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ANDREA ALLEN  
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Recording Requested by and  
When Recorded Mail To:

DW Associates, L.L.C.  
c/o Tate Properties, LC  
Attn: Steve Tate  
P.O. Box 1153  
Centerville, UT 84014

APNs: 13-042-0074 & 13-042-0100

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**FIRST AMENDMENT TO  
RESTRICTIONS AND EASEMENTS AGREEMENT**

THIS FIRST AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT (this “**Amendment**”) is entered into on SEP. 5, 2021, by and between DW ASSOCIATES, L.L.C., a Utah limited liability company (“**DWA**”), WGT AMERICAN FORK HOLDINGS, LLC, Utah limited liability company (“**WGT**”), DJ SMITH INVESTMENTS, LLC, a Utah limited liability company (“**DJS**”), NIMBUS PROPERTIES L.C., a Utah limited liability company (“**Nimbus**”), and INNES FAMILY, LLC, a Utah limited liability company (“**Innes**”); individually, a “**Party**”, and collectively the “**Parties**”.

**RECITALS**

- A. On or about August 10, 2009, DWA and DJS entered into that certain Restrictions and Easements Agreement (the “**Declaration**”), which Declaration was recorded on September 3, 2009, as Entry No. 96546:2009 of the official records of Utah County.
- B. The Declaration grants certain reciprocal easements upon the Parcels (as that term is defined in the Declaration) and provides for certain covenants, conditions and restrictions with respects to the Parcels, for the mutual reciprocal benefit of the Center and the Owners (as those terms are defined in the Declaration).
- C. DWA is the long-term ground lessee of that certain real property consisting of approximately 3.359 acres located in the City of American Fork, Utah County, State of Utah, more particularly described in the Declaration and referred to therein as the DWA Parcel, pursuant to that certain Ground Lease dated January 12, 2007 between DWA (as assignee of DJS) as tenant, and Nimbus as landlord (the “**Nimbus Ground Lease**”), as disclosed in that certain Memorandum of Lease recorded on December 12, 2008 as Entry No. 130155:2008. DJS is the long-term ground lessee of that certain contiguous real property located in the City of American Fork, Utah County, State of Utah, more particularly described in the Declaration and referred to therein as the “**DJS Parcel**”, pursuant to that certain Ground Lease dated as of January 12, 2007 between DJS and Innes (the “**Innes Ground Lease**”).

D. The DWA Parcel and the DJS Parcel are collectively referred to in the Declaration as the “Center”, which Center is commonly known as *The Crossroads at American Fork*.

E. WGT is the fee owner of certain real property consisting of approximately 1.078 acres located in the City of American Fork, Utah County, State of Utah, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “WGT Parcel”). The WGT Parcel is contiguous to and located directly west of the Center.

F. Certain portions of the DWA Parcel have been leased (or subleased, as applicable) to various commercial tenants, and the respective leased premises boundaries of each subleased premises are shown on the Site Plan (defined below). WGT also intends to ground lease a portion of the WGT Parcel (i.e., “Pad B-2”) to DWA and, in turn, DWA will ground-sublease said portion of the WGT Parcel to one of its existing tenants (In N Out Burgers). WGT also intends to ground sublease from DWA a portion of the DWA Parcel (i.e., the “Pad A-3 Portion”, as described on Exhibit C) and, in turn, WGT will ground sub-sublease said portion of the DWA Parcel, and also ground lease a portion of the WGT Parcel (i.e., “Pad B-1”), to KeyBank National Association (“KeyBank”).

G. The parties hereto now desire to provide for (among other things), the incorporation of the WGT Parcel into the Center, the subjection of the WGT Parcel to, and the encumbrance of the WGT Parcel by, the Declaration, the granting of reciprocal cross parking and access easements throughout the Common Area of the Center (as amended to include the WGT Parcel), and the common operation, cleaning, maintenance, repair, replacement and insurance of the Common Area within the Center as hereinafter provided.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto make the following amendments to the Declaration.

1. **Recitals and Defined Terms.** The foregoing Recitals are hereby incorporated herein in their entirety. Except to the extent otherwise defined herein, all capitalized terms used in this Amendment shall have the meaning ascribed thereto in the Declaration.

1.2 **Additional Definitions.** The following additional definitions are hereby deemed added to the Declaration:

(a) **“Building Appurtenances”:** Means service facilities serving an Owner’s building(s), such as (i) patios, outdoor seating areas, (ii) permanent garbage containers, trash storage, dumpsters and enclosures, (iii) drive-through lanes, drive-up lanes, ATM islands, and/or similar improvements, (iv) exterior storage areas, (v) utility facilities, (vi) supports and appurtenances that extend from a building, such as building canopies, support columns, pilasters, overhangs and footings, provided that such improvements are located immediately adjacent to a building, and (vii) other similar service facilities. Building Appurtenances shall be deemed to be a part of the building to which they are

attached or the building which they serve, as applicable, and not a part of the Common Area, and shall be maintained by the Owner of such Building Appurtenances.

(b) **“Common Area”** The following shall be deemed to replace in its entirety the definition of the “Common Area” contained in the Declaration: Common Area includes, without limitation, all of the following areas or facilities within the Center: (i) parking areas, (ii) light fixtures located within the parking areas, driveways, sidewalks and/or landscaped areas of the Center, including the light fixtures that are not attached to the buildings, (iii) any common signage for the Center, (iv) the utility lines serving the Center, located outside of the buildings, and (v) all driveways and sidewalks (excluding those sidewalks immediately surrounding the buildings and those driveways and other improvements comprising a portion of drive-through facilities from time to time). The Common Area shall exclude all buildings located within the Center.

(c) **“Consenting Owners”**: Shall mean DWA and WGT, and their applicable successors-in-interest. In addition, in the event that either the Nimbus Ground Lease or the Innes Ground Lease is ever terminated (and the applicable ground landlord thereunder succeeds to the interest of the ground tenant thereunder), then Nimbus and/or Innes, as applicable, shall be deemed to be Consenting Owners. Furthermore, for so long as KeyBank occupies PAD B-1, KeyBank shall be deemed to be a Consenting Owner and shall be permitted to exercise the Consenting Owner rights (but shall not be deemed to have assumed any Consenting Owner obligations) of WGT hereunder.

(d) **“Occupant”**: Any Person from time to time entitled to the use and occupancy of any portion of a Parcel under any lease, sublease, license, or other similar agreement.

(e) **“Owner”**: Means DWA (during the term of the Nimbus Ground Lease), DJS (during the term of the Innes Ground Lease), WGT, their successors and/or assigns, or any holder of fee simple title to a Parcel (in the case of a termination of either the Nimbus Ground Lease or the Innes Ground Lease). The term “Owner” shall also include any Occupant under a lease or sublease, as applicable, if designated by the Owner of such Parcel leased or subleased by such Occupant to act on behalf of such Owner in the exercise of the rights or powers granted to such Owner under the Declaration, as amended hereby. So long as such designation remains in effect, such designee shall be deemed an Owner hereunder with respect to the designated Owner’s Parcel and the rights or powers so granted; *provided, however*, that (i) in order to be effective any such designation must be in writing, executed by such Owner and its designee and served upon the Consenting Owners in the manner provided for notices hereunder, and (ii) no such designation shall relieve the designating Owner of liability for the obligations imposed on such Owner under this Amendment. There shall not be more than one (1) Person exercising the rights of an Owner with respect to any individual Parcel at any time. Accordingly, for so long as KeyBank occupies PAD B-1, KeyBank hereby is designated by WGT to act on behalf of WGT in the exercise of the rights and powers granted to WGT as an Owner hereunder.

