

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

MILLER STARR REGALIA  
1331 N. California Blvd., 5th Floor  
Walnut Creek, CA 94546  
Attn: Michael E. DiGeronimo  
RETURN BY: MAIL (X) PICK UP ( )

INwest 149627 pt 13-042-0013

[SPACE ABOVE FOR RECORDER'S USE ONLY]

### NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Non-Disturbance and Attornment Agreement (the "**Agreement**") is dated the \_\_\_\_ day of July, 2009 for reference purposes only, and entered into by and between NIMBUS PROPERTIES, L.C., a Utah limited liability company ("**Ground Lessor**"), and IN-N-OUT BURGERS, a California corporation ("**Sublessee**"), and is made with reference to the following facts:

#### RECITALS:

A. 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 (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.

B. Ground Lessor and Sublessor's predecessor-in-interest DJ SMITH INVESTMENTS L.C. have entered into that certain Ground Lease dated January 12, 2007 (the "**Ground Lease**"). The Ground Lease relates to the Center and includes the Premises.

C. Sublessee desires to be assured of continued occupancy of the Premises under the terms of the Sublease in the event the Ground Lease is terminated during the term of the Sublease.

#### AGREEMENT:

Now therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. The Sublease is and shall be subject and subordinate to the Ground Lease insofar as it affects the Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof, provided Sublessee shall not be required to perform any of Sublessor's obligations under the Ground Lease.

2. In the event it should become necessary to terminate the Ground Lease pursuant to the terms of the Ground Lease or if the term of the Ground Lease shall expire before the Sublease term expires or the Sublease is otherwise terminated, Ground Lessor will not seek a termination of the Sublease, or claim, allege or assert that such occurred, so long as Sublessee is not in default under any

of the terms, covenants, or conditions of the Sublease beyond any applicable notice or opportunity to cure period. In such circumstances, Ground Lessor will recognize and accept Sublessee as its "Tenant" under the Sublease, whereupon, the Sublease shall continue in full force and effect as a direct lease between the Ground Lessor and Sublessee for the full term thereof, together with all extensions and renewals thereof. Ground Lessor shall thereafter assume and perform all of Sublessor's obligations, as the landlord under the Sublease with the same force and effect as if the Ground Lessor was originally named therein as the "Landlord". Sublessee agrees to attorn to and recognize Ground Lessor or any other party that succeeds to Sublessor's interest under the Sublease (pursuant to a termination or otherwise) as the new "Landlord" under the Sublease, and Sublessee shall continue to be bound by the Sublease. Nothing in the covenants of this Paragraph 2 or any other provision of this Agreement shall be construed as an agreement by Ground Lessor to subordinate the Ground Lease to any lender of Sublessor or Sublessee. Further, in no event shall the Ground Lease be subordinate to the Sublease pursuant to the terms of this Agreement.

3. In the event it should become necessary to terminate the Ground Lease pursuant to the terms of the Ground Lease or if the term of the Ground Lease shall expire before the Sublease term expires or the Ground Lease is otherwise terminated, Ground Lessor and Sublessee hereby agree that at the request of either party, the parties will enter into a new direct lease agreement with Ground Lessor as Landlord and Sublessee as Tenant on the same terms as the Sublease and for the term then-remaining including any extension options contained therein.

4. In the event that Ground Lessor shall, in accordance with the foregoing, succeed to the interest of Sublessor under the Sublease, Ground Lessor agrees to be bound to Sublessee under all of the terms, covenants and conditions of the Sublease, and Sublessee shall from and after such event for the remainder of the Sublease have the same remedies against Ground Lessor for the breach of an agreement contained in the Sublease that Sublessee might have had under the Sublease against Sublessor if Ground Lessor had not succeeded to the interest of Sublessor.

5. Each party to this Agreement warrants and represents to the other parties to this Agreement that:

5.1 the execution, delivery and performance of this Agreement, constitutes the legal, valid and binding obligation of such party and is enforceable against such party in accordance with its terms; and

5.2 such party, and each individual executing this Agreement on behalf of such party, is duly authorized, and has all power and authority necessary to make any such execution, delivery and performance of this Agreement without the consent or approval of any other person, entity, or regulatory authority or governmental body, and such execution, delivery and performance does not conflict with, result in a violation of, or constitute a default under any provision of any articles of incorporation or organization, or bylaws, or any agreement or other instrument binding on such party, or any law, governmental regulation, court decree or order applicable to such party.

6. Ground Lessor represents and warrants to Sublessee as follows as of the date of this Agreement:

6.1 The Ground Lease is in full force and effect in accordance with, and subject to, all of the terms, covenants, conditions and agreements contained therein;

6.2 The Ground Lease has not been modified, amended or supplemented, except for that certain Agreement to Extend Rent Commencement Date dated May 15, 2007, a second Agreement to Extend Rent Commencement Date dated June 15, 2007; and that certain Extension and Acknowledgement of Rent Commencement Date and Modifications to Ground Lease dated November 9, 2007, Addendum 1 to Ground Lease dated August 30, 2008, and a true correct copy the Ground Lease (except for those portions which have been redacted) as amended is attached hereto as **Exhibit B**;

