

RECORDING REQUESTED
BY AND WHEN RECORDED
RETURN TO:

ENT 110752:2021 PG 1 of 12
Andrea Allen
Utah County Recorder
2021 Jun 18 01:43 PM FEE 40.00 BY SM
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Lamont Richardson, Esq.

#141089-13HM

54-356-0009

(Space above this line for Recorder's use.)

RIGHT OF FIRST REFUSAL AND ARCHITECTURAL STANDARD AGREEMENT

THIS RIGHT OF FIRST REFUSAL AND ARCHITECTURAL STANDARDS AGREEMENT (this "**Agreement**") is entered into as of June 16, 2021, between URBAN GROVE, LLC, a Utah limited liability company (together with its successors and/or assigns, the "**Owner**") and SLC URBAN GROVE EQUITIES LLC, a Delaware limited liability company ("**Felton**"). Owner and Felton are referred to in this Agreement individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Pursuant to that certain Agreement of Sale and Purchase and Joint Escrow Instructions dated as of May 10, 2021 (as amended, the "**Purchase Agreement**"), Owner is selling a certain parcel of real property located in Utah County, Utah, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Felton Property**") to Felton;

B. Owner is also the owner of a certain parcel of real property located in Utah County, Utah, more particularly described on Exhibit "B" attached hereto and made a part hereof (the "**Owner Property**"), which real property is adjacent to the Felton Property.

C. In connection with the Purchase Agreement, Owner and Felton agreed to enter into this Agreement.

AGREEMENT

NOW THEREFORE, in consideration for mutual benefits to be derived herefrom and from the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Right of First Refusal. Owner hereby agrees as follows:

(a) If Owner receives a bona fide written offer from an unaffiliated third party to purchase the Owner Property which Owner desires to accept, Owner shall provide a copy of such written offer to Felton (the "**Notice of Proposed Sale**").

(b) **Exercise of Right of First Refusal.** Felton shall have the right (the “**Right of First Refusal**”) for a period of five (5) business days from and after Owner’s delivery of the Notice of Proposed Sale to purchase the Owner Property on the same terms and conditions as those set forth in the Written Notice of Proposed Sale which may be exercised by delivering a written notice to Owner (the “**Acceptance Notice**”). If Felton timely delivers the Acceptance Notice, Owner and Felton shall use good faith efforts to, within ten (10) business days of Felton’s delivery of the Acceptance Notice, enter into a purchase contract for the Owner Property setting forth the terms of the Written Notice of Proposed Sale, but otherwise on the same terms as provided in the Purchase Agreement (the “**Owner Property Purchase Agreement**”). So long as Felton uses good faith efforts to execute the Owner Property Purchase Agreement within such ten (10) business day period, the fact that the Owner Property Purchase Agreement is not executed within such ten (10) day period shall not invalidate the Acceptance Notice or permit Owner to enter into an agreement to sell the Owner Property to a third party; provided, however, in all events such Owner Property Purchase Agreement must be executed within thirty (30) days from the date of Felton’s delivery of the Acceptance Notice, unless such failure to execute the Owner Property Purchase Agreement is due to Owner’s bad faith. If Felton does not deliver an Acceptance Notice within such five (5) business day period, Felton shall be deemed to have elected to not elect to purchase the Owner Property. If Felton does not desire to purchase the Owner Property on the terms set forth in the Written Notice of Proposed Sale, Felton agrees to deliver to Owner a written notice indicating that Felton is not exercising its rights as provided in this Section 1, provided, Felton’s failure to deliver such notice shall not in any way extend such five (5) business day period. If Felton fails to deliver an Acceptance Notice and Owner thereafter conveys the Owner Property to a third party, or if Felton delivers an Acceptance Notice but thereafter fails to use good faith efforts to enter into the Owner Property Purchase Agreement within such ten (10) business day period, or if Felton fails to execute the Owner Property Purchase Agreement within thirty (30) days of Felton’s delivery of the Acceptance Notice for any reason (other than Owner’s bad faith) or thereafter terminates the Owner Property Purchase Agreement for any reason (other than a default by Owner), Felton’s rights under this Section 1 shall be forever terminated. Notwithstanding the foregoing, in the event that any proposed sale as to which Felton did not exercise its right of first refusal as above provided, is not consummated by Owner within 180 days after notice thereof was given to Felton, or if prior to the closing of such transaction the purchase price is reduced by more than five percent (5%) of the purchase price set forth in the Notice of Proposed Sale, then the Owner Property must be reoffered to Felton in the same manner provided above.