(f) **“Parcel”**: Each portion of the DWA Parcel or WGT Parcel, respectively (portions of which may be leased or subleased to third party tenants, from time to time), all as shown on the Site Plan. As of the recording of this Amendment, the Center has six (6) Parcels depicted thereon as follows: “RETAIL A”, “PAD A-1”, “PAD A-2”, “PAD A-3”, “PAD B-1”, and “PAD B-2”. Furthermore, for purposes of the easements and access rights established in the Declaration, as amended hereby, the DJS Parcel shall be deemed to be a Parcel.

(g) **“Permittees”**: Owners’ agents and Occupants, and their employees, service persons, licensees, invitees, customers, contractors and agents.

(h) **“Person”**: Individuals, partnerships, firms, associations, limited liability companies, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2. **Subjection of WGT Parcel to Declaration.** WGT hereby submits and subjects the WGT Parcel to the Declaration, including, without limitation, all terms, conditions, covenants, easements, benefits, burdens, and restrictions, contained therein, and as supplemented and modified hereby. From and after the recordation of this Amendment, the WGT Parcel shall be held, leased, operated, transferred, sold, conveyed and occupied subject to the Declaration. DWA and DJS, as the original parties to the Declaration, hereby consent to the subjection of the WGT Parcel to the Declaration and to the expansion of the Center (to include the WGT Parcel), as herein provided. The Site Plan attached to the Declaration is hereby deleted in its entirety and shall be deemed replaced with the Site Plan attached to this Amendment as **Exhibit B** and incorporated herein by this reference (“**Site Plan**”).

3. **Reciprocal Easements.** Without in any way limiting, diminishing or otherwise abrogating the easements contained in the Declaration, the following easement provisions shall be deemed added to the Declaration:

3.1 **Supplement to Reciprocal Parking and Access Easements; Use of Common Area.** The Parties hereby reserve unto each other and grant to all Owners, together with the right of such Owners to grant and transfer the same, for the use and benefit of each of them and their Permittees, a nonexclusive, irrevocable easement with a right of entry to use the Common Area on the Parties’ respective Parcels for access to and from the Center (at the access point(s) depicted on the Site Plan), the parking of motor vehicles, pedestrian and vehicular travel, ingress and egress, and for the other Common Area uses for which the Common Area was designed. Such easements shall (a) be perpetual and survive any termination of this Amendment, (b) burden the Common Area and the interests of each Owner, and (c) benefit the other Owners’ Parcels to which they are appurtenant.

3.2 **Primary Use of Common Area.** For the avoidance of doubt, the Common Area of the Center is for the joint and non-exclusive use of the Owners and Occupants of the Center, together with their Permittees, for the purposes of driving, parking, loading and unloading motor vehicles, and vehicular and pedestrian access, ingress and egress to, from, and within the Center (“**Primary Uses**”), and each Owner, Occupant and their Permittees shall have the non-exclusive

use of and easement over, across, through and across the entirety of the Common Area for the Primary Uses throughout the term of the Declaration. The Common Area shall be used only for the Primary Uses and other purposes permitted herein and for no other purpose. It is the intention of the parties that an orderly flow of traffic be reasonably maintained in the Center, and the Parties hereto shall not take any action which materially adversely affects the orderly flow of traffic within the Center without the written approval of the Consenting Owners.

**3.3 Signage Easements.** The Parties hereby reserve unto themselves, together with the right of the Parties to grant and transfer the same, for the use and benefit of the Parties and of the Occupants, a non-exclusive, irrevocable easement in, to, over, and across those applicable portions of the Common Area for the installation, operation, maintenance and repair of any future monument signage approved in writing by the Consenting Owners (collectively, the “Monument Signs” and, individually, a “Monument Sign”).

**3.4 Outdoor Sales.** No portion of the Common Area, except sidewalks, shall be used for the sale or display of merchandise, unless approved by the Consenting Owners in writing.

**3.5 Short Term Parking.** Notwithstanding anything contained herein or in the Declaration to the contrary, each Consenting Owner may permit the designation of a reasonably specified area immediately adjacent to an Occupant’s building (on such Consenting Owner’s Parcel) as short-term parking for such Owner’s (or its Occupants’) Permittees’ use, and the installation of signage consistent with such designation.

**3.6 Protection of Common Area.** Each Consenting Owner shall each have the right to take such steps as it deems necessary in the exercise of its commercially reasonable judgment to prevent those persons not authorized by this Amendment to use the Common Area from using the Common Area for ingress, egress, parking or any other purpose.

**4. Property Manager.** DWA, WGT and DJS hereby jointly appoint Tate Properties, L.C., a Utah limited liability company (or its applicable affiliate), as designated “Property Manager” of the Common Area as of the recording hereof (sometimes referred to herein as the “Commencement Date”). However, such appointment and designation shall not relieve any of DWA, WGT or DJS of their primary obligations hereunder with respect to the DWA Parcel, the WGT Parcel or the DJS Parcel, respectively.

## **5. COMMON AREA MAINTENANCE AND INSURANCE OBLIGATIONS.**

**5.1 Maintenance.** Notwithstanding anything contained in the Declaration to the contrary, each of DWA, WGT and DJS shall be obligated with respect to their respective Parcels to (which obligations they may discharge by ensuring that the Property Manager does) operate, manage, equip, light, repair, and maintain all of the Common Areas located within their respective Parcels of the Center (including without limitation any common signage) for their intended purposes in a manner befitting a first-class shopping center, said maintenance to include, without limitation, the following: keeping all of the Common Areas (including without limitation all of the parking areas, driveways, sidewalks, utility lines, lighting and other improvements therein, whether located on the Land or otherwise) free from debris, ice and snow,

and maintained in good condition and repair and in a manner befitting a first-class shopping center, reasonable wear and tear, the effects of aging, eminent domain, and damage or destruction by fire or other casualty excepted; arranging for regular removal of such trash or garbage; maintain the parking and drive surfaces in their respective in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability; keeping in repair and replacing any necessary or appropriate directional signs, markers and lines; operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required for adequate lighting; maintaining all landscaped areas in a healthy and trimmed condition; making such reasonable replacements of shrubs and other landscaping as is necessary; and maintaining, repairing, and renewing any storm drain facilities.

**5.2 Insurance for Common Area.** Each of DWA, WGT and DJS shall be obligated with respect to their respective Parcels to (which obligations they may discharge by ensuring that the Property Manager does) provide and maintain, as a Common Area Expense, commercial general liability insurance, which shall include contractual liability coverage, with broad form coverage insuring the Center and all of the Owners and Occupants against claims for personal injury, bodily injury or death, and property damage arising out of any occurrences on the Common Areas (including without limitation the negligent act or omission of any such Party or the Property Manager in performing (or failing to perform) its obligations or services hereunder). Such insurance shall be written with an insurer licensed or authorized to do business in the state in which the Center is located and all Persons who own or hold portions of the Center or building space within the Center or any leasehold estate or other interest therein as their respective interests may appear shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be a combined single limit (covering personal injury, bodily injury and property damage) of \$5,000,000 per occurrence and \$5,000,000 in the aggregate. This commercial liability coverage shall be primary and non-contributing coverage. In addition, the Parties shall (or shall ensure that the Property Manager does) also provide and maintain as a Common Area Expense (a) policies of full replacement cost casualty insurance insuring the improvements within the Common Area, (b) business automobile liability insurance covering all vehicles (if any), owned, leased, hired, or borrowed in connection with operations at or for the benefit of the Center, at a limit not less than \$1,000,000 per occurrence for bodily injury liability and property damage liability combined, (c) coverage fully complying with the workers' compensation laws of the State of Utah, and (d) employer's liability insurance at limits not less than \$1,000,000 per accident for injury by accident, \$1,000,000 per employee for injury by disease, and \$1,000,000 in the aggregate for injury by disease.

