

Transaction No. ZFN-3182052

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12/5/2019 3:47:00 PM \$40.00  
Book - 10868 Pg - 8650-8659  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 10 P.

**WHEN RECORDED, RETURN TO:**

Zions Bancorporation, N.A.,  
dba Zions First National Bank  
Enterprise Loan Operations-UT RDWG 1970  
PO Box 25007  
Salt Lake City, UT 84125-0007

26-24-411-001  
26-24-411-003

**ASSIGNMENT OF LEASES**

This Assignment of Leases (the "Assignment") is made and executed this 22 day of November, 2019 (the "Closing Date"), by Gardner-Daybreak Office 1, L.C., a Utah limited liability company ("Borrower") and Zions Bancorporation, N.A., dba Zions First National Bank ("Lender").

RECITALS

A. Pursuant to the Promissory Note dated the Closing Date in which Borrower appears as "Borrower" and Lender appears as "Lender" and which is in the original principal amount of Nine Million Dollars (\$9,000,000.00) (the "Note"), and pursuant to the Construction and Term Loan Agreement dated the Closing Date wherein Borrower appears as "Borrower" and Lender appears as "Lender" (the "Loan Agreement"), Lender has loaned the proceeds of the Note to Borrower.

B. Pursuant to the Construction and Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated the Closing Date (the "Trust Deed") in which Borrower appears as "Trustor", and Lender appears as "Trustee" and "Beneficiary" and which encumbers the real property (the "Property") together with the improvements thereon located in Salt Lake County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Project"), Borrower has granted to Lender a lien on its leasehold interest in the Project to secure the Note pursuant to the Ground Lease Agreement effective as of July 2, 2019, in which Borrower appears as "ground lessee", and University of Utah, a body politic and corporate of the State of Utah appears as "ground lessor", and which is further evidenced by a Memorandum of Ground Lease dated July 2, 2019 (the "Ground Lease").

C. This Assignment also secures any and all obligations of Borrower to Lender arising now or in the future under or in connection with any interest rate derivative transactions, including without limitation, rate swaps, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options or any other similar transaction (including any option with respect

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to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, including without limitation, any interest rate hedging transactions under any ISDA Master Agreement and Schedule thereto to be entered into between Borrower and Lender, and all Confirmations (as such term is defined in such ISDA Master Agreement) between Borrower and Lender executed in connection therewith (collectively the "Interest Rate Hedging Transaction"), together with all renewals of, extensions of, modifications of, consolidations of and substitutions for any of the foregoing.

D. The following lease currently affects the Project: The Lease No. 36C25919L0018 dated as July 1, 2019, in which Borrower, appears as "Lessor", and The United States of America, acting through the designated representative of the Department of Veterans Affairs, appears as "Government" (the "Veterans Affairs Lease").

E. There have been and/or may be lease agreements entered into by Borrower and tenants of the Project, and other leases affecting the Project, or any building or improvement located on the Property, all subject to the terms and conditions of the Loan Documents.

F. Lender desires and Borrower agrees to further secure the Note and the Loan Agreement with an assignment of the leases affecting the Project, including, without limitation, the Veterans Affairs Lease.

### AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Assignment. Subject to the provisions of Section 2 of this Assignment, Borrower hereby absolutely and unconditionally assigns and transfers unto Lender all right, title, and interest of Borrower in and to all leases of the Project or any portion of the Project, now existing or hereafter created, including, without limitation, the Veterans Affairs Lease, together with all rents, subrents and other amounts received for the use of all or any portion of the Property or the Improvements, including without limitation, any and all rental agreements and arrangements of any kind for all or any portion of the Project now owned or hereafter acquired, and all proceeds from such leases, rents, subrents and other amounts received for the use of all or any portion of the Property or the Improvements, now or hereafter existing or entered into, together with all right, title and interest of Borrower in and to all other leases or subleases covering the Project or any portion of the Project, now or hereafter existing or entered into, together with all security deposits made by the lessee thereunder (the "Lessee") and together with all extensions, renewals, modifications or replacements thereof, as well as all guaranties of Lessee's obligations under any provisions thereof and under any and all extensions and renewals thereof (collectively the "Lease"). Notwithstanding anything to the contrary in this Assignment, the term "Lease" does not include the Ground Lease.

