13178774 1/27/2020 1:47:00 PM \$40.00 Book - 10889 Pg - 390-408 RASHELLE HOBBS Recorder, Salt Lake County, UT COTTONWOOD TITLE BY: eCASH, DEPUTY - EF 19 P.

#### AFTER RECORDING, PLEASE RETURN TO:

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

#### FIRST AMENDMENT

21-26-202-006, 21-26-276-010, 21-26-276-011, 21-26-276-012, and 21-26-202-002

TO

#### AMENDED AND RESTATED DECLARATION

OF

#### **COVENANTS AND RESTRICTIONS**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS (this "Amendment"), dated as of the 23rd day of January, 2020 (the "Effective Date"), is executed by ARBOR GARDNER BINGHAM JUNCTION OFFICE 5, L.C., a Utah limited liability company (successor to Declarant with respect to the portion of the Declarant Parcel now constituting the Office 5 Parcel, as such terms are defined below) ("Office 5"), ARBOR GARDNER BINGHAM JUNCTION OFFICE 4, L.C., a Utah limited liability company (successor to Declarant with respect to the portion of the Declarant Parcel now constituting the Office 4 Parcel, as such terms are defined below) ("Office 4"), VIEW 8, L.C., a Utah limited liability Company ("View 8"), and CORNELJUS DEVELOPMENT CORPORATION, a Utah corporation (the current owner of the Benefited Lot) ("Cornelius"). Office 5, Office 4, View 8, and Cornelius are sometimes referred to herein collectively as the "Parties" and individually as a "Party".

#### RECITALS:

- A. Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, as "Declarant", View 8, and Savage Companies, a Utah Corporation ("Savage Companies") entered into that Amended and Restated Declaration of Covenants and Restrictions dated July 9, 2015, and recorded on July 31, 2015, as Entry No. 12103912 (the "Declaration"), which encumbers the View 8 Parcel, the Office 5 Parcel and the Office 4 Parcel described on Exhibit "A" attached hereto and made a part hereof. Capitalized terms used but not defined herein have the meanings set forth for such terms in the Declaration.
  - B. Savage Companies conveyed the Benefited Lot to Cornelius on July 30, 2018.
- C. The Parties desire to amend the Declaration to, among other things, provide the following: (i) increase the height restriction in the Seventy Two Foot Restricted Area to seventy nine feet and rename this area the "Seventy Nine Foot Restricted Area;" (ii) allow rooftop

equipment on the roof of the Building in the Seventy Nine Foot Restricted Area to extend an additional four feet beyond the seventy nine foot restriction up to a maximum height of eighty three feet (subsequently referred to herein as the Eighty Three Foot Restricted Area) provided that such rooftop equipment constitutes less than 15% of the footprint of the Building located in the Seventy Nine Foot Restricted Area; and (iii) that the baseline for determining the elevation of all Restricted Areas shall (instead of being measured from the natural grade of the land) be measured from the finished floor level of the ground floor of the existing Building located in the Eighty Six Foot Restricted Area.

- D. Section 5 of the Declaration provides that the Declaration may be amended by an instrument that is executed by all of the Owners of the Lots.
- E. The Parties are the sole owners of the respective Lots and desire to amend the Declaration in accordance with the terms and conditions set forth below.

#### DECLARATION:

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. <u>Definitions</u>.

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(a) The definition for "Restricted Areas" set forth in Section 1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Restricted Areas" means, collectively, the Thirty Foot Restricted Area, the Thirty Eight Foot Restricted Area, the Seventy Nine Foot Restricted Area, the Eighty Three Foot Restricted Area, the Eighty Six Foot Restricted Area, and the One Hundred Foot Restricted Area.