**5.3 Building Appurtenances.** Notwithstanding anything to the contrary in this Article, the Parties shall not be responsible for the maintenance or insurance of any Building Appurtenances, all of which shall be maintained by the Owners (or Occupant(s)) thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area.

**5.4 Damage or Destruction to Common Area.** Upon any damage or destruction to the Common Area during the term of this Amendment from any casualty, the Parties shall, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild

such damaged or destroyed Common Area within their respective Parcels utilizing the proceeds of the casualty insurance carried hereunder as described in Section 5.2(a) above. Once commenced, the Parties shall use all due diligence to complete such restoration and repair of the Common Area within their respective Parcels as expeditiously as possible so that the same may be available for use as part of the Center with as little delay and as little disruption as circumstances permit.

**5.5 Occupant Signs.** The Parties jointly and severally shall be obligated to maintain, repair and replace, if necessary, the sign structure(s) of any future, common, monument sign constructed in the Center, *provided, however*, the Parties shall not be obligated to maintain any single-tenant signs, which signs may be constructed, installed, maintained, repaired and replaced by the Owner (or its Occupant) advertising (or with the right to advertise) on such sign. Each Owner shall cause the identification panel (including any backlit lighting) of its Occupant/tenant attached to or forming a part of any of the foregoing sign structures, and any pylon sign in the Center, to be maintained at its sole cost and expense pursuant to governmental regulations, in a safe condition and in a good state of repair.

**5.6 Lighting.** Lighting for the Common Area shall remain on each day at least from dusk until 1:00 a.m. Utah time. If any applicable law, rule, statute or ordinance then in effect restricts the hours or amount of lighting herein specified, then the standard prescribed by such restriction shall be adhered to while in effect. If “special” lighting is required by any Occupant on any Parcel, or if regular lighting is required by any Occupant on any Parcel after such time as Common Area lighting remains on as set forth above (“**After Hours Lighting**”), then all costs and expenses incurred in connection with such additional lighting shall be equitably determined by the Property Manager and such costs and expenses shall be so paid by such Occupant. An Owner may separately meter electrical service relating to Common Area lighting on its Parcel, in which event the Owner of the separately metered Parcel shall pay for all electricity costs for Common Area lighting incurred in connection with such Owner’s Parcel and none of such cost shall be included in Common Area Expenses and such Owner shall not be required to reimburse the cost of any other lighting in the Center. The cost of electrical service for Common Area lighting for the Parcels which are not separately metered shall be a Common Area Expense which shall be allocated among all Owners whose Parcels are not separately metered and charged based upon the relevant Proportionate Share (defined below) of such Owners.

**5.7 Self-Maintenance.** Notwithstanding the foregoing, an Owner (and/or its Occupant) may, upon notice to the Property Manager, elect to individually maintain its own Parcel in accordance with Section 3(f) and Section (g) of the Declaration. DJS shall entirely self-maintain the DJS Parcel, and DJS shall not be responsible for payment of any Common Area Expenses hereunder.

## **6. Common Area Management and Common Area Expenses.**

**6.1 Generally.** The Parties shall cause the Property Manager to contract and pay for all of the Common Area maintenance items contemplated by Article 3 above (the expenses therefor, and the other Common Area expenses permitted hereunder, sometimes collectively

being referred to as “**Common Area Expenses**”), on an estimated budget-basis, pursuant to the provisions hereof.

**6.2 Definitions.** For purposes of this Amendment, the term “**Maintenance Budget Year**” shall mean the period commencing on January 1 of each year and ending on December 31 of such year and each corresponding calendar year thereafter from and after the Commencement Date. If the Commencement Date is a date other than January 1, then the amounts under the first Maintenance Budget Year shall be prorated accordingly, based on the actual number of days in such partial calendar year in relation to a full calendar year.

**6.3 Budget Submission.** The initial budget for the remainder of the calendar year in which the Commencement Date occurs shall be submitted by the Property Manager and approved by the Consenting Owners in accordance with the terms of this Amendment within sixty (60) days after the Commencement Date. Notwithstanding the foregoing, at least seventy-five (75) days prior to the commencement of each Maintenance Budget Year thereafter, the Property Manager shall submit to each Consenting Owner, for such Consenting Owner’s review and approval, a proposed annual budget for Common Area Expenses (“**Budget**”) covering the applicable Maintenance Budget Year, which Budget shall, after the initial Maintenance Budget Year, be based on the actual Common Area Expenses paid in the prior year, with such increases due to projected increased costs as reasonably determined by the Property Manager. The Budget may provide for a Property Management Fee (as defined in Section 6.9).

**6.4 Consenting Owners’ Review.** Each Consenting Owner shall, within thirty (30) days after receipt of the Budget, deliver written notice of its approval, disapproval or questions regarding or request for additional information concerning the Budget to the Property Manager (“**Budget Notice**”). Provided a Consenting Owner has received the Budget as required herein, failure by such Consenting Owner to respond with its written approval, disapproval or questions regarding or request for additional information of the Property Manager regarding the Budget as required above shall be deemed to be an approval by such Consenting Owner, *provided, however,* the foregoing deemed approval process shall not apply to any submission unless such submission states at the top of such submission in bold, all capital letters of not less than 14 point type that “FAILURE TO RESPOND TO THIS NOTICE WITHIN THIRTY (30) DAYS SHALL BE DEEMED APPROVAL OF THE BUDGET CONTAINED HEREIN”.

**6.5 Disapproval by Consenting Owners/Bidding.** With respect to each submitted Budget, each Consenting Owner shall reasonably approve all items of Common Area Expenses (“**CAM Items**”) that such Consenting Owner deems acceptable, even if the Budget contains other CAM Items which the Consenting Owner deems unacceptable, such that the Consenting Owner shall have approved as much of the Budget as possible. If a Consenting Owner disapproves of any CAM Items, it must specify its reasons for disapproval in the Budget Notice and the Property Manager shall promptly revise and resubmit the same until the Property Manager and the Consenting Owner(s) reach agreement on the matters in question. The Property Manager and Consenting Owner shall attempt in good faith to reach agreement as to the disapproved items as quickly as reasonably possible and in any event prior to the expiration of the immediately preceding Maintenance Budget Year. If, prior to the expiration of the applicable Maintenance Budget Year, the Property Manager and the Consenting Owners are unable to agree upon the inclusion of a particular CAM Item within the Budget which was not included in the



prior year's Budget, despite their good faith efforts, said disputed CAM Item shall not be included in the Budget.

**6.6 Non-Reimbursable Items.** Notwithstanding anything herein to the contrary, an Owner shall not be obligated to reimburse the Property Manager for any specific CAM Item which is an Excluded Item (defined below), or not part of the Budget except: (i) emergency expenses in accordance with Section 6.7, (ii) unforeseen or extraordinary expenses in accordance with Section 6.8, or (iii) necessary expenditures over which the Property Manager has no control (such as utility rate increases or extraordinary demand created by forces of nature and governmentally regulated services).

**6.7 Emergency Expenses.** If the Property Manager is required to incur an expense for the emergency repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, then each Owner shall pay its pro rata share of such expense provided that the Property Manager has given each Owner the earliest notice of the same that is feasible under the circumstances. For purposes of this Section 6.7, an "emergency" necessitating repair or replacement shall be one which presents a threat or danger of harm to person or property.

