

Recording requested and after recording return to:

DW Associates, L.L.C.
Attn: Mr. Steve Tate
P.O. Box 1153
Centerville, Utah 84014



ENT 132853:2021 PG 1 of 9
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Jul 29 3:38 pm FEE 40.00 BY JR
RECORDED FOR TATE, STEVE

APN(s): 13-042-0074 & 13-042-0100

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

PREMISES LOCATION: approximately 717 West Main Street, American Fork, Utah County, Utah.

THIS AGREEMENT is made and entered into as of this 21st day of ~~April~~^{July}, 2021 by and among DW ASSOCIATES, L.L.C., a Utah limited liability company, whose principal address is P.O. Box 1153, Centerville, Utah 84014 ("Landlord"), WGT AMERICAN FORK HOLDING, LLC, a Utah limited liability company, whose principal address is P.O. Box 1153, Centerville, Utah 84014 ("Tenant"), KEYBANK NATIONAL ASSOCIATION, a national banking association, whose principal address is Mail Code: OH-01-10-0605, 100 Public Square, Suite 600, Cleveland, Ohio 44113-2207 ("KeyBank"), and BRIGHTON BANK, a Utah banking corporation, whose principal address is 7101 South Highland Drive, Salt Lake City, Utah 84121 ("Lender").

WITNESSETH:

WHEREAS, Landlord has entered into and delivered that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated November 17, 2008, in favor of Lender, recorded in the Office of the Recorder of Utah County, Utah as Instrument Number 130177:2008 and Collateral Assignment of Ground Lease and Landlord's Consent dated November 17, 2008 and recorded in the Office of the Recorder of Utah County, Utah as Instrument Number 130178:2008 (collectively the "Mortgage"), conveying certain real property including a portion of the property located at 599 West Main Street, American Fork, Utah County, Utah and more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Landlord and Tenant entered into that certain Ground Sublease dated as of March 15, 2021 (the "Sublease") for a certain limited portion of Pad A-3 (the "Pad A-3 Portion") more particularly described in Exhibit B attached hereto and incorporated herein by reference, together with the appurtenant rights to utilize the common areas of Landlord's ground leasehold estate outside of the Pad A-3 Portion (collectively, the "Premises"); and

WHEREAS, Tenant and KeyBank entered into that certain Ground Lease dated as of March 15, 2021 (the "KeyBank Lease"), pursuant to which KeyBank ground sub-leases the Premises (and ground leases certain other adjacent property owned by Tenant), as more particularly described therein; and

WHEREAS, it is one of the conditions to KeyBank's confirmation, approval and waiver of its due diligence under the KeyBank Lease that this Agreement be fully executed and delivered by the parties hereto;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually covenant and agree as follows:

1. Lender hereby consents to the Sublease and the KeyBank Lease.
2. Tenant covenants and agrees with the Lender that the Sublease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended), subject to the provisions of this Agreement.

3. KeyBank covenants and agrees with the Lender that the KeyBank Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended), subject to the provisions of this Agreement.

4. Tenant certifies that the Sublease is presently in full force and effect.

5. KeyBank certifies that the KeyBank Lease is presently in full force and effect.

6. Lender agrees that so long as the Sublease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable cure period:

(a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action, or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.

(b) The possession by Tenant of the Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Sublease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Lender, or (ii) any judicial sale or execution or other sale of the Premises, or by any deed given to Lender by any other documents or as a matter of law, or (iii) any default under the Mortgage or the bond or note or other obligation secured thereby.

7. Lender agrees that so long as the KeyBank Lease shall be in full force and effect and KeyBank is not in default under the KeyBank Lease beyond any applicable cure period:

(a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, KeyBank shall not be named or joined as a party defendant or otherwise in any suit, action, or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.

(b) The possession by KeyBank of the Premises and KeyBank's rights thereto shall not be disturbed, affected or impaired by, nor will the KeyBank Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Lender, or (ii) any judicial sale or execution or other sale of the Premises, or by any deed given to Lender by any other documents or as a matter of law, or (iii) any default under the Mortgage or the bond or note or other obligation secured thereby.

8. If Lender shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Sublease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as Tenant thereunder, and the then owner of the Premises, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the Sublease, and in such event:

(a) Tenant shall be bound to the Lender or to such new owner under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the option periods if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the Sublease; and

(b) If Tenant is not in default under the Sublease beyond any applicable cure period, such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Sublease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform, provided, however,

that Lender or any successor or assignee of Lender shall not (i) be bound by any prepayment of rent or additional rent, unless received and receipted for by Lender or its successor or assignee; (ii) be personally liable under the Sublease, and Lender's or its successor's or assignee's liability under the Sublease shall be limited to the interest of the Lender or its successor or assignee in the Premises; (iii) be liable for any act or omission of any prior landlord under the Sublease, including, without limitation, the Landlord, except for any continuing act or omission of which Lender had notice and failed to cure; (iv) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Sublease, including, Landlord, except for any offsets or defenses related to any continuing act or omission of which Lender has had notice and failed to cure; (v) except as provided below, be bound by any amendment, modification or termination of the Sublease (other than a termination of the Sublease by Tenant pursuant to the express terms of the Sublease) made without Lender's prior written consent; and (vi) be liable to provide Tenant with any rights in or be bound by or be responsible for any restrictions on any property other than the Premises during the remainder of the term of the Sublease.