6.3 Ground Lessor, except for two (2) payments of rent and the 2008 real property taxes that were paid under protest by Sublessor, has not received any notice of any default by Sublessor under the Ground Lease, which default remains uncured and Ground Lessor is not in default under the Ground Lease and no event has occurred which, with notice or the passage of time or both, would constitute a default under the Ground Lease by Ground Lessor;

6.4 Ground Lessor is the fee owner of the Premises and the same is not subject to any mortgages, deeds of trust, and monetary liens of any other type (except for any liens for unpaid and nondelinquent real property taxes and assessments), except for Brighton Bank, whose interest is the subject of a Collateral Assignment of Ground Lease and Landlord's Consent dated December 10, 2008 (the "Existing Lender"), and to the extent an Existing Lender exists, Ground Lessor shall use good faith and diligent efforts to obtain and deliver to Sublessee a Non-Disturbance Agreement from the Existing Lender, providing certain commercially reasonable assurances including, among other things, that so long as Sublessee is not in default under the Sublease beyond the period of notice and opportunity to cure provided therein, that Existing Lender shall not disturb Sublessee's use and possession of the Premises upon the default by Ground Lessor under the terms of the applicable mortgage and/or deed of trust or for any other reason, so long as Sublessee agrees to attorn to said Existing Lender.

6.5 To Ground Lessor's actual knowledge, Sublessor is not in default under the Ground Lease and no event has occurred which, with notice or the passage of time or both, would constitute a default under the Ground Lease by Sublessor;

6.6 To Ground Lessor's actual knowledge, the Premises are not presently used and have not been used in the past for the generation, storage, disposal, treatment or use of any Hazardous Substances (as such term is defined in the Sublease), no Hazardous Substances are presently located on, under or about the Premises and the Premises are currently in compliance with all applicable environmental laws; and

6.7 There are no actions, suits, or proceedings pending, or, to the actual knowledge of Ground Lessor threatened, against Ground Lessor, or the Premises, or involving the validity or enforceability of the Ground Lease, including, but not limited to, petitions relating to bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings or other petitions for reorganization or for debtor relief or for the appointment of a receiver.

7. Ground Lessor hereby agrees, pursuant to Section 25.8 of the Ground Lease, to copy Sublessee on any notices sent to Sublessor, including a notice of default by Sublessor under the Ground Lease, together with a reasonable opportunity to cure such default. The Sublease shall be deemed an Approved Sublease (as defined in the Ground Lease).

8. This Agreement, and all of its provisions, shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

9. This Agreement shall be governed by and construed under the laws of the State of Utah. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction in the county where the Premises is located.


10. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed to be an original of this Agreement for all purposes. This Agreement shall be deemed executed when each of the parties has executed at least one counterpart.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement effective as of the dates set forth below.

"Ground Lessor"

Executed 7/2, 2009

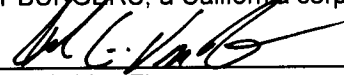
NIMBUS PROPERTIES, L.C., a Utah limited liability company

By:   
Its: Manager

"Sublessee"

Executed 8/20, 2009

IN-N-OUT BURGERS, a California corporation

By:   
Its: Carl G. Van Fleet  
Executive Vice President of Planning and Development

STATE OF Utah )  
 ) ss.  
COUNTY OF Utah )

On July 2, 2009 before me, Marla Coomes, Notary Public, personally appeared Bryce Taylor, manager, 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 Utah that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Marla Coomes  
Notary Public



STATE OF California )  
 ) ss.  
COUNTY OF Los Angeles )

On August 20, 2009 before me, Lori Brazzill, Notary Public, personally appeared Carl G. van Fleet, 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.

Lori Brazzill  
Notary Public



**EXHIBIT A to NDA**

(Legal Description of Center)

**Original Parcel:**

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

COMMENCING AT THE NORTHEAST CORNER OF SECTION 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 I-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-I15-6(175)245, AND FURTHER DESCRIBED AS FOLLOWS:

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

**EXHIBIT B to NDA**  
(Copy of Ground Lease)

COPY

**GROUND LEASE**

BKT  
12th

This Ground Lease (hereinafter "Lease") is made and entered effective into this 12<sup>th</sup> day of January, 2007, by and between NIMBUS PROPERTIES, L.C., a Utah limited liability company (hereinafter referred to as "Landlord") and DJ SMITH INVESTMENTS L.C. , a Utah limited liability company (hereinafter referred to as "Tenant") with respect to the following facts:

**RECITALS**

WHEREAS, Landlord is the fee owner of that certain real property situated in the City of American Fork, County of Utah, State of Utah, which real property is legally described on Exhibit "A" attached hereto, together with all rights and interest, if any, of Landlord in and to the land lying in the streets and roads in front thereof and adjoining thereto and in and to any easements or other rights appurtenant thereto; and

WHEREAS, Tenant intends to develop the Land (together with any other property Tenant adds thereto) as a retail and commercial site (referred to as "Tenant's Project").

NOW, THEREFORE, in consideration of the above recitals and the representations, warranties, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

**DEFINITIONS**

As used in this Lease, the following terms shall have the meanings set forth below:

- A. "Affiliate" means any person which (1) directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, the Tenant or Landlord,

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or (2) owns twenty-five percent (25%) or more of the equity interest of which is held beneficially or of record by Tenant or Landlord, as the context may require.

