



W3122321

APNs: 08-029-0021 and 08-029-0071

E# **3122321** PG 1 OF 11
Leann H. Kilts, WEBER COUNTY RECORDER
29-Jan-21 0436 PM FEE \$40.00 DEP DAC
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Mountain West REIT, LLC
c/o Taylor Derrick Capital, LLC
2298 W. Horizon Ridge Pkwy #213
Henderson, NV 89052

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

SUBORDINATION AND STANDSTILL AGREEMENT

By and Among

MOUNTAIN WEST REIT, LLC,
a Delaware limited liability company,

RSET DEVELOPMENT, LLC,
a Utah limited liability company,

and

THE SUBORDINATE LENDER (as identified herein)

Dated: January 29, 2020

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "**Agreement**"), dated January 29 2021, is made by and among Mountain West REIT, LLC, a Delaware limited liability partnership ("**Lender**"), RSET DEVELOPMENT, LLC, a Utah limited liability company ("**Borrower**"), and DAI PARTNERS, LLC, a Utah limited liability company (the "**Subordinated Lender**").

RECITALS

A. Lender has agreed to make a loan to Borrower in the original principal amount of Five Million Seven Hundred Ten Thousand Dollars (\$5,710,000) (the "**Loan**") pursuant to that certain Loan Agreement of even date herewith between Lender and Borrower (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Loan Agreement**"), which Loan shall be evidenced by that certain Secured Promissory Note of even date herewith from Borrower to Lender (as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Note**") and secured by, among other things, (i) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith executed by Borrower, as trustor, to the trustee named therein, in favor of Lender, as beneficiary (the "**Deed of Trust**"), which Deed of Trust encumbers, among other things, the real property described on Exhibit "A" attached hereto and incorporated herein by this reference ("**Property**"). The Deed of Trust is to be recorded contemporaneously herewith in the Official Records, as applicable, of the Weber County Recorder ("**County Official Records**").

B. Borrower is indebted to Subordinated Lender pursuant to a Loan Agreement and/or Note (the "**Subordinated Obligation**"), in the original principal amount of One Million Dollars (\$1,000,000.00) (the "**Subordinated Indebtedness**"), in favor of Subordinated Lender, upon the terms and conditions described therein, which Subordinated Obligation is secured by that a certain Deed of Trust dated January 29th, 2021 (the "**Subordinated Deed of Trust**"), encumbering the Property and recorded as Entry No. 3122316 in the County Official Records.

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby declared, understood and agreed as set forth below.

1. **Definitions.** The following capitalized terms in this Agreement shall have the meanings set forth below.

(a) "**Bankruptcy Code**" means Title 11, United States Code, as amended from time to time, any successor statute thereto, and any rules promulgated pursuant thereto.

(b) "**Collateral**" means all of the real, personal and other property encumbered by or securing the Deed of Trust, or any documents entered into or delivered in connection with the Loan, and all of Borrower's right, title and interest in and to such property, whether existing now or in the future, and all security interests, security titles, liens, claims, pledges, conveyances, endorsements and guaranties of whatever nature securing the Loan, and all products and proceeds of the foregoing.

(c) "**Enforcement Action**" means the commencement of any foreclosure proceeding, the exercise of any statutory power of sale, the taking of a deed or assignment in lieu of foreclosure, the

obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any remedies with respect to, the Collateral or any portion thereof.

(d) **“Loan Documents”** means the Loan Agreement, Note, Deed of Trust, and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of Borrower in connection with the Loan, as any of the same may be from time to time amended, extended, restated or otherwise modified.

(e) **“Subordinated Loan Documents”** means the Subordinated Obligation, the Subordinated Deed of Trust and any other document now or hereafter executed and delivered by or on behalf of Borrower in connection with the Subordinated Indebtedness, as any of the same may be from time to time amended, extended, restated or otherwise modified.

2. **Effectiveness of Agreement.** This Agreement shall be effective immediately upon the execution hereof by the parties hereto.