2. License to Collect. This Assignment shall inure to the benefit of Lender, its successors and assigns for the payment of the principal and interest provided to be paid in or by the Note, any amounts owing under the Interest Rate Hedging Transaction, the performance of the agreements of Borrower contained in the Loan Agreement and the Trust Deed, and the performance of the agreements of Borrower contained in the Loan Documents and any other document evidencing, securing, or relating to the disbursement or administration of the proceeds of the Note or any amounts owing under the Interest Rate Hedging Transaction (all of which agreements and obligations are collectively referred to as the "Obligation"), reserving to Borrower, however, a revocable (only during the continuance of an Event of Default), right and license only to collect, except as hereinafter provided, the rents, income, and profits accruing by virtue of the Lease as they respectively become due (the "License"), but not in advance, and to enforce the agreements of the Lease, as long as an Event of Default has not occurred and is not continuing.

3. Lender as Creditor of Lessee. Upon prior written notice from Lender to Borrower, if an Event of Default has occurred and is continuing, Lender (and not Borrower), shall be the creditor of Lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessee. Lender, however, shall not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Lender shall have the option to apply any monies received by Lender as such creditor towards the reduction of the principal or interest of the Obligation as Lender may elect.

4. Default Remedies of Lender. If an Event of Default has occurred and is continuing, the License of Borrower to collect rents, income, and profits shall cease and terminate. Lender would thereby be authorized at its option to enter and take possession of all or part of the Project, and to perform all acts necessary for the operation and maintenance of the Project in the same manner and to the same extent that Borrower might reasonably so act. In furtherance thereof, Lender shall be authorized, but shall be under no obligation, to collect the rents, income, and profits arising from the Lease, and to enforce performance of any other terms of the Lease including, but not limited to, Borrower's rights to fix or modify rents, sue for possession of the Project, or any part thereof, relet all or part of the Project, and collect all rents, income, and profits under such new lease. Lender shall, after payment of all proper costs, charges, and any damages, apply the net amount of income to the sums then due to Lender under the Obligation as set forth in the Loan Agreement. Lender shall have sole discretion as to the manner in which such net income is applied, and the items that shall be credited thereby.

5. Termination of Assignment. When Lender has been paid for the full amount of the Obligation and such payment is evidenced by a recorded satisfaction or release of the Trust Deed, this Assignment shall no longer be in effect and shall be void.

6. Notice to Lessee of Borrower's Default. Borrower shall irrevocably authorize each Lessee, upon demand and prior written notice from Lender of an Event of Default, to pay all rents, income, and profits under the Lease to Lender. In such situation, Lender shall not be liable to Lessee for the determination of the actual existence of any default claimed by Lender. Lessee shall have the right to rely upon any such notices of Lender that Lessee shall pay all rents, income,

and profits to Lender, without any obligation or right to inquire as to the actual existence of the default, notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim against Lessee for any rents paid by Lessee to Lender. Upon the curing of all Events of Default, Lender shall give Lessee written notice of such cure, and thereafter, until further notice from Lender, Lessee shall pay the rents, income, and profits to Borrower.

7. Assignment of Borrower's Interest in Lease. Lender shall have the right to assign Borrower's right, title, and interest in the Lease to any subsequent holder of the Trust Deed and to any person acquiring title to the mortgaged premises through foreclosure or otherwise. After Borrower shall have been barred and foreclosed of all right, title, interest, and equity of redemption in the premises, no assignee of Borrower's interest in the Lease shall be liable to account to Borrower for the rents, income and profits thereafter accruing.

8. Indemnification of Lender. Borrower shall pay, protect, defend, indemnify and hold Lender harmless of and from any and all liability, loss, or damage that Lender may incur under the Lease or by reason of this Assignment other than such liability, loss, or damage as may be occasioned by Lender's gross negligence or willful misconduct. Such indemnification shall also cover any and all claims that may be asserted against Lender by reason of any alleged obligation to be performed by Lender under the Lease or this Assignment. Nothing in this paragraph shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender including, without limitation, any liability under the Lease's covenant of quiet enjoyment in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Trust Deed and shall have been barred thereby of all right, title, interest, and equity of redemption in the premises. This Assignment shall not impose liability upon Lender for the operation and maintenance of the premises or for carrying out the Lease terms before Lender has entered and taken possession of the premises. Any loss or liability incurred by Lender by reason of actual entry and taking possession under the Lease or this Assignment or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower, except to the extent arising from Lender's gross negligence or willful misconduct. Such reimbursement shall include interest at the default rate set forth in the Note, and reasonable and documented costs, expenses, and attorneys' fees. Lender may, upon entry and taking of possession, collect the rents, income, and profits, and apply them toward reimbursement for the loss or liability.