(c) If the consideration to be paid pursuant to any acceptable third party offer to purchase the Owner Property or otherwise acquire the same from Owner, or any other transaction subject to this right of first refusal shall include consideration other than cash, Felton may exercise its right of first refusal with respect to such transaction and shall pay as consideration therefor the same amount of cash and the same consideration as set forth in the proposed offer, or an all cash purchase price in an amount equal to the sum of the cash portion of the consideration, plus the fair cash value of the other consideration which the offeror proposed to exchange for the Owner Property. If any acceptable third

party offer to Owner shall include other property owned by Owner, Felton's rights under this Section 1 shall apply only to the Owner Property for the purchase price allocated to the Owner Property by Owner and such third party.

(d) The rights granted to Felton in this Section 1 shall not apply to a granting of a mortgage, deed of trust, security agreement or other security interest (collectively, a "**Mortgage**") or to the foreclosure, delivery of a deed in lieu of foreclosure or similar action of a Mortgage.

2. Use Restrictions. In no event will any portion of the Owner Property be used for any Prohibited Use. For purposes hereof, a "Prohibited Use" means the following uses: (a) a gas station; (b) a car wash, (c) a prison, (d) a center for drug rehabilitation or the treatment of drug addiction, (e) a children's nursery, preschool or an elementary or grade school, (f) any use involving the display or distribution for commercial purposes of pornographic materials, adult books and magazines or X-rated videos or similar productions, (g) a funeral home, or (h) any signage which can be seen outside of a building which uses neon, flashing or streaming lights.

3. Architectural Standards.

(a) Prior to commencing the construction of initial building on the Owner Property, the Owner shall first present the conceptual plans for the exterior of such building (the "**Conceptual Plans**") to Felton for its approval, which approval will not be unreasonably withheld, conditioned or delayed and which approval shall be limited to confirming the exterior portions of the building(s) are at least of the same quality with the architectural appearance of the building on the Felton Property. Within five (5) business days after receipt of a full and complete set of the Conceptual Plans, Felton will either approve or disapprove the Conceptual Plans. If Felton fails to disapprove of such Conceptual Plans within five (5) business days after receipt of a full and complete set of the Conceptual Plans, Felton shall be deemed to have approved of the Conceptual Plans. If Felton disapproves of any element of the Conceptual Plans, then Felton will notify Owner in writing of any required changes thereto within such five (5) business day period, and Owner will use commercially reasonable efforts to promptly incorporate Felton's changes into the Conceptual Plans and redeliver such Conceptual Plans, as revised, to Felton. If (i) Owner notifies Felton that Owner cannot, after using commercially reasonable efforts, incorporate some or all of Felton's changes to the Conceptual Plans, or (ii) Owner incompletely or inaccurately incorporates the changes into the Conceptual Plans, then Felton and Owner and their respective contractors, engineers, and/or architects shall meet and work in good faith to attempt to reach a resolution and agreement on the necessary changes to be incorporated into the Conceptual Plans. Felton and Owner will attempt to agree on any and all final changes to be incorporated into the Conceptual Plans within five (5) business days of Felton's receipt of the revised Conceptual Plans or notice from Owner that Owner cannot, after using commercially reasonable efforts, incorporate some or all of Felton's requested changes.

