



ENT 155411:2021 PG 1 of 6
 ANDREA ALLEN
 UTAH COUNTY RECORDER
 2021 Sep 07 2:29 pm FEE 40.00 BY LT
 RECORDED FOR WGT AMERICAN FORK HOLDIN

RECORDATION REQUESTED BY:
 AFTER RECORDATION RETURN TO:

IN-N-OUT BURGERS
 13502 Hamburger Lane
 Baldwin Park, California 91706-5885
 Attention: Real Estate Department

RETURN BY: MAIL (X)

FIRST AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS FIRST AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "First Amendment") is made and entered into this 16 day of August, 2021 ("Effective Date"), by Nimbus Properties, L.C., a Utah limited liability company ("Ground Lessor"), and In-N-Out Burgers, a California corporation ("Sublessee").

RECITALS

A. DW ASSOCIATES, LLC, a Utah limited liability corporation ("Sublessor"), and Sublessee are parties to that certain Ground Lease dated May 8, 2009, as amended by that certain First Amendment to Ground Lease dated July 21, 2009 (as amended, the "Original Sublease"), with respect to certain premises consisting of approximately forty eight thousand one hundred twelve (48,112) square feet (the "Premises") within that certain real property located at 651 W. Main Street in American Fork, Utah.

B. Ground Lessor and Sublessee entered into that certain Non-Disturbance and Attornment Agreement recorded September 3, 2008 as Entry No. 96547:2009 (the "Original NDA") to assure Sublessee of its continued occupancy of the Premises under the terms of the Sublease in the event that certain Ground Lease between Ground Lessor and Sublessor (as successor in interest to DJ SMITH INVESTMENTS L.C.) dated January 12, 2007 is terminated during the term of the Sublease.

C. Concurrently with the execution of this First Amendment, Sublessor and Sublessee are entering into a Second Amendment to the Original Sublease (the "Second Amendment", together with the Original Sublease, the "Sublease"), pursuant to which Sublessee will sublease from Sublessor land adjacent to the Premises (the "Expanded Premises") in addition to other changes to the Original NDA.

D. Ground Lessor and Sublessee desire to amend the Original NDA in connection with the execution of the Second Amendment, as provided in this First Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the parties hereby covenant and agree as follows:

1. Second Amendment.

- 1.1 Ground Lessor hereby consents to and approves of the Second Amendment.
- 1.2 The parties agree that as of the Expanded Premises Commencement Date (as defined in the Second Amendment), Recital A in the Original NDA shall be amended and restated in its entirety as follows:

"DW ASSOCIATES, LLC, a Utah limited liability corporation ("Sublessor"), and Sublessee have entered into a certain Ground Lease dated May 8, 2009 as amended by that certain First Amendment to Ground Lease dated July 21, 2009, and as further amended by that certain Second Amendment to Ground Lease dated _____, 2021 (as amended, the "Sublease"), with respect to certain premises consisting of approximately forty eight thousand one hundred twelve (48,112) square feet (the "Premises") of that certain real property located at 651

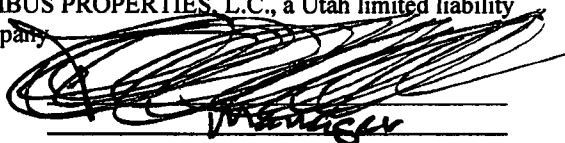
W. Main Street in the American Fork, Utah and commonly known as the Crossroads Center (the "Center"), as more particularly described on Exhibit A hereto."

2. Additional Provisions.

- 2.1 Entire Agreement. This First Amendment contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.
- 2.2 Ratification. Except as specifically set forth in this First Amendment, Ground Lessor hereby ratifies and affirms each and every term, representation, warranty, covenant, and condition of the Original NDA, including but not limited to Section 6 of the Original NDA, which shall remain in full force and effect; provided, however, that in the event of any conflict between the Original NDA and this First Amendment, this First Amendment shall govern and control.
- 2.3 Partial Invalidity. If any provision of this First Amendment shall, for any reason, be held violative of any applicable law and/or unenforceable, such provision shall be reformed only to the extent necessary to render such provision non-violative and/or enforceable. The invalidity of any provision herein shall not be held to invalidate any other provision herein, all of which such other provisions shall remain in full force and effect.
- 2.4 Governing Law. This First Amendment shall be construed in accordance with the laws of the State of Utah.
- 2.5 Attorneys' Fees. In the event that any suit is brought for the enforcement for any provision of this First Amendment, or is a result of any alleged breach thereof or any of the rights, duties, or obligations herein, the prevailing party or parties after a final adjudication or settlement in favor of such party or parties shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.
- 2.6 Binding Agreement. This First Amendment shall bind and inure to the benefit of the parties and their respective successors, transferees, and assigns.
- 2.7 Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be an original and taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the Effective Date.

"Ground Lessor"
Executed _____, 2021

NIMBUS PROPERTIES, L.C., a Utah limited liability company
By: 
Its: _____

"Sublessee"
Executed _____, 2021

IN-N-OUT BURGERS, a California corporation
By: _____
Carl Arena
Vice President of Real Estate

W. Main Street in the American Fork, Utah and commonly known as the Crossroads Center (the "Center"), as more particularly described on Exhibit A hereto."

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IN WITNESS WHEREOF, the parties have executed this First Amendment as of the Effective Date.

"Ground Lessor"
Executed June 24, 2021

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

By: 
Its: Manager

"Sublessee"
Executed August 16, 2021

IN-N-OUT BURGERS, a California corporation

By: 
~~Carl Arena~~ Mike Abbate
Asst. Vice President of Real Estate

ACKNOWLEDGMENTS

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

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

WITNESS my hand and official Seal.

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



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

On August 16, 2021 before me, Lori Brazzill, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Mike Abbate
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT A

PREMISES LEGAL DESCRIPTION

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BEGINNING AT A POINT NORTH 89°53'25" WEST ALONG THE SECTION LINE 1108.33 FEET AND SOUTH 291.43 FEET FROM A FOUND UTAH COUNTY BRASS CAP MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 89°28'19" EAST 7.15 FEET; THENCE NORTH 00°31'00" EAST 30.77 FEET; THENCE EAST 114.16 FEET; THENCE SOUTH 56.76 FEET; THENCE SOUTH 54°20'10" EAST 146.19 FEET; THENCE SOUTH 35°39'51" WEST 131.76 FEET; THENCE SOUTH 62°58'03" EAST 53.12 FEET; THENCE SOUTH 36°09'04" WEST 71.05 FEET TO A POINT ON THE PROPOSED CONTROLLED ACCESS LINE OF INTERSTATE 15, PER PROJECT NO. S-115-6(175)245, SAID POINT BEING ON THE ARC OF A 2500.86 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 35°03'07" EAST); THENCE ALONG SAID PROPOSED CONTROLLED ACCESS LINE THE FOLLOWING (2) COURSES: (1) NORTHWESTERLY ALONG THE ARC OF SAID 2500.86 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 03°02'21" A DISTANCE OF 132.65 FEET (CHORD BEARS NORTH 53°25'42" WEST 132.64 FEET), (2) NORTH 44°35'46" WEST 89.20 FEET; THENCE NORTH 00°04'37" EAST 157.31 FEET TO THE POINT OF BEGINNING.