



ENT 132929:2021 PG 1 of 9
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Jul 29 4:24 pm FEE 40.00 BY IP
RECORDED FOR TATE, STEVE

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

WGT American Fork Holdings, LLC
Attn: Mr. Steve Tate
P.O. Box 1153
Centerville, Utah 84014

NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

This NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement") is made and entered into this 21st day of July, 2021, 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 ("Tenant") having a mailing address of P.O. Box 1153, Centerville, Utah 84014; WGT AMERICAN FORK HOLDINGS, LLC, a Utah limited liability company ("Subtenant") having a mailing address of P.O. Box 1153, Centerville, Utah 84014; and KEYBANK NATIONAL ASSOCIATION, a national banking association ("KeyBank"), having a mailing address of Mail Code: OH-01-10-0605, 100 Public Square, Suite 600, Cleveland, Ohio 44113-2207.

WITNESSETH:

THAT WHEREAS, Master Landlord is lessor under that certain Ground Lease with Tenant, as successor-in-interest to 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 that certain Agreement to Extend Rent Commencement Date dated. June 15, 2007, as partially assigned by DJ Smith Investment, L.C. to WGT American Fork, LLC, a Utah limited liability company, as co-tenant, 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 I 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 located at approximately 651 W. Main Street in American Fork, Utah, commonly known as the Crossroads Center (the "Property"), which Property is more particularly described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Tenant entered into that certain Ground Sublease dated March 15, 2021 with Subtenant (the "Sublease") for a certain limited portion of the Property more particularly described in Exhibit B attached hereto and made a part hereof (the "Pad A-3 Portion");

WHEREAS, Subtenant entered into that certain Ground Lease Agreement with KeyBank dated March 15, 2021 pursuant to which KeyBank: (i) ground leases certain real property owned by Subtenant more particularly described in Exhibit C attached hereto and made a part hereof ("the WGT Parcel"), which WGT Parcel is located adjacent to the Property; and (ii) ground sub-subleases the Pad A-3 Portion, from Subtenant, together with the appurtenant rights to utilize the common areas of Tenant's property outside of the Pad A-3 Portion (the "Sub-Sublease").

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, and KeyBank acknowledge that the Master Lease is prior to and paramount to the Sublease and Sub-Sublease.
2. In accordance with Section 25.8 of the Master Lease, Master Landlord represents and warrants to Tenant, Subtenant, and KeyBank 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 KeyBank'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 KeyBank is 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 KeyBank in or of its possession or its right to possession of the Property or of any right or privilege granted to or inuring to the benefit of KeyBank under the Sub-Sublease.
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 and KeyBank 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 foregoing option; (y) if immediately prior to such surrender or termination of the Sublease, the Sub-Sublease shall be in full force and effect; and (z) KeyBank is not in default of the Sub-Sublease beyond any applicable cure period: KeyBank may elect at its option, which option shall be exercised by KeyBank 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 KeyBank for the remainder of the Sub-Sublease term and KeyBank 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 KeyBank, 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 Master Landlord have any obligation pursuant to their terms that did not exist in the Master Lease.
10. Subtenant and KeyBank acknowledge that Master Landlord only owns Pad A-3 and

does not own the WGT Parcel. Notwithstanding anything in the Sublease or Sub-Sublease to the contrary, Subtenant and KeyBank agree and acknowledge that Master Landlord's obligations in the Sublease and Sub-Sublease shall only apply to the Pad A-3 Portion.

11. Additionally, upon termination of the Master Lease for any reason KeyBank 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 KeyBank.

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 carrier's or courier's receipt, shall be the effective date of such notice, election or demand. Master Landlord agrees to contemporaneously deliver to Subtenant and KeyBank 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 parties have executed this Agreement effective as of the dates set forth below.

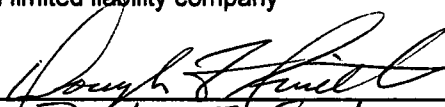
"Master Landlord":

NIMBUS PROPERTIES, L.C.,
a Utah limited liability company


By: _____
Name: Bryce K. Taylor
Its: Manager


"Tenant":

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

By: 
Name: Douglas E. 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

NOTARY ACKNOWLEDGMENTS

STATE OF UTAH)
)
) SS:
)
COUNTY OF Utah)

On June 24, 2021, personally appeared before me, a Notary Public, Bryce K. Taylor, the Manager of NIMBUS PROPERTIES, L.C., a Utah limited liability company personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of NIMBUS PROPERTIES, L.C., a Utah limited liability company.

WITNESS my hand and official Seal.

Marion S. Oakeson
Notary Public in and for said State
My commission expires: 09/05/2021

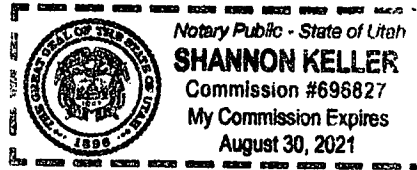


STATE OF UTAH)
)
) SS:
)
COUNTY OF Salt Lake)

On June 29, 2021, personally appeared before me, a Notary Public, Doug Smith, the Manager of DW ASSOCIATES, L.L.C., a Utah limited liability company personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of NIMBUS PROPERTIES, L.C., a Utah limited liability company.

WITNESS my hand and official Seal.