(b) If Owner and Felton cannot agree on the Conceptual Plans within thirty (30) days of the date such Conceptual Plans were first delivered to Felton, a deadlock shall be deemed to exist (a “**Deadlock**”). If a Deadlock exists, upon demand from either Owner or Felton, the Parties will seek to agree upon an independent architect that is licensed in the state of Utah and has at least ten (10) years of experience in designing buildings similar to the building constructed on the Felton Property and the building to be constructed on the Owner Property (the “**Architect**”). If the parties cannot agree upon the Architect, either party may request that the Chief Justice of the Fourth Judicial District Court to appoint such Architect meeting the standards set forth above. Such Architect, once appointed, shall within ten (10) business days of the Appointment determine (i) if the changes to the Conceptual Plan requested by Felton would result in a violation of applicable Governmental Requirements; or (ii) if the exterior of the building(s) to be constructed on the Owner Property as shown in the Conceptual Plan, as last presented by the Owner, are at least of the same quality of the building constructed on the Felton Property. If the Project Architect determines, in a written analysis provided to the Parties, that if such approval were given, such approval would result in the occurrence of one of the events specified in clauses (i)-(ii) above, then Felton shall be deemed to have approved of the Conceptual Plans. If the Project Architect determines, in a written analysis provided to the Parties, that if such approval were given, such approval would not result in the occurrence of both of the events specified in clauses (i)-(ii) above, then such approval shall be deemed denied.

(c) Following the approval or deemed approval of the Conceptual Plans by Felton, the Owner shall have the right to construct one or more buildings on the Owner Property consistent with the Conceptual Plans. Upon the completion of such buildings consistent with such Conceptual Plans, Felton shall have no additional approval rights with respect to the construction or modification of any building on the Owner Property.

4. Transferability of Option. Notwithstanding anything contained herein to the contrary, the rights granted to Felton under Sections 1 and 3 of this Agreement are personal to Felton and the rights of Felton under Section 1 and 3 of this Agreement may not be assigned, sold, pledge, encumbered, conveyed or otherwise transferred (whether directly, indirectly or as security) to any party without the prior written consent of Owner in each instance, which approval may be withheld at Owner’s sole and absolute discretion; provided, however, Felton may assign, without Owner’s consent, Felton’s rights under this Agreement (including, without limitation the rights set forth in Section 1 and 3 of this Agreement) to an affiliate of Felton, including, without limitation, the ultimate purchaser entity under the Purchase Agreement. Without limiting the generality of the foregoing, upon the sale, conveyance or other transfer of the Felton Property to a third party, the provisions of Section 1 and 3 of this Agreement shall automatically terminate. Any assignment that is not permitted by this Agreement is and shall be null and void for all purposes.

5. Subordination. This Agreement is and shall remain subject and subordinate to any mortgage, deed of trust or other security interest now or hereafter encumbering the Owner Property. Felton agrees to execute any document for the sole purpose of confirming the

provisions of this Paragraph required by the holder of such mortgage, deed of trust or other security interest.

6. Recordation. If this Agreement is terminated Felton shall execute such documents as may be reasonably necessary to acknowledge such termination of record.

7. Notices. Any notices, certificates, consents or other communication required to be sent or given under this Agreement must be in writing and will be deemed given to a Party when actually received. Notices, certificates, consents or other communications may be delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid, with written confirmation of receipt) to the following addresses and marked to the attention of the individual (by title) designated below (or to such other address, or individual as a Party may designate by notice to the other Parties):

If to Felton:

SLC Urban Grove Equities LLC
Attn: Matt Felton
6916 S. Macadam Ave, Suite 325
Portland, OR 97219

If to Owner:

Urban Grove, LLC
Attn: Christian Gardner
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111

8. Entire Agreement. This Agreement, including the exhibits attached hereto, constitute the entire agreement between the Parties. All exhibits mentioned in this Agreement are incorporated herein by reference. In the event of a default by Owner under this Agreement, Felton shall have all other remedies permitted at law or in equity against Owner, including, without limitation, specific performance. No subsequent amendment to this Agreement shall be binding upon Owner or Felton unless reduced to writing and signed by the Party against whom such enforcement is sought. Submission of this Agreement for examination does not constitute an option for the Owner Property and becomes effective only upon execution and delivery hereof by the Parties. There are no representations or promises by either Party to the other except as are specifically set forth herein. This Agreement supersedes and revokes all previous conversations, negotiations, arrangements, letters of intent, writings, brochures, understandings, and information conveyed, whether oral or in writing, between the Parties and their respective affiliates. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section or paragraph.

