

175900-KAP

When recorded, return to:
 America First Federal Credit Union
 Attn: Property Lease Officer
 P.O. Box 9199
 Ogden, Utah 84409-0199



W3329666

COURTESY RECORDING ONLY

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 or effects of this document.

RESTRICTIVE USE AGREEMENT

THIS RESTRICTIVE USE AGREEMENT (this "**Agreement**") is made and entered into as of this 2nd day of April, 2024, by and among RKF PROPERTIES, LLC, a Utah limited liability company (hereinafter "**RKF**") and AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union (hereinafter "**Credit Union**") (each a "**Party**", and collectively, the "**Parties**").

RECITALS

A. MARVIN BARKER INVESTMENT COMPANY, L.L.C., a Utah limited liability company ("**Barker**") and Credit Union have entered into a Purchase and Sale Agreement whereby Barker has agreed to sell to Credit Union approximately 1.894 acres of real property located in North Ogden, Weber County, State of Utah, consisting of those parcels of property identified as Land Tax Serial Nos. 18-049-0028 and 18-049-0022, and a portion of the parcel of property identified as Land Tax Serial No. 18-161-0012, all as depicted on **Exhibit "A"** and as described on **Exhibit "A-1"** (the "**Credit Union Property**").

B. Barker and RKF have entered into a Purchase and Sale Agreement whereby Barker has agreed to sell to RKF the remainder of the real property located in North Ogden, Weber County, State of Utah, identified as Land Tax Serial No. 18-161-0012, not constituting the Credit Union Property, as depicted on **Exhibit "A"** and as described on **Exhibit "A-2"** (the "**RKF Property**," and collectively with the Credit Union Property, the "**Properties**").

C. As the prospective purchaser of the Credit Union Property, the Credit Union will have an interest in the orderly development and use of the RKF Property and would not agree to purchase the Credit Union Property without the imposition of the covenants, conditions and restrictions set forth in this Agreement.

D. Contingent upon Credit Union's successful closing of its purchase from Barker of the Credit Union Property and RKF's successful closing of its purchase from Barker of the RKF Property, the Parties desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, it is mutually agreed as follows:

1. **Restriction on Development.** No portion of the RKF Property shall be occupied or used, directly or indirectly, for a financial institution including a bank, credit union or savings and loan.

2. **Enforcement.** Credit Union shall have the right to enforce by proceedings at law or in equity, all of the terms, provisions, covenants, conditions and restrictions of this Agreement, including the right to prevent the violation of any of the same and the right to recover damages or other amounts for such violation. Failure of the Credit Union to enforce any term, provision, covenant, condition or restriction of this Agreement in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or of any other term, provision, covenant, condition or restriction herein contained.

3. **Contingent on Credit Union's and RKF's Closings.** This Agreement is expressly made contingent upon Credit Union's successful closing of its purchase from Barker of the Credit Union Property (the "**Credit Union Contingency**") and RKF's successful closing of its purchase from Barker of the entire RKF Property (collectively with the Credit Union Contingency, the "**Closing Contingencies**"). Each of the Parties agree that this Agreement shall be recorded only upon the satisfaction of both of the Closing Contingencies, which recording shall be made immediately prior to the recording of the deed conveying the Credit Union Property from Barker to the Credit Union. In the event that either of the Closing Contingencies fail for any reason or if the Closing Contingencies are not satisfied on or before July 19, 2024, then this Agreement shall be automatically terminated without any further action of either of the Owners and shall be deemed to be null and void for all purposes.

4. **Miscellaneous.**

a. **Termination and Modification.** This Agreement may be terminated or modified only by an instrument signed by the Parties, their respective successors or assigns, and recorded in the Records of the Weber County Recorder.

b. **Severability.** If any term, provision, covenant, condition or restriction of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, conditions and restrictions of this Agreement and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

c. **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, provisions, covenants, conditions or restrictions contained herein.

d. **Interpretation.** Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar import) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

e. Governing Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

f. Attorneys' Fees and Costs. In the event any action or proceeding shall be instituted in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

g. Rights of Successors and Assigns. The covenants, conditions, restrictions, benefits and obligations hereunder shall be perpetual and shall inure to the benefit of the Credit Union and run with the land.

h. Mortgagee Protection Provision. The breach of any of the foregoing covenants, conditions and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the RKF Property that is made in good faith and for value; provided, however, that all of the covenants, conditions and restrictions contained herein shall be binding upon and effective against the party whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall be deemed to constitute one and the same instrument and shall be effective upon execution of any one (1) or more of such counterparts by each of the Parties hereto and delivery of one (1) or more of such counterparts to the other Party.