**6.8 Unforeseen or Extraordinary Expenses.** If the Property Manager reasonably deems it necessary to incur an unforeseen or extraordinary expense (which is not on an emergency basis) for the repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, the Property Manager shall request written approval of such expenditure from the Consenting Owners as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld. Any such item which is approved by the Consenting Owners shall be considered a reimbursable expense.

**6.9 Property Management Fee.** Subject to the provisions hereof, the Property Manager may charge a commercially reasonable and market rate property management fee for all out-of-pocket expenses incurred by the Property Manager in performing the services described in Article 3 and its other obligations hereunder to cover management and administration costs, but not to exceed 4.5% of the gross rents of the Center for the corresponding time (the "Property Management Fee").

**6.10 Common Area Expense Exclusions.** Notwithstanding anything contained herein, or in the Declaration to the contrary, Common Area Expenses hereunder shall not include: the cost of any work or services provided to any specific tenant or other Occupant of the Center (collectively referred to herein as "Other Occupants") which is paid for by Other Occupants, or the cost of renovating space for any Other Occupants; expenses for repairs or other work occasioned by fire, windstorm or other casualty; costs of capital improvements or repairs (except for costs of any capital improvements or repairs made or installed pursuant to any governmental requirement not in effect as of the recording of this Amendment and not triggered as a result of the action, inaction or existence of the Owners or Other Occupants, which costs shall be spread over the useful life thereof in accordance with sound accounting and management principles consistently applied, with only the applicable annual installment thereof being

included within the Common Area Expenses for any applicable year); depreciation of any improvement at the Center; interest on debt or amortization payments on any mortgage or mortgages, and rental under any land leases or subleases; expenses incurred in leasing or procuring tenants or Other Occupants (including, without limitation, advertising, marketing, and leasing commissions); expenditures in connection with services and other benefits which are not provided to an Occupant or for which an Occupant is charged directly but which are provided to one or more Other Occupants; any general corporate overhead and also any management fee in excess of four and one-half percent (4.5%) of gross rents of the Center for the corresponding period of time; the cost of correcting any construction defect (latent or otherwise) in any portion of the Common Areas; expenses in connection with repairs or other work occasioned by the exercise of the right of eminent domain; damages incurred due to default by the Property Manager or any Party hereunder or under any other lease or agreement, or default by Other Occupants under the terms of any lease or occupancy agreement; costs, fines or penalties incurred due to the violation by an Owner or the Property Manager or any Other Occupant of any law; salary and benefits, including taxes and insurance, for all direct employees above the grade of building manager or equivalent position and the portion thereof for any employees not working full time on the management, operation, maintenance or repair of the Common Areas which is not reasonably allocable to the Common Areas, and any compensation or benefits paid to clerks or attendants or other persons employed in the operation of commercial concessions or newsstands; any expenditures for which an Owner or the Property Manager has been reimbursed, or is entitled to reimbursement from any person or entity who has failed to pay or reimburse the same when due; any amount incurred by reason of any negligence or wrongful or willful misconduct on the part of an Owner, the Property Manager or any Other Occupant; costs of acquiring and/or leasing sculptures, paintings and other objects of art; any costs representing an amount paid to a person, firm, corporation or other entity related to an Owner or the Property Manager in excess of the amount which would have been paid on a fair market value basis in the absence of such relationship; except in the case of a temporary rental or emergency service, rentals and other related expenses incurred in leasing equipment which would constitute a capital investment item if such equipment were purchased; legal and accounting fees relating to disputes with Other Occupants or prospective tenants of the Center, disputes with purchasers, prospective purchasers, mortgagees or prospective mortgagees of the Center or any part of either, or negotiations of leases, contracts of sale or mortgages; all ownership costs not allocable to the management, repair, maintenance and operation of the Common Areas; costs arising from compliance with applicable environmental laws or the presence of hazardous materials in the Center, but excluding commercially reasonable costs and expenses related to maintenance of any existing monitoring wells or related monitoring improvements within the Common Areas; and costs allocable to the management, repair, maintenance or replacement of the buildings within the Center or any other item attributable to anything other than the Common Areas including any Center signage (each, an “**Excluded Item**”). DWA shall be obligated to pay for (or cause to be paid) the costs of all Excluded Items pertaining to the DWA Parcel, and WGT shall be obligated to pay for (or cause to be paid) the costs of all Excluded Items pertaining to the WGT Parcel, in each such case in a timely manner.

7. **Billing for Common Area Expenses.**

7.1 **Proportionate Share:** As used herein, the proportionate share of the total Common Area Expenses and applicable insurance premiums to be borne hereunder by DWA and WGT (exclusive of property taxes) with respect to their Parcels, shall be as set forth in the table below (“**Proportionate Share**”):

<b>DWA Parcel:</b>	
“RETAIL A”	27.20%
“PAD A-1”	20.68%
“PAD A-2”	18.74%
“PAD A-3”	9.39%
<b>WGT Parcel:</b>	
“PAD B-1”	9.07%
“PAD B-2”	14.92%
<b>DJS Parcel</b>	
	Excluded
<b>Total:</b>	100%

7.2 **Monthly Payment.** Beginning on the first day of each Maintenance Budget Year and continuing on the first day of each calendar month thereafter, DWA and WGT shall pay (or cause to be paid) to the Property Manager one-twelfth (1/12) of their respective Parcel’s applicable Proportionate Share of the total annual Common Area Expenses, as set forth in the approved Budget; provided that if the Commencement Date does not occur in the month of January, then the total Common Area Expenses set forth in the approved Budget for the Maintenance Budget Year in which the Commencement Date occurs shall be divided by the number of months (including any partial month) from the Commencement Date until December 31 of such year, and shall be paid in equal monthly installments over such period, or otherwise as the Property Manager may reasonably direct.

7.3 **Year-End Reconciliation.** Within one hundred twenty (120) days after the end of each Maintenance Budget Year, the Property Manager shall send to each Owner a written statement of the total Common Area Expenses actually paid by the Property Manager during said Maintenance Budget Year (“**Actual Expenses**”) and the difference between the Proportionate Share of the Actual Expenses allocable to each Parcel and Pad and the sum of all the monthly payments made with respect to each Parcel and Pad relative to said Maintenance Budget Year (“**Reconciliation Statement**”). The Reconciliation Statement for the Consenting Owners shall be accompanied by copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, “**Backup Invoices**”). The Property Manager shall, within thirty (30) days after receipt of an Owner’s written request, provide to such Owner such additional documentation as the Owner reasonably requests to substantiate the expenses (sometimes referred to herein as “**Additional Documentation**”). DWA, WGT and the Property Manager shall, within thirty (30) days after the Property Manager submits the Reconciliation Statement to the Owners, make (or cause to be made) such adjustments and payments as necessary so that the Property Manager receives the entire amount (but no more) of each Parcel’s and Pad’s Proportionate Share of the Actual Expenses for the applicable Maintenance Budget

Year. Any reimbursement that may be due by the Property Manager as a result of such reconciliation may take the form of a credit on the Parties' next succeeding installment(s).

**7.4 Inspection of Records.** Any Owner may, upon not less than ten (10) days' prior written notice to the Property Manager, inspect the Property Manager's records for all Common Area Expenses incurred during the preceding calendar year at the Property Manager's general offices or at such other location reasonably designated by the Property Manager at any time during reasonable business hours within three (3) years after the end of said calendar year. If said inspection reveals an overpayment of Common Area Expenses, the Property Manager shall reimburse DWA and/or WGT with respect to its Parcel (or its respective tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. In lieu of such reimbursement, the Property Manager may credit future payments due from DWA or WGT. If said inspection reveals an underpayment of Common Area Expenses, DWA and/or WGT with respect to its Parcel shall reimburse the Property Manager its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing. The Property Manager's expenses for any calendar year shall be deemed correct for purposes of this Declaration, absent manifest error, if an Owner does not give the Property Manager written notice of any such overpayment or underpayment within the 3-year period provided. Contingency fee-based audits of Common Area Expenses shall not be permitted hereunder. The foregoing shall be in addition to any audit rights granted by DWA or WGT to any Occupant in any lease, or sublease as applicable.

