

Loan No. 254-5434602-01-001

WHEN RECORDED, RETURN TO:

Zions First National Bank
Real Estate Banking Group
One South Main Street, Suite 470
Salt Lake City, Utah 84133
Attn: Real Estate Banking Group Manager

12192256
12/21/2015 12:30 PM \$40.00
Book - 10389 Pa - 3935-4010
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FORTSON, BENTLEY & GRIFFIN
2500 DANIELLS BRIDGE RD
BLDG 200 #3A
ATHENS GA 30606
BY: CSA: DEPUTY - MA 16 P.

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") is made and executed as of the 17th day of December, 2015, by and between **ZIONS FIRST NATIONAL BANK**, a national banking association ("Lender"), **LEGACY PLAZA AT 54TH, LLC**, a Utah limited liability company ("Landlord"), **MJM 5G, LLC**, a Nevada limited liability company ("Tenant"), and **ZAXBY'S FRANCHISING, INC.**, a Georgia corporation ("ZFI").

RECITALS

A. Tenant has executed and entered into a Zaxby's Taylorsville Lease dated March 9, 2015, Amendment No. 1 of Lease dated November 2015, and Rider to Lease Agreement (collectively, and together with any and all amendments, modifications and extensions, and including all guarantees of the lease, the "Lease"), in which Landlord appears as "Landlord" and Tenant appears as "Tenant", whereby Tenant has agreed to lease the real property described in the Lease as the leased or demised premises, which leased or demised premises are located in Salt Lake County, State of Utah, together with the improvements now or hereafter located on the leases or demised premises, and are more particularly described in Exhibit A attached hereto and incorporated into this Agreement by this reference (the "Property") for use by Tenant as Zaxby's® restaurant to be operated pursuant to a written License Agreement by and between ZFI and Tenant and First Amendment to License Agreement by and between ZFI and Tenant, and any and all additional amendments, renewals and extensions thereof (collectively the "License Agreement").

B. On the condition that the Lease and all of Tenant's rights in the Property (the "Lease Rights") be subordinated as provided below, and that Tenant enter into this Agreement, Lender has agreed to make a construction and term loan (the "Loan") in the principal amount of Seventeen Million Sixty-Five Thousand Dollars (\$17,065,000.00) to provide construction and mini term financing for, among other things, Landlord's acquisition and renovation of the Property. In connection with the Loan, Landlord has or will be executing, among other things, a Construction and Term Loan Agreement (the "Loan Agreement"), a Promissory Note (the "Note"), a Construction and Term Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed"), an Assignment of Leases (the "Assignment of Leases") and

any and all other documents required by Lender to evidence and/or secure Landlord's obligations under the Loan and the Loan Documents.

C It is a condition to ZFI's confirmation of the Lease, as required under the License Agreement, that this Agreement be fully executed and recorded.

AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord, and Tenant agree as follows:

1) **Consent of Lender.** Lender hereby consents to the Lease. Landlord and Tenant may, from time to time, modify or amend the Lease without Lender's consent, provided such modifications or amendments do not result in a change in the Lease Term (as defined in the Lease), the reduction of the Rent (as defined in the Lease) payable thereunder or make Landlord's obligations thereunder more onerous; and 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.

2) **Subordination to Loan Documents.** Notwithstanding anything in the Lease to the contrary, the Lease and Lease Rights are hereby made subject, subordinate, inferior, and junior to the Loan Documents and the liens created by the Loan Documents, and to all sums advanced on the security for the Loan Documents, including all sums advanced or costs incurred in connection with the Loan Documents or the Loan, and including all renewals, modifications, consolidations, replacements, and extensions of the Loan and any of the Loan Documents, including, without limitation, any increases in the principal amount of the Loan and changes in the interest rate of the Loan, and any future lien or liens affecting the Property held by or made for the benefit of Lender. The Lease and Lease Rights are hereby subordinated to the Loan Documents and the liens created by the Loan Documents, the same and as fully as if the Loan Documents had been executed and delivered, and recorded, where applicable, prior to execution, delivery, and recording of the Lease. If there is any inconsistency between the provisions of the Loan Documents and the provisions of the Lease, the provisions of the Loan Documents shall prevail and govern the Lease.

Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

3) **Acknowledgement of Assignment of Rents.** Tenant agrees and acknowledges that it has notice, and notwithstanding anything to the contrary in the Lease hereby consents, that the Lease, the Lease Rights, the rents, and all other sums due under the Lease have been assigned or are to be assigned to Lender. Specifically, but without limitation, Tenant consents to the Assignment of Leases executed by Landlord to Lender. In the event that Lender notifies Tenant of a default under any of the Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all

other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.

4) **Notice and Opportunity to Cure.** Tenant agrees to deliver to Lender, within five (5) days of delivery to Landlord, a copy of all notices and other documents delivered to Landlord in connection with the Lease, specifically including, but without limitation, any notices of default or termination. If any default occurs under the Lease, Lender shall have the right for a period of sixty (60) days after receipt of notice of the default to cure such default. If the nature of the default is such that it cannot reasonably be cured within such sixty (60) day period, then Lender shall have such longer period as is reasonably necessary to cure such default. No default shall be deemed to exist under the Lease so long as Lender is seeking, in good faith, to cure the default.

5) **Requirement of Non-Disturbance.** Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

6) **Non-Disturbance.** In the event of foreclosure of the Trust Deed, or upon a sale of the Property pursuant to the trustee's power of sale contained in the Trust Deed, or upon a transfer of the Property by conveyance in lieu of foreclosure (collectively, a "Transfer"), then so long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease beyond any applicable cure period, Lender shall not name or join Tenant in any foreclosure proceeding, unless such joinder is necessary, in Lender's discretion, to complete the foreclosure, nor shall Lender disturb the possession of Tenant, its successors and assigns. In the event of a Transfer, Lender will perform and be bound by all of the obligations imposed on Landlord by the Lease for the balance of the term of the Lease, and any extension or renewals of the Lease, as long as no event of default has occurred and is continuing under the Lease, which has continued to exist for such period of time, after notice and opportunity to cure, if any, required by the Lease, as would entitle Landlord under the Lease to terminate the Lease, or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant under the Lease.

7) **Attornment.** Upon the occurrence of a Transfer, Tenant hereby agrees to attorn to, adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, such attornment to be self-operative without the execution of any further instruments.

8) **No Liability for Lender.** Lender, or any successor owner of the Property resulting from a Transfer, shall not be (a) liable for any obligations under the Lease which arise or accrue prior to a Transfer or which arise or accrue at any time after Lender ceases to be the owner of the Property; (b) liable for any damages or other relief attributable to any act or omission of a prior landlord, including Landlord; (c) liable for any damages or other relief attributable to any latent or patent defect in the Property; (d) liable for any damages or other relief attributable to any breach by any prior landlord, including Landlord, under the Lease or any representation or warranty made in connection with the Lease; (e) subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; (f) bound by

any rent or additional rent which Tenant might have paid in advance to any prior landlord, including Landlord, for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord, including Landlord; (g) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the prior written consent of Lender; or (h) liable for any indirect or consequential damages, including loss of sublet rentals, loss of profits, or damage to goodwill or reputation.

Nothing in this Agreement is intended to constitute an agreement by Lender to perform any obligation of Landlord as landlord under the Lease prior to the time Lender obtains title to the Property by Transfer or otherwise obtains possession of the Property pursuant to the terms of the Loan Documents. Specifically, but without limitation, Lender shall have no obligations with respect to the erection or completion of any improvements on the Property, either at the commencement of the term of the Lease or upon any renewal or extension of the term of the Lease, or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations imposed upon Lender under this Agreement or under the Lease, and Lender is hereby released and relieved of any other obligations under this Agreement and the Lease.

9) **No Assignment or Subletting.** Except as expressly permitted under Section 11) of this Agreement or as expressly permitted under Section 11 of the Rider, Tenant agrees not to assign, transfer, mortgage, or otherwise encumber the Lease or Lease Rights or any interest in the Lease or the Lease Rights. Tenant further agrees not to sublet the Leased Premises or the Property or any part of the Leased Premises or the Property, without the prior written consent of Lender and any attempt to do so without such consent shall be void as to Lender. Lender shall not be obligated to give its consent until, at least, Tenant has assigned the sublease to Lender, granted a lien on Tenant's interest in the Property to Lender as collateral for the Loan and all obligations of Landlord under the Loan Documents, and subtenant has executed and delivered to Lender a Subordination, Non-Disturbance Attornment Agreement and separate estoppel certificate acceptable to Lender.