[Signatures and acknowledgements are on the following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CREDIT UNION:

AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union

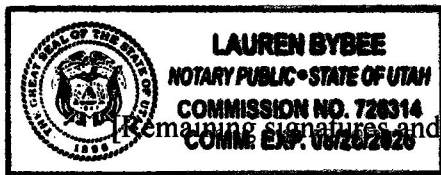
By: *Tammy Gallegos*

Print Name: Tammy Gallegos

Its: EVP

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

On this 1 day of April, 2024, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Tammy Gallegos, EVP (title) of AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



Lauren Bybee
NOTARY PUBLIC

[remaining signatures and acknowledgements are on the following pages]

Commission Expires: 08-26-2026

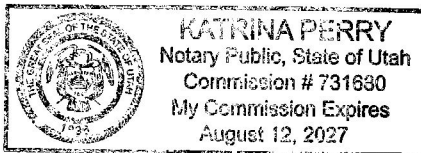
RKF:

RKF PROPERTIES, LLC, a Utah limited liability company

By: 
Name: Ryan Forsyth
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF Boulder)

On this 2 day of April, 2024, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Ryan Forsyth, Manager of RKF PROPERTIES, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he executed the same on behalf of said company. Witness my hand and official seal.





NOTARY PUBLIC

EXHIBIT "A"