## **8. Default in Payment.**

**8.1 Failure to Pay Common Area Expenses.** In the event that DWA or WGT fails or refuses to pay, or cause to be paid, when due its share of any bill for the Common Area Expenses, which failure continues for a period of ten (10) days after receipt of written notice of such failure to pay, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Party by the Property Manager or other person paying the expense of the defaulting Party ("**Curing Party**") for reimbursement plus interest. In addition to the other remedies provided for in this Section, if any portion of a Party's Common Area Expenses is not paid within ten (10) days after the due date for such payment, a late charge in the amount of five percent (5%) of such unpaid amount shall immediately become due and owing. Additionally, interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at a rate equal to eighteen percent (18%) per annum (the "**Default Rate**"). Furthermore, the Curing Party shall have a lien on the defaulting Party's interest in its Parcel for the amount of said expenses plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Party's interest in its Parcel until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

**8.2 Failure of Property Manager to Perform.** In the event the Property Manager fails to perform any of its obligations hereunder, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from

any Owner specifying the particulars of such failure, such failure shall constitute a default and any Owner may thereafter institute legal action against the Property Manager for specific performance, declaratory or injunctive relief or monetary damages, provided, however, that the Property Manager shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Property Manager is diligently proceeding to rectify the particulars of such failure. Notwithstanding the foregoing, each Occupant also shall have with respect to any such failure any rights and remedies available to it under its lease or sublease, as applicable, from DWA or WGT, including without limitation the self-help and offset rights granted to KeyBank in its ground lease from WGT.

9. **Property Taxes.** DWA and WGT each shall be obligated to pay (or cause to be paid) all Taxes (as defined below) allocable to their respective Parcels as provided herein. The Property Manager shall be permitted to collect from the Parties (or on behalf of the Owners to collect from each Owner or their designated Occupants to the extent so provided in its respective ground lease, lease, or sublease), such Party's respective share of all real property taxes and other special taxes and assessments (collectively "Taxes"), as reasonably calculated in good faith by the Property Manager. Such calculation of each Party's share of Taxes shall be based on: (A) the ratio of which the gross leasable area within such Party's Parcel (and, in the case of a multi-tenant building, the applicable portion of the building within a ground leased premises, as applicable) bears to the total gross leasable area in all buildings located on the applicable tax parcel, as to Taxes on improvements; and (B) the ratio of which the number of square feet of land comprising the applicable Party's ground leased premises (as applicable) bears to the total number of square feet of land within the entire Center, as to Taxes on land. For purposes of this provision, the Parties' Proportionate Shares are set forth as follows:

<u>DWA Parcel</u>		Acres	Sq. Ft.	% of Taxes
Retail A	DWA Shops (Zupas/MF)	1.186	51,681	35.32%
Pad A-2	WDG AF (Zaxby's)	0.802	34,942	23.88%
Pad A-1	In-N-Out Burger (Orig.)	0.943	41,069	28.07%
Pad A-3	Key Bank (NNN's only)	0.428	18,639	12.74%
	<b>Totals</b>	<b>3.359</b>	<b>146,331</b>	<b>100.00%</b>
<u>WGT Parcel</u>				
Pad B-2	In-N-Out Burger (New)	0.657	29,623	62.18%
Pad B-1	Key Bank (Main)	0.414	18,018	37.82%
	<b>Totals</b>	<b>1.071</b>	<b>46,642</b>	<b>100.00%</b>

Notwithstanding the forgoing, in the event that the Center is subsequently consolidated and re-parcelized such that the DWA Parcel and the WGT Parcel are both owned in fee (i.e., in the event that DWA exercises its right to purchase the fee simple interest in the DWA Parcel from Nimbus), the Parties hereto agree that the Owner of each respective parcel shall thereafter timely pay all Taxes assessed against such Owner's Parcel(s), including the portion(s) of the Common Area located on such Owner's Parcel, which it owns in fee, directly to the applicable taxing authority, without contribution from any other Owner and without the requirement of the

Property Manager to collect shares of the Taxes as described above. In addition, DJS shall pay all Taxes on the DJS Parcel directly to the applicable taxing authority.

## **10 DESIGN AND CONSTRUCTION MATTERS.**

**10.1 Building Design.** Each building constructed in the Center shall be of first-class quality construction and designed so that its exterior elevations will be reasonably architecturally and aesthetically compatible and harmonious with the other buildings in the Center. An Owner or Occupant being entitled to construct its building pursuant to its lease, or sublease as applicable, shall be conclusive evidence that the foregoing standard has been satisfied.

**10.2 Height Limitations.** No building constructed on PAD B-1 or PAD-B2 shall exceed thirty-five (35) feet in height, inclusive of architectural treatments.

**10.3 ATM Facilities.** Unless the prior written consent of KeyBank (for so long as it occupies Pad B-1, and thereafter of WGT) is obtained, and except for PAD B-1, no Owner or Occupant may install or permit installation of an ATM on its Parcel.

**10.4 Building Maintenance.** Each Owner shall maintain and keep the building improvements and Building Appurtenances, if any, located on its Parcel in a first-class condition and repair consistent with other similarly situated Centers in Utah County, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this Amendment. Each Owner further agrees to store all trash and garbage in adequate containers, and to arrange for regular removal of such trash or garbage. An Owner or Occupant being in compliance with respect to the foregoing under its lease shall be conclusive evidence that the foregoing covenants are being satisfied.

**10.5 Center Signs.** All signs within the Center shall be subject to the Consenting Owners' reasonable approval and shall comply with all applicable laws and municipal ordinances.

**10.6 Specific Common Area Restrictions.** Throughout the term of the Declaration, without the prior written consent of Consenting Owners, which consent shall not be unreasonably withheld, the Common Area and the orientation, location and size of the improvements, drive aisles, and parking spaces thereon, shall not be altered or modified in any material manner from that shown on the Site Plan. It shall not be unreasonable for a Consenting Owner to withhold its consent to any of the foregoing if any such alteration, modification or addition to the Common Area or the Center materially affects or interferes with the visibility of the building or signage on any Parcel from adjacent streets, access to the Center or any Parcel from adjacent streets, vehicular or pedestrian circulation within the Center, or materially reduces the number of parking spaces within the Center (other than outside of the WGT Parcel and PAD A-3), to less than is required by then applicable code. Notwithstanding the foregoing or anything to the contrary contained in the Declaration or this Amendment, without the written consent of all of the Owners, which consent shall not be unreasonably withheld, the main access point(s) (to Main Street) as shown on the Site Plan shall not be changed.

**10.7 Changes in Common Area.** Except as expressly permitted in Section 10.6 above, no Owner or Occupant shall materially change the Common Area on its Parcel(s) in any manner without the prior written approval of the Consenting Owners.

**11. Use Restrictions.**

**11.1 Exclusives.** Unless otherwise approved by the Consenting Owners in writing, which approval may be withheld or denied in such Consenting Owner's sole and absolute discretion:

(1) for so long as In-N-Out Burger occupies PAD A-1 and PAD B-2, no part of the Center, other than PAD A-1 and PAD B-2, shall be used for a quick-service or fast food, hamburger-oriented restaurant including, without limitation, quick-service restaurants such as Burger King, Carl's Jr., Jack-in-the-Box, McDonald's, Wendy's, and Sonic Burgers. The restriction set forth herein is referred to herein as the "In-N-Out Exclusive".

