

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

ASSIGNMENT OF LESSOR'S INTEREST IN LEASES

THIS ASSIGNMENT OF LESSOR'S INTEREST IN LEASES (the "Assignment"), is made and entered effective as of the 2 day of July, 2024, by **KC GARDNER RIVERWOODS 2, L.C.**, a Utah limited liability company ("Borrower"), in favor of **AMERICA FIRST FEDERAL CREDIT UNION d/b/a AMERICA FIRST CREDIT UNION** ("Lender").

R E C I T A L S :

- A. Borrower owns that certain real property located in Utah County, Utah (the "Property"), as more particularly described on Exhibit "A" attached to and incorporated in this Assignment by reference.
- B. Borrower applied to Lender for a loan (the "Loan") in the maximum principal amount of TWELVE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$12,300,000.00).
- C. The proceeds of the Loan will be used by Borrower as term financing for improvements constructed or to be constructed on the Property.
- D. Lender requires, as a condition precedent to making the Loan, that Borrower assign to Lender, as additional security for the Loan and for any other obligation and indebtedness of Borrower to Lender, whether presently existing or incurred in the future, all right, title and interest of Borrower in and to all leases now or hereafter affecting all or a portion of the Property, and the rents derived or to be derived therefrom.

NOW, THEREFORE, in consideration of Lender making the Loan to Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Assignment. Subject to the provisions set forth in Section 4 hereof, Borrower hereby grants, transfers, sets over and assigns to Lender all right, title and interest of Borrower in and to all leases now or hereafter affecting Borrower's interest in the Property (such leases and all other leases that Borrower, as lessor, has previously entered into or may enter into after the date hereof, affecting all or a portion of the Property are hereinafter collectively referred to as the "Leases"). In addition, subject to the provisions set forth in Section 4 hereof, Borrower hereby assigns to Lender:

- (a) All rents, income and profits arising from the Leases, and all renewals, modifications and extensions thereof, whether present or future and whether affecting all or a portion of the Property;

(b) All cleaning, security and other deposits and any prepaid rent held or received by Borrower from tenants pursuant to or under the terms of any of the Leases;

(c) All right, power and authority of Borrower to alter, modify or change the terms of the Leases or to surrender, cancel or terminate the same without the prior consent of Borrower; and

(d) All rights of Borrower under any guaranties made by third-parties with respect to the Leases, including, but not limited to, the right to enforce and receive payment under such guaranties.

2. Obligations Secured. This Assignment is given for the purpose of securing the following obligations of Borrower:

(a) The payment of the indebtedness of Borrower to Lender pursuant to the Term Loan Agreement dated as of the date hereof (as the same may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement"), evidenced by the Term Loan Promissory Note dated the same date as this Assignment (as the same may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Note") in the maximum principal amount of TWELVE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$12,300,000.00) executed by Borrower, as maker, and payable to the order of Lender, as payee, and all extensions, renewals and modifications thereof. The Note is secured, in part, by a Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing of even date herewith (as the same may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Deed of Trust") encumbering the Property.

(b) The payment of all other sums, with interest thereon, becoming due and payable to Lender under the provisions hereof or under the provisions of the Note or the Deed of Trust.

(c) The performance and discharge of each and every obligation, covenant and agreement of Borrower herein and in the Note and the Deed of Trust.

3. Representations and Covenants of Borrower. Borrower hereby represents to and covenants with Lender as follows:

(a) Borrower shall observe and perform in all material respects all of the obligations imposed upon the lessor in the Leases and shall not do or permit to be done anything to impair the security thereof;

(b) Any existing Leases are valid and, except as disclosed by Borrower to Lender in writing, to Borrower's knowledge enforceable and, to Borrower's knowledge, the lessees thereunder are not in default under any of the material terms thereof;

(c) If requested by Lender, not more than once in any twelve (12) month period (except following the occurrence and continuance of any Event of Default), Borrower shall obtain and deliver to Lender, as soon as reasonably possible after such request, tenant estoppel certificates pertaining to all existing Leases, duly executed and acknowledged by such tenants in form and substance required by such tenants' leases, and in the case of any Leases that do not require estoppels Borrower shall use commercially reasonable efforts to obtain and deliver to

