

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
Mountain West REIT, LLC  
2298 W Horizon Ridge Pkwy #213  
Henderson, NV 89052  
Attn: Loan 1127

185748-CAP  
TIN 14-598-0003

(Space Above For Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and effective as of MARCH 19, 2025, by and between **MOUNTAIN WEST REIT, LLC**, a Delaware limited liability company ("Lender"), **CLINTON FG, LLC**, a Utah limited liability company ("Tenant"), and **CLINTON CORNERS II, LLC**, a Utah limited liability company ("Landlord").

**R E C I T A L S:**

A. Lender is the holder of indebtedness secured by a lien or liens upon, the real property described in Exhibit "A" attached hereto and by this reference incorporated herein. The Exhibit "A" property and improvements thereon is hereinafter referred to as the "Premises." The instruments creating such lien or liens whether they be denominated as being "mortgage," "deed of trust," "deed to secure debt," "security agreement," "vendor's lien," "ground lease," or otherwise, and any instruments modifying or amending the same, or entered into in substitution or replacement thereof, are hereinafter collectively referred to as being the "Deed of Trust."

B. Tenant has executed a certain lease with Landlord, dated July 11, 2024, for the Premises as more particularly set forth in said lease. Said lease and all amendments and modifications thereto are herein collectively referred to as the "Lease."

C. Tenant has requested that Lender agree not to disturb Tenant's possessory rights under the Lease in the event that Lender should foreclose on the Deed of Trust, provided that Tenant is not in default of the Lease.

D. The parties desire to establish certain rights and obligations with respect to their respective interests by means of this Agreement.

**A G R E E M E N T:**

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein contained, and intending to be legally bound by hereby agree as follows:

1. Subject to the terms and conditions of this Agreement, and provided that Tenant's rights under the Lease, including its right to quiet enjoyment and possession, are not disturbed, the Lease shall be subordinate to the lien of the Deed of Trust and all voluntary and involuntary advances made thereunder.

2. Lender approves of the Lease.

3. Provided that Tenant is not in default so as to permit Landlord to terminate the Lease or Tenant's right to possession of the Premises, Lender or the purchaser at a foreclosure sale pursuant to any action or proceeding to foreclose the Deed of Trust, whether judicial or non-judicial, or Lender pursuant to acceptance of a deed in lieu of foreclosure or any assignment of Landlord's interest under the Lease, in the exercise of any of the rights arising, or which may arise, out of the Deed of Trust or in any other manner: (i) shall not disturb or deprive Tenant in or of its use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Premises, or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Tenant under the Lease (including any right of renewal or extension thereof); (ii) shall not terminate or affect the Lease; (iii) shall recognize Tenant's rights, benefits and privileges under the Lease; and, (iv) shall recognize the leasehold estate of Tenant under all of the terms, covenants, and conditions of the Lease for the remaining balance of the term of the Lease with the same force and effect as if Lender were the Landlord under the Lease. Lender hereby covenants that any sale by it of the Premises pursuant to the exercise of any rights and remedies under the Deed of Trust or otherwise, shall be made subject to the Lease and the rights of Tenant thereunder. However, in no event shall Lender be:

(a) Liable for any act or omission of Landlord arising prior to the date Lender takes possession of Landlord's interest in the Lease or becomes a mortgagee in possession, except to the extent such act or omission is of a continuing nature, such as a repair obligation;

(b) Liable for any offsets or deficiencies which Tenant might be entitled to assert against Landlord arising prior to the date Lender takes possession of Landlord's interest in the Lease or takes possession of the Premises, except to the extent that Lender has received the benefit of the act of Tenant giving rise to the right of deduction, such as, for example, relief of an obligation that would otherwise have been paid by Lender as Landlord;

(c) Bound by any payment of rent or additional rent made by Tenant to Landlord for more than one month in advance, which payment was not required under the terms of the Lease;

(d) Bound by any amendment or modification of the Lease executed after the date of this Agreement which: (i) decrease Tenant's or increases Landlord's monetary obligations under the Lease, or reduce the term of the Lease, or increases the parties' termination rights under the Lease; and, (ii) is made without Lender's prior written consent (except (x) to the extent that the Lease may specifically contemplate any amendment or modification thereof; (y) the Landlord is entitled to enter into the amendment without the consent of Lender under the terms of the loan documents; or (z) amendments made solely for the purposes of documenting the exercise of rights expressly set forth in the Lease).