Depiction of Credit Union Property
Depiction of RKF Property

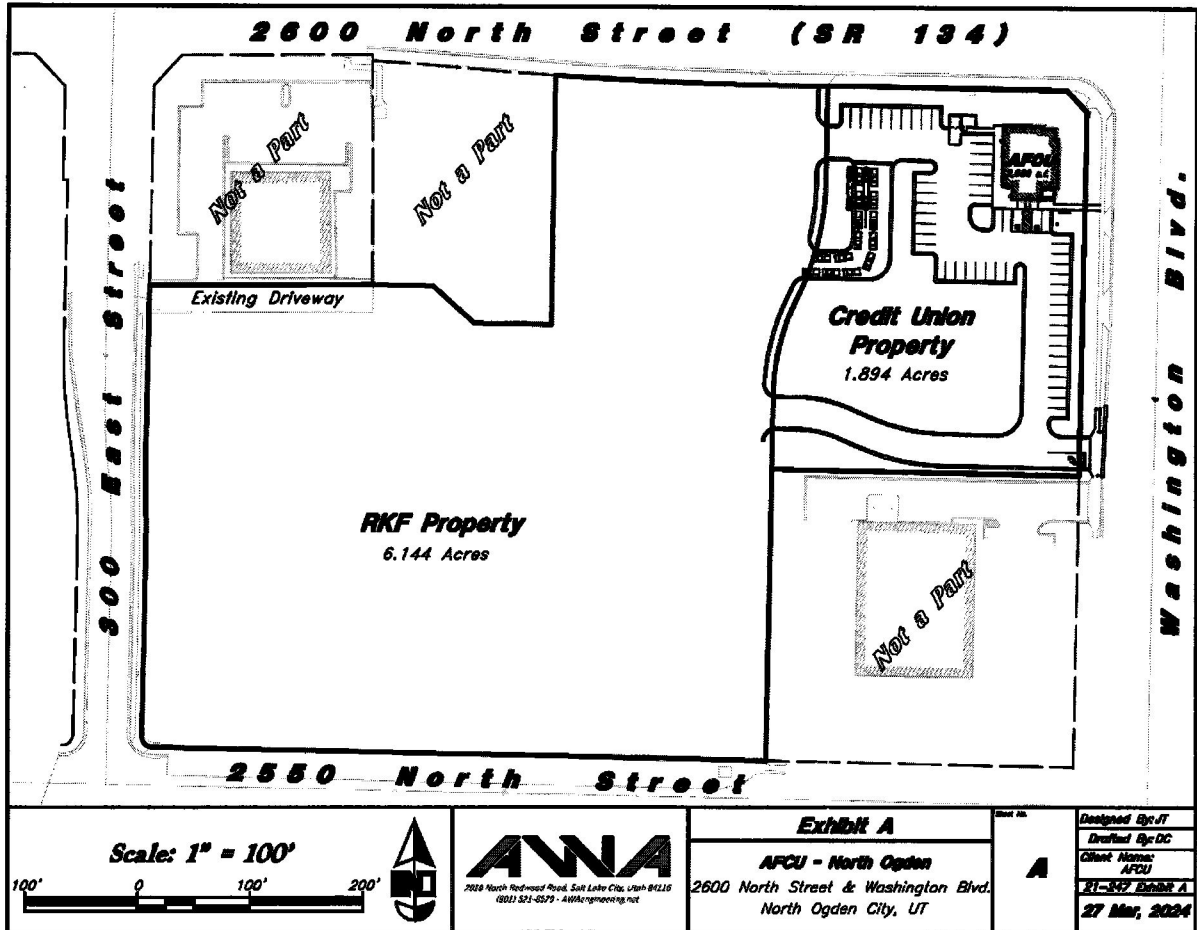


EXHIBIT "A-1"**Legal Description of Credit Union Property**

A portion of the Remainder Parcel of Barker Depot, a Subdivision in North Ogden City, recorded as Entry No. 2992361 in Book 85 at Page 95 of the Official Records of Weber County, Utah, together with more land, being a part of Lots 15 and 16 of Plat B, North Ogden City Survey, located in the Northeast Quarter of Section 32, Township 7 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, in North Ogden City, Weber County, Utah:

Beginning at a point located 273.04 feet North $89^{\circ}41'30''$ West along South line of Lot 48 of said Plat B; and 254.41 feet North $0^{\circ}15'00''$ East along the West line of said Remainder Parcel from the Southeast corner of said Lot 48; said point is also located 5451.14 feet North $0^{\circ}15'00''$ East along the monument line of Washington Boulevard spanning between 1700 North and Elberta Streets to the intersection thereof with the centerline of 2550 North Street; 339.06 feet North $89^{\circ}41'30''$ West along said centerline; and 33.00 feet North $0^{\circ}18'30''$ East from a Brass Cap Monument found marking the intersection of said 1700 North Street and Washington Boulevard; and running thence North $0^{\circ}15'00''$ East 45.11 feet to a point of curvature; thence Northeasterly along the arc of a 200.00 foot radius curve to the right a distance of 74.87 feet (Central Angle equals $21^{\circ}26'51''$ and Long Chord bears North $10^{\circ}58'23''$ East 74.43 feet) to a point of tangency; thence North $21^{\circ}41'47''$ East 38.83 feet to a point of curvature; thence Northeasterly along the arc of a 270.00 foot radius curve to the left a distance of 101.15 feet (Central Angle equals $21^{\circ}27'53''$ and Long Chord bears North $10^{\circ}57'49''$ East 100.56 feet) to a point of tangency; thence North $0^{\circ}13'51''$ East 81.59 feet to a point on a curve on the Southerly line of 2600 North Street as conveyed to the Utah Department of Transportation per that certain Warranty Deed recorded as Entry No. 3025685 of the Official Records of Weber County, Utah; thence along said Southerly line the following three courses: Southeasterly along the arc of a 9918.00 foot radius curve to the right a distance of 138.37 feet (Center bears South $0^{\circ}31'40''$ East, Central Angle equals $0^{\circ}47'58''$ and Long Chord bears South $89^{\circ}52'20''$ West 138.37 feet) to a point of tangency; South $89^{\circ}43'42''$ East 69.95 feet; and South $44^{\circ}43'54''$ East 25.47 feet to the West line of said Washington Boulevard as it exists at 66.00 foot half-width; thence South $0^{\circ}15'00''$ West 317.65 feet along said West line; thence North $89^{\circ}45'00''$ West 273.04 feet to and along the South line of said Remainder Parcel to the point of beginning.