B. "Control" means the possession, directly or indirectly, of the power to cause the direction of the management of the policies of a person, whether through the ownership of voting securities, by contract, family relationship or otherwise.

C. "Effective Date" means May <sup>15</sup> 2007. This Lease shall be fully binding on the parties on the Effective Date, unless Tenant has cancelled this Lease in accordance with the provisions of ¶20 hereafter or extended as provided therein.

D. "Hazardous Substances" means any hazardous or toxic substances, materials or waste, including, but not limited to, those substances, materials and waste listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or the Environmental Protection Agency Hazardous Substances (40 CFR 302); hazardous chemicals as defined in the OSHA Hazard Communication Standard; Hazardous Substances as defined in the Comprehensive Environmental Response Compensation and Liability Act, 42 USC ' 9601, et seq.; Hazardous Substances as found in the Toxic Substance Control Act, 15 USC ' 2601, 2671; and all substances now or hereinafter designated as "hazardous substances"; "hazardous materials" or "toxic substances" under any federal, state or local laws or in any regulations adopted and publications promulgated pursuant to said laws, and amendments to all such laws and regulations thereto, or such substances, materials and waste which are or become regulated under any applicable local, state or federal law.

E. "Improvements" means any structure now or hereafter constructed on and affixed to the Land.



F. "Indebtedness" means the amount which is outstanding at any given time under a Permitted Mortgage.

G. "Initial Term" shall be for a period of thirty (30) years, commencing on the Effective Date.

H. "Insurance Proceeds" means any amount received from any insurance carrier after deducting therefrom the reasonable fees and expenses of collection, including, but not limited to, reasonable attorney fees and expert fees.

I. "Land" or "Property" means the raw land described on Exhibit "A" hereto.

J. "Landlord's Estate" means the Land, its reversionary interest in the Improvements pursuant hereto and the Rent and other benefits due Landlord hereunder.

K. "Lease Expiration Date" means the date upon which this Lease is terminated pursuant to the provisions of this Lease or the mutual agreement of the parties hereto.

L. "Legal Requirements" means all present and future laws, statutes, requirements, ordinances, orders, judgments, regulations, administrative or judicial determinations, even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction of the Premises now or hereinafter enacted or in effect (including, but not limited to, environmental laws and those relating to (accessibility to) usability by, and discriminated against disabled individuals), and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant or to all or any portion of the Premises or to the use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Premises, even if compliance therewith necessitates structural changes to the Improvements or the

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making of the Improvements results in the interference with the use or enjoyment of all or any portion of the Premises.

M. "Mortgagee" means any one or more holders of the beneficial interests and secured position under any Permitted Mortgage.

N. "Official Records" means the official records of Utah County, State of Utah.

O. "Permitted Exceptions" means those matters described on Exhibit B attached hereto affecting Landlord's title to the Land, all of which have been approved by Tenant.

P. "Permitted Mortgage" means collectively any deeds of trust and other collateral security interests, including, without limitation, financial statements, security agreements and other documents required pursuant to the Utah Uniform Commercial Code, and any absolute or conditional assignments of rents and subleases serving as security for one or more construction loans and/or permitted loans otherwise permitted to be incurred hereunder which encumber Tenant's Estate, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting, (otherwise permitted to be incurred hereunder) and any instruments required in connection with an assignment-sublease back transaction involving Tenant's Estate; provided, however, in no event should such Permitted Mortgage encumber the Land. Nothing herein shall prohibit or impair the ability of the Tenant or any Subtenant from recording the Lease, a sublease or a memorandum of the same with the applicable county recorder's office.

— Q. "Premises" shall mean the Land and Improvements now or hereinafter located thereon.

R. "Rent" means the fixed, annual rent payable to Landlord by Tenant pursuant to Section 4.0 below.

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S. "Rent Commencement Date" means May <sup>15</sup> 1, 2007, (the same date as the Effective Date), unless the conditions of paragraph 20 have been used by the Tenant to cancel this Lease. (It is acknowledged by the parties that the first four (4) months rent, starting on the Rent Commencement Date, is zero per month.)

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T. "Signing Date" means January <sup>12</sup> 1, 2007.

*[Handwritten signature]*  
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U. "Sublease" means any present or future ground sublease, space sublease, use or occupancy agreement or direct lease of any Improvement with Tenant as the lessor, entered into in accordance with Section 10 below and any modification, extension or termination of any of the foregoing entered into in accordance with Section 3 below. Subleases shall also include any ground lease, space lease, use or occupancy agreement between Tenant as lessor thereunder and a lessee, the demised premises under which are partially situated within the Premises and any partially situated in other portions of the Tenant's Project.

V. "Subtenant" means any person or entity entitled to use of all or any portion of the Premises under any Sublease. Subtenant shall also include each lessee under any ground lease, space lease, use or occupancy agreement between Tenant as lessor thereunder and such lessee.

W. "Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Premises, its fee estate in the Improvements, and its interest under this Lease.

**STANDARD LEASE TERMS**

1. Lease of Land. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Land which is more particularly described as approximately 4.14 acres or 180,338 square feet of Land identified as Utah County Tax Serial Number #13:042:0013.