(b) The definition for "Seventy Two Foot Restricted Area" set forth in Section 1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Seventy Nine Foot Restricted Area" means the area on the Burdened Lots which are more particularly described on Exhibit "D" attached hereto as the Seventy Nine Foot Restricted Area

(c) Section 1 is hereby amended to include the following definition:

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"Eighty Three Foot Restricted Area" means the rooftop area on the roof of the Building in the Seventy Nine Foot Restricted Area which is more particularly described on Exhibit "D" attached hereto as the Eighty Three Foot Restricted Area.

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#### 2. Restrictive Covenants.

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- (a) Section 2 is hereby amended to delete each reference to the following phrase as the measuring standard for the Restricted Areas: "measured at the natural grade of the land on which such Building or Related Improvement is constructed". Such measuring standard is hereby replaced in each instance with the following phrase: "measured from the finished floor level of the ground level of the Building located (as of the date of this Amendment) in the Eighty Six Foot Restricted Area".
- (b) Subsection (c) of Section 2 is hereby deleted in its entirety and replaced with the following:
  - (c) No Building or Related Improvement shall be constructed in the Seventy Nine Foot Restricted Area if such Building or Related Improvements exceeds seventy-nine feet (79') in height measured from the finished floor level of the ground level of the Building located (as of the Effective Date) in the Eighty Six Foot Restricted Area.
  - (c) Section 2 is hereby amended to include the following Subsection (f):
    - (f) Notwithstanding Subsection (c) of Section 2 above, rooftop mechanical equipment may be constructed in the Eighty Three Foot Restricted Area as long as: (i) such rooftop mechanical equipment does not exceed eighty-three feet (83') in height measured from the finished floor level of the ground level of the Building located (as of the Effective Date) in the Eighty Six Foot Restricted Area; and (ii) such rooftop mechanical equipment constructed in the Eighty Three Foot Restricted Area constitutes less than fifteen percent (15%) of the footprint of the Building located in the Seventy Nine Foot Restricted Area.

#### 3. Exhibits.

- (a) <u>Exhibit "D"</u> to the Declaration is hereby deleted in its entirety and replaced with the revised <u>Exhibit "D"</u> attached to this Amendment and incorporated herein and into the Declaration by this reference. All references to <u>Exhibit "D"</u> in the Declaration shall be deemed to be references to the revised <u>Exhibit "D"</u> attached to this Amendment.
- (b) <u>Exhibit "E"</u> to the Declaration is hereby deleted in its entirety and replaced with the revised <u>Exhibit "E"</u> attached to this Amendment and incorporated herein and into the Declaration by this reference. All references to <u>Exhibit "E"</u> in the Declaration shall be deemed to be references to the revised Exhibit "E" attached to this Amendment.
- 4. <u>Continuing Validity of Declaration</u>. Except as modified by this Amendment, the Declaration shall continue in full force and effect in accordance with its terms. In the event of any conflict between the Declaration and this Amendment, this Amendment shall control.

5. <u>Counterparts.</u> This Amendment may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

(Signatures begin on following page)

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EXECUTED as of the Effective Date.

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### "Office 5"

ARBOR GARDNER BINGHAM JUNCTION OFFICE 5, L.C., a Utah limited liability company, by its manager

Bingham Junction Office 5 Manager, Inc., a Utah corporation

By: / len Combine
Name: them C. Gardhar
Its: prange

#### "Office 4"

ARBOR GARDNER BINGHAM JUNCTION OFFICE 4, L.C., a Utah limited liability company, by its managers

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

By: Alm C Farder
Name: Kem C. Gardasr
Its: Manager

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By:
Name:
\_\_\_\_\_\_\_\_
Its: Manager

EXECUTED as of the Effective Date.