Lender, as soon as reasonably possible after such request, tenant estoppel certificates pertaining to such Lease, duly executed and acknowledged by such tenants in form and substance reasonably acceptable to Lender;

(d) Except as disclosed to Lender in writing, no rent has been reserved, anticipated or assigned by Borrower in any of the existing Leases (except in connection with loans which are being paid in full as of the date hereof), and no rent in any of the future Leases shall be reserved, anticipated or assigned;

(e) Borrower shall not collect any of the rent, income and profits arising or accruing from the Leases more than thirty (30) days in advance of the time when the same become due under the terms of the Leases, and shall not discount any future accruing rents;

(f) Borrower has made no prior assignment of any security or other interest in any of the Leases to any person or entity (except for loans which are satisfied or are being satisfied on or prior to the date hereof);

(g) Borrower shall not execute any other assignment of leases or assignment of rents of all or a portion of the Property unless the same shall recite that it is subject to the terms hereof;

(h) Borrower shall not alter, modify, or change the material terms of any Lease for space in excess of 20,000 square feet (a "Material Lease"), or surrender, cancel or terminate the same without the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed;

(i) Borrower shall assign and transfer to Lender any and all further Leases and shall execute and deliver, at the request of Lender, all such further assurances and assignments of the Leases as Lender may from time to time reasonably require;

(j) Borrower possesses all requisite power and authority to enter into the Leases and to make the assignment of the Leases herein contained; and

(k) After the date of this Assignment, Borrower shall not enter into any new Material Lease affecting the Property except substantially on a form approved by Lender and only after Lender, in Lender's reasonable discretion, has approved the form and content of the Material Lease and the lessee named in the Lease in each such case, which approval will not be unreasonably withheld, conditioned, or delayed. Lender shall receive a copy of each executed Lease.

4. Effect of Assignment. Notwithstanding the provisions of this Assignment to the contrary, Borrower shall have the right to collect, when due, all rents, issues and profits from the Leases and to retain, use and enjoy the same and to exercise all other rights of the landlord thereunder so long as no Event of Default has occurred and is continuing under the Loan Agreement, this Assignment, the Note, the Deed of Trust or any and all documents or instruments relating thereto (collectively the "Loan Documents").

5. Rights of Lender upon Default by Borrower. Upon the occurrence and during the continuance of an Event of Default under the Loan Documents, without in any way waiving such default or Event of Default, Lender may, at Lender's option, take possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem

proper. In addition, upon the occurrence and during the continuance of an Event of Default, Lender may collect and receive all rents, issues and profits of the Leases, and all cleaning, security and other deposits held by Borrower under the terms of the Leases, with full power to make from time to time all alterations, renovations, repairs or replacements thereto as may be necessary to protect the interests of Lender with respect to the Leases. In furtherance of the foregoing, Lender may apply such rents, issues and profits to the payment of the following:

(a) The actual out-of-pocket cost of all such alterations, renovations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof, and keeping the same properly insured;

(b) All taxes, charges, claims, assessments, water rents and any other liens which may be prior to the lien of the Deed of Trust or have priority of payment over the Note, and to premiums for insurance, with interest on all such items; and

(c) The indebtedness secured hereby together with all costs and attorney fees, in such order of priority as to any of such items, as Lender in Lender's sole discretion may determine, subject, however, to any statutory rights of Borrower with respect to such applications.

6. Reinstatement after Event of Default. If Lender, upon any Event of Default, shall exercise Lender's option described in Section 5 above, then Lender, at its sole option, may accept a cure of an Event of Default upon Borrower having complied with all the terms, covenants and conditions of the Loan Documents and such other requirements as Lender may require in connection with accepting such cure. If Lender accepts a cure of an Event of Default, and no other Event of Default is then continuing, then Lender may agree in its discretion, but without any obligation to do so, to treat any provision in this Assignment or in any other Loan Document as if no Event of Default had ever occurred. Borrower shall thereupon hold the Property subject to the Deed of Trust and this Assignment as if Lender had not exercised any option hereunder. Nothing contained in this Assignment shall impair any right of Lender to exercise Lender's remedies upon any subsequent Event of Default or require Lender to refund to Borrower any rents, issues or profits of the Leases collected or received by Lender during any period of an Event of Default.