10) **Payment of Rent.** Tenant shall not pay an installment of rent more than thirty (30) days prior to the due date.

11) **Collateral Assignment of Lease.** Tenant and ZFI have entered into, or are about to enter into, a certain Collateral Assignment of Lease whereby ZFI is granted the right to become the tenant of the Property and continue the operation of a Zaxby's® restaurant (now or to be located thereon) in the event Tenant should fail to cure any default in the Lease within any applicable cure period or in the event the License Agreement should ever, for any reason, be terminated or expire. Accordingly, this Agreement shall inure to the benefit of ZFI, its successors and assigns, in the event ZFI should ever become tenant of the Property.

12) **New Lease.** Upon the written request of Lender to Tenant after a Transfer, Tenant shall execute and deliver to Lender a lease of the Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such Transfer.

13) **Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and trustor under the Trust Deed, acknowledges and agrees for itself and its heirs, successors, and assigns agrees to each of the following:

a) This Agreement does not constitute a waiver by Lender of any of its rights under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, and/or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Trust Deed.

b) The provisions of the Trust Deed, Assignment of Leases, and all other Loan Documents remain in full force and effect and must be complied with by Landlord.

c) In the event of a default under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Loan Documents.

14) **Right to Sublease and Mortgage.** Notwithstanding anything to the contrary in the Lease, upon the occurrence of a Transfer, Tenant agrees that Lender, its successor or assign, or any purchaser at a foreclosure sale, may mortgage, lien, encumber, or otherwise transfer its interest in the Property or assign all of its or Landlord's rights in the Lease without the consent of Tenant.

15) **Insurance Proceeds and Condemnation Awards.** Notwithstanding anything to the contrary in the Lease, unless otherwise agreed by Lender in writing in advance, all insurance proceeds and condemnation awards paid or awarded in connection with the Property and/or any improvements located on the Property shall be paid to Lender as payments on the Loan pursuant to the terms and conditions of the Loan Documents and for any and all other obligations of Landlord to Lender in connection with the Loan and under the Loan Documents.

16) **Memorandum of Lease.** If required by Lender, Tenant agrees to execute and cause to be recorded in the county recorder's office of the county in which the Property is located, a memorandum of lease for the Lease in a form reasonably acceptable to Lender.

17) **Future Estoppel Certificates.** Tenant agrees to execute and deliver to Lender, within five (5) days of request by Lender, estoppel certificates in such form and covering such matters as Lender reasonably requests. For purposes of the foregoing sentence, any tenant estoppel certificate in the form executed in connection with this Agreement and dated of even date herewith shall be presumed reasonable. Tenant shall not be obligated to deliver an estoppel certificate more often than one (1) time per calendar year, unless Lender determines, in its reasonable discretion, that an estoppel certificate is required more often.

18) **No Merger.** If any lien granted on the Property or assignment of any lease of the Property made to Lender and the fee title to the Property shall at any time become vested in one owner, the lien created under any trust deed granted or assignment made to Lender shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender, beneficiary, and assignee and, if applicable, fee title owner, as to the separate estates. In addition, upon the foreclosure of any such lien or assignment, any leases or subleases then existing and created by Tenant shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender, its successor or assign, or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender, its successor or assign, or any such purchaser shall constitute a termination of any lease or sublease unless Lender, its successor or assign, or such purchaser shall give written notice of such termination to such tenant or subtenant.

19) **Unlawful Use, Medical Marijuana, Controlled Substances and Prohibited Activities.** Tenant shall not use or occupy or permit the use or occupancy of the Property in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation, any law relating to the use, sale, possession, cultivation manufacture, distribution or marketing of any controlled substances or other contraband or any law relating to the medicinal use or distribution of marijuana.

20) **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender: Zions First National Bank
Real Estate Banking Group
One South Main Street, Suite 470
Salt Lake City, Utah 84133
Attn: Timothy P. Raccuia

With copies to: Callister Nebeker & McCullough
Zions Bank Building
10 East South Temple, Suite 900
Salt Lake City, Utah 84133
Attn: Lynda Cook

Landlord: Legacy Plaza at 54th, LLC
c/o Legacy Real Estate Investments, Inc.
1962 East Stag Hill Circle
Draper, Utah 84020
Attn: David C. Werts

Tenant: MJM 5G, LLC
125 West Burton Ave., Suite 2
Salt Lake City, Utah 84115
Attn: Ryan Homes

ZFI: Zaxby's Franchising, Inc.
1040 Founder's Boulevard, Suite 100
Athens, Georgia 30606
Attn: Legal Department

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

21) **Attorneys' Fees.** Upon the occurrence of a default under this Agreement by Tenant, Lender may employ an attorney or attorneys to protect Lender's rights under this Agreement, and Tenant shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Tenant by reason of such breach. Tenant shall also pay to Lender any attorneys' fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Tenant or any guarantor of the Lease as a debtor.