9. Quality of Borrower's Title to Lease. Borrower represents itself to be the absolute owner of the Lease, with absolute right and title to assign it and the rents, income, and profits due or to become due thereunder; that the Lease, if existing, is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof or of the rents, income, and profits due or to become due thereunder; that, to Borrower's knowledge, there are no existing defaults under the provisions thereof on the part of any party; that to Borrower's knowledge, Lessee has no defense, setoff or counterclaim against Borrower; and that no rents, income, and profits payable thereunder have been or will hereafter be anticipated, discounted, released, waived, compromised, or otherwise discharged except as may be expressly permitted by the Lease. Borrower covenants not to cancel, abridge, surrender, or terminate the Veterans Affairs Lease or change, alter, or modify the Veterans Affairs Lease

(except as required by the express terms thereof), either to reduce the amount of the rents, income, and profits payable thereunder, or otherwise change, alter, abridge or modify the Veterans Affairs Lease (except as required by the express terms thereof), or make any subsequent assignment of the Lease, or consent to subordination of the interest of any Lessee in the Lease without the prior written consent of Lender. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease in violation of this Assignment without the written consent of Lender shall be null and void. Borrower may, so long as no Event of Default has occurred and is continuing, enter into, amend, change, alter, terminate, abridge or otherwise modify any Lease (other than the Veterans Affairs Lease, except as permitted herein).

10. Delivery of Necessary Instruments to Lender. Borrower shall execute and deliver to Lender and during the continuance of an Event of Default hereby irrevocably appoints Lender, its successors, and assigns as its attorney in fact to execute and deliver during the term of this Assignment, all further instruments as Lender may deem necessary to make this Assignment and any further assignment effective. The power hereby granted is coupled with an interest in the Project and is irrevocable.

11. Transfer of Title to Lessee; Cancellation of Lease. The Lease shall remain in full force and effect despite any merger of Borrower's and any Lessee's interest thereunder. In the event the Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Lender to be applied, at the election of Lender, to reduce the amount of the principal of the Obligation in the inverse order of maturity or to be held in trust by Lender as further security without interest for the payment of the principal and interest provided to be paid on the Obligation.

12. Lease Guaranties; Assignment of Lease; Alterations of Premises. Borrower shall not alter, modify, cancel or terminate any guaranties of the Veterans Affairs Lease without the written consent of Lender. Nor shall Borrower consent to any Veterans Affairs Lease assignment or subletting (except as permitted by the terms thereof), nor agree to a subordination of the Lease to any mortgage or other encumbrance, other than that of Lender, now or hereafter affecting the Project without Lender's prior written consent. Except as contemplated by the Loan Documents, Borrower shall not permit a material alteration of or addition to the Project by any Lessee without Lender's prior written consent unless the right to alter or enlarge is expressly reserved by or granted to such Lessee in the Lease, including the Veterans Affairs Lease.

13. Borrower to Ensure Continued Performance under Lease. Borrower shall not execute any other assignment of the Lease, of any interest therein, or of any rents payable thereunder. Borrower shall perform all of its covenants as Lessor under the Lease, and shall not permit to occur any release of liability of the Lessee under the Veterans Affairs Lease, or any withholding of rent payments by the Lessee under the Veterans Affairs Lease. Lender shall promptly receive from Borrower copies of all notices of default Borrower has sent to any Lessee. Borrower shall, at Lender's request, use commercially reasonable efforts to enforce the Lease and all remedies available to Borrower thereunder upon any Lessee's default thereunder on a commercially reasonable basis.

14. Changes in Obligation Terms. Notwithstanding any variation of the terms of the Obligation and/or the Trust Deed including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the real property subject to the Trust Deed, the Lease and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment.

15. Additions to and Replacement of Obligation. Lender may take security in addition to the security already given Lender for the payment of the principal and interest provided to be paid in or by the Obligation or by the Trust Deed or release such other security, and may release any party primarily or secondarily liable on the Obligation, may grant or make extensions, renewals, modifications, or indulgences with respect to the Obligation or Trust Deed and replacements thereof, which replacement of the Obligation or Trust Deed may be on the same or on terms different from the present terms of the Obligation or Trust Deed, and may apply to any other security thereof held by it to the satisfaction of the Obligation, without prejudice to any of its rights hereunder.