3. **Priority of Deed(s) of Trust and Payments.** Notwithstanding the time of the recording of the Subordinated Deed of Trust, and notwithstanding anything to the contrary whatsoever, Subordinated Lender’s rights and remedies under the Subordinated Loan Documents and to the Collateral are hereby expressly made subject and subordinate in lien, payment, and otherwise to the Deed of Trust, the Note, and the other Loan Documents (including, without limitation, future advances by Lender, whether to protect the Collateral of Lender’s lien thereon or rights thereto or otherwise), and to all of Lender’s rights and remedies under the Loan Documents and to the Collateral. In addition, in furtherance of and without limiting the foregoing, Subordinated Lender agrees that, until the Loan is paid in full:

(a) **Rights in Collateral.** All rights of Subordinated Lender under the Subordinated Loan Documents in and to the Collateral and the proceeds thereof shall be subordinate to the Loan and the Loan Documents.

(b) **Insurance and Condemnation Proceeds.** Subordinated Lender hereby agrees that any insurance proceeds and condemnation awards shall be paid first to Lender to the extent of its debt.

(c) **Release.** Lender may release all or any portion of the Property or Collateral from the lien of the Deed of Trust and concurrently therewith, if Lender is not paid in full as a result of its release, Subordinated Lender shall release same from the lien of the Subordinated Loan Documents; Subordinated Lender hereby waives any right to require Lender to marshal the Collateral in favor of Subordinated Lender.

(d) **Notice of Default.** Subordinate Lender hereby agrees to deliver notice to Lender of any default by Borrower under the Subordinated Loan Documents concurrently with the delivery of notice to Borrower of any such default.

(e) **Amendments; etc.** Subordinated Lender hereby expressly consents to and authorizes, at the option of Lender, the amendment, extension, restatement, refinance, or other

modification, in whole or in part, of all or any of the Loan Documents, including, without limitation, altering payment terms under the Note or altering the amount due under the Loan Documents.

(f) **Subordination of Further Rights.** If Subordinated Lender shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in any of the Collateral, that lien, estate, right or other interest shall be subordinate to the Deed of Trust as provided herein.

(g) **Payment to Subordinated Lender.** Lender and Subordinate Lender declare, agree, and acknowledge that Borrower may make payments under the Subordinated Loan Documents, if required, as long as all payments under the Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment: (a) no default under the Loan Documents exists of which Subordinate Lender has received notice, and (b) such payment would not result in a violation of any of Borrower's financial covenants set forth in the Loan Agreement ("**Permitted Payments**"). Notwithstanding anything to the contrary contained herein, it is the intention of the parties hereto that no provision of this Agreement shall excuse or release Borrower from any payments or obligations due Subordinate Lender under the Subordinated Loan Documents.

4. **Certain Actions Regarding Subordinated Indebtedness.** Until the earlier of: (i) the satisfaction of the Note or (ii) reconveyance of all of the Property and other Collateral by Lender to Borrower, (a) Subordinated Lender shall not take any of the following actions with respect to the Subordinated Indebtedness without the prior written consent of Lender, which may be given or withheld in the sole and unfettered discretion of Lender:

- (i) accelerate all or any portion of the Subordinated Indebtedness or initiate any Enforcement Action under the Subordinated Loan Documents;
- (ii) exercise any of Subordinated Lender's other remedies under the Subordinated Loan Documents or commence any legal proceedings against Borrower; or
- (iii) commence or consent to any bankruptcy, insolvency, reorganization or similar proceeding by or against Borrower.

5. **Bankruptcy Issues.**

(a) **Applicability of Agreement.** This Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case by or against Borrower under the Bankruptcy Code and all references herein to Borrower shall be deemed to apply to Borrower as a debtor-in-possession and to any trustee in bankruptcy for the estate of Borrower.

