

AFTER RECORDING, PLEASE RETURN TO:

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Tax Parcel No. 51-511-0001  
51-511-0002  
51-511-0003

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "**Declaration**"), dated as of the 23 day of July, 2012, is executed by KC GARDNER RIVERWOODS HOLDING, L.L.C., a Utah limited liability company (the "**Declarant**").

RECITALS:

A. Declarant owns the following tracts of real property located in Utah County, State of Utah:

(1) Certain real property the legal description of which is set forth on Exhibit "A" attached hereto and made a part hereof (the "**Building 1 Parcel**");

(2) Certain real property the legal description of which is set forth on Exhibit "B" attached hereto and made a part hereof (the "**Building 2 Parcel**"); and

(3) Certain real property, the legal description of which is set forth on Exhibit "C" attached hereto and made a part hereof (the "**Building 3 Parcel**").

B. Declarant desires to establish with respect to the Building 1 Parcel, the Building 2 Parcel and the Building 3 Parcel certain reciprocal rights of ingress and egress, and certain covenants and restrictions, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant makes the following declarations, creates the following easements and establishes the following covenants and restrictions, all of which apply to, bind, affect and run with title to each Parcel.

1. Definitions. Certain terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) "**Access Areas**" means all areas within each Parcel intended to be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, but does not include any portion of a Parcel on which a Building or Related Improvement is located at any time or from time to time.

(b) “**Benefitted Parties**” means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests, invitees and licensees.

(c) “**Building or Related Improvement**” means a building or other principal structure on a Parcel (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items).

(d) “**Building Ratio**” means the ratio for each Building determined by dividing the square footage of each Building by the total square footage of both Buildings combined.

(e) “**Common Area**” means, collectively, all of those areas on any Parcel which are not occupied by a Building or Related Improvement. The Common Area shall include, but not be limited to, Access Areas and Parking Areas. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building or Related Improvement to which they are attached and are not a part of the Common Area.

(f) “**Common Utility Lines**” means those Utility Lines which are installed to provide the applicable service to more than one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single Building shall be considered a Separate Utility Line.

(g) “**Governmental Authorities**” means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a Parcel or its use, operation, maintenance or development.

(h) “**Improvements**” means all improvements, of whatever kind or character, to the Access Areas and Parking Areas on a Parcel including, without limitation, any landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

(i) “**Index**” means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the “**Bureau**”) “All Items” for All Urban Consumers, U.S. City Average (1982–84 = 100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as agreed to by each of the Owners will be substituted therefor.

(j) “**Laws**” means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Parcels and the Building or Related Improvement from time to time in effect.

(k) “**Mortgage**” means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner’s interest in a Parcel or a portion of a Parcel as security for the payment of indebtedness.

(l) “**Mortgagee**” means the mortgagee, beneficiary or other secured party under a Mortgage.

(m) “**Occupant**” means any Person that, by virtue of a contract to purchase, a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or portion of any Parcel.

(n) “**Owner**” means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Utah County, Utah of a fee interest in any Parcel or portion of any Parcel. In the event that, at any time, more than one Person owns the fee interest in a Parcel, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee’s sale or any arrangement or proceeding in lieu thereof.

(o) “**Parcel**” means Building 1 Parcel, Building 2 Parcel, or Building 3 Parcel.

(p) “**Parcels**” means Building 1 Parcel, Building 2 Parcel, and Building 3 Parcel.

(q) “**Parking Areas**” means the areas on any Parcel that are used at any time and from time to time for parking in conformance with this Declaration.

(r) “**Performing Owner**” means the Owner that performs any installation, operation, maintenance, repair or replacement of any Utility Lines.

(s) “**Person**” means a natural person or a legal entity.

(t) “**Project Roadway**” means the roadway serving the project and cross-hatched on the plat for the project and labeled as “A Reciprocal Cross Access and Utility Easement for the use of Lots 1, 2 & 3 of Phase VII, Riverwoods Research Business Park”, which plat is attached hereto as Exhibit “D.”

(u) “**Separate Utility Lines**” means those Utility Lines which are installed to provide the applicable service to only one Parcel.