[Signature]
Notary Public in and for said State
My commission expires: Aug 29, 2021

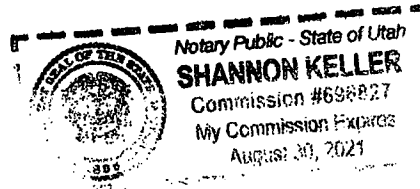


STATE OF UTAH)
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) SS:
)
COUNTY OF Salt Lake)

On June 29, 2021, personally appeared before me, a Notary Public, Warren Tate, the Manager of WGT AMERICAN FORK HOLDINGS, LLC, a Utah limited liability company personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of NIMBUS PROPERTIES, L.C., a Utah limited liability company.

WITNESS my hand and official Seal.

[Signature]
Notary Public in and for said State
My commission expires: Aug 29, 2021

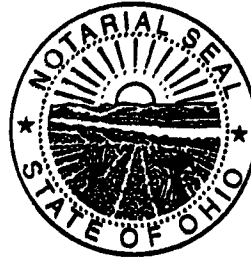


STATE OF OHIO)
)
) SS:
)
COUNTY OF CUYAHOGA)

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 TO NDA

(Legal Description of Property)

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 TO NDA
 (Legal Description of the Pad A-3 Portion sub-subleased by KeyBank)

THAT CERTAIN PORTION OF THE FOLLOWING DESCRIBED PAD A-3 WHICH IS DEPICTED BELOW:

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

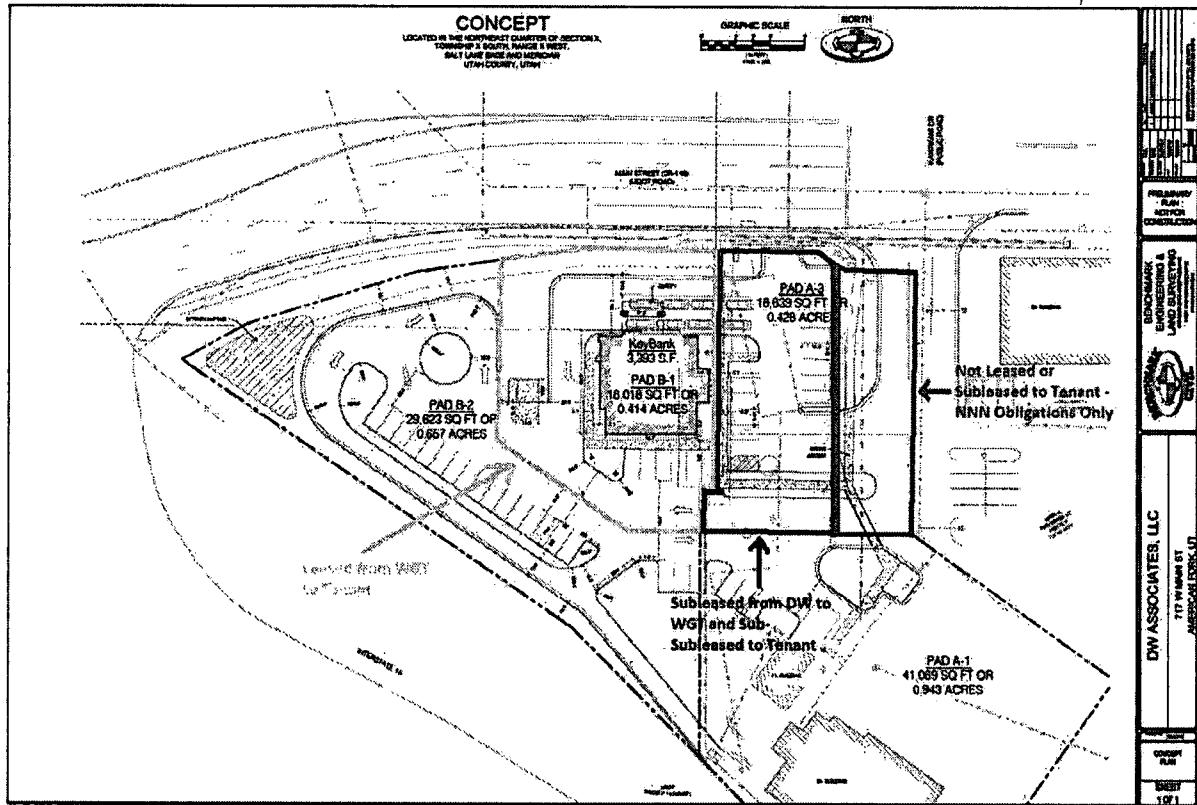


EXHIBIT C TO NDA

(Legal Description of WGT Parcel)

Legal Description: COM N 89 DEG 53' 48" W 1098.95 FT & S 154.74 FT FR NE COR. SEC. 22, T5S, R1E, SLB&M.; S 0 DEG 31' 0" W 136.63 FT; N 89 DEG 29' 0" W 7.14 FT; S 0 DEG 4' 37" W 157.31 FT; N 44 DEG 43' 33" W 107.6 FT; N 55 DEG 42' 17" W 273.28 FT; N 61 DEG 10' 31" E 42.91 FT; N 72 DEG 56' 17" E 102.41 FT; N 81 DEG 51' 9" E 96.8 FT; S 89 DEG 15' 29" E 78.77 FT TO BEG. AREA 1.077 AC.