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ENT 79258:2015 PG 1 of 9  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2015 Aug 28 3:49 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 **DW ASSOCIATES L.L.C.**, a Utah limited liability company, and **INNES FAMILY, LLC**, a Utah limited liability company (collectively the "Tenants") 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, **NIMBUS PROPERTIES, L.C.**, a Utah limited liability company ("Master Landlord") is lessor under that certain Ground Lease with DJ Smith Investments, L.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.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.L.C. and WGT American Fork, LLC to DW Associates, L.L.C. 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, DW Associates, L.L.C. 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 Tenants 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, 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;

WHEREAS, pursuant to the License Agreement, ZFI requires that Sub-Subtenant obtain a Collateral Assignment of Lease of the Sub-Sublease (the "Assignment"), and this Agreement from Master Landlord, Tenants and Subtenant; and

WHEREAS, Master Landlord, Tenants and Subtenant, as an inducement to ZFI to confirm the Property as a confirmed site for a Zaxby's® restaurant pursuant to the License Agreement with Sub-Subtenant, have agreed to make the representations, warranties and covenants as hereafter provided;

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. Tenants represent and warrant to Subtenant, Sub-Subtenant and ZFI as follows:
  - (a) that it is in possession of leasehold title or fee simple title to the Property;
  - (b) that the Master Lease and Sublease are properly executed, unmodified and in full force and effect;
  - (c) that neither Landlord or D.W. Associates, L.L.C. is in default of the Master Lease;
  - (d) that neither Tenants or Subtenant are in default under the Sublease;
  - (e) that the Master Lease will not be amended or modified in any respect which adversely affects the rights of Tenants, Subtenant, Sub-Subtenant or ZFI, and, further, the Master Lease will not be amended or modified in any respect without first giving Subtenant, Sub-Subtenant and ZFI ten (10) days prior written notice; and
  - (f) that the Sublease will not be amended or modified in any respect which adversely affects the rights of Sub-Subtenant and ZFI thereunder, and, further, the Sublease will not be amended or modified in any respect without first giving Sub-Subtenant and ZFI ten (10) days prior written notice.

Tenants hereby acknowledge receipt of a copy of, and consent to and approve, the Sub-Sublease and the Assignment and all of the terms, covenants and provisions thereof, and agrees that the exercise by Sub-Subtenant or ZFI of any of the rights, remedies and options contained therein shall not constitute a default under the Sublease.

Tenants shall not, in the exercise in any of the rights arising or which may arise out of the Sublease 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 its possession or its rights 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 or ZFI's option referenced in the next paragraph has expired.

In the event of the surrender or termination of the Sublease for any reason, including, without limitation, (i) a termination by reason of a condemnation of all or a portion of the Property, (ii) the rejection of the Sublease in any bankruptcy proceeding initiated under Title 11 of the U.S. Code wherein Subtenant is named as debtor or petitioner, before any of the dates provided in the Sub-Sublease for the termination of the initial or renewal terms of the Sub-Sublease, and if immediately prior to such surrender or termination the Sub-Sublease shall be in full force and effect and Sub-Subtenant or ZFI, as applicable, is not in default of the Sub-Sublease beyond any applicable cure period, then Sub-Subtenant or ZFI, as applicable, may elect at its option, which option shall be exercised by Sub-Subtenant or ZFI, as applicable, within thirty (30) days of such surrender or termination, for the Sub-Sublease to continue in full force and effect as a direct lease from Tenants 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 Tenants 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 Tenants to Sub-Subtenant or ZFI, as applicable. Tenants shall provide written notice as soon as commercially reasonable to Sub-Subtenant and ZFI in the event of the surrender or termination of the Sublease for any reason.

Tenants agree, upon written request of Sub-Subtenant or ZFI, to subordinate any and all rights or remedies against Sub-Subtenant or ZFI, pursuant to any lien, statutory or otherwise, that Tenants may have against any of the personal property of Sub-Subtenant or ZFI in or on the Property to the lien of any lender of Sub-Subtenant or ZFI.

2. Subtenant represents and warrants to Sub-Subtenant and ZFI as follows:

- (a) that it is in possession of leasehold title in the Property;
- (b) that the Sublease and Sub-Sublease are properly executed, unmodified and in full force and effect;
- (c) that neither Tenants or Subtenant are in default under the Sublease;
- (d) that neither Subtenant or Sub-Subtenant is in default under the Sub-Sublease; and
- (e) that the Sublease will not be amended or modified in any respect which adversely affects the rights of Sub-Subtenant or ZFI, as applicable, and, further the Sublease will not be amended or modified in any respect without first giving Subtenant, Sub-Subtenant and ZFI ten (10) days prior written notice.