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2. Term. The Initial Term of this Lease shall begin on the Rent Commencement Date and shall be a period of thirty (30) years. If Tenant does not give notice of cancellation of this Lease on or prior to May 15, 2007, as described in paragraph 20, then this Lease shall be enforceable against both parties, unless the parties agree in writing to extend the Rent Commencement Date. References in this Lease to a lease year (e.g. in Section 31 "Option to Purchase") shall mean a full year beginning on the Rent Commencement Date and each successive year thereafter.

3. Option to Extend. This Lease shall automatically extend for four (4) additional consecutive ten (10)-year lease periods. Tenant shall notify Landlord in writing at least ninety (90) days prior to the expiration of the then current lease term of Tenant's election to not extend the lease term. If Tenant fails to notify Landlord of its intent to not extend the lease term, then the lease term shall automatically be extended for the next ten-year period. The terms and conditions of any extension period shall be the same terms and conditions as the Initial Term, subject to the rental increase described in Section 4.3 below.

4. Rent. Tenant shall pay Rent during the term of this Lease to Landlord as follows:

4.1. Rent. Rent shall be paid, commencing on the Rent Commencement Date, on the following schedule:

|                         |            |            |
|-------------------------|------------|------------|
| Months                  | [REDACTED] | [REDACTED] |
| Months                  | [REDACTED] | [REDACTED] |
| Months                  | [REDACTED] | [REDACTED] |
| Months                  | [REDACTED] | [REDACTED] |
| Years                   | [REDACTED] | [REDACTED] |
| Years 21 to termination | [REDACTED] | [REDACTED] |

*[Handwritten signature]*  
BKT

[REDACTED]

4.2. Payment. Upon establishment of the Rent Commencement Date, Tenant shall pay the Rent attributable to the calendar or fractional calendar month with which the term of this Lease begins (if a fractional month is involved, the applicable monthly rent shall be prorated). Thereafter, on or before the first day of each calendar month throughout the term hereof, including extensions, Tenant shall pay in advance the monthly rent. Each rental payment shall be delivered to Landlord at such place as Landlord may from time to time designate in writing.

4.3 Increases to Annual Rent. [REDACTED]

[REDACTED]

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[REDACTED]

4.4

[REDACTED]

4.4.1.

[REDACTED]

4.4.2.

[REDACTED]

4.4.2.1

[REDACTED]

*[Handwritten Signature]* BKT

[REDACTED]

4.4.2.2. [REDACTED]

[REDACTED]

4.4.3. [REDACTED]

[REDACTED]

*[Handwritten signature]* BKT



[REDACTED]

5. Use. Tenant shall use the property for only lawful purposes permitted by American Fork City.

6. Compliance with Environmental Matters.

6.1. Environmental Compliance. Commencing with the Effective Date, Tenant shall at all times comply with applicable environmental laws affecting the Premises. Tenant shall, at its own expense, maintain in effect any permits, licenses or other governmental approvals relating to Hazardous Substances, if any, required for Tenant's use, and cause each Subtenant to maintain in effect any such permits, licenses or other governmental approvals, if any, required for such Subtenant's use of the Premises. Tenant shall make all disclosures required of Tenant by any such environmental laws, and shall comply with all orders with respect to Tenant's and its agents', contractors' and invitees'


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activities on the Premises into compliance with all environmental laws affecting the Premises.

Notwithstanding the foregoing, Tenant's responsibilities as set forth in this paragraph shall only extend to its activities and those of its agents, contractors and invitees. Landlord shall assume all risk and responsibility associated with hazardous substances existing on the Premises as of the Effective Date, and Landlord covenants and warrants that there are no known hazardous substances on the Premises or that may affect the Premises as of the Effective Date.

6.2. Notices. If at any time Tenant or Landlord should become aware or have reasonable cause to believe that any actionable level of Hazardous Substance has been released or otherwise come to be located on or beneath the Premises, such party shall immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of an actionable level of Hazardous Substance on or beneath the Premises shall immediately notify the other party in writing of any enforcement, cleanup, removal or other government or regulatory action instituted, completed or threatened pursuant to any environmental laws, any claim made or threatened by any person against Landlord, Tenant or the Premises arising out of or resulting from any actionable level of Hazardous Substances, and any reports made to any local, state, or federal environmental agency arising out of or in connection with any actionable level of Hazardous Substance.

6.3. Indemnity.



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6.3.1. By Landlord. Landlord shall indemnify, defend (by counsel reasonably acceptable to Tenant), protect, and hold harmless Tenant, Tenant's Affiliates and their respective partners, members, shareholders, trustees, beneficiaries, officers, directors, employees, attorneys, agents, heirs, representatives, successors and assigns ("Tenant Indemnified Parties"), from any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including reasonable attorney, consultant and expert fees) (collectively, "Claims") arising from, related to, or in connection with the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by the presence in, on, under or about the Land, or any discharge or release in or from the Land of any Hazardous Substance, to the extent that any such presence, discharge or release is caused by Landlord's activities or the activities of any of Landlord's employees, agents, contractors or invitees.

6.3.2. Tenant. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold harmless Landlord, Landlord's Affiliates and their respective commissioners, directors, trustees, beneficiaries, officers, directors, employees, attorneys, agents, successors and assigns ("Landlord Indemnified Parties") from and against any and all Claims arising from, related to or in connection with the death of or injury to any person or damage to any property whatsoever, arising after the Effective Date from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the Premises or any discharge or release in or from the Premises of any Hazardous Substance, to the extent that any such presence,

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discharge or release is caused by Tenant's activities, or the activities of any of Tenant's Subtenants, employees, agents, contractors or invitees, or (ii) Tenant's failure to comply with its covenants under this paragraph.

