

SREQUESTED BY
AND WHEN RECORDED MAIL TO:

U.S. Bank National Association
170 South Main St., Suite 600
Salt Lake City, UT 84101
Attn: Real Estate Banking Division
Loan No.:

PIN 54-3500-0008

103688-ETM

THIS SPACE ABOVE FOR RECORDER'S USE

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Subordination, Nondisturbance and Attornment Agreement ("**Agreement**") is entered into as of the 24th day of August, 2018 by and among Summit Fulfillment Services, LLC, a Utah limited liability company ("**Tenant**"), Urban Grove, LLC, a Utah limited liability company ("**Borrower**") and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("**Bank**").

Factual Background

A. Borrower owns certain real property in the County of Utah, State of Utah, more particularly described in Exhibit "A" attached and made a part hereof by this reference. The term "**Property**" herein means that real property together with all improvements (the "**Improvements**") located on it.

B. Bank has made or agreed to make a loan to Borrower in the principal amount of \$15,785,000.00 (the "**Loan**") as provided in a loan agreement (the "**Loan Agreement**"). The Loan is or will be evidenced by a promissory note (the "**Note**") which is or will be secured by a deed of trust encumbering the Property (the "**Deed of Trust**") with an assignment of rents. The Loan Agreement, the Note, the Deed of Trust, this Agreement and all other documents and instruments identified in the Loan Agreement as "Loan Documents" shall be collectively referred to herein as the "**Loan Documents**."

C. Tenant and Borrower (as landlord) have entered into that certain lease described in Exhibit "B" attached hereto and made a part hereof by this reference (the "**Lease**") under which Borrower leased to Tenant a portion of the Improvements located within the Property and more particularly described in the Lease (the "**Premises**").

D. It is a requirement of the Loan to Borrower that Tenant agree, among other things, to subordinate Tenant's rights under the Lease to the lien of the Loan Documents and to attorn to Bank on the terms and conditions of this Agreement. Tenant is willing to agree to such subordination and attornment and other conditions, provided that Bank agrees to a nondisturbance provision, all as set forth more fully below.

Agreement

Therefore, the parties agree as follows:

1. Subordination. The Loan Documents and all supplements, amendments, modifications, renewals, replacements and extensions of and to them shall unconditionally be and remain at all times a lien on the Property prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of Tenant under it. The Lease and leasehold estate, together with all rights and privileges of Tenant under that Lease, are hereby unconditionally made subordinate to the lien of the Loan Documents in favor of Bank. Tenant consents to Borrower and Bank entering into the Deed of Trust and the other Loan Documents. Tenant further declares, agrees and acknowledges that in making disbursements under the Loan Documents Bank has no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom they are disbursed by Bank, and any application or use of such proceeds for purposes other than those provided for in the Loan Documents shall not defeat the subordination made in this Agreement, in whole or in part.

2. Definitions of "Transfer of the Property" and "Purchaser." As used herein, the term "**Transfer of the Property**" means any transfer of Borrower's interest in the Property by foreclosure, trustee's sale or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof. The term "**Purchaser**," as used herein, means any transferee, including Bank, of the interest of Borrower as a result of any such Transfer of the Property and also includes any and all successors and assigns, including Bank, of such transferee.

3. Nondisturbance. The enforcement of the Deed of Trust shall not terminate the Lease or disturb Tenant in the possession and use of the Premises unless at the time of foreclosure Tenant is in default under the Lease or this Agreement, and Bank so notifies Tenant in writing at or prior to the time of the foreclosure sale that the Lease will be terminated by foreclosure because of such default. The nondisturbance herein granted is subject to Section 5 below. This nondisturbance applies to any option to extend or renew the Lease term which is set forth in the Lease as of the date of this Agreement.

4. Attornment. Subject to Section 3 above, if any Transfer of the Property should occur, Tenant shall and hereby does attorn to Purchaser, including Bank if it should be the Purchaser, as the landlord under the Lease, and Tenant shall be bound to Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the Lease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Lease, all with the same force and effect as if Purchaser had been the original landlord under the Lease. This attornment shall be effective and self-operative without the execution of any further instruments upon Purchaser's succeeding to the interest of the landlord under the Lease.

5. Subordination of Options and Rights of First Refusal. The Loan Documents and all supplements, amendments, modifications, renewals, replacements and extensions of and to them shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future right of Tenant, whether arising out of the Lease or otherwise, to exercise any option or right of first refusal to:

- (a) purchase the Premises or the Property or any interest or portion in or of either of them; or
- (b) expand into other space in the Improvements.

Tenant specifically agrees and acknowledges that upon any Transfer of the Property, any such purchase or expansion option or right of first refusal, whether now existing or in the future arising, shall terminate and be inapplicable to the Property notwithstanding the nondisturbance granted to Tenant in Section 3 above. If any option or right of first refusal to purchase is exercised prior to a Transfer of the Property, any title so acquired to all or any part of the Property shall be subject to the lien of the Loan Documents, which lien shall in no way be impaired by the exercise of such option or right of first refusal. Bank specifically reserves all of its rights to enforce any accelerating transfer, due on sale, due on encumbrance or similar provision in the Deed of Trust or any other Loan Document.

