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ENT 79257:2015 PG 1 of 9
JEFFERY SMITH
UTAH COUNTY RECORDER
2015 Aug 28 3:48 pm FEE 27.00 BY ED
RECORDED FOR FORTSON BENTLEY GRIFFIN

This instrument was prepared by
and after recording return to:
Walter W. Hays, Jr.
Fortson, Bentley and Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens, Georgia 30606
(706) 548-1151

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Non-Disturbance and Attornment Agreement (this "Agreement") is made and entered into this 13th day of August, 2015, by and among **NIMBUS PROPERTIES, L.C.**, a Utah limited liability company ("Master Landlord"), having a mailing address of 932 North 520 West, Orem, Utah 84057; **DW ASSOCIATES L.L.C.**, a Utah limited liability company (the "Tenant") having a mailing address of P.O. Box 1153, Centerville, Utah 84014; **WDG AMERICAN FORK, LLC**, a Utah limited liability company ("Subtenant") having a mailing address of 1572 Woodland Park Drive, Suite 505, Layton, Utah 84041; **MJM 5G, LLC**, a Nevada limited liability company ("Sub-Subtenant"), having a mailing address of 125 West Burton Avenue, Suite B, Salt Lake City, Utah 84115; and **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation ("ZFI") having a mailing address of 1040 Founder's Boulevard, Suite 100, Athens, Georgia 30606.

WITNESSETH:

THAT WHEREAS, Master Landlord is lessor under that certain Ground Lease with DJ Smith Investments, L.C., a Utah limited liability company, as lessee, dated January 12, 2007 as amended by that certain Agreement to Extend Rent Commencement Date dated May 15, 2007 and Agreement to Extend Rent Commencement Date dated June 15, 2007 and as partially assigned by DJ Smith Investment, L.C. to WGT American Fork, LLC, a Utah limited liability company, as co-tenant and as modified by that certain Extension and Acknowledgment of Rent Commencement Date and Modifications to Ground Lease by and among Master Landlord, DJ Smith Investments, L.C. and WGT American Fork, LLC dated November 12, 2007, as further modified by Addendum 1 to Ground Lease dated August 30, 2008 and assigned from DJ Smith Investments, L.C. and WGT American Fork, LLC to Tenant by Assignment and Assumption of Lease dated November of 2008 (collectively the "Master Lease") for certain real property including a portion of the property located at 599 West Main Street, American Fork, Utah County, Utah and more particularly set forth and described as Lease Parcel 1 on **Exhibit A** attached hereto and incorporated herein by reference ("Parcel 1");

WHEREAS, Tenant entered into that certain Ground Lease with Subtenant for Parcel 1 dated June 17, 2014, as modified by Confirmation, Assignment and Acceptance of Sublease and Sub-Sublease dated February 12, 2015 and as amended by First Amendment to the Ground Sublease by and between Tenant, Innes Family, LLC, a Utah limited liability company, and Subtenant for that certain real property more particularly set forth and described as Lease Parcel 2 on Exhibit A attached hereto and incorporated herein by reference ("Parcel 2") (Parcel 1 and Parcel 2 collectively referred to as the "Property") (collectively, the "Sublease");

WHEREAS, Subtenant entered into that certain Zaxby's American Fork Lease with Sub-Subtenant dated December 9, 2014, as modified by Confirmation, Assignment and Acceptance of Sublease and Sub-Sublease dated February 12, 2015, and Rider to Lease dated August 13, 2015 for the Property (collectively, the "Sub-Sublease");

WHEREAS, Subtenant and Sub-Subtenant entered into a Collateral Assignment of Lease dated August 13, 2015 regarding the Sub-Sublease to ZFI (the "Assignment").

WHEREAS, pursuant to that certain license agreement between ZFI and Sub-Subtenant dated August 13, 2015 and First Amendment to License Agreement dated August 13, 2015 (collectively the "License Agreement"), Sub-Subtenant obtained a license to establish and operate a Zaxby's® restaurant and Sub-Subtenant desires to use the Property for such purpose;

NOW THEREFORE, for the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, it is agreed as follows:

1. Tenant, Subtenant, Sub-Subtenant and ZFI acknowledge that the Master Lease is prior to and paramount to the Sublease, Sub-Sublease and Assignment.

