

WHEN RECORDED MAIL TO:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

APN(s): 54-356-0007; 54-356-0009

THIS SPACE ABOVE FOR RECORDER'S USE
Urban Grove, LLC.
(Utah County, Utah Property)

FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "*Amendment*") is entered into effective for all purposes as of July 31, 2019, between **URBAN GROVE, LLC**, a Utah limited liability company ("*Trustor*"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("*Beneficiary*"), whose mailing address is 170 South Main Street, Suite 600, Salt Lake City, Utah 84101.

RECITALS:

A. Beneficiary previously extended a construction loan to Trustor (the "*Loan*") in the original maximum principal amount of TWO MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,300,000.00) pursuant to that certain Term Loan Agreement dated February 9, 2018 (as amended, the "*Loan Agreement*"), and evidenced by that certain Promissory Note dated February 9, 2018 (as amended, the "*Note*"). Capitalized terms used herein without definition, shall have the meanings given to such terms in the Loan Agreement and Note, as modified.

B. Trustor's obligations under the Loan and Loan Documents are secured by, among other things, a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated February 9, 2018, executed by Trustor, as trustor, to the trustee named therein, in favor of Beneficiary, and recorded on February 9, 2018 as Entry No. 13128:2018 in the official records of Utah County, Utah (as amended, the "*Deed of Trust*"). The Deed of Trust encumbers certain real property in Utah County Utah, as more particularly described on Exhibit A attached the Deed of Trust (the "*Property*").

C. The Loan is guaranteed pursuant to that certain Payment Guaranty Agreement dated as of February 9, 2018 (the "*Guaranty*"), made by **GARDNER PROPERTY HOLDINGS, L.C.**, a Utah limited liability company and **KEM C. GARDNER FAMILY, L.C.**, a Utah limited liability company (collectively, the "*Guarantor*").

D. In accordance with that certain Second Loan and Note Modification Agreement between Trustor and Beneficiary, as lender, dated of approximately even date herewith (the "*Modification Agreement*"), Trustor and Beneficiary have agreed to modify and amend the Loan and Loan Documents to, among other things, (i) increase the amount of the Loan to \$1,806,000.00, (ii) amend and restate the legal description of the

Property in connection with Borrower's acquisition of certain real property, and (iii) extend the Maturity Date of the Loan.

E. The Note, the Loan Agreement, the Guaranty, the Deed of Trust, any environmental indemnities, guaranties and all other agreements, documents, and instruments evidencing, securing, or otherwise relating to the Loan are sometimes referred to individually and collectively as the "*Loan Documents*."

F. Consistent with and to further the foregoing, Beneficiary and Trustor now desire to amend the Deed of Trust as described herein.

NOW THEREFORE, in consideration of the covenants contained herein, and the covenants and agreements contained in the Modification Agreement, and other good and valuable consideration, the parties agree as follows:

1. Accuracy of Recitals. Each of the foregoing Recitals is hereby incorporated herein and made a part hereof. Trustor acknowledges the accuracy of such Recitals.

2. Modified Legal Description. Exhibit A to the Deed of Trust is hereby amended and restated in its entirety by Exhibit A attached hereto. Accordingly, the parties hereby agree that all references in the Deed of Trust to the "*Land*" shall refer to the real property described in Exhibit A to this Amendment, including all associated improvements, buildings and related rights on and to the lots referenced therein

3. Notice of Amendment; Amendment of Deed of Trust. Notice is hereby given that the Loan Agreement, Note, Deed of Trust and other Loan Documents have been amended and modified pursuant to the Modification Agreement. The Deed of Trust is hereby modified, to the extent necessary, to be consistent with the Modification Agreement.

4. Ratification of Deed of Trust. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary, and their respective successors and assigns. No provision of this Amendment may be changed, discharged, supplemented, terminated or waived except in a writing signed by Beneficiary and Trustor.

5. Release and Discharge. Trustor fully, finally, and forever releases and discharges Beneficiary and its respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that Trustor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Beneficiary in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Amendment.

6. GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS

SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, AND ANY LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO NATIONAL BANKS.

TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR AND BENEFICIARY HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. TRUSTOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF UTAH OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS SECURITY INSTRUMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF UTAH, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN WILL AFFECT THE RIGHT OF BENEFICIARY TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TRUSTOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO TRUSTOR AT THE ADDRESSES FOR NOTICES DESCRIBED IN THIS SECURITY INSTRUMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE WILL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN WILL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document.

8. Miscellaneous. Except for the amendment above stated, all of the conditions and covenants of the Deed of Trust shall remain in full force effect, unchanged, and the Deed of Trust is in all respects ratified, confirmed and approved. All of the terms and conditions of the Deed of Trust are incorporated herein by reference.

9. Binding Effect; Waivers; Cumulative Rights and Remedies. The provisions of this Amendment inure to the benefit of and are binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns; provided, however, that neither this Agreement nor the proceeds of the Loan may be assigned by Trustor voluntarily, by operation of law or otherwise, without the prior written consent of Beneficiary. No delay on the part of Beneficiary in exercising any right, remedy, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege hereunder constitute such a waiver or exhaust the same, all of which will be continuing. The rights and remedies of Beneficiary specified in this Agreement are in addition to, and not exclusive of, any other rights and remedies which Beneficiary would otherwise have at law, in equity or by statute, and all such rights and remedies, together with Beneficiary's rights and remedies under the other Loan Documents, are cumulative and may be exercised individually, concurrently, successively and in any order.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first written above.

URBAN GROVE, LLC
a Utah limited liability company

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

By: *KC Gardner*
Name: *KC Gardner*
Title: Manager

"Trustor"

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

On this 31 day of JULY 2019, before me SONIA C. PEREZ, a notary public, personally appeared KC GARDNER, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document as and acknowledged he executed the same.

Witness my hand and official seal.



[Signature]
NOTARY PUBLIC

[SEAL]

[Signatures continue on following page]

U.S. BANK NATIONAL ASSOCIATION
a national banking association

By: SS
Name: Steve Strong
Title: Vice President

"Beneficiary"



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

On this 31 day of JULY 2019, before me Bradford M. Sawyer, a notary public, personally appeared **STEVE STRONG**, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document as and acknowledged he executed the same.

Witness my hand and official seal.

Bradford M. Sawyer
NOTARY PUBLIC

[SEAL]

EXHIBIT A

AMENDED AND RESTATED LEGAL DESCRIPTION

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

All of Lots 7 and 9, 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.