

WHEN RECORDED, RETURN TO:

America First Federal Credit Union  
4646 South 1500 West, Suite 130  
Riverdale, Utah 84405  
Attn: Commercial Real Estate Department

ENT 110117 : 2019 PG 1 of 11  
**Jeffery Smith**  
**Utah County Recorder**  
2019 Oct 24 04:31 PM FEE 40.00 BY MG  
RECORDED FOR Backman Orem  
ELECTRONICALLY RECORDED

Loan No. 726642201

Tax Parcel Nos. 51-344-0001  
51-318-0005  
51-381-0001

**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 24<sup>th</sup> day of October, 2019, by DPRE RIVERWOODS I, LLC, Utah limited liability company, DPRE RIVERWOODS II, LLC, Utah limited liability company and DPRE RIVERWOODS III, LLC, Utah limited liability company (collectively, the "Borrower"), in favor of AMERICA FIRST FEDERAL 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 NINETEEN MILLION FIVE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$19,530,000.00), which Loan is evidenced by, among other documents, that certain Term Loan Agreement of even date herewith (the "Loan Agreement"). All capitalized terms used but not defined herein have the meanings ascribed to such terms in the Loan Agreement.

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, whether presently existing or incurred in the future, all right, title and interest of Borrower in and to any and all leases now or hereafter affecting all or any portion of the Property, and the rents, income and profits 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 Section 4 below, Borrower hereby grants, transfers, sets over and assigns to Lender all right, title and interest of Borrower in and to any and all leases now or hereafter affecting Borrower's interest in the Property or any portion thereof (such leases and any and all other leases that Borrower, as lessor, has previously entered into or may enter into from time to time after the date hereof, affecting all or a portion of the Property, are collectively referred to herein as the "Leases"). In addition, 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 evidenced by the Term Loan Promissory Note dated the same date as this Assignment (the "Note") in the maximum principal amount of NINETEEN MILLION FIVE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$19,530,000.00), 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 Term Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing of even date herewith (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:

- (a) Borrower hereby represents and warrants to Lender as follows as of the date hereof:

i. To Borrower's knowledge, any existing Leases are valid and, except as disclosed by Borrower to Lender in writing, enforceable and the lessees thereunder are not in default under any of the terms thereof;

ii. Except as previously disclosed to Lender in writing, no rent has been reserved, anticipated or assigned in any of the existing Leases, and no rent in any of the future Leases shall be reserved, anticipated or assigned to any person or entity other than Lender;

iii. Borrower has made no prior assignment of any security or other interest in any of the Leases to any person or entity;

iv. Borrower possesses all requisite power and authority to enter into the Leases and to make the assignment of the Leases herein contained.

(b) Borrower hereby covenants with Lender as follows:

i. Borrower shall observe and perform 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;

ii. If requested by Lender, 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 all then-existing Leases, duly executed and acknowledged by such tenants in form and substance reasonably acceptable to Lender or as otherwise required under such tenant's Lease;

iii. Borrower shall not collect any of the rent, income and profits arising or accruing from the Leases more than one month in advance of when the same become due under the terms of the Leases, and shall not discount any future accruing rents except as expressly set forth in the Leases, including, without limitation any security or other deposits;

iv. 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;

v. Except pursuant to an express right in any of the Leases, Borrower shall not modify the term, decrease the monetary obligations or increase the obligations of the landlord in any material respect under any of the Leases, or surrender, cancel or terminate the same without the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed;

vi. 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 provided that the obligations of Borrower shall not be increased; and

vii. Borrower shall obtain Lender's prior approval for any Lease with a Major Tenant, such approval not to be unreasonably withheld, conditioned or delayed. "Major Tenant" means any tenant that hereafter occupies 8,000 rentable square feet or more of the rentable square feet of space in the Improvements located on the Property, or for a term in excess of 5 years. Lender shall approve or disapprove (along with providing specific objections thereto) any Lease with a Major Tenant within ten (10) business after written request by Borrower therefor and, if no such approval or disapproval is received by Borrower, Lender shall have deemed to have approved such Lease.

4. Effect of Assignment. 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 so long as there is no continuing Event of Default by Borrower under the Leases or there is no continuing Event of Default under the Loan Documents.

5. Rights of Lender upon Default by Borrower. Upon and during the continuance of an Event of Default, Lender, without in any way waiving such Event of Default, may, at Lender's option but without obligation to do so, to the extent permitted by applicable law, enter upon 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, subject to the rights of tenants under Leases; provided, however, that Lender in no way shall be or be deemed to be a mortgagee-in-possession. In addition, 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 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 attorneys' 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 Default. If Lender, upon any Event of Default by Borrower hereunder, shall exercise Lender's option herein and if such Event of Default shall be remedied and all necessary charges and expenses incurred by reason thereof paid, then Lender and Borrower shall each be restored to and reinstated in their respective rights and estates as if an Event of Default had not 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 actually incurs under the Leases 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, except to the extent any claims, liability, loss, or damage was the result of Lender's willful misconduct or gross negligence. 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 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 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 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, renewal or modification thereof or any amendment or supplement

thereto, and any leases subsequently executed by Borrower covering all or a portion of the Property, in each in case in accordance with the terms and provisions of this Assignment and of the other Loan Documents. 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, by mail, postage prepaid, addressed as follows:

If to Lender, to:	America First Federal Credit Union 4646 South 1500 West, Suite 130 Riverdale, Utah 84405 Attn: Commercial Real Estate Department
If to Borrower, to:	DPRE Riverwoods I, LLC DPRE Riverwoods II, LLC DPRE Riverwoods III, LLC 299 South Main Street Suite 2450 Salt Lake City, Utah 84111 Attention: Scott T. Swallow

Any notice delivered personally or by courier shall be deemed to have been given when delivered. 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 inures to the benefit of Lender and any holder of the Note or the Deed of Trust, and is binding upon 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:**

**DPRE RIVERWOODS I, LLC,**  
a Utah limited liability company

By: Dakota Pacific Real Estate  
Partners III, LP, a Delaware limited  
partnership, its sole member

By: Dakota Pacific RE III GP, LLC, a  
Delaware limited liability company, its  
general partner

By: DPRE Management, LLC, a  
Utah limited liability company,  
its manager

By: Lane Critchfield  
Name: Lane Critchfield  
Title: Manager

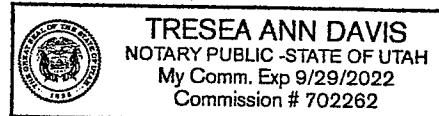
STATE OF UTAH )  
: ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of October, 2019,  
by Lane Critchfield, who is the Manager of DPRE MANAGEMENT, LLC, a Utah limited liability  
company, the manager of DAKOTA PACIFIC RE III GP, LLC, a Delaware limited liability  
company, the general partner of DAKOTA PACIFIC REAL ESTATE PARTNERS III, LP, a  
Delaware limited partnership, the sole member of DPRE RIVERWOODS I, LLC, a Utah limited  
liability company.

Tresea Ann Davis  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:

September 29, 2022



**DPRE RIVERWOODS II, LLC,**  
a Utah limited liability company

By: Dakota Pacific Real Estate  
Partners III, LP, a Delaware limited  
partnership, its sole member

By: Dakota Pacific RE III GP, LLC, a  
Delaware limited liability company, its  
general partner

By: DPRE Management, LLC, a  
Utah limited liability company,  
its manager

By:   
Name: Lane Critchfield  
Title: Manager

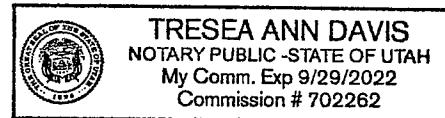
STATE OF UTAH )  
: ss.  
COUNTY OF )

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company, the general partner of DAKOTA PACIFIC REAL ESTATE PARTNERS III, LP, a  
Delaware limited partnership, the sole member of DPRE RIVERWOODS II, LLC, a Utah limited  
liability company.

Tresea Ann Davis  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:

September 29, 2022



**DPRE RIVERWOODS III, LLC,**  
a Utah limited liability company

By: Dakota Pacific Real Estate  
Partners III, LP, a Delaware limited  
partnership, its sole member

By: Dakota Pacific RE III GP, LLC, a  
Delaware limited liability company, its  
general partner

By: DPRE Management, LLC, a  
Utah limited liability company,  
its manager

By:   
Name: Lane Critchfield  
Title: Manager

STATE OF UTAH )  
: ss.  
COUNTY OF )

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company, the general partner of DAKOTA PACIFIC REAL ESTATE PARTNERS III, LP, a  
Delaware limited partnership, the sole member of DPRE RIVERWOODS III, LLC, a Utah limited  
liability company.

Tresea Ann Davis  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:

September 29, 2022

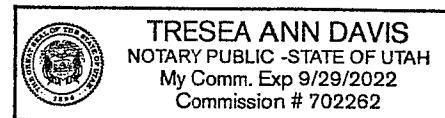


EXHIBIT "A"

PROPERTY DESCRIPTION

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

PARCEL 1:

Lot 1, Phase 1 Amended, Riverwoods Research and Business Park, a Planned Unit Development, according to the official plat filed as Entry Number 83653 and Map Number 8152-94 in the Office of the Utah County Recorder.

Together with easements for ingress and egress over and across a road as defined in that certain Cross Easement Grant and Maintenance Agreement recorded March 2, 2001 as Entry No. 19967:2001 of Official Records in the Office of the Utah County Recorder.

Parcel Number: 51-344-0001

PARCEL 2:

Lot 1, Phase V, Riverwoods Research and Business Park, a Planned Unit Development, according to the official plat filed as Entry Number 46382 and Map Number 7522-88 in the Office of the Utah County Recorder.

Parcel Number: 51-318-0005

PARCEL 3:

Lot 1, Phase VI, Riverwoods Research and Business Park, a Planned Unit Development, according to the official plat filed as Entry Number 97684 and Map Number 8863-101 in the Office of the Utah County Recorder.

Parcel Number: 51-381-0001

Address References:

5152 N Edgewood Drive, Provo, UT 84604 (Parcel 1)  
5252 N Edgewood Drive, Provo, UT 84604 (Parcel 2)  
5255 N Edgewood Drive, Provo, UT 84604 (Parcel 3)