2. In accordance with Section 25.8 of the Master Lease, Master Landlord represents and warrants to Tenant, Subtenant, Sub-Subtenant and ZFI as follows:

(a) that Master Landlord is the owner of fee simple title in and to the Property;

(b) that the Master Lease is properly executed, not in default, unmodified and in full force and effect.

3. Master Landlord agrees that Tenant's, Subtenant's and Sub-Subtenant's intended use of the Property is not a violation of the Master Lease.

4. So long as Subtenant is not in default beyond any applicable cure period under the Sublease, Master Landlord shall not, in the exercise in any of the rights arising or which may arise out of the Master Lease or any instruments modifying or amending the same entered into in substitution or replacement thereof, disturb or deprive Subtenant in or of its possession or its rights to possession of the Property or of any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease until Subtenant's options referenced in this Agreement have expired.

5. So long as Sub-Subtenant and ZFI are not in default beyond any applicable cure period under the Sub-Sublease, Master Landlord shall not, in the exercise in any of the rights arising or which may arise out of the Master Lease or any instruments modifying or amending the same entered into in substitution or replacement thereof, disturb or deprive Sub-Subtenant or ZFI in or of their possession or their right to possession of the Property or of any right or privilege granted to or inuring to the benefit of Sub-Subtenant or ZFI under the Sub-Sublease or Assignment until Sub-Subtenant and ZFI's options referenced in this Agreement have expired.

6. In the event of the surrender or termination of the Master Lease for any reason, before any of the dates provided in the Sublease for the termination of the initial or renewal terms of the Sublease, and if immediately prior to such surrender or termination the Sublease shall be in full force and effect and Subtenant is not in default of the Sublease beyond any applicable cure period, then Subtenant may elect at its option, which option shall be exercised by Subtenant within thirty (30) days of such surrender or termination, for the Sublease to continue in full force and effect as a direct lease from Master Landlord to Subtenant for the remainder of the Sublease and Subtenant hereby agrees to attorn to Master Landlord for the balance of the term of the Sublease with the same force and effect as though Sublease was originally made directly from Master Landlord to Subtenant. Master Landlord shall provide written notice as soon as commercially reasonable to Subtenant, Sub-Subtenant and ZFI in the event of the surrender or termination of the Master Lease for any reason.

7. In the event: (x) Subtenant does not elect its option; (y) if immediately prior to such surrender or termination of the Sub-Sublease shall be in full force and effect; and (z) Sub-Subtenant or ZFI, as applicable, is not in default of the Sub-Sublease beyond any applicable cure period: the Sub-Subtenant or ZFI, as applicable, may elect at its option, which option shall be exercised by Sub-Subtenant within forty (40) days of such surrender or termination for the Sub-Sublease to continue in full force and effect as a direct lease from Master Landlord to Sub-Subtenant or ZFI, as applicable, for the remainder of the Sub-Sublease and Sub-Subtenant or ZFI, as applicable,

hereby agrees to attorn to Master Landlord for the balance of the term of the Sub-Sublease with the same force and effect as though Sub-Sublease was originally made directly from Master Landlord to the Sub-Subtenant or ZFI, as applicable.

8. Nothing in this Agreement shall limit any remedies available to the Master Landlord under the Master Lease.

9. Notwithstanding anything in the Sublease or Sub-Sublease to the contrary, in no event shall the term of the Sublease or Sub-Sublease extend past July 14, 2077. Notwithstanding anything in the Sublease or Sub-Sublease to the contrary, in no event shall Master Landlord have any obligation pursuant to their terms that did not exist in the Master Lease.

10. Subtenant, Sub-Subtenant and ZFI acknowledge that Master Landlord only owns Parcel 1 and does not own Parcel 2. Subtenant, Sub-Subtenant and ZFI agree to execute the above rights in conjunction with similar rights in a Non-Disturbance and Attornment Agreement with the owner of Parcel 2. Notwithstanding anything in the Sublease or Sub-Sublease to the contrary, Subtenant, Sub-Subtenant and ZFI agree and acknowledge that Master Landlord's obligations in the Sublease and Sub-Sublease shall only apply to Parcel 1.