(b) **Reinstatement.** In the event Lender is required under any bankruptcy or other law to return to Borrower, the estate in bankruptcy thereof, any trustee, receiver or other similar representative of Borrower or any third party any payment or distribution of assets, whether in cash, property or securities, including without limitation any collateral or any proceeds of the Collateral previously received by Lender on account of the Deed of Trust (a "**Reinstatement Distribution**"), then to the maximum extent permitted by law, this Agreement shall be reinstated with respect to any such

Reinstatement Distribution. Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

6. **Waivers of Subordinated Lender.** Subordinated Lender declares, agrees and acknowledges that:

(a) **Subordination of Subordinated Deed(s) of Trust.** Subordinated Lender understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being made and, as part and parcel thereof, specific monetary or other obligations are being entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

7. **Notice to Subordinate Lender.** Lender hereby agrees to deliver notice to Subordinate Lender of any default by Borrower under the Loan concurrently with the delivery of notice to Borrower of any such default.

8. **Reconveyance.** Notwithstanding anything to the contrary in the Subordinated Loan Documents, upon the closing of the sale to a third party buyer of all or any portion of the Property, Subordinate Lender shall release and reconvey its security interest in such portion of the Property under the applicable Subordinated Deed of Trust whether or not sufficient proceeds from such sale are available to Subordinate Lender to satisfy the requirements of the Subordinated Loan Documents with respect to a release of such security by the applicable Subordinated Deed of Trust; provided, however, that Subordinate Lender shall be entitled to receive, for pay down of the Subordinated Obligation concurrently with the recordation of Subordinate Lender's release, the net proceeds, if any, from the sale of the Property after payment of all costs and expenses of such sale and payment to Lender of any amount required under the Loan Documents for release and reconveyance of the lien of the applicable Deed of Trust from the Property. Subordinate Lender's obligation to release the Subordinated Deed of Trust upon the sale of the property shall not be affected by any default under the Loan Documents or the Subordinated Loan Documents. Subordinate Lender's reconveyance of the Subordinated Deed of Trust as to the Property upon close of the purchase escrow therefor shall be a condition precedent to Lender's obligation to reconvey the Deed of Trust on the Property. Subordinate Lender agrees to execute and deliver to Lender's escrow the request for reconveyance and release of the Property from the Subordinated Deed of Trust within five (5) business days after written request therefor from the escrow company. Subordinate Lender acknowledges that Lender would not make the Loan to Borrower without the foregoing obligation and that Subordinate Lender's failure to timely effect such reconveyance, regardless of the availability of proceeds from such sale to satisfy any portion of the Subordinated Obligation, shall be a default by Subordinate Lender under this Agreement.

9. **Substitution of Borrower.** Notwithstanding any provision herein to the contrary, Subordinate Lender shall have the right (without any obligation) to assume or otherwise receive any of the rights, duties, obligations and benefits of Borrower under the Loan Documents, subject to Subordinate Lender's compliance with the provisions of this paragraph. It shall not constitute an event of default under the Loan Documents should Subordinate Lender acquire one hundred percent (100%) of the legal and beneficial ownership interest in Borrower following a default under the Subordinated Loan Documents and Subordinate Lender exercising its rights and remedies (said transfer shall be referred to herein as an "***Ownership Transfer***"), as long as Subordinate Lender:

(a) shall (i) have provided Lender with notice of any default under the Subordinated Loan Documents as provided herein, and (ii) provide Lender with all information reasonably required by Lender within a reasonable time for Lender to review said information in connection with any Ownership Transfer requested by Subordinate Lender pursuant to the provisions of the this paragraph;

(b) expressly reaffirms in writing Borrower's continuing obligations under the Loan Documents;

(c) cures (or causes Borrower to cure) any and all outstanding defaults under the Loan Documents that are capable of being cured by Subordinate Lender (it being recognized by the parties hereto that any monetary event of default shall be deemed capable of cure by Subordinate Lender); and

(d) pays all reasonable attorneys' fees and other out-of-pocket costs reasonably incurred by Lender in approving the Ownership Transfer.