22) **No Derogation of Liens.** Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Trust Deed, Assignment of Leases, or any other lien created by the Loan Documents.

23) **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

24) **Successors and Assigns.** This Agreement is and shall be binding upon and shall inure to the benefit of Tenant, Lender and their respective successors and assigns.

25) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart. Copies of this Agreement, and fax signatures thereon, shall have the same force, effect and legal status as an original.

26) **Defined Terms.** Unless otherwise defined in this Agreement, capitalized terms used herein have the meanings given them in the Loan Agreement. The term Loan Documents shall include all amendments and modifications to the Loan Documents.

***[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]***

LANDLORD

LEGACY PLAZA AT 54TH, LLC,
a Utah limited liability company

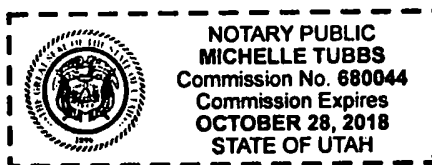
By: Legacy Real Estate Investments, Inc.
a Washington corporation,
Operating Manager of Legacy Plaza at 54th, LLC

By: *David C. Werts*
Name: David C. Werts,
Title: President of Legacy Real Estate Investments, Inc.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

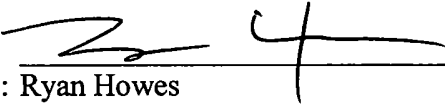
The foregoing instrument was acknowledged before me this 6th day of November, 2015, by David C. Werts, President of Legacy Real Estate Investments, Inc., a Washington corporation, Operating Manager of Legacy Plaza at 54th, LLC, a Utah limited liability company.


Michelle Tubbs
NOTARY PUBLIC
Residing at: *Salt Lake City*

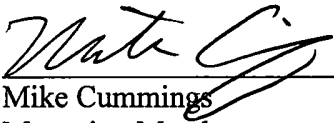


TENANT

MJM 5G, LLC,
a Nevada limited liability company

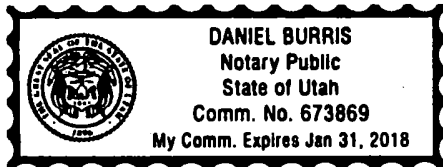
By: 
Name: Ryan Howes
Title: Managing Member

By: 
Name: Jeff Howes
Title: Managing Member

By: 
Name: Mike Cummings
Title: Managing Member

STATE OF UT)
 : SS.
COUNTY OF DAVIS)

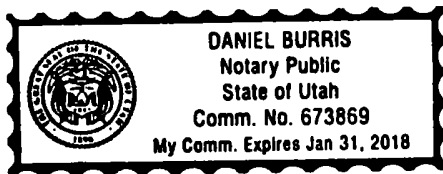
The foregoing instrument was acknowledged before me this 27 day of November, 2015, by Ryan Howes, Managing Member of MJM 5G, LLC, a Nevada limited liability company.



Daniel Burris
NOTARY PUBLIC
Residing at: Bountiful

STATE OF UT)
 : SS.
COUNTY OF DAVIS)

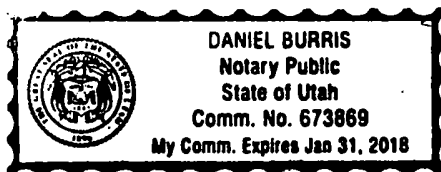
The foregoing instrument was acknowledged before me this 27 day of November, 2015, by Jeff Howes, Managing Member of MJM 5G, LLC, a Nevada limited liability company.



Daniel Burris
NOTARY PUBLIC
Residing at: Bountiful

STATE OF UT)
 : SS.
COUNTY OF Davis)

The foregoing instrument was acknowledged before me this 27 day of November, 2015, by Mike Cummings, Managing Member of MJM 5G, LLC, a Nevada limited liability company.