6.3.3. Cost Included: Survival. The indemnity obligations created hereunder shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of the Premises. The obligations of the parties hereunder shall survive the expiration or earlier termination of this lease.

7. Construction of Improvements. Tenant and its Subtenants shall have the right during the Initial Term of this Lease, or any extensions thereof, to construct any Improvements or alterations and additions to such Improvements to the Property, including, but not limited to, the installation of any underground utilities necessary to service the Property. Any alterations, additions or Improvements to the Property, excepting Tenant's or Tenant's Subtenants' trade fixtures, shall be surrendered with the Property and become Landlord's Property upon the expiration of the Lease term and any extensions. All alterations, additions or Improvements to the Property by Tenant (or a Subtenant), shall be made by Tenant (or Subtenant) at Tenant's (or Subtenant's) sole cost and expense. All Improvements, additions or alterations shall be in conformity with all applicable laws and ordinances. Landlord shall provide such written consents or approvals from the Landlord as may be reasonably necessary to permit Tenant (or Subtenant) to exercise its rights under this section 7. Landlord agrees to cooperate with Tenant and its Subtenants in subjecting the Property to all easements necessary in order to provide utility

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services to the Property, such easements to be defined by a metes and bounds description. Tenant and its Subtenants may construct whatever Improvements they desire, including buildings and structures of any size or type, and they may do so without formal or informal approval of Landlord. Ownership of the Improvements in fee shall be exclusively held by Tenant during the term of the Lease and any extensions thereunder, with said Improvements reverting to Landlord at the conclusion of said time period.

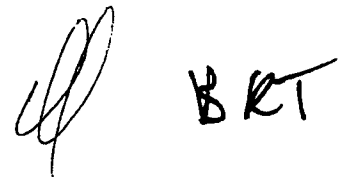
8. Maintenance and Repair. Tenant shall, at Tenants sole cost and expense, keep the Property and all Improvements, additions or alterations constructed thereon, in good condition and repair, ordinary wear and tear excepted.

9. Liens. Tenant shall keep the Property free from any liens arising out of any work performed or materials furnished by or on behalf of Tenant and Tenant agrees to indemnify and hold Landlord harmless from and against any and all costs resulting from Tenant's actions under this Lease which may give rise to any such material or labor liens.

10. Assignment, Subletting, and Permitted Mortgages. Tenant and its Subtenants shall have the right during the term of this Lease and any extensions thereof to assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or the Improvements or any interest therein or sublet the Premises or any part thereof, or any right or privilege appurtenant thereto. No assignment or subletting shall in any way relieve Tenant of any of its obligations under this Lease unless Landlord shall evidence such release in writing to Tenant, such release not to be unreasonably withheld; provided, however, that if Tenant elects to request a release, and Tenant's proposed assignee has a net worth equal to or exceeding Tenant's (as demonstrated by competent evidence), has a business reputation reasonably acceptable to Landlord, and provided

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that such assignee has experience (in terms of project size and number of years in the business) commensurate with Tenant's in building, operating and managing projects like Tenant's Project, then Landlord shall immediately release Tenant from all obligations hereunder upon such assignment and assignee's assumption of Tenant's obligations hereunder. Tenant and its Subtenants shall be free to enter into Subleases with Subtenants without Landlord's consent. Any Permitted Mortgage or encumbrance of Tenant's Estate, or part thereof, shall be and remain subordinate and subject to Landlord's title to the Land upon the reversion of the Premises to Landlord. Notwithstanding the foregoing, Landlord agrees to reasonably cooperate with efforts on the part of the Tenant to secure and maintain Permitted Mortgages. By way of example, Landlord agrees to provide reasonable assurances to a potential lender of Tenant upon its request. Such assurances may include the following: (1) The Lease is in effect, was properly executed and is not in default, and no modifications to the Lease have occurred except as may be noted; (2) The subject loan and any encumbrance within the concept of a Permitted Mortgage will not be in violation of the Lease; (3) The Landlord will provide written notice to the lender of notices to the Tenant including any notice of default by Tenant under the Lease, together with a reasonable opportunity to cure such default; (4) The covenants made by Landlord relating to these assurances shall inure to the benefit of Landlord, the Subtenant and their respective legal representatives, successors and assigns. In the event that Tenant or a Subtenant seeks to enter a Sublease or assignment for any portion of the Premises for a period of time that extends beyond the term of this Lease, Tenant shall have the right, consistent with the terms of this Lease, to extend its term to coincide with the term of the Subtenant. In the event that Tenant or a Subtenant seeks to enter a Sublease or an assignment for any portion of the Premises for a period


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of time that extends beyond the term of this Lease and all permitted extensions thereof, Tenant or a Subtenant may first seek to obtain approval of the Sublease or assignment from Landlord. Upon approval, the Sublease or assignment shall be binding on Landlord upon termination of this Lease. In the event that Tenant or a Subtenant presents to Landlord a Sublease or assignment for its approval, Landlord agrees to promptly review the Sublease or applicable agreement and, within ~~five~~ <sup>seven</sup> days of receipt, to respond to the request for approval. Under any circumstances, Landlord shall not unreasonably withhold its approval of any Sublease or assignment presented to Landlord under the provisions of this paragraph.

