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KELLY A. SILVESTER  
DAVIS COUNTY, UTAH RECORDER  
01/17/2025 10:31:19 AM  
FEE: \$40.00 Pgs: 9  
DEP eCASH REC'D FOR: UTAH FIRST TITLE  
INSURANCE AGENCY

**Tax Serial Number:**  
13-384-0001

**RECORDATION REQUESTED BY:**  
Security Service Federal Credit Union  
15000 IH 10 West  
San Antonio, TX 78249

**WHEN RECORDED MAIL TO:**  
Security Service Federal Credit Union  
15000 IH 10 West  
San Antonio, TX 78249

**SEND TAX NOTICES TO:**  
Security Service Federal Credit Union  
15000 IH 10 West  
San Antonio, TX 78249

FOR RECORDER'S USE ONLY

**NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT  
AND ESTOPPEL CERTIFICATE**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") dated November 4, 2024, is made and executed among TFC CLINTON RETAIL, LLC, whose address is 6770 S. 900 E. Suite 300, Midvale, UT 84047 ("Landlord"); SAVORY MB STORES, LLC, whose address is 1557 West Innovation Way, Suite 150, Lehi, UT 84043 ("Tenant"); and Security Service Federal Credit Union, 15000 IH 10 West, San Antonio, TX 78249 ("Lender").

**SUBORDINATED LEASE.** Tenant and Landlord have executed a lease dated March 28, 2024 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Tenant and Landlord have entered into that certain lease dated March 28, 2024 (as the same has been and may further be modified, amended, assigned or supplemented from time to time, the "lease") for the property described herein.

**REAL PROPERTY DESCRIPTION.** The Lease covers a portion of the following described real property (the "Real Property") located in Davis County, State of Utah:

See Exhibit "A", which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 2654 North 2000 West, Clinton, UT 84015. The Real Property tax identification number is 13-384-0001.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Landlord, secured by the Real Property (the "Superior Indebtedness"):

Evidenced by a Promissory Note payable to the order of Lender (the "Note"), as secured by, among other things, a Deed of Trust as of November 7, 2024, pertaining to the Real Property.

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated November 7, 2024, from Landlord to Lender (the "Lender's Lien") and recorded in Davis County, State of Utah as follows:

Security Service Federal Credit Union 15000 IH 10 West, San Antonio, TX 78249.

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

**REQUESTED FINANCIAL ACCOMMODATIONS.** Landlord wants Lender to provide financial accommodations to Landlord in the form of the Superior Indebtedness. Landlord represents and acknowledges, and Tenant acknowledges, to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to Landlord, and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

**IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:**

**ESTOPPEL CERTIFICATE.** Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

- (A) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.
- (B) All requirements for the commencement and validity of the Lease have been satisfied.
- (C) To the best of Tenant's knowledge, Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Landlord under the Lease.
- (D) There are no defenses, counterclaims or setoffs against rents or charges due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. There are no defenses, counterclaims or setoffs against rents or charges which may become due under the Lease, except for the payment of the Tenant Improvement Allowance under Section 5.2 of the Lease. To the best of Tenant's knowledge obligations of Landlord required to be performed on or before the Effective Date have been fully performed.
- (E) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.
- (F) As between Lender and Tenant only, after the date of this Agreement, Lender shall not be bound by any Material Modification (as hereinafter defined) of the Lease made without Lender's consent (such consent not to be unreasonably withheld, conditioned or delayed). As used in this Agreement, the term "Material Modification" shall mean any amendment or modification of the Lease which (i) shortens or extends the term of the Lease (excluding Tenant's renewal option(s) set forth in the Lease), (ii) results in a reduction of Base Rent or the elimination or reduction of any category of Additional Rent, (iii) increases Landlord's obligations under the Lease by more than a de minimus extent, or (iv) decreases Tenant's obligations under the Lease by more than a de minimus extent.
- (G) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease without the prior written consent of Lender, unless Tenant transfers its interest under the Lease pursuant to a Permitted Transfer, as defined in the Lease.

**SUBORDINATION.** Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender. Subject to the terms and conditions of this Agreement, if Lender notifies Tenant of any default under the Deed of Trust and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Lender's notice) shall pay rent and all other sums thereafter due under the Lease directly to Lender, unless and until otherwise directed in writing by Lender. Any payments made to Lender by Tenant shall not affect or impair the other rights and remedies of Lender under the Deed of Trust or otherwise against Landlord. Any and all payments made to Lender by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may thereafter be made by Landlord.

**NON-DISTURBANCE.** So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any

applicable cure period, Tenant shall continue to occupy and use the Premises pursuant to the Lease and Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

**ATTORNMENMENT.** If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, such commercially reasonable instrument or certificate which, in the commercially reasonable judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

**NO LIABILITY FOR LENDER.** Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord that are not continuing after Lender succeeds Landlord's interest; or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord provided that the reason for such offset or defense is not continuing after Lender succeeds Landlord's interest; or
- (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (D) Bound by any Material Modification (as defined above) of the Lease made without Lender's prior consent, or waiver of any of its terms, made without its consent; or
- (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or
- (G) Liable for any construction obligation of any prior landlord, including Landlord; or
- (H) Liable for any breach of representation or warranty of any prior landlord, including Landlord provided that the breach of warranty does not continue after Lender succeeds Landlord's interest.