Daniel Burris
NOTARY PUBLIC
Residing at: Bountiful

ZFI

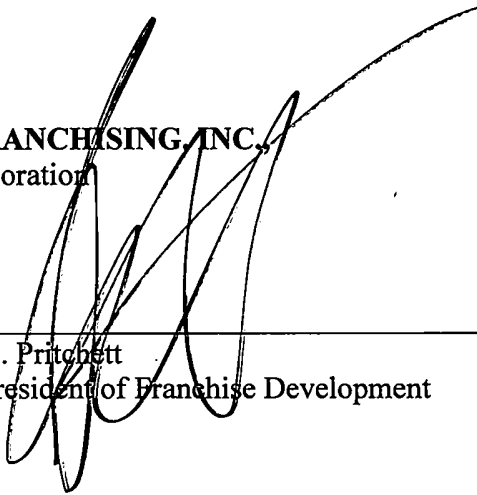
ZAXBY'S FRANCHISING, INC.

a Georgia corporation

By: _____

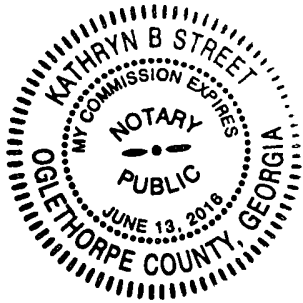
Name: Amy C. Pritchett

Title: Vice President of Franchise Development



STATE OF Georgia)
 : ss.
COUNTY OF Oconee)

The foregoing instrument was acknowledged before me this 10 day of December, 2015,
by Amy C. Pritchett, Vice President of Franchise Development of Zaxby's Franchising, Inc., a
Georgia corporation.



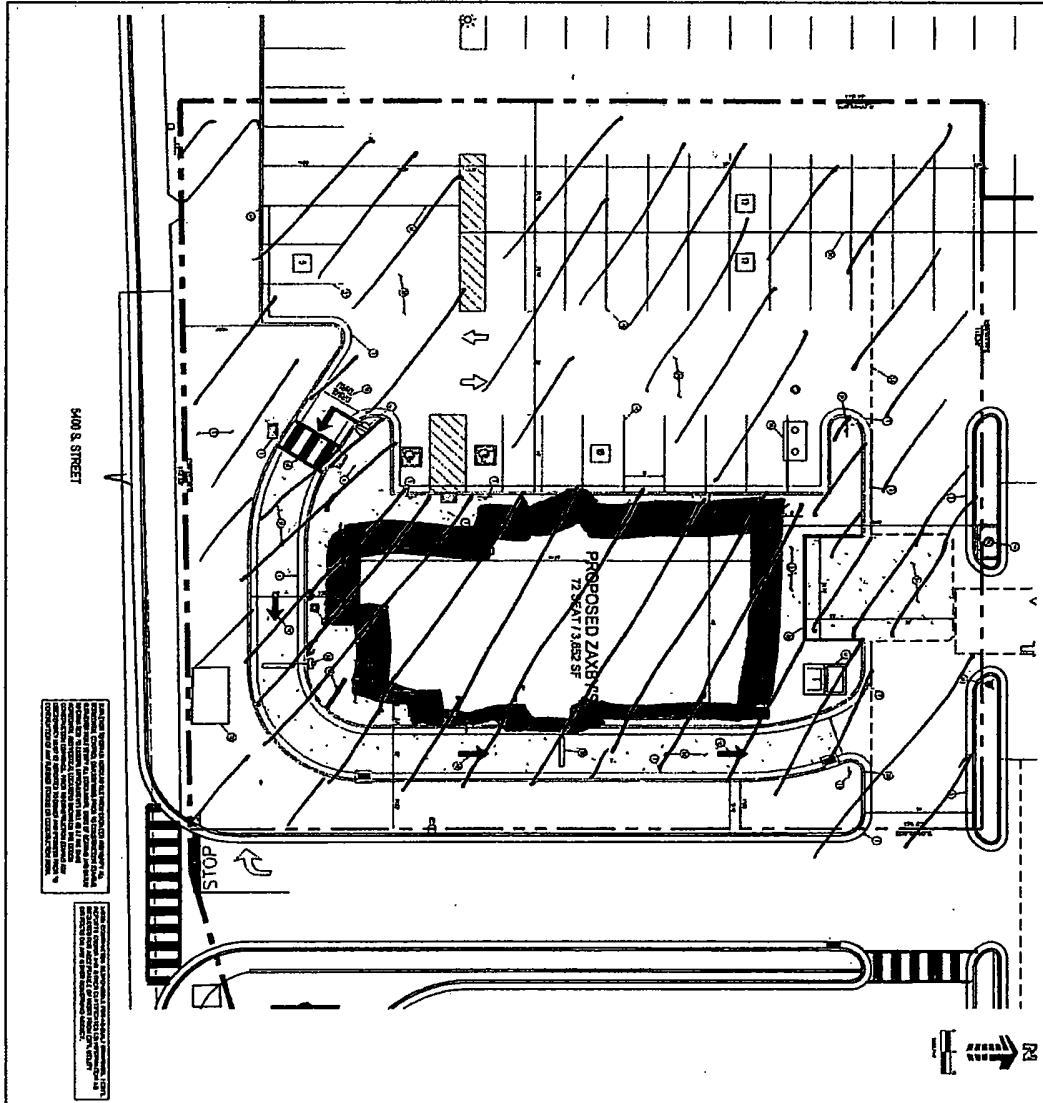
Kathryn B Street
NOTARY PUBLIC
Residing at: 6-13-16