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#### "Office 5"

ARBOR GARDNER BINGHAM JUNCTION OFFICE 5, L.C., a Utah limited liability company, by its manager

Bingham Junction Office 5 Manager, Inc., a Utah corporation

By:	
Name:	
Its:	

#### "Office 4"

ARBOR GARDNER BINGHAM JUNCTION OFFICE 4, L.C., a Utah limited liability company, by its managers

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

By:		 	
Name:			
Its:	Manager	 	

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: 7 4
Name: Cony Gust
Its: Manager

" <u>View 8</u> "
VIEW 8, L.C., a Utah limited liability company, by its manager
KC Gardner Company, L.C., a Utah limited liability company
By: 1 ftm 7 andrew Name: 12em C. Co and wer Its: mange
"Cornelius"
CORNELIUS DEVELOPMENT CORPORATION, a Utah corporation

By:
John K. Savage, President

## "<u>View 8</u>"

VIEW 8, L.C., a Utah limited liability company, by its manager

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

By:
Name:
Its:

## "Cornelius"

CORNELIUS DEVELOPMENT CORPORATION, a Utah corporation

By: Charles John K. Savage, President

STATE OF UTAH )	
: ss. COUNTY OF SALT LAKE )	
COUNTY OF SALT LAKE	
	December, 2019, personally appeared before me
	of Bingham Junction Office 5 Manager, Inc., a
limited liability company, on behalf	Arbor Gardner Bingham Junction Office 5, L.C., a Utah
infied flagfilly company, on behalf	si sala company.
SONIA CORTEZ PEREZ	
My Comm. Exp. 10/16/2020	
Commission # 691238	NOTARY PUBLIC
My Commission Expires: 10-11-20	-
The state of the s	and the first of t
STATE OF UTAH )	
: ss. COUNTY OF SALT LAKE )	
COUNTY OF BALLI LAKE )	
On this day of	December, 2019, personally appeared before me
	of Arbor Commercial Real Estate L.L.C., a Utah limited
	or Gardner Bingham Junction Office 4, L.C., a Utah limited
liability company, on behalf of said c	ompany.
	NOTE DI DI DI DI DI
My Commission Expires:	NOTARY PUBLIC Residing at:
wry Commission Expires.	residing at.

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STATE OF UTAH )
: ss. COUNTY OF SALT LAKE )
On this day of December, 2019, personally appeared before me, the of Bingham Junction Office 5 Manager, Inc., a
Utah corporation, the Manager of Arbor Gardner Bingham Junction Office 5, L.C., a Utah limited liability company, on behalf of said company.
NOTARY PUBLIC
My Commission Expires: Residing at:
STATE OF UTAH  : ss.  COUNTY OF SALT LAKE  On this day of December, 2019, personally appeared before me  NA GUST  , a Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Arbor Gardner Bingham Junction Office 4, L.C., a Utah limited liability company, on behalf of said company.
My Commission Expires: 3/20/21  NOTARY PUBLIC Residing at: U

KALEE ARAGON-HERRERA

NOTARY PUBLIC-STATE OF UTAH COMMISSION# 694028 COMM. EXP. 03-20-2021

STATE OF UTAH ) : ss.	
COUNTY OF SALT LAKE )	
On this 17 day of Dece vem C. Amoles, a Manager of KC company, a manager of Arbor Gardner Bing company, on behalf of said company.	mber, 2019, personally appeared before me Gardner Company, L.C., a Utah limited liability gham Junction Office 4, L.C., a Utah limited liability
SONIA CORTEZ PEREZ NOTARY PUBLIC - STATE OF UTAH My Comm. Exp. 10/16/2020 Commission # 691238	NOTARY PUBLIC
My Commission Expires: 10.16.20	Residing at: PANS COUNTY, 47
STATE OF UTAH ) : ss. COUNTY OF SALT LAKE )	
com c. garonte, a Manager of KC	mber, 2019, personally appeared before me Gardner Company, L.C., a Utah limited liability Utah limited liability company, on behalf of said
SONIA CORTEZ PEREZ  NOTARY PUBLIC - STATE OF UTAH  My Comm. Exp. 10/16/2020  Commission # 691238	NOTARY PUBLIC
My Commission Expires: 10.16.20	Residing at: pavis county, n7
STATE OF UTAH ) : ss. COUNTY OF SALT LAKE )	
On this day of December, 20	19, personally appeared before me John K. Savage, poration, a Utah corporation, on behalf of said
My Commission Expires:	NOTARY PUBLIC Residing at:

STATE OF UTAH )	
: ss. COUNTY OF SALT LAKE )	
, a Manager of KC	uary, 2020, personally appeared before me Gardner Company, L.C., a Utah limited liability gham Junction Office 4, L.C., a Utah limited liability
My Commission Expires:	NOTARY PUBLIC Residing at:
STATE OF UTAH ) : ss. COUNTY OF SALT LAKE )	
, a Manager of KC	uary, 2020, personally appeared before me Gardner Company, L.C., a Utah limited liability Utah limited liability company, on behalf of said
My Commission Expires:	NOTARY PUBLIC Residing at:
STATE OF UTAH ) : ss. COUNTY OF SALT LAKE )	
President of Cornelius Development Cor	0, personally appeared before me John K. Savage, poration, a Utah corporation, on behalf of said
MONICA FRAME NOTARY PUBLIC-STATE OF UTAH COMMISSIONS 704214 COMM. EXP. 01-23-2023	M- 1
My Commission Expires:	Residing at:

#### **EXHIBIT "A"**

#### TO

## FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

#### Legal Description of View 8 Parcel

Lot 2 as shown on the View 8 Hotel Subdivision Amendment of Lot 1 of Bingham Junction Savage Subdivision recorded in the Salt Lake County Recorder's Office.

Tax Parcel Id: 21-26-202-006

#### Legal Description of Office 5 Parcel

Lot 1 and Lot 2 of the "View 72 Retail Subdivision 3rd Amended" recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015 at Page 165.

Tax Parcel Id:

Lot 1: 21-26-276-010 Lot 2: 21-26-276-011

#### Legal Description of Office 4 Parcel

Lot 3 of the "View 72 Retail Subdivision 4th Amended" recorded with the County Recorder for Salt Lake County, Utah on September 20, 2019 as Entry No. 13078701 in Book 2019 at Page 262.

Tax Parcel Id: 21-26-276-012

#### Legal Description of Benefitted Lot

Lot 2 as shown on the Bingham Junction Savage Subdivision as recorded in the Salt Lake County Recorder's Office.

#### EXHIBIT "D"

#### TO

## AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

#### Description of Restricted Areas

#### Thirty Foot Restricted Area:

Parcel 1 (Depicted as Restricted Area No. 1 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 738.23 feet along the Section Line and West 1,546.27 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 18°21'05" West 509.05 feet;

thence North 56°55'12" West 1.56 feet;

thence Northwesterly 69.25 feet along the arc of a 500.00 foot radius curve to the left (center bears South 33°04'48" West and the chord bears North 60°53'15" West 69.19 feet with a central angle of 07°56'06");

thence North 64°51'18" West 0.52 feet;

thence North 18°21'05" East 535.19 feet;

thence Southeasterly 7.11 feet along the arc of a 1,369.90 foot radius curve to the right (center bears South 47°30'39" West and the chord bears South 42°20'26" East 7.11 feet with a central angle of 00°17'51");

thence South 42°11'31" East 73.27 feet to the point of beginning.

Contains 36,489 Square Feet or 0.838 Acres

#### Parcel 2 (Depicted as Restricted Area No. 5 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 1,430.63 feet along the Section Line and West 954.14 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 00°17'30" West 70.04 feet;

thence South 88°18'07" West 415.56 feet;

thence North 30°21'58" East 82.60 feet;

thence North 88°18'07" East 374.14 feet to the point of beginning.