**NEW LEASE.** If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

**ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD.** Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

**EXHIBIT "A".** An exhibit, titled "Exhibit "A", is attached to this Agreement and by this reference is made a part of this Agreement just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Agreement.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Agreement against Landlord, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees relating to the enforcement of the terms of this Agreement, including at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Landlord also will pay any court costs, in addition to all other sums provided by law.

**Authority.** Any person who signs this Agreement on behalf of Lender, Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Utah.

**Choice of Venue.** If there is a lawsuit, Landlord agrees upon Lender's request to submit to the jurisdiction of the courts of Salt Lake County, State of Utah.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**No Waiver by Tenant.** Tenant shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Tenant. No delay or omission on the part of Lender in exercising any right shall

operate as a waiver of such right or any other right. A waiver by Tenant of a provision of this Agreement shall not prejudice or constitute a waiver of Tenant's right otherwise to demand strict compliance with that provision or any other provision of this Agreement.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Deed of Trust, except as specifically set forth herein.

**Successors.** This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED November 4, 2024.

LANDLORD:

TFC CLINTON RETAIL, LLC

TERRAFORM VENTURES IV, LLC, Manager of TFC CLINTON RETAIL, LLC

By: [Signature]  
JASON E SMITH, Manager

By: [Signature]  
ELLIOTT B SMITH, Manager

By: [Signature]  
JONATHAN P TAYLOR, Manager

### LANDLORD ACKNOWLEDGMENT

STATE OF Utah

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COUNTY OF Salt Lake

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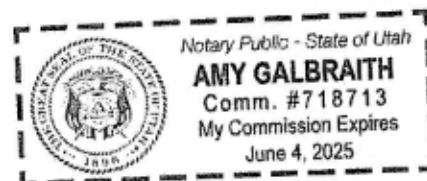
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On this 19 day of December, 20 24, before me, the undersigned Notary Public, personally appeared JASON E SMITH, Manager of TERRAFORM VENTURES IV, LLC, Manager of TFC CLINTON RETAIL, LLC; ELLIOTT B SMITH, Manager of TERRAFORM VENTURES IV, LLC, Manager of TFC CLINTON RETAIL, LLC; and JONATHAN P TAYLOR, Manager of TERRAFORM VENTURES IV, LLC, Manager of TFC CLINTON RETAIL, LLC, and known to me to be members or designated agents of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By [Signature]  
Notary Public in and for the State  
of Utah

Residing at Salt Lake County

My commission  
expires 6/4/2025



LENDER:

SECURITY SERVICE FEDERAL CREDIT UNION

X

Robert A. Reger, Loan Officer

LENDER ACKNOWLEDGMENT

STATE OF

Utah

COUNTY OF

Salt Lake

On this 17th day of December, 2024, before me, the undersigned Notary Public, personally appeared Robert A. Reger and known to me to be the Loan Officer, authorized agent for Security Service Federal Credit Union that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Security Service Federal Credit Union, duly authorized by Security Service Federal Credit Union through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of Security Service Federal Credit Union.

By

Notary Public in and for the State

of

Utah

Residing at

My commission

expires

Salt Lake City, Utah  
9/19/2027




NATOYA CHUNG  
Notary Public  
State of Utah  
My Commission Expires 09/19/2027  
Commission Number 733288

TENANT:

SAVORY MB STORES, LLC

SAVORY MANAGEMENT SERVICES, LLC, Operating Manager

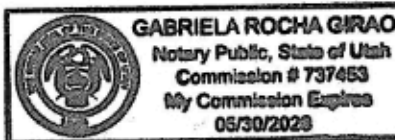
SAVORY MB STORES, LLC

By:   
Authorized Signer for Savory Management Services, LLC

### TENANT ACKNOWLEDGMENT

STATE OF UTAH

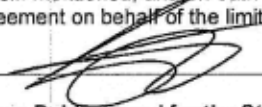
COUNTY OF UTAH



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On this 9<sup>th</sup> day of January 25 ~~December~~ 2024, before me, the undersigned Notary Public, personally appeared

Rob Erdmann  
and known to me to be (a) member(s) or designated agent(s) of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By   
Notary Public in and for the State  
of Utah

Residing at Utah

My commission  
expires 5/30/28



## EXHIBIT "A"

This EXHIBIT "A" is attached to and by this reference is made a part of the Subordination, Non-Disturbance and Attornment Agreement, dated November 4, 2024, and executed in connection with a loan or other financial accommodations between SECURITY SERVICE FEDERAL CREDIT UNION and TFC CLINTON RETAIL, LLC.

Lot 1A, HOMESTEAD CLINTON PAVILION AMENDED SUBDIVISION, according to the Official Plat thereof on file in the office of the Davis County Recorder, State of Utah.