

**AMENDMENT NO. 1 TO
SAN ANTONIO BOTANICAL GARDEN AGREEMENT**

THIS AMENDMENT NO. 1 TO SAN ANTONIO BOTANICAL GARDEN AGREEMENT (this "Amendment"), is made and entered into as of [REDACTED], 2017 ("Effective Date") set forth below, by and between the CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation (the "City") and the SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC., a Texas non-profit corporation ("SABG"); with each party (each a "Party" and collectively, the "Parties") acting herein by and through its hereunto duly authorized representative.

RECITALS:

WHEREAS, the Parties hereto entered into that certain San Antonio Botanical Garden Agreement, pursuant to Ordinance No. 2010-10-21-092, dated October 21, 2010, a copy of which is attached hereto as Exhibit 1 (the "SABG Agreement"), which SABG Agreement incorporates (i) that certain License Agreement (the "License"), for that certain real property known as San Antonio Botanical Garden (the "Property"), more particularly described in Exhibit A attached to the License, and (ii) that certain Lease Agreement (the "Lease") for the Property;

WHEREAS, SABG desires to obtain a loan from Urban Development Fund LII, LLC, a Delaware limited liability company ("UDF"), in the estimated principal amount of \$7,500,000 (the "QLICI Loan"), which financing will be used to complete certain improvements on the Property, purchase certain furniture, fixtures, and equipment relating to the operation of the Property, and perform certain services for the benefit of the Property (the "Financing"); and

WHEREAS, in order for SABG to obtain the Financing, the Parties have agreed to amend the SABG Agreement on the terms and conditions set forth in this Amendment.

1. AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree to amend the SABG Agreement as follows:

1.1 Acknowledgement of Term of License and Lease. City acknowledges that, pursuant to Section 4.1 of the SABG Agreement and based upon the exercise of all available renewal options, the term of the License will expire at the end of the day on December 31, 2018. Upon expiration of the License, the City acknowledges and agrees the Lease shall commence such that the term of the License and the term of the Lease are consecutive. The term of the Lease commences on January 1, 2019, with the initial term expiring at the end of the day on December 31, 2039, unless SABG exercises, in its sole discretion, its option to renew the Lease for an additional twenty (20) year term.

1.2 Notices; Default and Cure Rights. The Parties agree that upon the occurrence of any default by SABG under the SABG Agreement (including the License and/or the Lease), the City shall provide UDF with prompt notice of any asserted default against SABG under the SABG Agreement (which includes the License and the Lease). In the event of any act or omission of SABG which would give the City the right, immediately or after lapse of time, to cancel or terminate the SABG Agreement, the License, and/or the Lease, or to exercise any other remedy under the SABG Agreement (including the License and/or the Lease), the City shall not exercise such right or remedy until UDF has received notice and a reasonable period of time to cure said default (which cure period shall be the greater of the applicable cure period provided to SABG under the SABG Agreement or if no cure period is provided to SABG under the SABG

Agreement, then thirty (30) days) with such cure period commencing upon the later of (i) the expiration of SABG's applicable cure period, or (ii) UDF's receipt of notice of the default. Notwithstanding the foregoing, UDF shall have the right, but not the obligation, to cure a default under the SABG Agreement (including the License and/or the Lease). City agrees to accept the cure of any default by SABG from UDF, if timely made in accordance with the other terms and provisions of the SABG Agreement and this provision.

All notices and other communications to UDF shall be in writing and shall be deemed to have been duly given hereunder (i) five (5) Business Days after being enclosed in a properly sealed envelope, certified or registered mail, and deposited (postage and certification or registration prepaid), return receipt requested, in a post office or branch post office regularly maintained by the United States Postal Service, (ii) on the date of confirmation of receipt of transmission by telecopy, facsimile or comparable electronic system, (iii) on the date confirmation of delivery is received by the courier service, after placement with a commercial courier service for next business day delivery, or (iv) at the time delivered by hand, and addressed as follows:

Urban Development Fund LII, LLC ("UDF")
216 West Ohio Street,
5th Floor
Chicago, Illinois 60654

With copies of such notice provided simultaneously to the following:

U. S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Attn: Director of Asset Management-NMTC Deal #

Dentons US LLP
One Metropolitan Square
Suite 3000
St. Louis, Missouri 63102
Attention: Jennifer Simmons

Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attention: Darryl Jacobs

1.3 Modification of SABG Agreement. Without UDF's prior written consent, the Parties shall not (a) amend or terminate the SABG Agreement (including the License and/or Lease), (b) assign any of SABG's rights under the SABG Agreement or sublet the Property or any part thereof, and/or (c) encumber the Property with any liens.

1.4 Legal Description. The Parties acknowledge and agree the Property is legally described on Exhibit 2 and such exhibit is incorporated herein by this reference.

1.5 Agreement Not to Encumber. The Parties hereto acknowledge and agree that upon UDF's request, (i) a memo of the SABG Agreement may be recorded in the public real estate records, and (ii) an agreement not to encumber the Property may also be recorded in the public

real estate records. The City further agrees that upon UDF's request, the City shall execute the foregoing documents.

1.6 Third Party Beneficiary. The Parties agree UDF shall be a third-party beneficiary of the terms of the SABG Agreement, including the terms of this Amendment, and UDF shall have the right to enforce the provisions thereof. During such time as the QLICI Loan is outstanding and UDF holds the QLICI Loan, the terms of the SABG Agreement shall neither terminate nor be modified without the prior written consent of UDF, which consent shall not be unreasonably withheld.

2. MISCELLANEOUS:

2.1 Further Assurances. The Parties shall execute and deliver any further instruments as may be necessary to effect the purposes of this Amendment.

2.2 Modification; Successors and Assigns. This Amendment may be modified only in writing, signed by the Parties, and permitted assigns, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

2.3 Counterparts. This Amendment may be executed in multiple identical counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single instrument.

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**SIGNATURE PAGE
TO
AMENDMENT NO. 1 TO
LICENSE AGREEMENT**

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC.

By: _____
John Troy, President

DRAFT

**SIGNATURE PAGE
TO
AMENDMENT NO. 1 TO
LICENSE AGREEMENT**

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

CITY OF SAN ANTONIO

By: _____
Xavier D. Urrutia, Director,
Parks and Recreation Department

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

EXHIBIT 1

COPY OF SABG AGREEMENT, INCLUDING LICENSE AND LEASE

DRAFT

EXHIBIT 2

LEGAL DESCRIPTION

DRAFT