EXHIBIT A

REAL PROPERTY DESCRIPTION

The approximately 3,801 square feet which is outlined in blue on site plan on Attachment 1 which is a portion of the property in Taylorsville, Salt Lake County, Utah, described on Attachment 2 as further indicated and marked on the shopping center site plan on Attachment 3.

ATTACHMENT 1



THESE PLANS WERE PREPARED BY THE ARCHITECT AND ENGINEER SHOWN HEREON AND TO THE BEST OF HIS KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS. THE ARCHITECT AND ENGINEER HAS NOT CONDUCTED A SURVEY OF THE PROPERTY SHOWN HEREON AND HAS NOT BEEN ADVISED OF ANY SURVEY OF THE PROPERTY SHOWN HEREON. THE ARCHITECT AND ENGINEER HAS NOT CONDUCTED A SURVEY OF THE PROPERTY SHOWN HEREON AND HAS NOT BEEN ADVISED OF ANY SURVEY OF THE PROPERTY SHOWN HEREON.

The "Leased Premises" referred to in the body of the Lease (or Memorandum of or Short Form Lease) to which this Exhibit "A" is attached consists of the Premises comprising approximately 3,801 square feet which are outlined in red or other color on the SITE Plan attached to said Lease, together with the improvements located on said premises and/or to be constructed on said premises pursuant to said Lease. The tract of land referred to as the "Entire Premises" and shown on the Site Plan (within which the Leased Premises are located) is situated in the City of TAYLORSVILLE, County of SALT LAKE, State of UTAH.



5400 S. AND REDWOOD ROAD
TAYLORSVILLE, UTAH

OWAY
ARCHITECTS & ENGINEERS
P.C.

ATTACHMENT 2

BEGINNING AT A POINT ON THE NORTH PROPERTY LINE OF 5400 SOUTH STREET, WHICH POINT IS 1262.36 FEET S89°53'41"W AND 53.00 FEET N0°13'19"W FROM THE SOUTH $\frac{1}{2}$ CORNER OF SECTION 10, T2S, R1W, S.L.B. & M; RUNNING THENCE N89°53'41"E 0.06 FEET; THENCE 398.14 FEET ALONG THE ARC OF A 11406.16 FOOT RADIUS CURVE TO THE LEFT (BEARING N00°06'19"W TO THE CENTER OF ITS BEGINNING); THENCE N87°53'41"E 173.03 FEET; THENCE 401.84 FEET ALONG THE ARC OF A 11512.16 FOOT RADIUS CURVE TO THE RIGHT (BEARING S02°06'19"E TO THE CENTER OF ITS BEGINNING); THENCE N89°53'41"E 126.78 FEET; THENCE N73°38'19"E 114.50 FEET TO THE WEST PROPERTY LINE OF REDWOOD ROAD; THENCE N0°02'55"W 557.04 FEET; THENCE WEST 1211.30 FEET; THENCE S0°13'19"E 611.34 FEET TO THE POINT OF BEGINNING.

CONTAINS 16.583 ACRES

ATTACHMENT 3

