceed concurrently against the Property and any guarantor, and may start, delay, postpone, cancel or recommence any foreclosure proceeding (whether judicial or non-judicial) while pursuing such guarantors, all at the sole and absolute discretion of Beneficiary. No act of Beneficiary or Trustee shall be construed as an election to proceed under any particular remedy available to Beneficiary or Trustee under any Loan Document to the exclusion of any other remedy in the same or in any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary or Trustee.

18. **Successor Trustee.** Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Trust Estate or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named in this Deed of Trust or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

19. **Successors and Assigns, Interpretation.** This Deed of Trust shall apply to, inure to the benefit of, and bind Trustor, Trustee, Beneficiary, their successors and permitted assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

20. **Acceptance by Trustee; Resignation.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee. Trustee may resign as Trustee under this Deed of Trust by recording a resignation of trustee in the office of the county recorder of each county in which any part of the Property is located. A resignation of trustee shall not invalidate the lien and encumbrance of this Deed of Trust against the Trust Estate, or cause any negative legal consequence to the resigning Trustee.

21. **No Partnership.** Nothing contained in this Deed of Trust or in any Loan Document shall be construed as creating a joint venture or partnership between Trustor, Trustee and Beneficiary. There shall be no sharing of losses, costs and expenses between Trustor, Trustee and Beneficiary, and neither Beneficiary nor Trustee shall have any right of control or supervision, except as Beneficiary and Trustee may exercise their rights and remedies provided hereunder and in the Loan Documents. In addition, Trustor bears the risk of diminution in value of the Property and the Improvements due to changes in market conditions. Neither Trustee nor Beneficiary shall be liable to Trustor for any loss or potential loss to Trustor that results from Trustor's or Beneficiary's proper exercise of their remedies under the terms of the Loan Documents, including, but not limited to, claims based on delays in commencing or completing the foreclosure of the Property, claims that the commencement of foreclosure proceedings have adversely affected the marketability of the Property, or otherwise.

22. **Subrogation of Beneficiary.** Beneficiary shall be subrogated to the lien of any previous encumbrance of the Property discharged with funds advanced by Beneficiary under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

23. **Future Advances.** Trustor and Beneficiary agree and acknowledge that Beneficiary may elect to make additional advances under the terms of the Note or any of the other Loan Documents, and that any such future advances shall be subject to, and secured by, this Deed of Trust. Should the obligations secured by this Deed of Trust decrease or increase pursuant to the terms of the Note or any of the other Loan Documents, at any time or from time to time, this Deed of Trust shall retain its priority position of record until (a) the termination of the Loan Documents; (b) the full, final and complete payment of all such obligations; and (c) the full release and termination of the liens and security interests created by this Deed of Trust.

24. **Governing Law.** This Deed of Trust shall be construed according to the laws of the State of Utah, without giving effect to principles of conflicts of laws.

25. **Loan Charges.** Notwithstanding any provision in this Deed of Trust or in the Note, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the applicable laws of the State of Utah.

26. **Invalidity.** If any provision of this Deed of Trust should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust.

27. **Request for Notice.** Trustor requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address set forth above.

28. **Sale or Transfer of Trust Estate.** If all or any part of the Trust Estate or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person except as otherwise permitted by the Loan Documents), the Beneficiary shall require immediate payment in full of all amounts owed under the Note and this Deed of Trust.

29. **Inspection of Trust Estate.** Beneficiary or its agent may make reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

30. **Hazardous Substances.** Trustor shall comply with applicable Environmental Laws and shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property in violation of Environmental Laws. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal office uses and to maintenance of the Property.

Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law; provided, however, that it shall not be a default under this Deed of Trust if Trustor promptly notifies Beneficiary of the manner in which the remediation will take place and if the remediation is timely initiated and is diligently pursued thereafter. Beneficiary, at Beneficiary's cost, shall have the right, from time to time, during the continuance of this Deed of Trust, to acquire additional information about potential contamination of the Property by Hazardous Substances or about potential violation of Environmental Laws by inspecting the Property if Beneficiary reasonably believes Hazardous Substances exist on the Property in violation of Environmental Laws. In the event of a violation of applicable Environmental Laws affecting the Property, Beneficiary may make reasonable investigations of the Property at Trustor's expense.

Trustor shall indemnify, defend and hold Beneficiary harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Property, which Beneficiary may incur due to the making of the Loan, the exercise of any of Beneficiary's rights under this Deed of Trust, under any other Loan Document or otherwise. The foregoing indemnity shall apply: (a) whether or not the release of the Hazardous Substances was caused by Trustor, a tenant or subtenant of Trustor, or a prior owner or tenant of the Property; (b) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous

Substances on the Property. The obligations of Trustor under this paragraph 30 shall survive the foreclosure of this Deed of Trust, a conveyance in lieu of foreclosure, the repayment of the Loan proceeds and the release of the lien and encumbrance of this Deed of Trust. The foregoing indemnity shall not apply to a release of Hazardous Substances caused by Beneficiary or its employees, agents or contractors.

As used in this paragraph 30, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this paragraph 30, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

31. **Appraisals.** Trustor agrees to pay the cost of all appraisals and appraisal reviews required by Lender, in Lender's sole discretion (a) to comply with (i) any applicable statute or regulation, or (ii) the request or directive (whether or not having the force of law) of any regulatory authority with jurisdiction over Lender; or (b) at any time after the occurrence of an Event of Default. All such appraisal costs shall become a part of the Indebtedness secured hereby and shall be payable on demand, together with interest thereon at the highest rate applicable to any such Indebtedness.