16. Future and Additional Leases. This Assignment shall apply and be effective with respect to any and all leases entered into by Borrower and any lessee which may cover or affect any portion of the Project, which lease(s) may be entered into at any time during the period the Obligation remains outstanding and secured by the Trust Deed, regardless of whether such lease(s) is/are in effect on the date this Assignment is executed. Upon the written request of Lender, Borrower shall give Lender prompt notice and provide Lender with a copy of any lease covering any portion of the Project it enters into, if the lease is not listed in this Assignment or is not in effect on the date of this Assignment. Upon notice from Lender to that effect, such lease shall be deemed included in this Assignment as though originally listed therein, and shall be subject to this Assignment in all respects.

17. Exercise of Lender's Rights. Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Obligation and Trust Deed. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

18. Amendment, Modification, or Cancellation of Assignment. No amendment, modification, cancellation, or discharge hereof (except by payment of the Obligations in full), or of any part hereof, shall be enforceable without Lender's prior written consent.

19. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given if provided in accordance with the terms and conditions of the Loan Agreement.

20. Binding Effect. All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Borrower and Lender.

21. Governing Law. This Assignment shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

22. Attorneys' Fees. Upon the occurrence of an Event of Default, Lender may employ an attorney or attorneys to protect Lender's rights under this Assignment, and Borrower shall pay Lender reasonable and documented attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such breach. Borrower shall also pay to Lender any reasonable and documented attorneys' fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Borrower or any guarantor as a debtor. If Lender exercises the power of sale contained in the Trust Deed or initiates foreclosure proceedings, Borrower shall pay all costs incurred and attorneys' fees and costs as provided in the Trust Deed.

23. Integrated Agreement and Subsequent Amendment. The Loan Documents, the Note, and the other agreements, documents, obligations, and transactions contemplated by this Assignment, constitute the entire agreement between Lender and Borrower with respect to the subject matter of these agreements, and may not be altered or amended except by written agreement signed by Lender and Borrower. PURSUANT TO UTAH CODE SECTION 25-5-4, BORROWER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENTS BETWEEN LENDER AND BORROWER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

All prior and contemporaneous agreements, arrangements and understandings between the parties to this Assignment as to the subject matter of this Assignment, are, except as otherwise expressly provided in this Assignment, rescinded.

24. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Assignment shall be sufficient for all purposes without producing or accounting for any other counterpart.

25. Defined Terms. Unless otherwise defined in this Assignment, capitalized terms used herein have the meanings given them in the Loan Agreement.

***[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]***

DATED: November 22, 2019.

BORROWER

**GARDNER-DAYBREAK OFFICE 1, L.C.,**  
a Utah limited liability company

By: KC Gardner Company, L.C.,  
a Utah limited liability company,  
Manager of Gardner-Daybreak Office 1, L.C.

By: [Signature]  
Name: Christian Gardner  
Title: Manager of KC Gardner Company, L.C.

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

The foregoing instrument was acknowledged before me this 22 day of November, 2019, by CHRISTIAN GARDNER, Manager of KC Gardner Company, L.C., a Utah limited liability company, Manager of Gardner-Daybreak Office 1, L.C., a Utah limited liability company.



[Signature]  
NOTARY PUBLIC  
Residing at: DAVIS COUNTY, UT





**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

The real property located in Salt Lake County, State of Utah, and more particularly described as follows:

The leasehold estate created by the Lease executed by the University of Utah, a body politic and corporate of the State of Utah as Lessor and Gardner-Daybreak Office 1, L.C., a Utah limited liability company as Lessee, dated July 2, 2019 as disclosed by a Memorandum of Ground Lease recorded July 3, 2019 as Entry No. 13022678 in Book 10799 at Page 5359, the following described land, to-wit:

Lot C-101, DAYBREAK SOUTH STATION PLAT 2 SUBDIVISION, Amending Lot T4 of the Kennecott Master Subdivision #1 Amended and Also Amending Lot O-103 of the Kennecott Daybreak Plat 4 Subdivision, recorded April 2, 2019 as Entry No. 12961128 in Book 2019P of Plats at Page 110, on file in the office of the Salt Lake County Recorder, State of Utah.