11. Insurance Indemnification.

11.1. Tenant's Obligations. Tenant agrees to defend Landlord, its agents, servants, employees, officers and directors against any claim, demand, assertion of liability, or action arising out of any negligent act or omission of Tenant in connection with its construction, operation and maintenance of the Property and any Improvements placed thereon and from any business or activity or work or things done or permitted by Tenant to be done in or about the Property and hold Landlord, its agents, servants, employees, officers and directors harmless from and against any such loss, damages, liability, expenses or other sums which Landlord may reasonably pay on account of such demand, claim, assertion of liability or action including reasonable attorneys' fees.

11.2. Landlord's Obligations. Landlord shall defend, indemnify and hold harmless Tenant, its agents, servants, employees, officers and directors against any claim, demand, assertion of liability, or action arising out of any negligent act or omission of Landlord in connection with its construction, operation and maintenance of the Property and

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any Improvements placed thereon and from any business or activity or work or things done or permitted by Landlord to be done in or about the Property and hold Tenant, its agents, servants, employees, officers and directors harmless from and against any such loss, damages, liability, expenses or other sums which Tenant may reasonably pay on account of such demand, claim, assertion of liability or action including reasonable attorneys' fees.

11.3. Tenant's Insurance. Tenant, at its sole cost and expense, shall, upon substantial completion of any Improvement and throughout the entire Initial Term, and any extensions, keep the Improvements insured against loss or damage by fire, windstorm, tornado, hail, water damage, lightening, vandalism and malicious mischief and against any loss or damage by such other further and additional risk as now or hereafter may be embraced by the standard "all risk" forms or endorsements, and any coverage available under the so-called "installation floater" in each case in the full amount of the replacement value of the Improvements. For purposes of this paragraph, any building or structure and the Premises related thereto or contained therein shall be deemed to be substantially completed when such building or structure and its related Improvements, taken as a whole, are substantially completed. In addition, Tenant shall maintain, at its sole cost and expense, throughout the entire term of this lease, the following:

11.3.1. Workers Compensation. Workers compensation insurance in statutory limits of the workers compensation laws of the State of Utah if and as required by law.

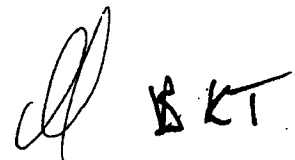
11.3.2. General Liability Insurance. Liability insurance against claims for bodily injury, death or property damage occurring upon or in or about the

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Premises, including the public areas adjacent thereto, including, in a form no less than a commercial general liability policy, including explosion, collapse and underground coverage; the insurance shall afford immediate protection at the Effective Date for not less than \$2,000,000.00 per occurrence aggregate and \$2,000,000.00 complete operations per occurrence aggregate. Such insurance shall, among other things, provide broad form contractual liability coverage (including, without limitation, indemnification or hold harmless obligations of Tenant under this lease) and personal injury (including, without limitation, coverage for assault and battery committed by or at the direction of the insured). Such insurance for the Premises shall also provide so-called "cross liability" coverage for all of the insureds in respect of the employees of each insured. The liability limits, including aggregate limits under this paragraph, may be increased, but not more than once every five years upon Landlord's showing by an opinion analysis of its insurance broker that the current limits are insufficient as reflected by insurance industry standards for the type of property and Improvements insured.

11.3.3. Certificate of Insurance. Tenant, upon written request from the Landlord, shall deliver to the Landlord an original certificate of insurance evidencing that the insurance required to be maintained pursuant to this paragraph is being carried and maintained by Tenant. Each certificate shall further provide that such insurance shall not be cancelled or materially amended unless thirty (30) days prior written notice is given to the respective certificate holder. Within thirty (30) days of any such notification that a policy of insurance has lapsed due to nonpayment by Tenant, Landlord shall be entitled to pay such amount for the Tenant, unless Tenant has

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already cured, and make claim to the Tenant for immediate reimbursement of the cost thereof, including any interest on the amount expended at the prime rate of interest publicly quoted by Zions First National Bank, N.A., plus two percent (2%) per annum.

12. Net Lease. This Lease shall be a true net lease to Landlord, with Tenant or its Subtenants paying all water, gas, heat, light, power, sewer charges, telephone service, and any and all other services and utilities supplied to the Property. Tenant or its Subtenants shall also pay all taxes and assessments levied or assessed or which become payable during the term hereof upon the Property, including all taxes and assessments levied or assessed or which become payable during the term hereof upon the Improvements, equipment, furniture, fixtures, and personal property located on the Premises. Tenant shall also pay all taxes or assessments for the Land. Landlord agrees to provide Tenant with all tax notices and bills not less than sixty (60) days prior to their due date, and Tenant shall pay such taxes directly to the taxing authority. Tenant shall have the right to appeal any and all taxes. Upon request by Tenant, Landlord shall diligently cooperate with Tenant in order to prosecute any appeal deemed appropriate or necessary by Tenant. Tenant agrees to pay for the cost of such appeal.

13. Holding Over. If Tenant remains in possession of the Property after the expiration of the term hereof without the express written consent of Landlord, such occupancy shall be a tenancy from month to month upon all of the other terms hereof, insofar as the same are applicable to a month-to-month tenancy.