9. General Provisions. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Agreement shall inure to the benefit of, and be binding on, the Parties (or any other party obligated hereunder) and their respective successors and assigns. This Agreement and the rights of

and obligations hereunder shall constitute covenants running with the land as to each of the Owner Property and the Felton Property. This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

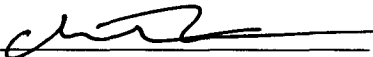
[signature page immediately follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

OWNER:

URBAN GROVE, LLC,
a Utah limited liability company,
by its Managers

KC Gardner Company, L.C.,
a Utah limited liability company

By: 
Name: Charles Gardner
Its: Manager

Grove Creek Capital, LLC, a Utah limited liability company

By: 
Name: KEVIN BRADBURN
Its: MANAGER

FELTON

SLC URBAN GROVE EQUITIES LLC, a
Delaware limited liability company, by its member

SLC Urban Grove SPE LLC,
a Delaware limited liability company

By: SLC Urban Grove Holdings LLC,
a Delaware limited liability company
Its: Managing Member

By: _____
Matthew J. Felton, Managing Member

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

OWNER:

URBAN GROVE, LLC,
a Utah limited liability company,
by its Managers

KC Gardner Company, L.C.,
a Utah limited liability company

By: _____
Name: _____
Its: _____

Grove Creek Capital, LLC, a Utah limited liability
company

By: _____
Name: _____
Its: _____

FELTON

SLC URBAN GROVE EQUITIES LLC, a
Delaware limited liability company, by its member

SLC Urban Grove SPE LLC,
a Delaware limited liability company

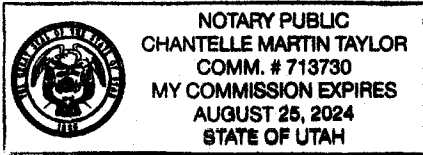
By: SLC Urban Grove Holdings LLC,
a Delaware limited liability company
Its: Managing Member

By: 
Matthew J. Felton, Managing Member

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

On this 14th day of June, 2021, before me, the undersigned, personally appeared Christian Gardner, known or identified to me to be a manager of KC Gardner Company, L.C., a Utah limited liability company, which is a manager of Urban Grove, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Chantelle Martin Taylor
NOTARY PUBLIC
My Commission Expires: 08-25-2024
Residing at: Lehi UT

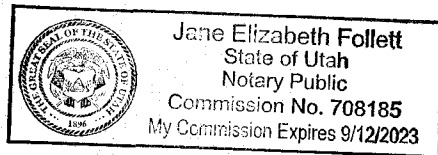
STATE OF UTAH)
 : ss.
COUNTY OF Utah)

On this 14 day of June, 2021, before me, the undersigned, personally appeared Kevin Bradburn, known or identified to me to be a manager of Grove Creek Capital, LLC, a Utah limited liability company, which is a manager of Urban Grove, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:
9/12/2023

Jane E. Follett
NOTARY PUBLIC
Residing at: Pleasant Grove, UT



STATE OF Oregon)
COUNTY OF Multnomah) : ss.

On this 14 day of June, 2021, before me, the undersigned, personally appeared Matthew J. Felton, the managing member of SLC Urban Grove Holdings LLC, a Delaware limited liability company, the managing member of SLC Urban Grove SPE LLC, the member of SLC Urban Grove Equities LLC, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Marianne Majors
NOTARY PUBLIC

My Commission Expires: 2/10/23

Residing at: Portland OR

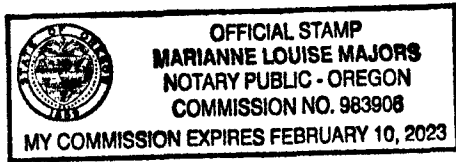


Exhibit "A"

All of Lot 8, The Void, Plat "D", according to the official plat thereof recorded January 26, 2018, as Entry No. 8256:2018 in the official records of the Utah County Recorder's Office, State of Utah.

Tax Parcel Id No. 54-356-0008

Exhibit "B"

All of Lot 9, The Void, Plat "D", according to the official plat thereof recorded January 26, 2018, as Entry No. 8256:2018 in the official records of the Utah County Recorder's Office, State of Utah.

Tax Parcel Id No. 54-356-0009