3. 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. Tenants agree to contemporaneously deliver to Sub-Subtenant and ZFI any notice required to be given under the Sublease.

4. 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.

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.

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.

TENANTS:  
DW ASSOCIATES, L.L.C.

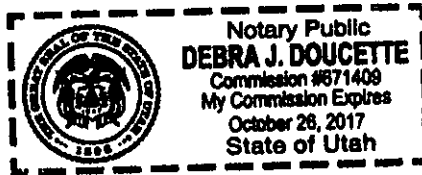
[Signature]  
Witness

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

[Signature]  
Witness

State of UTAH  
County of SALT LAKE

On this 14<sup>th</sup> 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.



[Signature]  
Notary Public

INNES FAMILY, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

State of \_\_\_\_\_  
County of \_\_\_\_\_

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 Innes Family, LLC 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.

TENANTS:  
DW ASSOCIATES, L.L.C.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

State of \_\_\_\_\_  
County of \_\_\_\_\_

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

INNES FAMILY, LLC

[Signature]  
\_\_\_\_\_  
Witness

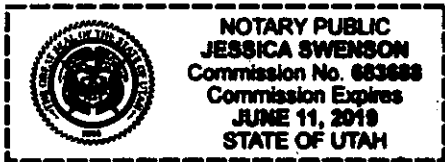
By: [Signature] [SEAL]  
Name: Weston R. Innes  
Title: Manager

[Signature]  
\_\_\_\_\_  
Witness

State of Utah  
County of Salt Lake

On this 28 day of July, 2015, personally appeared before me Jessica Swenson 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 Innes Family, LLC and that he/she as Manager, being authorized to do so, executed the foregoing on behalf of the company.

[Signature]  
\_\_\_\_\_  
Notary Public



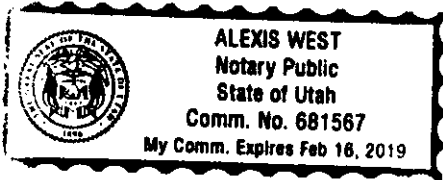
[Signature]  
Witness  
[Signature]  
Witness

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.



[Signature]  
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

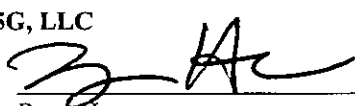
State of \_\_\_\_\_  
County of \_\_\_\_\_

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

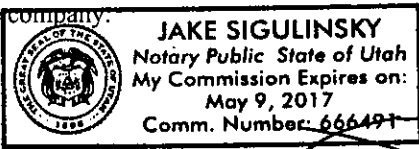
  
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Witness

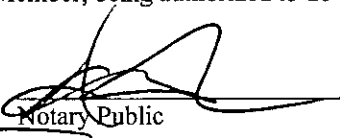
By:  [SEAL]  
Name: Ryan Howes  
Title: Managing Member

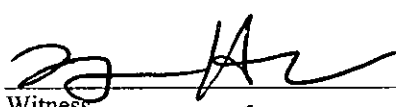
  
\_\_\_\_\_  
Witness

State of Utah  
County of Salt Lake

On this 17 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.



  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
Witness

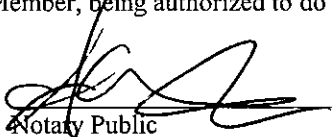
By: \_\_\_\_\_ [SEAL]  
Name: Jeff Howes  
Title: Managing Member

  
\_\_\_\_\_  
Witness

State of Utah  
County of Salt Lake

On this 17 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.



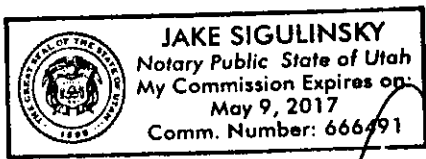
  
\_\_\_\_\_  
Notary Public

Witness [Signature]  
Witness [Signature]

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

State of Utah  
County of Salt Lake

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.



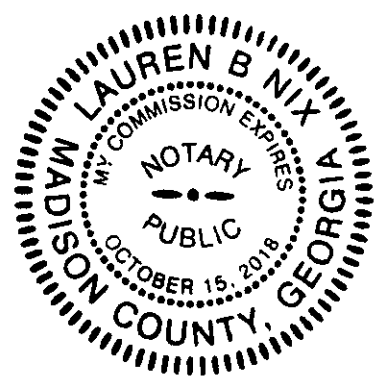
[Signature]  
Notary Public

Witness [Signature]  
Witness [Signature]

ZFI:  
ZAXBY'S FRANCHISING, INC.  
By: [Signature]  
Name: Amy C. Pritchett  
Title: Vice President of Franchise Development  
[CORPORATE SEAL]

State of Georgia  
County of Oconee

On this 19 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-I15-6(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-I15-6(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