11. Additionally, upon termination of the Master Lease for any reason, Sub-Subtenant or ZFI, as applicable, shall have the right to remove trade name indicia (including internal and external signage), trade fixtures and improvements as well as furniture, fixtures, equipment and other personal property of Sub-Subtenant or ZFI.

12. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing and shall be delivered personally, or sent by overnight courier service by a company regularly engaged in the business of delivering business packages (such as Federal Express or Airborne), or sent by Registered or Certified Mail to the other party at address set forth hereinabove, or at such other address as may be supplied in writing from time to time by any party to the other. The date of personal delivery or, if sent by mail or overnight courier, then the date of delivery or refusal thereof as evidenced by the carriers or couriers receipt, shall be the effective date of such notice, election or demand. Master Landlord agrees to contemporaneously deliver to Subtenant, Sub-Subtenant and ZFI any notice required to be given under the Master Lease.

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

14. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees.

15. The agreement is to be recorded in the real property records of the Recorder of Utah County, Utah.

(Signatures on following page)

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of the day and year first above written.

MASTER LANDLORD:
NIMBUS PROPERTIES, L.C.

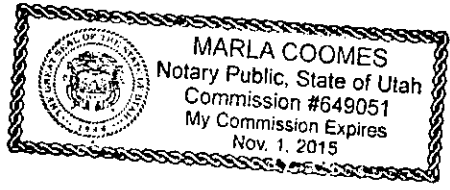
[Signature]
Witness
marla coomes
Witness

By: [Signature] [SEAL]
Name: Bryce K. Taylor
Title: Manager

State of Utah
County of Utah

On this 13th day of July, 2015, personally appeared before me Bryce K. Taylor, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Manager of Nimbus Properties, L.C. and that he/she as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Marla Coomes
Notary Public



TENANT:
DW ASSOCIATES, L.L.C.

Witness

Witness

State of _____
County of _____

By: _____ [SEAL]
Name: _____
Title: _____

On this _____ day of _____, 2015, personally appeared before me _____, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the _____ of DW Associates, L.L.C. and that he/she as _____, being authorized to do so, executed the foregoing on behalf of the company.

Notary Public

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of the day and year first above written.

MASTER LANDLORD:
NIMBUS PROPERTIES, L.C.

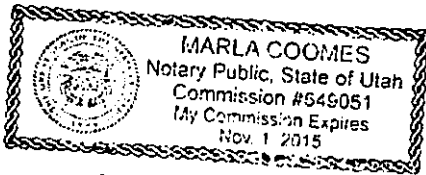
[Signature]
Witness
Marla Coomes
Witness

By: [Signature] [SEAL]
Name: Bryce K. Taylor
Title: Manager

State of Utah
County of Utah

On this 13th day of July, 2015, personally appeared before me Bryce K. Taylor, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Manager of Nimbus Properties, L.C. and that he/she as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Marla Coomes
Notary Public



TENANT:
DW ASSOCIATES, L.L.C.

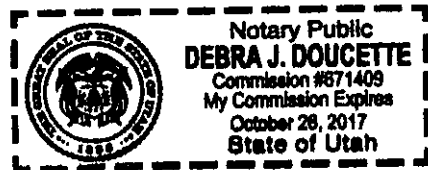
[Signature]
Witness
Jyl Mansder
Witness

By: [Signature] [SEAL]
Name: Stephen W. Tate
Title: Co-Manager

State of UTAH
County of SALT LAKE

On this 14th day of JULY, 2015, personally appeared before me STEPHEN W. TATE, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the CO-MANAGER of DW Associates, L.L.C. and that he/she as CO-MANAGER, being authorized to do so, executed the foregoing on behalf of the company.

Debra J. Doucette
Notary Public



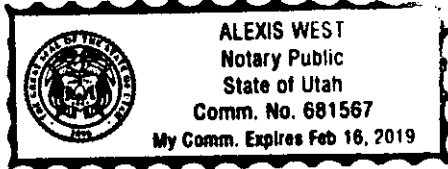
[Signature]
Witness
[Signature]
Witness

SUBTENANT:
WDG AMERICAN FORK, LLC

By: [Signature] [SEAL]
Name: Spencer H. Wright
Title: Manager

State of Utah
County of DAVIS

On this 28 day of July, 2015, personally appeared before me Spencer H. Wright, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of WDG American Fork, LLC. and that he as Manager, being authorized to do so, executed the foregoing on behalf of the company.