14. Entry by Landlord. Upon forty-eight (48) hours advance written notice, Landlord shall have the right to enter onto the Property during normal business hours to inspect the same and to

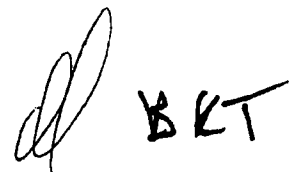
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exhibit the Property to prospective purchasers, lenders or tenants so long as such entry does not interfere with the normal business operations of Tenant.

15. Tenant's Default. In the event that Tenant shall either fail to make any payment of Rent within ten (10) days after such payment falls due where such failure shall continue for a period of fifteen (15) days after notice from Landlord that said payment is due and payable or Tenant fails to observe and perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant, then Tenant shall be considered to be in default; provided, however, that if the nature of Tenant's failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be in default if Tenant promptly commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

16. Remedies for Tenant's Default. In the event Tenant is in default as provided in Section 15 above, Landlord may at any time thereafter and as long as the default is not cured, terminate Tenant's rights under this Lease by written notice or by any lawful means, or reenter and take possession of the Property, or itself pay or perform the obligation as to which Tenant is in default (in which event Landlord's cost of so doing shall be immediately reimbursed to it by Tenant). Tenant agrees to reimburse Landlord for the cost of recovering possession of the Property, including attorney's fees and court costs whether or not suit is brought. Any Rent or other charges under this Lease which are not paid when due by Tenant shall bear interest from the due date thereof at the rate of twelve percent (12%) per annum.

17. Damage and Destruction.

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17.1. Events of Termination. Tenant shall have the right to terminate this Lease in the event: (i) any Improvements erected on the Property by Tenant are damaged or destroyed to the extent that twenty-five percent (25%) or more of the cost of original construction of the Improvements would be required to be expended to replace the Improvements in their entirety and the destruction or damage involved is not covered by insurance maintained by Tenant or Insurance Proceeds payable to Tenant as a result of destruction, or (ii) any part of any Improvements placed on the Property are damaged or destroyed at any time during the last five years of the term of this Lease or during any extended or renewal term. Any such termination must be accomplished through written notice given within sixty (60) days following the date of destruction or damage. In the event of such termination, there shall be a proration of the Rent called for herein and Landlord shall refund any excess theretofore paid by Tenant. Termination shall be effective, and Rent shall be prorated, as of the date on which written notice of termination is given. Tenant shall upon termination as a result of damage or destruction, if requested by Landlord, raze the existing Improvements on the Land and clean the Land of debris and rubble within 360 days after Landlord's request.

17.2. Duty to Rebuild Improvements. If Tenant does not terminate this Lease as permitted by Section 17.1, Tenant shall proceed with the repair and restoration of any damages to Premises within ninety (90) days following any insured loss against damage or destruction, or such later date as the Insurance Proceeds are available therefor, and once commenced, such restoration shall be diligently prosecuted to completion. Except as herein set forth, Landlord shall have no



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liability to Tenant, and Tenant shall not be entitled to terminate this Lease for an insured loss against damage or destruction, nor shall Tenant have the right to terminate this Lease by virtue of any delays in completion of repairs and restoration, except to the extent caused by Landlord. Notwithstanding any provision of this Lease to the contrary, as long as Tenant is current on its payment of Rent hereunder and provided that Tenant's Project is not materially adversely affected in any way or diminished in value thereby, Tenant shall have no obligation to rebuild any Improvement if in Tenant's good faith business judgment, Tenant determines the same to be uneconomical, imprudent or burdensome in light of the circumstances existing at the time of damage to such Improvement, whether or not insurance proceeds are available therefor.

18. Eminent Domain. If part of the Property shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, and if as a result thereof the remainder of the Property cannot reasonably be used for the purposes contemplated by this Lease as determined solely by Tenant, then Tenant shall have the right, at its option, within sixty (60) days after said taking, to terminate this Lease by written notice to Landlord. If part of the Property is taken (and this Lease is not terminated as a result of such taking), the Rent thereafter to be paid shall be equitably reduced based on the fair market value of the Property before and after the taking, with consideration for the quantity, quality, location and characteristics of the Property taken. If the parties cannot agree on the new Rent amount, it shall be determined by appraisal in accordance with the provisions of Section <sup>4.4.2</sup> ~~4.2.2~~ above. In the event of any taking or appropriation whatsoever, both parties hereto acknowledge that the Rent payable under this Lease is less than market value and agree that the valuation allocated between the parties by the

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condemning authority shall be based upon comparable sales of property rather than the rental income generated under this Lease Agreement. All awards attributable to Improvements placed on the Property by Tenant (but not awards attributable to Land), shall be the property of Tenant.

✗ A sale in lieu of condemnation shall be considered a taking for purposes hereof. Nothing herein contained shall prevent Landlord from seeking such awards as it may deem appropriate or necessary aside and apart from any actions taken by Tenant.

19. Signs. Tenant shall have the right to place and maintain such signs, as Tenant deems appropriate or necessary. All such signs shall be in conformity with all rules and regulations relating to signs as may be directed by the City of American Fork, Utah.