Contains 27,640 Square Feet or 0.635 Acres

#### Thirty Eight Foot Restricted Area (Depicted as Restricted Area No. 7 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 1,422.40 feet along the Section Line and West 677.25 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence Southeasterly 72.30 feet along the arc of a 333.00 foot radius curve to the left (center bears North 80°27'49" East and the chord bears South 15°45'24" East 72.16 feet with a central angle of 12°26'26");

thence South 88°18'07" West 297.01 feet; thence North 00°17'30" East 70.04 feet; thence North 88°18'07" East 277.05 feet to the point of beginning.

Contains 19,998 Square Feet or 0.459 Acres

#### Seventy Nine Foot Restricted Area:

Parcel 1 (Depicted as Restricted Area No. 4 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 1,744.13 feet along the Section Line and West 1,207.61 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence North 68°31'47" West 258.59 feet; thence North 30°21'58" East 158.20 feet; thence North 88°18'07" East 240.72 feet; thence South 18°32'52" West 251.33 feet to the point of beginning.

Contains 48,589 Square Feet or 1.115 Acres

#### Parcel 2 (Depicted as Restricted Area No. 6 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 1,422.40 feet along the Section Line and West 677.25 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 88°18'07" West 651.19 feet; thence North 30°21'58" East 263.93 feet; thence North 33°11'04" East 17.47 feet; thence South 67°51'20" East 356.36 feet; thence South 83°35'13" East 174.63 feet;

thence Southeasterly 69.47 feet along the arc of a 333.00 foot radius curve to the left (center bears South 87°34'59" East and the chord bears South 03°33'35" East 69.35 feet with a central angle of 11°57'12") to the point of beginning.

Contains 86,182 Square Feet or 1.978 Acres

Less and Excepting:

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Beginning at a point being South 00°17'30" West 1,363.87 feet along the Section Line and West 1,010.99 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

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thence North 67°51'20" West 145.34 feet;
thence North 22°08'40" East 67.10 feet;
thence South 67°51'20" East 145.34 feet;
thence South 22°08'40" West 67.10 feet to the point of beginning.
```

Contains 9,752 Square Feet or 0.224 Acres

Net Area Contains 76,430 Square Feet or 1.754 Acres

#### Eighty Three Foot Restricted Area (Depicted as Restricted Area No. 8 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 1,363.87 feet along the Section Line and West 1,010.99 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

```
thence North 67°51'20" West 145.34 feet;
thence North 22°08'40" East 67.10 feet;
thence South 67°51'20" East 145.34 feet;
thence South 22°08'40" West 67.10 feet to the point of beginning.
```

Contains 9,752 Square Feet or 0.224 Acres

#### Eighty Six Foot Restricted Area (Depicted as Restricted Area No. 3 on Exhibit "E"):

#### View Corridor Restricted Area No. 3

Beginning at a point being South 00°17'30" West 1,547.48 feet along the Section Line and West 966.53 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

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thence South 21°28'13" West 456.91 feet;
thence North 69°00'29" West 441.50 feet;
thence North 30°21'58" East 191.31 feet;
thence South 68°31'47" East 258.59 feet;
thence North 18°32'52" East 251.33 feet;
thence North 88°18'07" East 52.31 feet;
thence South 68°31'47" East 118.04 feet to the point of beginning.
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Contains 122,851 Square Feet or 2.820 Acres

#### One Hundred Foot Restricted Area (Depicted as Restricted Area No. 2 on Exhibit "E"):

Beginning at a point being South 00°17'30" West 814.54 feet along the Section Line and West 1,571.20 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 42°11'35" East 114.45 feet;

thence Southeasterly 247.78 feet along the arc of a 1,397.90 foot radius curve to the left (center bears North 47°20'26" East and the chord bears South 47°44'14" East 247.45 feet with a central angle of 10°09'20");

thence South 33°11'04" West 306.99 feet; thence North 56°55'12" West 255.68 feet; thence North 18°21'05" East 388.33 feet to the point of beginning.

Contains 100,246 Square Feet or 2.301 Acres

### EXHIBIT "E"

TO

# AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

<u>Depiction of Restricted Areas</u>

(See Attached)