7. Indemnification. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Borrower shall and does hereby agree to indemnify Lender for and to hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in the Leases. Lender and Borrower agree to cooperate in the defense of all such claims and demands. Should Lender incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including actual out-of-pocket cost, expenses and reasonable attorney fees, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand, and upon the failure of Borrower so to do Lender may declare all sums secured hereby immediately due and payable.

8. Termination of Assignment. Upon the payment in full of all indebtedness secured hereby evidenced by a deed of reconveyance of the trust estate granted by the Deed of Trust, this Assignment shall automatically become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, supervisor or attorney of Lender showing any part of the indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of

this Assignment, and any person may and is hereby authorized to rely thereon. A demand on any lessee by Lender for the payment of the rent on any Event of Default claimed by Lender shall be sufficient notice to such lessee to make future payments of rent to Lender without the necessity for further consent by Borrower.

9. Releases and Extensions. Lender may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by Lender to the satisfaction of such indebtedness without prejudice to any of Lender’s rights hereunder.

10. Interpretation. The term “Leases” as used herein means the Leases hereby assigned or any extension or renewal thereof, and any leases subsequently executed by Borrower covering all or a portion of the Property. The term “Event of Default” has the meaning ascribed to it in the Loan Agreement. The captions which precede the paragraphs of this Assignment are for convenience only and shall in no way affect the manner in which any provision hereof is construed. In this Assignment, whenever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and conversely. All obligations of Borrower hereunder are joint and several.

11. Notices. Except as otherwise provided in this Assignment or in any other document evidencing or securing the Loan, whenever Lender or Borrower desire to give or serve any notice, demand, request or other communication with respect to this Assignment or any such other document, each such notice shall be in writing and shall be effective only if the notice is delivered by personal service, by nationally-recognized overnight courier, or by mail, postage prepaid, addressed as follows:

If to Lender, to: America First Federal Credit Union
4051 South 1900 West
Roy, Utah 84067
Attn: Commercial Real Estate Department
Facsimile No. (801) 827-7323

If to Borrower, to: 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: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111
Attn: Lamont R. Richardson

Any notice delivered personally or by courier shall be deemed to have been given when delivered. Any notice sent by facsimile shall be presumed to have been received on the date transmitted. Any notice sent by mail shall be presumed to have been received five (5) business days after deposit in the United States mail, with postage prepaid and properly addressed. Any party may change its address by giving notice to the other party of its new address in the manner provided above.

12. Miscellaneous. Nothing herein contained and no act done or omitted by Lender pursuant to the powers and rights granted Lender herein shall be deemed to be a waiver by Lender of Lender’s rights and remedies under the Loan Documents or under any other promissory note, deed of trust or security agreement evidencing and securing any other obligations of Borrower to Lender. The

right of Lender to collect the indebtedness and to enforce any other security therefor owned by Lender may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by Lender hereunder. This Assignment is binding upon and inures to the benefit of Lender and any holder of the Note or the Deed of Trust, and is binding upon and inures to the benefit of Borrower and Borrower's successors and assigns. This Assignment may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute only one instrument. This Assignment shall be construed in accordance with the laws of the State of Utah, and venue for any action relating to this Assignment shall be in Utah County, Utah.

[SIGNATURE PAGE FOLLOWS]

DATED effective as of the date first above written.

BORROWER:

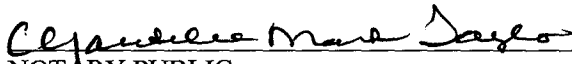
KC GARDNER RIVERWOODS 2, L.C.,
a Utah limited liability company

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 Utah County, Utah

My Commission Expires:
DB-25-2024

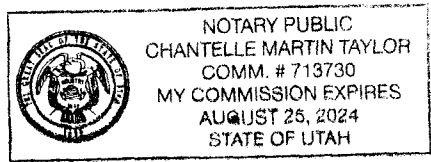


EXHIBIT "A"

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