(2) for so long as Zaxby's Chicken occupies PAD A-2, no part of the Center, other than PAD A-2 shall be used for the sale of chicken, chicken sandwiches and chicken on the bone. The restriction set forth herein is referred to herein as the "Zaxby's Exclusive". Notwithstanding the foregoing Zaxby's Exclusive, the use of chicken as an ingredient in other dishes (cubed chicken pieces, shredded chicken, chicken broth or similar), and the ancillary sale thereof by another restaurant, shall not be deemed to violate the Zaxby's Exclusive.

(3) for so long as KeyBank occupies PAD B-1 no part of the Center, other than PAD B-1 shall be used to operate a bank, credit union, ATM, AHD, check-cashing, lending or mortgage brokerage service. The restriction set forth herein is referred to herein as the "KeyBank Exclusive".

**11.2 Nuisance Restrictions.** In addition to the restrictions set forth above, no Owner or Occupant shall use or permit the use of any portion of its Parcel for any purpose or in any manner which is reasonably offensive, disreputable, immoral or illegal, which prohibition shall include but not be limited to use (i) as a brothel or for adult entertainment of any type or for the sale or rental of adult books, magazines, videos or other adult products; (ii) for the sale of paraphernalia related to the use or manufacturing or producing of illegal drugs; or (iii) by any occupant that (A) engages in the business of off track betting, payday loans, massage parlors, video poker or other games of chance, or internet cafes, or (B) operates a bar or nightclub (other than in connection with a full-service restaurant) or (C) engages in a retail liquor store use for off-premises consumption (other than a state/DABC liquor store, a convenience store, or a major retailer that sells liquor, beer, and/or wine), or (D) engages in a use that any Consenting Owner finds reasonably objectionable. Notwithstanding the foregoing restrictions, an Owner shall be permitted to lease space within the Center to a retailer offering (i) CBD (non-THC) products for sale (such as oils, creams or supplements), and/or (ii) legally authorized medicinal (i.e., non-recreational) marijuana products, but only if the same both are legalized in the State of Utah and become federally legalized as well.

12. **Notices.** All notices given pursuant to this Amendment shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

DW: DWA Associates, L.L.C.  
c/o Tate Properties, LC  
Attn: Steve Tate  
P.O. Box 1153  
Centerville, UT 84014

DJS: DJ Smith Investments, L.L.C.  
2438 Bramble Way  
Holladay, UT 84117

WGT: WGT American Fork Holdings, LLC  
c/o Tate Properties, LC  
Attn: Steve Tate  
P.O. Box 1153  
Centerville, UT 84014

Key Bank: KeyBank National Association (PID No. 25337)  
Attn: Real Estate Asset Manager  
P.O. Box 94839  
Cleveland, Ohio 44101-4839  
Mail Code: OH-01-10-0605

Notices of default or of the exercise of any remedies shall also be sent to:

KeyBank National Association (PID No. 25337)  
127 Public Square  
Cleveland, Ohio 44114  
Attention: Legal Department

Nimbus: Nimbus Properties, L.C.  
932 North 520 West  
Orem, UT 84057

Innes: Innes Family, LLC  
8346 Ridge Point Road  
Sandy, UT 84093



The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Amendment shall be deemed given upon receipt.

**13. Fee Owner Provisions.** Nimbus and Innes hereby execute this Amendment to evidence their consent to its recordation and encumbrance of the Declaration, as amended hereby, upon their fee simple interest in the DWA Parcel and the DJS Parcel, respectively. By executing this Amendment, and without in any way whatsoever modifying any of their rights under their respective ground leases, Nimbus and Innes hereby acknowledge and consent to the provisions hereof and as set forth in the Declaration, and specifically agree that Nimbus and Innes shall continue to recognize and be bound by the terms, conditions, agreement, easement and restrictions contained in the Declaration, as amended hereby, in the event of any termination of the Nimbus Ground Lease or the Innes Ground Lease respectively.

**14. Miscellaneous.**

**14.1 Successors and Assigns.** This Amendment shall inure to the benefit of and be binding upon the Parties, the Owners, and their respective successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

**14.2 Breach Shall Not Permit Termination.** A breach of this Amendment shall not entitle any Party or Owner to terminate this Amendment, but such limitation shall not affect in any manner any other rights or remedies which any such Owner may have hereunder by reason of any breach of this Amendment. Any breach of this Amendment shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Amendment and any liens arising hereunder shall be binding upon and be effective against any Party or Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**14.3 Recordation; Modification and Termination.** This Amendment promptly shall be recorded in the office of the recorder of Utah County. This Amendment may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Consenting Owners, and then only (a) by written instrument duly executed and acknowledged by the Consenting Owners and recorded in the office of the recorder of Utah County and (b) provided that such modification neither materially adversely affects the ability of any Owner to use its Parcel as contemplated herein nor directly results in a material increase in the costs to be paid hereunder by any Owner.

**14.4 Counterparts.** This Amendment may be executed in any number of counterparts, all of which shall be originals but together shall be deemed one instrument.

**14.5 Full Force and Effect.** Except to the limited extent expressly amended by this Amendment, the Declaration shall remain and continue in full force and effect in accordance with its terms.

*[Signatures on following pages]*

EXECUTED as of the day and year first above written.

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

By: [Signature]  
Name: Warren G. Tate  
Its: Manager  
By: [Signature]  
Name: Douglas E. Smith  
Its: Manager

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 29 day of June 2021, by Warren Tate and Douglas Smith, the managers of DW Associates, 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 such limited liability company.

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

My Commission Expires: Aug 30, 2021



*[Signature]*  
DJS: DJ SMITH INVESTMENTS, LLC  
Utah limited liability company

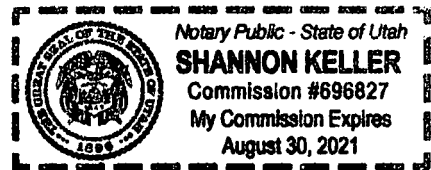
By: *[Signature]*  
Name: Douglas A. Smith  
Its: Manager

STATE OF UTAH            )  
  ) ss.  
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 29 day of June 2021, by Douglas Smith, the MANAGER of DJ Smith Investments, 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 such limited liability company.

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

My Commission Expires: Aug 30, 2021



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

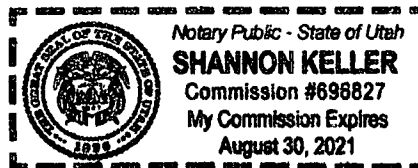
By: [Signature]  
Name: Stephen Tate  
Its: co-manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 29 day of June 2021, by Stephen Tate, the co-manager of WGT American Fork Holdings 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 such limited liability company.

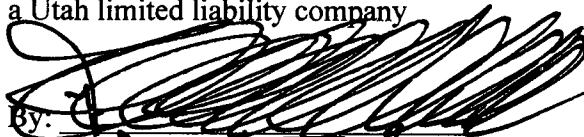
[Signature]  
\_\_\_\_\_  
Notary Public

My Commission Expires: Aug 30, 2021



NIMBUS HEREBY EXECUTES THIS AMENDMENT TO EVIDENCE ITS CONSENT TO THE RECORDATION AND ENCUMBRANCE OF THE DECLARATION, AS AMENDED HEREBY, UPON ITS FEE SIMPLE INTEREST IN THE DWA PARCEL. BY EXECUTING THIS AMENDMENT, AND WITHOUT IN ANY WAY WHATSOEVER MODIFYING ANY OF ITS RIGHTS UNDER THE NIMBUS GROUND LEASE, THE UNDERSIGNED HEREBY ACKNOWLEDGES AND CONSENTS TO THE PROVISIONS HEREOF, AND AS SET FORTH IN THE DECLARATION, AND SPECIFICALLY AGREES THAT NIMBUS SHALL CONTINUE TO RECOGNIZE AND BE BOUND BY THE TERMS, CONDITIONS, AGREEMENTS, EASEMENTS, AND RESTRICTIONS CONTAINED IN THE DECLARATION, AS AMENDED HEREBY, IN THE EVENT OF ANY TERMINATION OF THE NIMBUS GROUND LEASE.

