

Ent 545154 Bk 1474 Pg 1707 - 1714
MARCY M. MURRAY, Recorder
WASATCH COUNTY CORPORATION
2024 May 10 01:51PM Fee: \$40.00 CO
For: Cottonwood Title Insurance Agency, In
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Mountain West REIT, LLC
2298 W Horizon Ridge Pkwy #213
Henderson, NV 89052
Attn: Loan 1097

170022-CAB

TIN 00-0000-8298

(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 May 10, 2024, by and between **MOUNTAIN WEST REIT, LLC**, a Delaware limited liability company ("Lender"), **Stena Coffee 3, LLC**, a Utah limited liability company DBA Oakley Roasting Company ("Tenant"), and **FSP7, 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 June 30, 2023, 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 for so long as this Agreement remains binding upon Lender, the Lease shall be, in accordance with the terms and conditions hereof, 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, for example, 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 pursuant to any remedy provided for by the Deed of Trust or otherwise, 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 thereafter due to Landlord under the Lease. 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:

Stena Coffee 3, LLC dba Oakley Roasting Company Heber
155 N. 400 W. Suite 580
Salt Lake City, Utah 84103
Attn: Scott Bates

and Landlord's address is:

FSP7 HEBER, LLC
7070 S Union Park Avenue, Suite 300
Midvale, Utah 84047
Attn: Jim Balderson

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 shall be as stated in the Lease, subject to the provisions of this Agreement.

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 shall be as stated in the Lease, subject to the provisions of this Agreement.

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

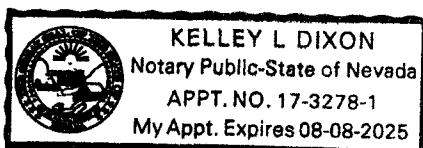
By: _____
Printed Name: Andrew Menlove
Title: Authorized Agent

NOTARY ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
County of Clark)

On this 8th day of May, 2024, before me, Kelley L Dixon, 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)

Kelley L Dixon
Notary Public for Nevada
Residing at Las Vegas, NV
My commission expires: 8/8/2025

TENANT:

Stena Coffeee 3, LLC
a Utah limited liability company

By: 1/2
Printed Name: ADAM KIRSCHMAN
Title: Notary Rep.

NOTARY ACKNOWLEDGMENTS

STATE OF Utah)
COUNTY OF Salt Lake)

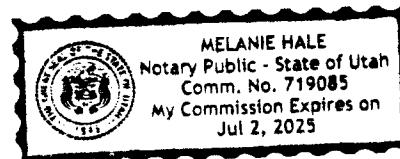
On April 26, 2024, before me, Melanie Hale, Notary Public, personally appeared Adam Kirschman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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 Melanie Hale

(seal)



LANDLORD:

FSP7 HEBER, LLC,
a Utah limited liability company

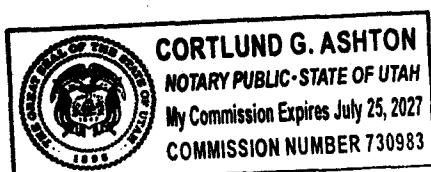

By: Jim Balderson
Its: Manager

NOTARY ACKNOWLEDGMENTS

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

On this 16 day of MAY, 2024, before me, CORTLUND G. ASHTON, known or identified to me to be the Manager of FSP7 HEBER, LLC, an Utah 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
Residing at DRAPER, UT
My commission expires: 7/25/27

EXHIBIT A TO SNDA

LEGAL DESCRIPTION

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

PARCEL 1

Beginning at an existing fence corner lying North 89°54'13" East 948.29 feet along the Section line and North 338.90 feet from the Wasatch County Survey Monument for the Southwest corner of Section 5, Township 4 South, Range 5 East, Salt Lake Base and Meridian (Basis of Bearing: Utah State Plane Coordinate System 1983 Central Zone), and running thence North 89°52'59" West 632.52 feet along an existing fence line to a point on the Easterly right-of-way line of U.S. Highway 40; thence along said Easterly right of way line along a non-tangent 1738.16 foot radius curve to the right 175.40 feet (Chord bears North 04°41'00" West 175.32 feet); thence North 9.66 feet along said Easterly right of way line; thence North 89°49'25" East 310.05 feet along an existing fence line; thence North 89°57'57" East 338.34 feet along an existing fence line; thence South 00°28'36" West 186.85 feet along an existing fence line to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

All of Lot 3, ONE STOP SUBDIVISION - LOT 3 AMENDED, as described in the official plat on file and of record in the office of the Wasatch County Recorder, State of Utah.

PARCEL 1A

Cross Access Easement for pedestrian and vehicular traffic as more particularly defined in that certain Cross Access Easement Agreement recorded May 22, 2022 as Entry No. 518947 in Book 1407 at Page 1225 of official records.

Property Address: 1131 South Main Street, Heber City, UT 84032

Parcel Identification Number: 00-0020-8298