Alexis West
Notary Public

SUB-SUBTENANT:
MJM 5G, LLC

By: _____ [SEAL]
Name: Ryan Howes
Title: Managing Member

Witness

Witness

State of _____
County of _____

On this _____ day of _____, 2015, personally appeared before me Ryan Howes, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of MJM 5G, LLC and that he as Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

Notary Public

Witness

By: _____ [SEAL]
Name: Jeff Howes
Title: Managing Member

Witness

State of _____
County of _____

On this _____ day of _____, 2015, personally appeared before me Jeff Howes, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of MJM 5G, LLC and that he as Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

Notary Public

SUBTENANT:
WDG AMERICAN FORK, LLC

Witness

By: _____ [SEAL]
Name: Spencer H. Wright
Title: Manager

Witness

State of _____
County of _____

On this ____ day of _____, 2015, personally appeared before me Spencer H. Wright, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of WDG American Fork, LLC. and that he as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Notary Public

SUB-SUBTENANT:
MJM 5G, LLC

Witness

By: _____ [SEAL]
Name: Ryan Howes
Title: Managing Member

Witness

State of Utah
County of Salt Lake



On this 28 day of July, 2015, personally appeared before me Ryan Howes, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of MJM 5G, LLC and that he as Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

Witness

Notary Public

By: _____ [SEAL]
Name: Jeff Howes
Title: Managing Member

Witness

State of Utah
County of Salt Lake



On this 28 day of July, 2015, personally appeared before me Jeff Howes, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of MJM 5G, LLC and that he as Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

Notary Public

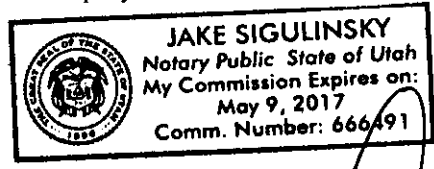
[Signature]
Witness

[Signature]
Witness

State of Utah
County of Salt Lake

By: [Signature] [SEAL]
Name: Mike Cummings
Title: Managing Member

On this 17 day of July, 2015, personally appeared before me Mike Cummings, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of MJM 5G, LLC and that he as Managing Member, being authorized to do so, executed the foregoing on behalf of the company.



[Signature]
Notary Public

ZFI:
ZAXBY'S FRANCHISING, INC.

[Signature]
Witness

[Signature]
Witness

State of Georgia
County of Oconee

By: [Signature]
Name: Amy C. Pritchett
Title: Vice President of Franchise Development
[CORPORATE SEAL]

On this 29 day of July, 2015, personally appeared before me Amy C. Pritchett, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that she is Vice President of Franchise Development of Zaxby's Franchising, Inc. and that she as Vice President of Franchise Development, being authorized to do so, executed the foregoing on behalf of the corporation.

[Signature]
Notary Public

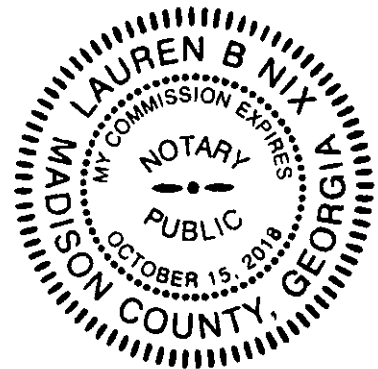


EXHIBIT A
LEGAL DESCRIPTION

LEASE PARCEL 1:

A PARCEL OF LAND SITUATE IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN AMERICAN FORK CITY, COUNTY OF UTAH, STATE OF UTAH AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 89° 53' 25" WEST, ALONG THE SECTION LINE, A DISTANCE OF 874.62 FEET AND SOUTH 00° 56' 47" EAST, A DISTANCE OF 402.33 FEET, FROM THE NORTHEAST CORNER OF SAID SECTION 22; AND RUNNING THENCE SOUTH 62° 42' 42" EAST 114.56 FEET, TO THE EAST LINE OF PARCEL 2, AS SHOWN ON THE HUBBLE ENGINEERING RECORD OF SURVEY, ON FILE WITH THE UTAH COUNTY SURVEYORS OFFICE; THENCE SOUTH 0° 56' 47" EAST, ALONG SAID EAST LINE, A DISTANCE OF 236.42 FEET, TO THE I-15 CONTROLLED ACCESS LINE [UDOT PROJECT NUMBER S-115-6(175)245] ALSO DESCRIBED IN WARRANTY DEED RECORDED AS ENTRY NUMBER 112834:2010 OF OFFICIAL RECORDS; THENCE NORTHWESTERLY ALONG SAID CONTROLLED ACCESS LINE THE FOLLOWING TWO (2) COURSES: (1) NORTHWESTERLY ALONG THE ARC A 2469.08 FOOT NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 3° 53' 05", A DISTANCE OF 167.41 FEET, THE LONG CHORD OF WHICH BEARS NORTH 61° 34' 23" WEST, A DISTANCE OF 167.38 FEET, TO A POINT OF CURVATURE; (2) NORTHWESTERLY ALONG THE ARC OF A 2005.86 FOOT NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 0° 50' 01", A DISTANCE OF 36.39 FEET, THE LONG CHORD OF WHICH BEARS NORTH 55° 21' 53" WEST, A DISTANCE OF 36.39 FEET, TO THE EAST LINE OF THE IN-N-OUT BURGER LEASE PARCEL; THENCE ALONG THE SAID LEASE PARCEL THE FOLLOWING THREE (3) COURSES: (1) NORTH 36° 09' 04" EAST, A DISTANCE OF 71.05 FEET; (2) NORTH 62° 58' 03" WEST, A DISTANCE OF 53.12 FEET; (3) NORTH 35° 39' 51" EAST, A DISTANCE OF 131.76 FEET, TO THE POINT OF BEGINNING.

CONTAINS: 34,262 SQUARE FEET, OR 0.787 OF AN ACRE

LEASE PARCEL 2:

A PARCEL OF LAND SITUATE IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN AMERICAN FORK CITY, COUNTY OF UTAH, STATE OF UTAH AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 89° 53' 25" WEST, ALONG THE SECTION LINE, A DISTANCE OF 773.67 FEET AND SOUTH 0° 56' 47" EAST, ALONG EAST LINE OF PARCEL 2 SHOWN ON THE HUBBLE ENGINEERING SURVEY, ON FILE WITH THE UTAH COUNTY SURVEYORS OFFICE, A DISTANCE OF 454.67 FEET, FROM THE NORTHEAST CORNER OF SAID SECTION 22; AND RUNNING THENCE SOUTH 62° 42' 42" EAST, A DISTANCE OF 17.03 FEET, TO A POINT 15.00 FEET EAST OF THE SAID EAST LINE OF PARCEL 2 SHOWN ON THE HUBBLE ENGINEERING RECORD OF SURVEY; THENCE SOUTH 0° 56' 47" EAST, PARALLEL WITH AND 15.00 FEET EASTERLY OF SAID EASTERLY LINE, A DISTANCE OF 236.09 FEET, TO THE I-15 CONTROLLED ACCESS LINE [UDOT PROJECT NUMBER S-115-6(175)245] ALSO DESCRIBED IN WARRANTY DEED RECORDED AS ENTRY NUMBER 44124:2012 OF OFFICIAL RECORDS; THENCE NORTHWESTERLY ALONG THE ARC OF A 2469.08 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 0° 23' 29", A DISTANCE OF 16.87 FEET, THE LONG CHORD OF WHICH BEARS NORTH 63° 42' 41" WEST, A DISTANCE OF 16.87 FEET, TO THE AFORESAID EAST LINE OF PARCEL 2 SHOWN ON THE HUBBLE ENGINEERING RECORD OF SURVEY; THENCE NORTH 0° 56' 47" WEST, ALONG SAID EAST LINE, A DISTANCE OF 236.42 FEET, TO THE POINT OF BEGINNING.

CONTAINS: 3,544 SQUARE FEET, OR 0.081 OF AN ACRE.

Tax I.D. No.: 13:042:0074