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

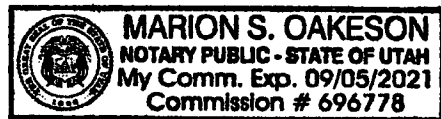
By:   
Name: Bryce K. Taylor  
Its: Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June 2021, by 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 such limited liability company.

Marion S. Oakes  
Notary Public

My Commission Expires: 09/05/2021



INNES HEREBY EXECUTES THIS AMENDMENT SOLELY TO EVIDENCE ITS CONSENT TO THE RECORDATION AND ENCUMBRANCE OF THE EASEMENTS GRANTED IN THE DECLARATION, AS AMENDED HEREBY, UPON ITS FEE SIMPLE INTEREST IN THE DJS PARCEL. BY EXECUTING THIS AMENDMENT, AND WITHOUT IN ANY WAY WHATSOEVER MODIFYING ANY OF ITS RIGHTS UNDER THE INNES GROUND LEASE, THE UNDERSIGNED HEREBY ACKNOWLEDGES AND CONSENTS SOLELY TO THE RECIPROCAL EASEMENT RIGHTS AND PROVISIONS SET FORTH HEREIN AND IN THE DECLARATION, AND SPECIFICALLY AGREES THAT INNES SHALL CONTINUE TO RECOGNIZE AND BE BOUND BY THE TERMS AND CONDITIONS OF THE RECIPROCAL ACCESS, INGRESS, EGRESS AND OTHER EASEMENT PROVISIONS CONTAINED IN THE DECLARATION, AS AMENDED HEREBY, IN THE EVENT OF ANY TERMINATION OF THE INNES GROUND LEASE.

Innes: INNES FAMILY, LLC,  
a Utah limited liability company

By: *Weston Innes*  
Name: Weston R. Innes  
Its: Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 29 day of June 2021, by Weston Innes, the manager of Innes Family 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 such limited liability company.

*[Signature]*  
Notary Public

My Commission Expires: Aug 30, 2021

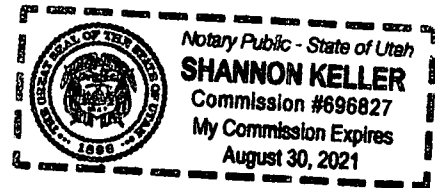


EXHIBIT A

LEGAL DESCRIPTION OF EXISTING CENTER AND WGT PARCEL  
<EXISTING CENTER>

**LEGAL DESCRIPTION OF DW ASSOCIATES GROUND LEASED PARCEL/NIMBUS 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.

<WGT PARCEL>

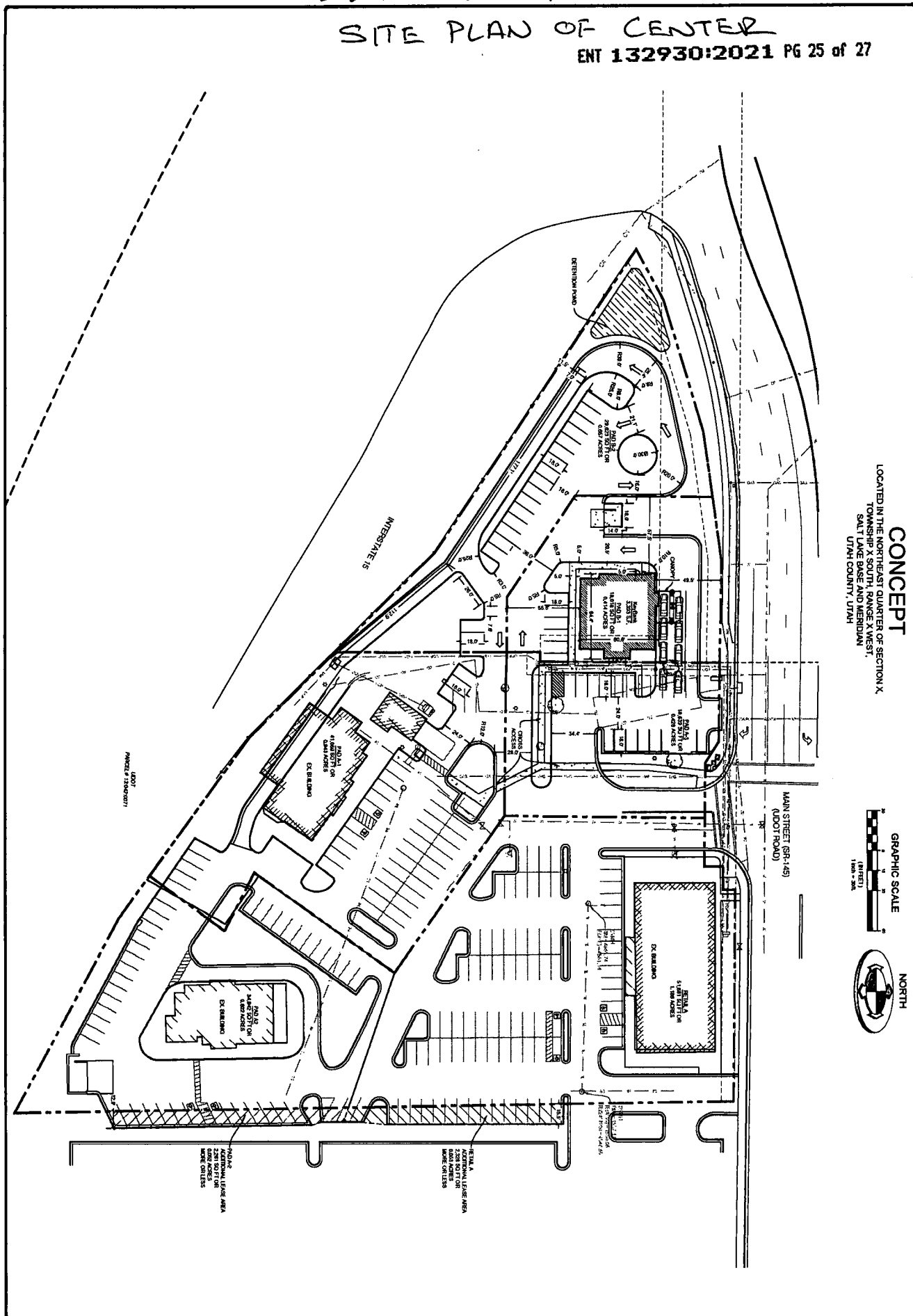
Legal Description: COM N 89 DEG 53' 48" W 1098.95 FT & S 154.74 FT FR NE COR. SEC. 22, T5S, R1E, SLB&M.; S 0 DEG 31' 0" W 136.63 FT; N 89 DEG 29' 0" W 7.14 FT; S 0 DEG 4' 37" W 157.31 FT; N 44 DEG 43' 33" W 107.6 FT; N 55 DEG 42' 17" W 273.28 FT; N 61 DEG 10' 31" E 42.91 FT; N 72 DEG 56' 17" E 102.41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