32. **Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

33. **Contract Rights.** So long as no Event of Default has occurred and is continuing, (a) Borrower shall have the right to (i) collect and retain all rents, and (ii) exercise the rights of the landlord under the leases that are a part of the Contract Rights, in each case, as permitted by the Assignment of Leases, and (b) Borrower shall have the right to exercise all of the rights assigned to Lender in connection with the Contract Rights.

34. **Fixture Filing.** This Deed of Trust shall be effective as a fixture filing from the date of recordation hereof in accordance with Section 70A-9a-502 of the Utah enactment of the Uniform Commercial Code. In connection therewith, the addresses of Trustor, as debtor ("Debtor"), and of Beneficiary, as secured party ("Secured Party"), are set forth below. The following address of Beneficiary, as the Secured Party, is also the address from which information concerning the security interest may be obtained by any interested party:

- (a) Name and address of Debtors: KC Gardner Riverwoods 2, L.C.
201 South Main Street, Suite 2000
Salt Lake City, UT 84111
Attn: Christian K. Gardner
- With a copy to: Lamont R. Richardson
Parr Brown Gee & Loveless
101 S 200 E, Suite 700
Salt Lake City, UT 84111
- (b) Name and address of Secured Party: America First Federal Credit Union
4051 South 1900 West
Roy, Utah 84067

Attn: Commercial Real Estate Department

- (c) Description of the types (or items) of property covered by this Fixture Filing: See pages 1 through 4 above.
- (d) Description of real estate subject to this Fixture Filing, to which the collateral is attached or upon which it is located: See Exhibit "A" attached hereto.
- (e) Utah entity registration number: 8344049-0160


Some of the above described collateral is or is to become fixtures upon the above described real estate, and this Fixture Filing is to be filed for record in the public real estate records. This Deed of Trust secures an obligation secured by real property and any fixtures thereon and shall be governed by the provisions of Section 70A-9a-502 of the Utah enactment of the Uniform Commercial Code.

[SIGNATURE PAGE FOLLOWS]

TRUSTOR:

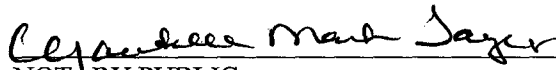
KC GARDNER RIVERWOODS 2, L.C.,
a Utah limited liability company

By: **KC GARDNER COMPANY, L.C.,**
a Utah limited liability company, its Manager

By: 
Name: Christian K. Gardner
Title: Manager

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

The foregoing instrument was acknowledged before me this 27th day of June, 2024, by Christian K. Gardner, who is a Manager of KC GARDNER COMPANY, L.C., a Utah limited liability company, which is the Manager of KC GARDNER RIVERWOODS 2, L.C., a Utah limited liability company.


NOTARY PUBLIC
Residing at Lehi County, Utah

My Commission Expires:
08-25-2024

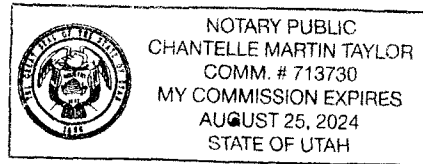


EXHIBIT "A"

PROPERTY DESCRIPTION

The following described real property is located in Utah County, Utah:

PARCEL 1:

All of Lots 1 and 2, PHASE VII, RIVERWOODS RESEARCH AND BUSINESS PARK, according to the official plat thereof, filed on October 1, 2008 as Entry No. 107880:2008 in the official records of the Utah County Recorder.

PARCEL 2:

Rights to the Common Facilities disclosed in the Master Declaration of Protective Covenants, Conditions and Restrictions for Riverwoods Research and Business Park recorded in Utah County, Utah on October 24, 1991 as Entry No. 42273 in Book 2847 at Page 618 and in the First Amendment to Master Declaration of Protective Covenants, Conditions and Restrictions for Riverwoods Research and Business Park recorded December 23, 1991 as Entry No. 50674 in Book 2869 at Page 154 and in the Second Amendment to Master Declaration of Protective Covenants, Conditions and Restrictions for Riverwoods Research and Business Park recorded September 10, 1992 as Entry No. 47431 in Book 2998 at Page 776 and in the Supplementary Declaration of Protective Covenants, Conditions and Restrictions for Riverwoods Research and Business Park recorded September 21, 1992 as Entry No. 49404 in Book 3004 at Page 277 and in the Third Amendment to Master Declaration of Protective Covenants, Conditions and Restrictions for Riverwoods Research and Business Park recorded June 2, 2000 as Entry No. 43568:2000.

Easement as established by that certain Reciprocal Grant of Easements recorded July 6, 1995 as Entry No. 43262 in Book 3715 at Page 132 and re-recorded July 10, 1995 as Entry No. 43655 in Book 3716 at Page 195.

A non-exclusive easement for ingress and egress purposes as established by that certain Declaration of Covenants, Restrictions and Easements recorded August 8, 2012 as Entry No. 66695:2012 and by that certain First Amendment to Ratification of Declaration of Covenants, Restrictions and Easements recorded March 1, 2013 as Entry No. 20518:2013.

Tax Parcel Nos. 51-511-0001 and 51-511-0002