(v) “**Utility Lines**” means those facilities and systems for transmissions of utility services, including, but not limited to, storm water drainage and storage systems or structures or both; fire protection, irrigation and domestic water mains and manholes; lift stations; sewer lines and systems; fire and landscape water sprinkler systems (including

without limitation, fire risers); telephone lines and manholes; generators and related equipment and switch gear, electrical conduits or systems, gas mains and other public or private utilities.

(w) **“Waste Removal Area”** means that portion of Parcel 3 containing dumpsters and otherwise designated by the Owner of Parcel 3 as a waste-removal area.

2. Grant of Easements. Declarant hereby creates the following easements appurtenant to each Parcel for the benefit of the Benefitted Parties of each of the other Parcels, which easements shall be appurtenant to each of the other Parcels:

(a) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas on each Parcel for pedestrian use by the Benefitted Parties of each other Parcel.

(b) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas on each Parcel for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of each other Parcel.

(c) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and the Parking Areas, to access all Utility Lines.

(d) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across Parcel 3 to access the Waste Removal Area for purposes of waste disposal in accordance with applicable Laws.

(c) A non-exclusive, perpetual right, privilege and easement for the benefit of each Parcel to construct, maintain, repair, replace, relocate and operate Utility Lines in the Project Roadway.

(i) General. The foregoing non-exclusive easement may only be used to such extent as may be reasonably necessary for the use of the Parcels for the purposes permitted by this Declaration. All such Utility Lines shall be installed and maintained below the ground level or surface of such easement except for ground mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or Related Improvements located in each Parcel). The installation, operation, maintenance, repair and replacement of such Utility Lines (A) shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in each Parcel, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Lines, (C) shall not reduce or unreasonably impair the usefulness or functionality of the Utility Lines of the other Owner, (D) shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (E) shall be performed in a good and workmanlike manner, with due care, and in compliance with all Laws and (F) shall not unreasonably interfere with the

pedestrian and vehicular access or the Parking Areas. For non-routine maintenance and repair that will impact the utilization of the Utility Lines of the other Owner, the Performing Owner shall provide written notice to the other Owner prior to performing any such non-routine maintenance and repair.

(ii) **Separate Utility Lines.** To the extent any construction, maintenance, repair or replacement relates to Separate Utility Lines, the Owner of the benefitted Parcel shall, (A) to the extent applicable, comply with Section 4 of this Declaration; (B) repair to the original specifications any damage to any Building or Related Improvement, signs, Common Utility Lines or Common Area resulting from such installation, operation, maintenance, repair and replacement; and (C) shall provide as-built plans for all such Separate Utility Lines to the Owners of all Parcels upon which such Separate Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby.

(iii) **Common Utility Lines.** All costs associated with the installation, operation, maintenance, repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels in accordance with the Building Ratio. Except as may be otherwise provided herein, the installation, operation, maintenance, repair and replacement of Common Utility Lines may be performed by the Owner of any Parcel served thereby. The Performing Owner shall bill the Owner(s) of the other Parcel(s) served thereby for each such Owner's proportionate share in accordance with the Building Ratio of the costs incurred by the Performing Owner not more often than monthly in arrears and such costs shall be payable within thirty (30) days after receipt of an invoice therefor and, if requested, reasonable supporting documentation.

(iv) **Relocation.** At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on such Owner's Parcel, provided that any such relocation (A) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (C) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (D) shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (E) shall provide for the original and relocated area to be restored to the original specifications, and (F) shall not unreasonably interfere with the pedestrian and vehicular access or the Parking Areas. At any time and from time to time the Owner of a Parcel may relocate onto its Parcel any Separate Utility Lines that are then present on the other Owner's Parcel, provided that in relocating such separate Utility Lines, the Owner relocating the Separate Utility Lines shall comply with subsections (A), (D) and (F). Further, if the Utility Lines on the other Parcel are accessed or the

surface of the other Parcel is disturbed in such relocation, the original area shall be restored to its original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(v) Additional Easements. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

(vi) Non-interference. Each Owner shall not interrupt, damage, or otherwise interfere with the Separate Utility Lines of the other Owner, including without limitation, any generators, related equipment and switch gear