9. If Lender shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, and at such time or at any time thereafter the Sublease no longer shall be in full force and effect, the KeyBank Lease shall continue in full force and effect with respect to the Premises, without necessity for executing any new lease, as a direct lease of the Premises between KeyBank, as Tenant thereunder, and the then owner of the Premises, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the KeyBank Lease, and in such event:

(a) KeyBank shall with respect to the Premises be bound to the Lender or to such new owner under all of the terms, covenants and provisions of the KeyBank Lease for the remainder of the term thereof (including the option periods if KeyBank elects or has elected to exercise its options to extend the term) and KeyBank hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the KeyBank Lease; and

(b) If KeyBank is not in default under the KeyBank Lease beyond any applicable cure period, such new owner shall with respect to the Premises be bound to KeyBank under all of the terms, covenants and provisions of the KeyBank Lease for the remainder of the term thereof (including the option periods, if KeyBank elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform, provided, however, that Lender or any successor or assignee of Lender shall not (i) be bound by any prepayment of rent or additional rent, unless received and receipted for by Lender or its successor or assignee; (ii) be personally liable under the KeyBank Lease, and Lender's or its successor's or assignee's liability under the KeyBank Lease shall be limited to the interest of the Lender or its successor or assignee in the Premises; (iii) be liable for any act or omission of any prior landlord under the KeyBank Lease, including, without limitation, the Tenant, except for any continuing act or omission of which Lender had notice and failed to cure; (iv) be subject to any offsets or defenses which KeyBank may have against any prior landlord under the KeyBank Lease, including, Tenant, except for any offsets or defenses related to any continuing act or omission of which Lender has had notice and failed to cure; (v) except as provided below, be bound by any amendment, modification or termination of the KeyBank Lease (other than a termination of the KeyBank Lease by KeyBank pursuant to the express terms of the KeyBank Lease) made without Lender's prior written consent; and (vi) be liable to provide KeyBank with any rights in or be bound by or be responsible for any restrictions on any property other than the Premises during the remainder of the term of the KeyBank Lease.

10. Tenant, Landlord, KeyBank and Lender acknowledge and agree that upon written instruction to Tenant or to KeyBank from the Landlord or Lender instructing Tenant or KeyBank to make all rent and other payments due and to become due to Landlord under the Sublease or to Tenant under the KeyBank Lease directly to Lender, the Tenant or KeyBank (as applicable) agrees to follow such direction until further written notice from the Lender, and Landlord, Tenant and Lender (as applicable) hereby expressly agree that any such payment shall discharge any obligation of Tenant to Landlord under the Sublease or of KeyBank to Tenant under the KeyBank Lease (as applicable) to the extent of such payment; provided, however, that the foregoing shall have no effect on Tenant's or KeyBank's rights to any offsets nor any effect on Landlord's or Tenant's obligations.

11. Tenant shall give Lender written notice of any default by Landlord under the Sublease. Lender shall

have the same period of time provided Landlord under the Sublease within which to cure such default.

12. Landlord and Tenant may, from time to time, modify or amend the Sublease without Lender's consent, provided such modifications or amendments do not result in a change in the Sublease Term, the reduction of the Rent payable thereunder or make Landlord's obligations thereunder more onerous; any such modifications having such result and made without Lender's written consent shall be void and of no force and effect as between Lender and Tenant. Tenant and KeyBank may, from time to time, modify or amend the KeyBank Lease without Lender's consent, provided such modifications or amendments do not with respect to the Premises result in a change in the KeyBank Lease term, the reduction of the rent payable thereunder or make Tenant's obligations thereunder more onerous; any such modifications having such result and made without Lender's written consent shall be void and of no force and effect as between Lender and KeyBank.

13. Neither Tenant nor KeyBank shall pay an installment of rent more than thirty (30) days prior to the due date.

14. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Lender, at the address of Lender hereinabove set forth or at such other address as Lender may designate by notice, (b) if to Tenant, at the address of Tenant hereinabove set forth, or at such other address as Tenant may designate by notice, (c) if to KeyBank, at the address of KeyBank hereinabove set forth, or at such other address as KeyBank may designate by notice, or (d) if to Landlord, at the address of Landlord hereinabove set forth or at such other address as Landlord may designate by notice.

This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier and PDFs transmitted electronically, all of which shall be deemed to be original counterparts of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah.

This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

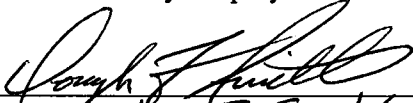
This Agreement and the covenants contained are intended to run with and bind all lands affected thereby.