6. Notices of Default; Material Notices; Bank's Rights to Cure Default. Tenant shall send a copy of any notice of default or similar statement with respect to the Lease to Bank at the same time such notice or statement is sent to Borrower. In the event of any act or omission by Borrower which would give Tenant the right to terminate the Lease or to claim a partial or total eviction, Tenant shall not exercise any such right or make any such claim until it has given Bank written notice of such act or omission and has given Bank the following applicable cure period to remedy such default: (i) with respect to monetary defaults, thirty (30) days after the expiration of Landlord's cure period with respect to such monetary default; or (ii) with respect to nonmonetary defaults, sixty (60) days after the expiration of Landlord's cure period with respect to such nonmonetary default, provided that if Bank commences a cure of such nonmonetary default within the prescribed period, and thereafter diligently pursues such cure to completion, the cure period shall be extended to provide Bank sufficient time to complete such cure. Acts taken by Bank to obtain possession of the Property shall be deemed acts taken to cure. Nothing in this Agreement, however, shall be construed as a promise or undertaking by Bank to cure any default of Borrower.

7. Limitation on Bank's Performance. Nothing in this Agreement shall be deemed or construed to be an agreement by Bank to perform any covenant of Borrower as landlord under the Lease. Tenant agrees that if Bank becomes Purchaser then, upon subsequent transfer of the Property by Bank to a new owner, Bank shall have no further liability under the Lease after said transfer.

8. Limitation on Liability. No Purchaser who acquires title to the Property shall have any obligation or liability beyond its interest in the Property.

9. Tenant's Covenants. Tenant agrees that during the term of the Lease, without Bank's prior written consent, Tenant shall not:

- (a) pay any rent or additional rent more than one month in advance to any landlord including Borrower; or
- (b) cancel, terminate or surrender the Lease, except at the normal expiration of the Lease term or as provided in Section 6 above; or
- (c) enter into any amendment, modification or other agreement relating to the Lease; or
- (d) assign or sublet any portion of the Lease or the Premises, except as expressly permitted in the Lease.

10. Bank Not Obligated. Bank, if it becomes the Purchaser or if it takes possession under the Deed of Trust, and any other Purchaser shall not (a) be liable for any damages or other relief attributable to any act or omission of any prior Landlord under the Lease including Borrower; or (b) be subject to any offset or defense not specifically provided for in the Lease which Tenant may have against any prior landlord under the Lease; or (c) be bound by any prepayment by Tenant of more than one month's installment of rent; or (d) be obligated for any security deposit not actually delivered to Purchaser; or (e) be bound by any modification or amendment of or to the Lease unless the amendment or modification shall have been approved in writing by Bank.

11. Tenant's Estoppel Certificate.

(a) True and Complete Lease. Tenant represents and warrants to Bank that Exhibit B accurately identifies the Lease and all amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold and/or the Premises.

(b) Tenant's Option Rights. Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Premises or the Property, or any interest or portion in or of either of them, to expand into other space in the Improvements or to extend or renew the term of the Lease, except as described in the attached Exhibit C.

(c) No Default. As of the date of this Agreement, Tenant represents and warrants that to the best of Tenant's knowledge there exist no events of default or events that with notice or the passage of time or both would be events of default under the Lease on either the Tenant's part or the Borrower's, nor is there any right of offset against any of Tenant's obligations under the Lease, except as described in the attached Exhibit D. Tenant represents and warrants that the Lease is in full force and effect as of the date of this Agreement.

12. Integration; Etc. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Lease to the Loan Documents,

attornment, nondisturbance and the other matters contained herein. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including the Lease, the terms, conditions and provisions of this Agreement shall prevail. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest. This Agreement may be executed in counterparts, each of which is an original but all of which shall constitute one and the same instrument.

13. Notices. All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt (or on the date when proper delivery is refused). Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

To Bank:	U.S. Bank National Association 170 South Main St., Ste 600 Salt Lake City, UT 84101 Attention: Loan Administration
To Borrower:	<u>Urban Grove, LLC</u> <u>201 South Main Street, Suite 2000</u> <u>Salt Lake City, Utah 84111</u> <u>Attn: Matt Winn</u>
To Tenant:	<u>Summit Fulfillment Services, LLC</u> <u>1500 West Pleasant Grove Blvd.</u> <u>Pleasant Grove, UT 84062</u> <u>Attn:</u>

14. Attorneys' Fees. If any lawsuit, judicial reference or arbitration is commenced which arises out of or relates to this Agreement, the prevailing party shall be entitled to recover from each other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees, including the costs for any legal services by in-house counsel, in addition to costs and expenses otherwise allowed by law.