4. In the event of the termination of the Deed of Trust by foreclosure, summary proceedings or otherwise, and if Tenant is not in default under the terms and conditions of the Lease so as to permit the Landlord thereunder to terminate the Lease, then, and in any such event, Tenant shall not be made a party in the action or proceeding to terminate the Deed of Trust unless not to do so would be disadvantageous procedurally to Lender, in which case, such joinder of Tenant as a party shall not extinguish or interfere with any rights of Tenant under the Lease, nor shall Tenant be evicted or moved or its possession or right to possession under the terms of the Lease be disturbed or in any way interfered with, and, subject to the provisions of this Agreement, Tenant will attorn to Lender or any other party which obtains title to the Premises, provided that Lender or such successor recognizes and agrees to be bound by all Tenant rights under the Lease, including any renewal options and rent terms, such attornment to be effective and self-operative without the execution of any other instruments on the part of any party, and the Lease shall continue in full force and effect as a direct Lease from Lender or such party to Tenant under all the terms

and provisions of the Lease (including any rights to renew or extend the term thereof). In the event of such attornment, Lender shall be deemed to have assumed and shall assume the performance of all of the covenants of Landlord occurring under the Lease from and after the time Lender becomes Landlord and until such time as such obligations are assumed by a bona fide purchaser.

5. Tenant hereby confirms that the Lease is in full force and effect.

6. Nothing contained in this Agreement shall be deemed to reduce or abrogate any rights of Tenant to cure any default of the Landlord under the Lease in accordance with and subject to the provisions of the Lease and/or to deduct from rental such amounts which Tenant may be entitled to so deduct under the provisions of the Lease.

7. Unless and until Lender or any subsequent purchaser succeeds to the interest of Landlord under the Lease, Landlord shall continue to perform Landlord's obligations and duties under the Lease.

8. Upon an event of default by Landlord under the Deed of Trust, after receipt of notice from Lender to Tenant (at the address set forth below) that rents under the Lease should be paid to Lender, Tenant shall thereafter pay to Lender all monies due under the Lease, and such payments shall satisfy Tenant's rent obligations to Landlord to the extent of the amounts paid to Lender. In such event, Tenant shall be entitled to rely solely upon such notice, and Landlord and Lender hereby indemnify and agree to defend and hold Tenant harmless from and against any and all expenses, losses, claims, damages or liabilities arising out of Tenant's compliance with such notice or performance of the obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Deed of Trust, shall be dealt with and adjusted solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party thereto.

9. Lender shall use the proceeds of any insurance recovery or condemnation award for the purposes stated in the Lease.

10. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against which the same is brought to be asserted.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, including without limitation, the covenants of Lender herein shall be specifically binding upon any purchaser of the Premises at foreclosure or at a sale under power of sale.

12. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and of no further force or effect.

13. This Agreement shall be governed and construed according to the laws of the state where the Premises is located.

14. Provided that Tenant is not in default under the Lease, Lender shall not institute any litigation naming Tenant as a defendant for the purpose of foreclosing or otherwise terminating Tenant's leasehold interest in the Premises unless Tenant is required to be named in such litigation by law, and then

only for the purpose of complying with the applicable foreclosure statute and so long as Tenant's failure to defend against any such action shall not result in a waiver of its rights to continued possession under the Lease as set forth in this Agreement. The term "Lender" as used herein shall include any successor-in-interest to the Lender (including a purchaser at foreclosure or sale in lieu thereof).

15. To be effective, any notice or other communication given pursuant to this Agreement must be in writing and sent via nationally recognized overnight courier service, such as, but not limited to, Federal Express, postage paid by United States express mail or registered or certified mail with return receipt requested. Rejection or other refusal to accept, or inability to deliver because of changed address of which no notice has been given, will constitute receipt of the notice or other communication.

For purposes hereof, Lender's address is:  
Mountain West REIT, LLC  
404 N 300 W  
Salt Lake City, Utah 84103  
Attn.: Andrew Menlove

and Tenant's address is:

Clinton FG, LLC  
14497 S Gray Fox Drive  
Bluffdale, Utah 84065  
Attn: Heidi Landen

and Landlord's address is:

Clinton Corners II, LLC  
610 N 800 W  
Centerville, Utah 84014  
Attn: Manager

At any time(s), each party may change its address for the purposes hereof by giving the other party a change of address notice in the manner stated above.

16. This Agreement (a) contains the entire understanding of Lender and Tenant regarding matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby), (b) can be modified or waived in whole or in part only by a written instrument signed on behalf of the party against whom enforcement of the modification or waiver is sought, and (c) will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

17. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable attorneys' fees, including costs of suit, discovery and appeal. The "prevailing party" shall be that party who obtains substantially the relief sought in the action.