If the conditions set forth above in this paragraph have not been satisfied prior to said Ownership Transfer, such Ownership Transfer shall be null and void and of no force and effect and Lender shall be entitled to treat the attempted Ownership Transfer as a unconsented and prohibited transfer under the Deed of Trust, and Lender shall have all remedies available under the Loan Documents arising out of such transfer.

10. **Further Assurance.** Subordinated Lender hereby agrees that, within five (5) business days after request by Lender, Subordinated Lender shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as Lender may reasonably request for the better assuring and evidencing of the foregoing subordinations and agreements.

11. **Notices.** All notices, demands and other communications required or permitted hereunder shall be in writing, addressed to the appropriate party as specified herein, or to such other address as may be designated from time to time by notice to the other parties in the manner set forth herein. All such communications shall be deemed effective (a) upon actual delivery if delivered by personal delivery or certified postage prepaid mail, (b) three (3) business days following deposit, first class postage prepaid, with the United States Mail, or (c) on the next business day after timely and proper deposit with an overnight air courier with request for next business day delivery. The addresses for the parties are as follows:

If to Lender: Mountain West REIT, LLC
Attn: Andrew Menlove
357 West 200 South, Suite 200,
Salt Lake City, Utah 84101

If to Subordinated Lender: DAI PARTNERS, LLC
Exchange Place Building B
14034 South 145 East, Suite 204
Draper, UT 84020

If to Borrower: RSET DEVELOPMENT, LLC
2637 North 400 East #127
North Ogden, UT 84414

12. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

13. **Entire Agreement.** This Agreement shall be the whole and only agreement with regard to the subject matter hereof.

14. **Modifications.** This Agreement may not be changed, terminated or modified except by an agreement in writing, signed by each of the parties hereto.

15. **No Third-Party Beneficiary.** No person or entity is intended to be a third-party beneficiary of this Agreement.

16. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Lender, Subordinated Lender, and Borrower and their respective successors and assigns.

17. **Counterparts.** This Agreement may be executed in counterparts, which together shall constitute the agreement of the parties when each party has signed a counterpart.

18. **Joint and Several.** The obligations of Subordinated Lender hereunder are and shall be joint and several.

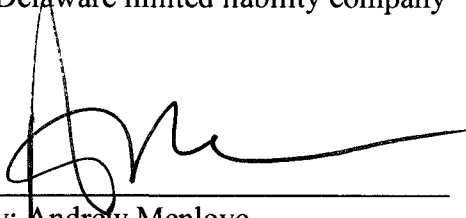
19. **Recordation.** This Agreement is to be recorded in the County Official Records.

[Signatures on Following Page]

*[Continued Signature and Acknowledgement Page to
Subordination and Standstill Agreement]*

LENDER:

MOUNTAIN WEST REIT, LLC,
a Delaware limited liability company



By: Andrew Menlove
Its: Authorized Agent

State of Nevada

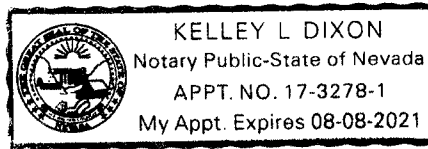
County of Clark

This instrument was acknowledged before me on January 28, 2021 by Andrew Menlove, as Authorized Agent of Mountain West REIT, LLC, a Delaware limited liability company.



.....
(Signature of notarial officer)

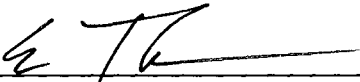
(Notary stamp)



IN WITNESS WHEREOF, Borrower, Lender and Subordinated Lender have executed this Subordination and Standstill Agreement as of the day and year first set forth above.