(Signatures on following page)

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


“Tenant”:

DW ASSOCIATES, L.L.C.,
a Utah limited liability company

By: 
Name: Douglas F. Smith
Its: Manager

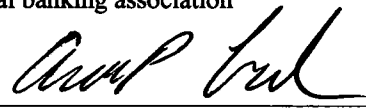
“Subtenant”:

WGT AMERICAN FORK HOLDINGS, LLC,
a Utah limited liability company

By: 
Name: Warren G. Tate
Its: Manager

“KeyBank”:

KEYBANK NATIONAL ASSOCIATION,
a national banking association

By: 
Name: Andrew P. Latimer
Title: Senior Vice President

“Lender”:

BRIGHTON BANK
a Utah banking corporation

By: 
Name: ERIN J. TATE
Its: VP MANAGER

STATE OF OHIO)
)
SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared KEYBANK NATIONAL ASSOCIATION, a national banking association, by Andrew P. Latimer, its Senior Vice President, who acknowledged that he did sign the foregoing instrument for and on behalf of said national banking association, being thereunto duly authorized, and that the same is his free act and deed individually and as such officer and the free act and deed of said national banking association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21 day of July, 2021.

Shelley A Zavarella
Notary Public



SHELLEY A. ZAVARELLA
Notary Public, State of Ohio
Commission No. 2019-RE-766334
My Commission Expires
April 16, 2024

EXHIBIT A

[LEGAL DESCRIPTION OF DW ASSOCIATES GROUND LEASED PARCEL/NIMBUS FEE PARCEL]

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

COMMENCING AT THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH; THENCE NORTH 89°53'25" WEST ALONG THE NORTH LINE OF SAID SECTION 771.29 FEET AND SOUTH 143.72 FEET TO THE REAL POINT OF BEGINNING; THENCE SOUTH 00°56'47" EAST 593.72 FEET TO THE NORTH RIGHT OF WAY LINE OF 1-15; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING 2 COURSES AND DISTANCES; (1) NORTH 69°57'50" WEST 344.14 FEET; (2) NORTH 62°12'58" WEST 27.09 FEET; THENCE NORTH 00°04'37" EAST 316.05 FEET; THENCE SOUTH 89°28'19" EAST 7.15 FEET; THENCE NORTH 00°31'00" EAST 150.09 FEET TO THE SOUTH LINE OF MAIN STREET; THENCE SOUTH 89°29'00" EAST ALONG SAID SOUTH LINE 328.55 FEET TO THE REAL POINT OF BEGINNING.

TAX SERIAL NO. 13-042-0013

Less and Excepting:**UDOT TAKING OF ORIGINAL PARCEL**

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, TO FACILITATE CONSTRUCTION OF A STATE ROAD KNOWN AS PROJECT NO. S-115-6(175)245, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 1107.54 FEET WEST AND 446.62 FEET SOUTH OF THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 44°35'46" EAST 89.20 FEET TO THE POINT OF CURVE OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,500.86 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°52'22" WHICH CHORD BEARS SOUTH 53°50'43" EAST 169.01 FEET; THENCE ALONG SAID CURVE 169.04 FEET TO THE POINT OF CURVE OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,469.08 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°53'23" WHICH CHORD BEARS SOUTH 61°34'32" EAST 167.59 FEET; THENCE ALONG SAID CURVE 167.62 FEET; THENCE SOUTH 00°53'34" EAST 46.33 FEET; THENCE NORTH 69°57'50" WEST 344.28 FEET; THENCE NORTH 62°12'58" WEST 27.09 FEET; THENCE NORTH 00°04'37" EAST 158.74 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

LEGAL DESCRIPTION OF PREMISES
 (A Portion of PAD A-3, GROUND SUBLEASED TO KEYBANK)

BEING A PORTION OF:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF MAIN STREET (SR-145), SAID POINT BEING NORTH 89°53'48" WEST 1224.77 FEET ALONG THE SECTION LINE AND SOUTH 160.69 FEET FROM THE NORTHEAST QUARTER OF SAID SECTION 22, AND RUNNING THENCE SOUTH 00°44'31" WEST 104.39 FEET; THENCE SOUTH 55°42'17" EAST 92.00 FEET; THENCE SOUTH 89°55'24" EAST 41.74 FEET; THENCE SOUTH 00°04'22" WEST 130.85 FEET TO A POINT ON THE NORTHEASTERLY HIGHWAY RIGHT OF WAY AND NO-ACCESS LINE OF INTERSTATE 15; THENCE ALONG SAID HIGHWAY RIGHT OF WAY AND NO-ACCESS LINE THE FOLLOWING TWO (2) COURSES: 1) NORTH 44°43'33" WEST 106.17 FEET; 2) NORTH 55°42'17" WEST 273.28 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY AND NO-ACCESS LINE OF PIONEER CROSSING; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: 1) NORTH 61°10'31" EAST 42.91 FEET; 2) NORTH 72°56'17" EAST 102.41 FEET' 3) NORTH 81°51'09" EAST 49.25 FEET TO THE POINT OF BEGINNING.

CONTAINS 28,623 SQ FT OR 0.657 ACERS, MORE OR LESS