3. Parking. Declarant hereby creates a reciprocal, non-exclusive, perpetual easement for vehicular parking over and across the Parking Areas located on Building 1 Parcel, Building 2 Parcel and the Building 3 Parcel for the benefit of the Benefitted Parties of the Building 1 Parcel, Building 2 Parcel and the Building 3 Parcel. All Buildings or Related Improvements constructed on any Parcel shall be developed to comply with the Laws governing parking for the use proposed for the Parcel. The Parking Area on any Parcel shall provide at least such number of parking stalls as required to comply with Laws or as may be required by Governmental Authorities to provide for all required parking for the Building or Related Improvements located on such Parcel, without regard to any parking that may be available on any other Parcel. Notwithstanding the reciprocal parking rights set forth herein, no Parcel shall be developed in so intense a manner as to adversely impact the parking available on the other Parcels absent an express written agreement permitting such. Except as set forth in this Section 3, no Owner of a Parcel or its Benefitted Parties shall park on any other Parcel.

4. Alteration, Relocation or Changes to Access Areas and Parking Areas. The Owner of a Parcel shall be permitted to alter, relocate or change the configuration of the Access Areas and the Parking Areas on the Parcel which it owns at any time and from time to time but only upon strict compliance with the provisions of this Section.

(a) Any proposed alteration, relocation or other change shall comply with all Laws.

(b) Any proposed alteration, relocation or other change shall not, without the prior written consent of all Owners:

(i) Permanently reduce the number of parking stalls located on a Parcel below those required to be maintained in accordance with applicable Laws;

(ii) Unreasonably impact the rights of the Benefitted Parties of the other Parcels;

(iii) Modify or unreasonably obstruct any direct access areas or drive isles between a Parcel and 300 West and any other access or utility easements on

file with the Utah County Recorder's Office, including all access and utility easements depicted on that certain Phase VII Riverwoods Research and Business Park recorded in the Utah County Recorder's Office on October 1, 2008 as Entry No. 107880:2008.

(iv) Permanently reduce the Waste Removal Area in such a way that waste removal space required by applicable Laws is no longer available to the Owners and Benefitted Parties of the Parcels.

(c) The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

(d) The Owner proposing to make such alteration, relocation or change may not perform any work on, or stage any work from, any other Parcel without the consent of the Owner of the other Parcel, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with obtaining such consent, the Owner proposing to make such alteration, relocation or change shall provide copies of its preliminary plans to the Owner of the other Parcel prior to commencing such work for review and approval by the Owner of the other Parcel, which consent shall not be unreasonably withheld, conditioned or delayed. In the event an Owner (the "**Submitting Owner**") submits a preliminary plan to the Owner of the other Parcel (the "**Consenting Owner**") for its consent as required by this subsection (d), such preliminary plan shall be deemed approved if not disapproved in writing within twenty (20) days of the delivery of the preliminary plans to the Consenting Owner. In the event a Consenting Owner disapproves of such preliminary plans, the Consenting Owner shall, within such twenty (20) day period, deliver to the Submitting Owner the Consenting Owner's written objections to the preliminary plans which objections shall include a reasonably detailed description of what changes, if made, would cause the Consenting Owner to give its approval of the preliminary plans. The Submitting Owner shall, to the extent the Submitting Owner agrees with the Consenting Owner's requested changes, revise the preliminary plans and resubmit them to the Consenting Owner for its approval in accordance with the procedures set forth above in this subsection (d). Notwithstanding the foregoing to the contrary, an Owner shall not be required to obtain the consent of the other Owners to make any alteration, relocation or modification on such Owner's Parcel if such alteration, relocation or modification is required by Law, provided, the Owner making such alteration, relocation or modification shall give each of the other Owners at least thirty (30) days prior written notice of such change.

##### 5. Insurance and Indemnification.

(a) Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah on its Parcel a policy or policies of (i) commercial general liability, bodily injury, personal injury and property damage liability insurance ("**CGL Insurance Policy**") with combined single limits of at least Five Million Dollars (\$5,000,000) (which such limit will be increased on January 1, 2020, and on every fifth anniversary of such

date (each an “**Adjustment Date**”), by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date)) and (ii) replacement cost property insurance on each Building or Related Improvement.

(b) Each Owner shall name the other Owner as an additional insured under the CGL Insurance Policy described above.

(c) Each Owner shall, upon the reasonable request thereof from any other Owner, furnish to the Person making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. All such insurance maintained pursuant to this Section shall provide that such insurance shall not be canceled or amended without 10 days prior notice to the other Owner. Upon the reasonable request of any Owner made to the Owner of a Parcel in writing, the Owner of a Parcel shall cause the requesting Owner to be named as an additional insured on the policy of liability insurance maintained by the Owner of the Parcel.