**Contains 82,495 sq. ft.
or 1.894 acres**

EXHIBIT "A-2"**Legal Description of RKF Property**

A portion of the Remainder Parcel of Barker Depot, a Subdivision in North Ogden City, recorded as Entry No. 2992361 in Book 85 at Page 95 of the Official Records of Weber County, Utah, being a part of Lots 15, 16 and 48 of Plat B, North Ogden City Survey, located in the Northeast Quarter of Section 32, Township 7 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, in North Ogden City, Weber County, Utah:

Beginning at a point on the South line of said Lot 48, located 273.04 feet North 89°41'30" West along South line of Lot 48 of said Plat B from the Southeast corner of said Lot 48; said point is also located 5451.14 feet North 0°15'00" East along the monument line of Washington Boulevard spanning between 1700 North and Elberta Streets to the intersection thereof with the centerline of 2550 North Street; 339.06 feet North 89°41'30" West along said centerline; and 33.00 feet North 0°18'30" East from a Brass Cap Monument found marking the intersection of said 1700 North Street and Washington Boulevard; and running thence North 89°41'30" West 544.13 feet along said South line to a point of curvature; thence Northwesterly along the arc of a 10.00 foot radius curve to the right a distance of 15.71 feet (Central Angle equals 90°01'06" and Long Chord bears North 44°40'57" West 14.14 feet) to a point on the East line of 300 East Street as dedicated on the Official Plat of said Barker Depot; thence along said East line the following four courses: North 0°19'43" East 171.77 feet to a point of curvature; Northwesterly along the arc of a 491.00 foot radius curve to the left a distance of 27.88 feet (Central Angle equals 3°15'12" and Long Chord bears North 1°17'53" West 27.88 feet) to a point of reverse curvature; Northwesterly along the arc of a 750.00 foot radius curve to the right a distance of 42.59 feet (Central Angle equals 3°15'12" and Long Chord bears North 1°17'53" West 42.58 feet) to a point of tangency; and North 0°19'43" East 149.28 feet to the Southwest corner of Lot 1 of said Subdivision; thence North 88°51'10" East 198.22 feet along the South line of said Lot 1 to the Southeast corner thereof, also being the Southwest corner of Lot 1 of the Final Plat of Mountain America North Ogden Subdivision, recorded as being Entry No. 3301370 in Book 96 at Page 52 of the Official Records of Weber County; thence along the South line of said Lot 1 the following three courses: South 89°47'52" East 53.51 feet; South 49°13'49" East 48.98 feet; and South 89°47'52" East 68.22 feet to the Southeast corner of said Lot 1; thence North 0°01'30" East 217.51 feet along the Easterly line of said Lot 1 to a point on a curve on the Southerly line of 2600 North Street as conveyed to the Utah Department of Transportation per that certain Warranty Deed recorded as Entry No. 3025685 of the Official Records of Weber County; thence along said Southerly line the following two courses: Southeasterly along the arc of a 4048.50 foot radius curve to the left a distance of 238.13 feet (Center bears North 2°47'47" East, Central Angle equals 3°22'12" and Long Chord bears South 88°53'19" East 238.10 feet) to a point of reverse curvature; and Southeasterly along the arc of a 9918.00 foot radius curve to the right a distance of 7.95 feet (Central Angle equals 0°02'45" and Long Chord bears South 89°26'58" West 7.95 feet); thence South 0°13'51" West 81.59 feet to a point of curvature; thence Southwesterly along the arc of a 270.00 foot radius curve to the right a distance of 101.15 feet (Central Angle equals 21°27'53" and Long Chord bears South 10°57'49" West 100.56 feet) to a point of tangency; thence South 21°41'47" West 38.83 feet to a point of curvature; thence Southwesterly along the arc of a 200.00 foot radius curve to the left a distance of 74.87 feet (Central Angle equals 21°26'51" and Long Chord bears South 10°58'23" West 74.43 feet) to a point of tangency; thence South 0°15'00" West 299.52 feet to and along the West line of said Remainder Parcel to said South line of Lot 48, Plat B, North Ogden City Survey, and the point of beginning.

**Contains 267,630 sq. ft.
or 6.144 acres**