15. **WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE LEASE, INCLUDING,**

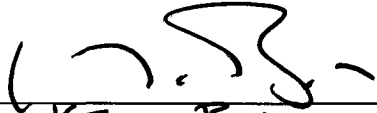
WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF, WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

16. Miscellaneous Provisions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement is governed by the laws of the State of California without regard to the choice of law rules of that State. This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement by Bank. As used herein, the word "include(s)" means "include(s) without limitation," and the word "including" means "including but not limited to." Bank, at its sole discretion, may but shall not be obligated to record this Agreement.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

TENANT:

SUMMIT FULFILLMENT SERVICES, LLC
a Utah limited liability company

By: 
Name: KEVIN BRADBURN
Title: MANAGER

~~By: _____
Name: _____
Title: _____~~

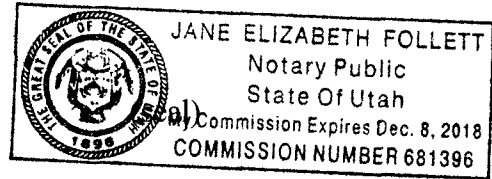
ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF Utah)
)

On this 16 day of August, in the year 2018, before me, Jane E. Follett
a notary public, personally appeared Kevin Bradburn, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.

Witness my hand and official seal.

Jane E. Follett
NOTARY PUBLIC



~~STATE OF UTAH)
)
COUNTY OF _____)
)~~

~~On this _____ day of _____, in the year 2018, before me, _____
a notary public, personally appeared _____, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.~~

~~Witness my hand and official seal.~~


~~_____
NOTARY PUBLIC~~

(seal)

BORROWER:

URBAN GROVE, LLC
a Utah limited liability company

By: KC GARDNER COMPANY, L.C.
a Utah limited liability company

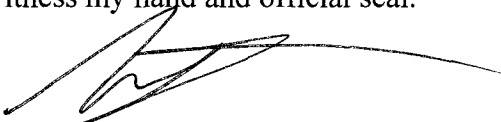
By: 
Name: Shirley Gardner
Title: Manager

ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On this 16 day of AUGUST, in the year 2018, before me, SONIA C. PEREZ
a notary public, personally appeared CHRISTIAN ARROWER, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.

Witness my hand and official seal.



NOTARY PUBLIC



(seal)

STATE OF UTAH)
)
COUNTY OF _____)

On this _____ day of _____, in the year 2018, before me, _____
a notary public, personally appeared _____, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.

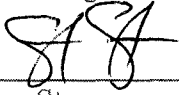
Witness my hand and official seal.

NOTARY PUBLIC

(seal)

BANK:

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By: 
Name: Steve Strong
Title: Vice President

ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On this 16 day of AUGUST, in the year 2018, before me, SONIA C. PEREZ
a notary public, personally appeared CHRISTIAN ARNONE, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.

Witness my hand and official seal.



NOTARY PUBLIC

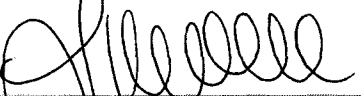


(seal)

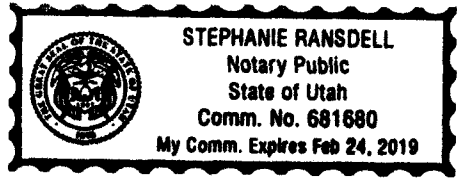
STATE OF UTAH)
)
COUNTY OF Saltlake)

On this 24th day of August, in the year 2018, before me, Stephanie Ransdell
a notary public, personally appeared Steve Strong, proved on the basis of
satisfactory evidence to the be person whose is subscribed to this instrument, and acknowledged
he/she/they executed the same.

Witness my hand and official seal.



NOTARY PUBLIC



(seal)

EXHIBIT A

PROPERTY DESCRIPTION

(to be attached prior to recording)

Legal Description

That certain real property located in Utah County, Utah, and more particularly described as follows:

All of Lot 8, THE VOID PLAT "D", according to the official plat thereof on file and of record in the Utah County Recorder's office, recorded January 26, 2018 as Entry No. 8256:2018.

EXHIBIT B

**IDENTIFY LEASE AND LIST ALL AMENDMENTS,
SUPPLEMENTS, SIDE LETTERS AND OTHER AGREEMENTS
AND MEMORANDA PERTAINING TO LEASE, PREMISES OR PROPERTY**

- Lease Agreement dated March 18, 2018, between Urban Grove, LLC, a Utah limited liability company, as landlord, and Summit Fulfilment Services, LLC, a Utah limited liability company, as tenant
- First Amendment to Lease Agreement dated May 31, 2018 between Urban Grove, LLC, a Utah limited liability company, as landlord, and Summit Fulfilment Services, LLC, a Utah limited liability company, as tenant

EXHIBIT C

LIST OF PURCHASE, EXPANSION, FIRST REFUSAL,
EXTENSION AND RENEWAL OPTIONS

- Tenant holds two extension options of five years each

EXHIBIT D

LIST ANY EXISTING DEFAULTS OR OFFSETS UNDER LEASE

None