(d) Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver.

(e) If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then the other Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the other Owner may do so and may then invoice the defaulting Owner for the expense incurred.

(f) The Owner of each Parcel hereby agrees to indemnify, defend and hold harmless the Owners and the Occupants of the Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorneys’ fees and reasonable attorneys’ fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Declaration, except to the extent caused by the



negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

6. Operation and Maintenance of the Parcels.

(a) Taxes and Assessments.

(i) Each Owner will pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels including any Common Areas located upon such Parcel. For purposes of this Declaration, "Taxes" will mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any Governmental Authority upon the land within each Parcel and/or any Improvements therein or thereon.

(ii) If any Owner fails to pay its share of Taxes prior to delinquency, any other Owner may pay such Taxes and the curing Owner may then bill the defaulting Owner for the expense incurred.

(iii) Each Owner will have the right, in good faith, to contest the amount of Taxes owing with respect to its Parcel; provided that such Owner will take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within each Parcel, including recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

(b) Each Owner, at its own cost and expense, will maintain, or cause to be maintained, its Parcel (including the Common Areas thereof) in a safe, clean, attractive, tenantable first-class condition. Each Owner agrees to maintain one trash bin in the Waste Removal Area and to contract and pay for waste removal from one of the trash bins. Notwithstanding the foregoing, each Owner will share all costs and expense, in accordance with the Building Ratio, relating to any maintenance or repairs of (i) the street-access curb cuts and main access entrance lanes and (ii) the loading drive-way. The Owner upon whose Parcel such Common Areas are located shall pay for such maintenance and repairs and the other Owner shall reimburse their portion of such costs and expenses within thirty (30) days of written demand for such reimbursement, which written demand shall include evidence of such costs and expenses

(c) Each Owner will be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel. Notwithstanding the foregoing, any such utility costs which are attributable to the Common Areas will be paid by the Owner of the Parcel containing the same.

7. Casualty.

(a) If any Building or Related Improvement or other Improvement situated on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building or Related Improvement or other Improvement is situated will promptly (i)

repair and/or reconstruct such Building or Related Improvement or other Improvement and also promptly remove debris and keep the affected portions of the Parcel neat, orderly and well maintained and covered during such repair or reconstruction; or (ii) promptly demolish the Building or Related Improvement and remove the debris and keep the Parcel (including the demolition area) neat, orderly and well maintained.

(b) Upon any damage or destruction to the Common Area on a Parcel the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, will promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Areas. If the damaged or destroyed Common Areas include or affect any entrances to the Parcels, access ways within the Parcels, or the Common Utility Lines, and the Owner of the affected Parcel does not promptly restore, repair or rebuild the damaged or destroyed Common Areas, then any one or all of the Owners of the other Parcel will have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Areas, in which event the electing Owner or Owners will effect such restoration, repair or rebuilding, and the Owner of the Parcel upon which such damage and destruction occurred will bear the actual out of pocket costs incurred to restore, repair and rebuild the affected Common Areas which affect any entrances to the Parcels, access ways within the Parcels or Common Utility Lines. If the Owner of the affected Parcel does not repair damaged or destroyed Common Areas, and no other Owner elects to effect such repair within 30 days after the date of the damage or destruction, then the affected Owner will promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered until subsequently improved or constructed upon. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Areas, the plans or specifications for such work will be subject to the prior written approval of Owners in accordance with Section 4(d). Each affected Owner will use all commercially reasonable due diligence to complete such restoration and repair of the Common Areas as expeditiously as possible with as little delay and as little disruption as circumstances permit.

8. Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of a Parcel, that portion of the award attributable to the value of the interest in the Parcel so taken will be payable to the Owner of such Parcel and no claim thereon will be made by any other Owner; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim will reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of a Parcel to be taken will promptly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner.

9. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall,

barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in this Declaration shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

10. Title and Mortgage Protection.

(a) No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

11. Estoppel. Each Owner shall, within fifteen (15) days after request from the other Owner, execute and deliver to the other Owner a written declaration certifying that such Owner is not in default under this Agreement or, to such Owner's knowledge, are there any defaults by the other Owner under this Agreement and that all costs and expenses due under this Agreement have been paid. Each Owner's Mortgagee and prospective purchasers shall be entitled to rely on such certification.

12. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated, but only by an instrument filed for record in the office of the County Recorder of Utah County, Utah that is executed by all of the Owners of the Parcels. The term of this Declaration is perpetual regardless of any change of ownership of the Parcels or the removal, alteration or destruction, in whole or in part, of a Building or Related Improvement; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

13. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner and any Person who acquires or comes to have any interest in any Parcel, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Parcel. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to

have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest in, or occupying a Parcel, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

14. Enforcement. In the event of a breach of any of the terms, covenants, conditions or restrictions hereof, including the payment of Taxes and assessments, by any Owner of any portion of any Parcel, and if such breach continues for a period of thirty (30) days after the defaulting Owner's receipt of a notice of such breach, or such longer period as may be reasonably required to cure such breach provided the defaulting Owner has commenced the cure of such breach with such thirty (30) day period and is diligently prosecuting the cure of such breach, any one or all of the Owners of the other Parcel shall be entitled forthwith and after written notice to such breaching party to perform any of the breaching party's obligations hereunder or to make any payment required hereunder, as the breaching party's attorney-in-fact, and by reason of so doing, the Owner taking such action shall not be liable or responsible for any loss or damage thereby sustained by the breaching party. All actual out of pocket, reasonable costs and expenses incurred by any Owner in performing any of the breaching Owner's obligations or in making any such payment shall be assessed against the defaulting Owner and, upon filing a notice of such assessment in the Utah County Recorder's Office, shall constitute a lien against the real property or the interest therein for which such payment or performance was made, but any such lien shall be and is hereby made subordinate to the lien of any first Mortgage covering any portion of the Parcels. The Owner of a Parcel or any portion of a Parcel shall also have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration the party prevailing in such action or arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered. In addition to the foregoing, if a defaulting Owner shall fail to pay another Owner amounts due by such defaulting Owner within thirty (30) days after delivery of written demand on the defaulting Owner, then: (i) a five percent (5%) late payment fee shall be added to the amount due on the thirty-first (31st) day; and (ii) the unpaid balance shall thereafter accrue interest at the rate of ten percent (10%) per annum.

15. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

16. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

17. Pronouns and Plurals. Whenever the contest may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

18. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules.

19. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

20. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

21. Time of Essence. Time is of the essence of this Declaration.

*(Signatures begin on following page)*

EXECUTED the day and year first above written.

“Declarant”

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

By: *Kem Gardner*  
Name: \_\_\_\_\_  
Its: *Manager*

STATE OF UTAH                    )  
  : ss.  
COUNTY OF                    )

On this 23<sup>rd</sup> day of July, 2012, personally appeared before me  
Kem Gardner, the Manager of KC GARDNER RIVERWOODS HOLDING, L.L.C., a  
Utah limited liability company, on behalf of said company.

*Raquel Cortez Cervantes*  
NOTARY PUBLIC  
Residing at:

My Commission Expires: 08/26/2014

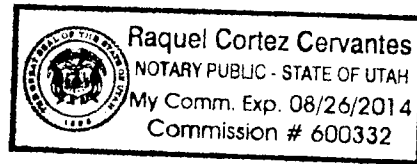


EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Building 1 Parcel

All of Lot 1, 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.

Tax Parcel Id. 51-511-0001

EXHIBIT "B"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Building 2 Parcel

All of Lot 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.

Tax Parcel Id. 51-511-0002





EXHIBIT "D"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Plat

(see attached)

**CONSENT OF LIENHOLDER**

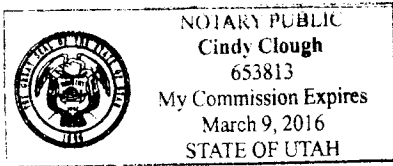
Zions Bank, National Association, as the holder of a lien encumbering the Property arising under that certain Construction Loan Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded November 24, 2008, as Entry Number 125114:2008 in the official records of Utah County, Utah, as amended, consents to the recording of this Declaration and subordinates its lien to this Declaration.

**Zions Bank, National Association**

By: Jeffrey A. Holt  
Name: Jeffrey A. Holt  
Title: Vice Pres.

State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me on July 27, 2012, by Jeffrey A. Holt, Vice President of Zions Bank, National Association.



Cindy Clough  
Notary Public