BORROWER:

RSET DEVELOPMENT, LLC
A Utah limited liability company



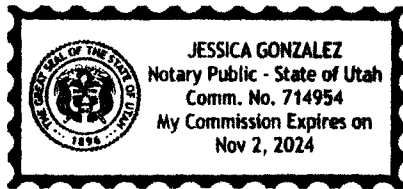
By: Eric Thomas
Its: Manager

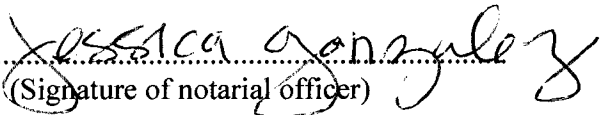
State of Utah

County of Weber

This instrument was acknowledged before me on January 29, 2021 by Eric Thomas, as Manager of RSET DEVELOPMENT, LLC, a Utah limited liability company.

(Notary stamp)






(Signature of notarial officer)

[Continued Signature and Acknowledgement Page to Subordination and Standstill Agreement]

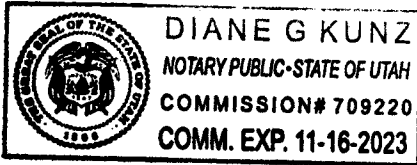
SUBORDINATED LENDER:

DAI PARTNERS, LLC
A Utah limited liability company


By: Bryan Flamm
Its: Manager

State of Utah
County of Salt Lake

This instrument was acknowledged before me on January 29, 2021 by Bryan Flamm, as Manager of DAI Partners, LLC, a Utah limited liability company.



(Notary stamp)

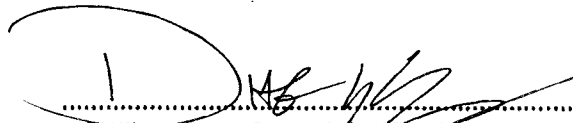

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(Signature of notarial officer)

EXHIBIT A

DESCRIPTION OF THE PROPERTY

The Land referred to herein is situated in the County of Weber, State of Utah, and is described as follows:

PARCEL 1:

PART OF NORTHWEST QUARTER SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING 160 RODS EAST AND 323.4 FEET NORTH OF SOUTHWEST CORNER OF SAID 1/4 SECTION; THENCE NORTH 309.6 FEET; THENCE WEST 150 FEET; THENCE SOUTH 309.6 FEET; THENCE EAST 150 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 22 RODS EAST AND 2 RODS NORTH OF THE SOUTHWEST CORNER OF SAID QUARTER SECTION AND RUNNING THENCE EAST 257.06 FEET; THENCE NORTH 33°59'40" EAST 171.63 FEET; THENCE NORTH 30°45'59" EAST 137.06 FEET; THENCE SOUTH 89°15'20" EAST 87.32 FEET; THENCE SOUTH 00°44'40" WEST 262.20 FEET TO THE NORTH RIGHT OF WAY LINE OF 3600 SOUTH STREET; THENCE EAST 1469.94 FEET; THENCE NORTH 00°49'58" EAST 290.40 FEET; THENCE SOUTH 89°15'20" EAST 150.00 FEET; THENCE NORTH 309.6 FEET; THENCE EAST 150 FEET; THENCE NORTH 1190.25 FEET, MORE OR LESS, TO A POINT 49.9 RODS SOUTH OF THE NORTH LINE OF SAID QUARTER SECTION; THENCE WEST 109 RODS, MORE OR LESS, TO A POINT 51 RODS EAST OF THE WEST LINE OF SAID QUARTER SECTION; THENCE SOUTHWESTERLY TO A POINT 26 RODS NORTH OF THE PLACE OF BEGINNING; THENCE SOUTH 26 RODS TO BEGINNING.

LESS AND EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDS OF THE WESTWOOD SUBDIVISION, FIRST AMENDMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 3, 2013 AS ENTRY NO. 2658394 IN BOOK 74 OF PLATS AT PAGE 70, IN THE OFFICE OF THE WEBER COUNTRY RECORDER.

Parcel Identification Numbers: 08-029-0021 and 08-029-0071 (for reference purposes only)

The Land described herein also known by the street address of:
3060 and 3460 West 3600 South
West Haven, UT 84401