# EXHIBIT B


## SITE PLAN OF CENTER

ENT 132930:2021 PG 25 of 27



**CONCEPT**  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION X,  
 TOWNSHIP 4 SOUTH, RANGE 4 WEST,  
 SALT LAKE COUNTY AND KANEAN  
 SALT LAKE COUNTY, UTAH



<b>DW ASSOCIATES, LLC</b> 717 W MAIN ST AMERICAN FORK, UT	 <b>BENCHMARK</b> CIVIL	<b>BENCHMARK</b> ENGINEERING & LAND SURVEYING 100 SOUTH 4700 WEST, SUITE 400 SANDY, UTAH 84088 (801) 562-7182 www.benchmarkcivil.com	PRELIMINARY PLAN NOT FOR CONSTRUCTION	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>DATE</td> <td>BY</td> <td>DESCRIPTION</td> </tr> <tr> <td>10/20/20</td> <td>J. L. HARRIS</td> <td>PRELIMINARY PLAN</td> </tr> <tr> <td>10/20/20</td> <td>J. L. HARRIS</td> <td>REVISIONS</td> </tr> <tr> <td>10/20/20</td> <td>J. L. HARRIS</td> <td>REVISIONS</td> </tr> <tr> <td>10/20/20</td> <td>J. L. HARRIS</td> <td>REVISIONS</td> </tr> <tr> <td>10/20/20</td> <td>J. L. HARRIS</td> <td>REVISIONS</td> </tr> </table> <p style="font-size: small;">SCALE MEASURED LUNCH ON FULL SIZE SHEETS                  ADJUST ACCORDINGLY FOR REDUCED SIZE SHEETS</p>	DATE	BY	DESCRIPTION	10/20/20	J. L. HARRIS	PRELIMINARY PLAN	10/20/20	J. L. HARRIS	REVISIONS	10/20/20	J. L. HARRIS	REVISIONS	10/20/20	J. L. HARRIS	REVISIONS	10/20/20	J. L. HARRIS	REVISIONS
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10/20/20	J. L. HARRIS	REVISIONS																				
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10/20/20	J. L. HARRIS	REVISIONS																				
SHEET 1 OF 1	CONCEPT PLAN																					

**EXHIBIT C**

**LEGAL DESCRIPTION OF PREMISES**

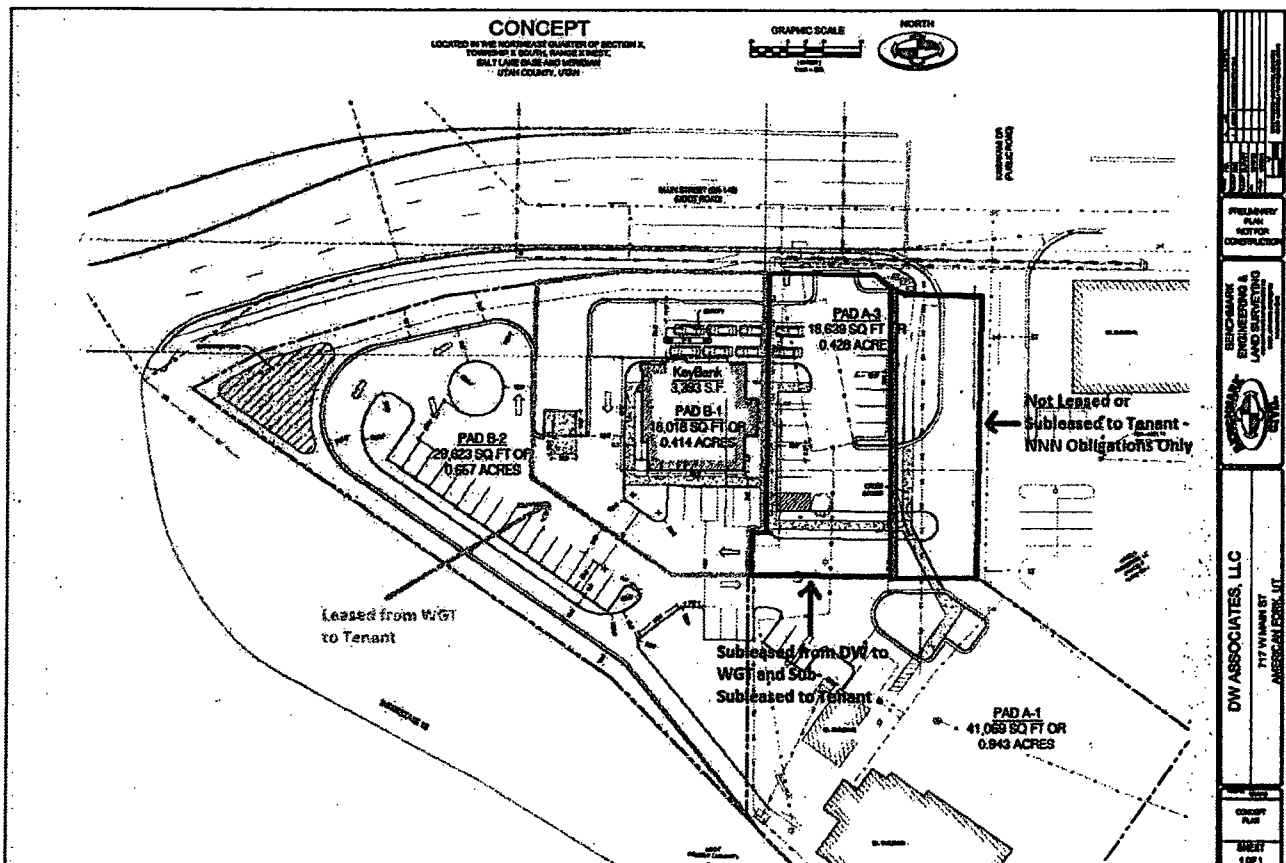
(A Portion of PAD A-3, GROUND SUBLEASED TO KEYBANK)

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



**LENDER'S CONSENT TO DOCUMENT RECORDING AND SUBORDINATION**

[RESTRICTIONS AND EASEMENTS AGREEMENT, AND FIRST AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT - *The Crossroads at American Fork*]

THE UNDERSIGNED LENDER AND THE BENEFICIARY UNDER THAT CERTAIN LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING DATED NOVEMBER 17, 2008 (THE "DEED OF TRUST") ENCUMBERING A PORTION OF THE THEREIN DESCRIBED REAL PROPERTY, HEREBY CONSENTS TO AND JOINS IN THE EXECUTION AND RECORDING OF THE FOLLOWING DOCUMENTS AFFECTING THE REAL PROPERTY DESCRIBED THEREIN: (1) RESTRICTIONS AND EASEMENTS AGREEMENT; AND (2) FIRST AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT (collectively, the "Documents").

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE DOCUMENTS, INCLUDING WITHOUT LIMITATION THE GRANT OF EASEMENTS CONTAINED THEREIN, AND HEREBY MAKES THE DEED OF TRUST SUBORDINATE THERETO.

THE UNDERSIGNED REPRESENTS THAT THE INDIVIDUAL EXECUTING THIS LENDER'S CONSENT AND SUBORDINATION HAS FULL POWER AND AUTHORITY TO DO SO ON BEHALF OF THE LENDER.

**LENDER:** **BRIGHTON BANK,**  
a Utah corporation

By: [Signature]  
Name: ERIK J. TADJE  
Title: VP MANAGER

STATE OF UTAH            )  
                                      ) ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 29 day of June 2021, by Erik Tadge, the VP manager of Brighton Bank, a Utah Corporation, 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 Brighton Bank.

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

My Commission Expires: Aug 30, 2021