18. In the event the Lease is terminated as a result of Landlord's bankruptcy or reorganization, whereby Lender obtains fee title to the Premises (or in the case Lender is the ground lessor, retains fee title without the encumbrance of the ground lease), Lender agrees that the Lease shall remain in effect as between Lender (as Landlord) and Tenant, subject to the terms of this Agreement, and, upon Tenant's written request, Lender and Tenant agree to execute a reinstatement agreement documenting that the Lease has been reinstated as between Lender (as Landlord) and Tenant and that the terms and conditions thereof

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

LENDER:

Mountain West REIT, LLC  
a Delaware limited liability company

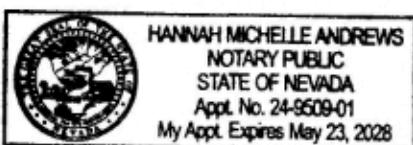
By:   
Printed Name: Andrew Menlove  
Title: Authorized Agent

**NOTARY ACKNOWLEDGMENT**

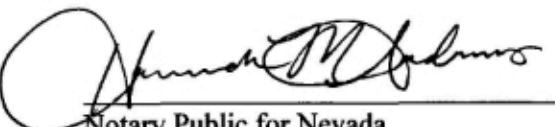
STATE OF NEVADA )  
                         ) ss.  
County of Clark      )

On this 4<sup>th</sup> day of March, 2025, before me, Hannah Michelle Andrews, a Notary Public in and for said State, personally appeared Andrew Menlove, known or identified to me to be the Authorized Agent of Mountain West REIT, LLC, a Delaware limited liability company, the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such 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.



(seal)

  
Notary Public for Nevada  
Residing at Las Vegas, NV  
My commission expires: May 23, 2028

My commission expires:

(seal)



510285.03/LA  
S7879-002/2-17-25/wjb/wjb [0:00 AM] DRAFT

2433236.2 - 22580.009  
Error! Unknown document property name.

Clinton FG LLC  
TYCOR MANAGEMENT, LLC

TENANT: a Utah limited liability company

By:  
Printed Name: Jeff Howes  
Title: Manager

### NOTARY ACKNOWLEDGMENTS

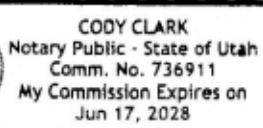
STATE OF Utah

)  
COUNTY OF Davis )

On March 14 2025, before me,  
Cody Clark, Notary Public,  
personally appeared Jeff Howes,  
who proved to me on the basis of satisfactory evidence to be the  
person(s) whose name is subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity, and that by his/her/their  
signature on the instrument the person, or the entity upon behalf  
of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of  
the State of Utah that the foregoing paragraph  
is true and correct.

WITNESS my hand and official seal.



Signature

(seal)

CLINTON CORNERS II, LLC  
a Utah limited liability company  
BY: COLE WEST ENTITY SERVICES, LLC  
(f/k/a CW The Manager, LLC)  
a Utah limited liability company, its Manager

BY: Cole West, LLC (f/k/a Cw Development Group, LLC)  
Its: sole member/sole manager

LANDLORD: ~~REDSIGNATUREBLOCK~~

By: Colin Wright  
Printed Name: Colin Wright  
Title: Manager

## **NOTARY ACKNOWLEDGMENTS**

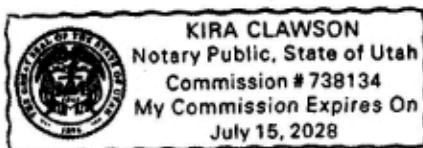
STATE OF Utah )  
 ) ss.

COUNTY OF Davis )

On this 17<sup>th</sup> day of March, 2025, before me,  
Kira Clawson, a Notary Public in and for  
said State, personally appeared  
Colin Wright, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name is  
subscribed to the within instrument and acknowledged to me  
that he/she/they executed the same in his/her/their authorized  
capacity, and that by his/her/their signature on the instrument the  
person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public for

Residing at

Kaysville, UT

My commission expires:

July 15, 2028

**EXHIBIT A TO SNDA**

**LEGAL DESCRIPTION**

The land is situated in Davis County, State of Utah, and is described as follows:

**PARCEL 1:**

Lot 3, CLINTON CORNERS COMMERCIAL SUBDIVISION - AMENDING LOT 4, according to the official plat thereof as recorded in the office of the Davis County Recorder on November 4, 2021 as Entry No. 3506387 in Book 8128 at Page 206.

**PARCEL 1A:**

Non-exclusive easements, appurtenant to Parcel 1 described herein, for pedestrian and vehicular access, ingress and egress, as created and described in that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions recorded August 31, 2012 as Entry No. 2684075 in Book 5597 at Page 280 and First Amendment to Reciprocal Easement Agreement recorded March 3, 2014 as Entry No. 2792567 in Book 5966 at Page 958.

Property Address: 1731 North 2000 West, Clinton, UT 84015

Parcel Identification Number: 14-598-0003

<b>Summary report:</b>	
<b>Litera Compare for Word 11.2.0.54 Document comparison done on</b>	
<b>2/17/2025 4:01:54 PM</b>	
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<b>Original filename:</b> 1127 SNDA - Five Guys.docx	
<b>Modified filename:</b> 1127 SNDA - Five Guys (ZSM 2.17.24).docx	
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<u>Move To</u>	0
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<u>Table moves from</u>	0
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Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	18