20. Conditions to Tenant's Obligation to Pay Rent. This Lease shall be in full effect and the Rent Commencement Date of this Lease shall apply unless Tenant cancels this Lease on or prior to May <sup>15</sup>, 2007. Notice of cancellation shall be given in writing to the address as provided in ¶21 herein. *BKT*

20.1. Upon the execution and delivery hereof, Landlord shall, at its cost, secure a preliminary title report on the Property, together with all documents evidencing exception to the title. Upon receipt of the title report, Tenant shall have a period of thirty (30) days following the Signing Date in which to review and investigate the same. In the event that Landlord receives no written notice from Tenant setting forth objections to the title report, Landlord shall deem Tenant as having approved the same. In the event Tenant shall provide Landlord with written notice setting forth objections, Landlord shall have a period of twenty (20) days in which to remove or correct any such objections. In the event that Landlord is unable to remove or correct any such objections, Tenant shall have the right

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to terminate this Lease, grant Landlord an extension of time to remove or correct, or accept the title report as it may then appear. Landlord represents and warrants that in the event that the title report shall disclose any financial encumbrance on the Property, then each such lienholder shall execute and deliver to Tenant a non-disturbance and attornment agreement or release such lien. Upon approval of the title report, Tenant shall secure, at its cost, an ALTA survey of the Property (the "survey"). Upon receipt of the survey, Tenant shall have a period of thirty (30) days in which to review and investigate the same. In the event that Landlord receives no written notice from Tenant setting forth objections to the survey, Landlord shall deem Tenant as having approved the same. In the event Tenant shall provide Landlord with written notice setting forth objections, Landlord shall have a period of twenty (20) days to remove or correct any such objections. In the event that Landlord is unable to remove or correct any such objections, Tenant shall have the right to terminate this Lease, grant Landlord an extension of time to remove or correct, or to accept the survey as it may then appear. Landlord shall pay the cost of the premium on a standard title insurance policy without additional endorsements. Tenant shall pay the cost of any additional endorsements it desires and shall pay the cost of any upgrades to a standard policy coverage, including, but not limited to an upgrade to an ALTA policy of title insurance. The title insurance company's allocation of the premium costs for the coverages described herein shall be binding on the parties to this Agreement.

20.2. The Tenant's duty to perform under this Lease shall be subject to Tenant receiving final subdivision and site plan approval. The Tenant's said duty shall be subject to the Property being rezoned to a commercial zone suitable to Tenant's intended



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use, if such zone change is required. In the event that either or both of these conditions are not resolved to the sole satisfaction of Tenant on or before May 15, 2007, by written notice to Landlord, may terminate the Lease and thereafter neither party shall have any obligation to the other. The deadline contained in the previous sentence may be extended by mutual consent of the parties. All costs and fees associated with the Tenant's request for such site plan approval, subdivision or zoning change shall be borne solely by Tenant. Landlord shall timely execute and deliver any and all documents and instruments that may be necessary or deemed helpful by Tenant to obtain site plan, subdivision or zoning or other similar approval required for Tenant's Project. Landlord shall also cooperate with Tenant regarding any approvals described in the previous sentence and shall support Tenant and Tenant's Project in both private and public settings.

20.3. Tenant may order and obtain a Phase I Environmental Study (the "Study") of the Premises for hazardous substances and to perform such other due diligence it desires regarding hazardous substances. Landlord shall pay the first one thousand dollars (\$1,000.00) of the cost of said study directly to Tenant when Tenant provides a copy of the invoice for the same to Landlord. In the event Tenant shall provide Landlord with written notice setting forth objections to the condition of the Property based upon the Study or any related report or study, Landlord shall have a period of 20 days in which to remove or correct any such objections. In the event that Landlord is unable to remove or correct any such objections, Tenant shall have the right to terminate this Lease, grant Landlord an extension of time to remove or correct, or accept the Property in its given condition.





20.4. Tenant shall have the right to grub the site immediately at its sole cost and expense.

20.5. The duties under this Lease are conditional upon Tenant signing a ground lease similar to this ground lease with Innes Family, L.C. on ground contiguous to the Property.

20.6. In the event that Landlord and Tenant are unable to satisfy any of the foregoing conditions, as provided in this Section 20, and Tenant exercises its right to terminate this Lease, Landlord may request of Tenant and Tenant shall deliver copies of all reports, surveys, and documents generated by Tenant under this Section.

21. Notices. Any notice required or permitted under this Lease shall be deemed appropriately served when deposited with the United States mail, postage prepaid, certified mail return receipt requested, to the parties addressed as follows:

If to Tenant:

DJ Smith Investments, L.C.  
Doug Smith, Manager  
2438 Bramble Way  
Salt Lake City, UT 84117

If to Landlord:

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

22. [REDACTED]

*[Handwritten signature]* BKT

[REDACTED]

[REDACTED]

23. Holidays and Weekends. If the final date of any period set forth herein shall fall upon a Saturday, Sunday or recognized legal holiday in the state of Utah, then the time period related thereto shall be extended to the next day which is not a Saturday, Sunday or recognized legal holiday.

24. Landlord's Representations and Covenants. Landlord hereby represents, covenants and warrants that:

24.1. It is possessed of fee simple and marketable title to the Property and has the authority to enter into this Lease and consummate the transactions described herein. The transaction contemplated herein will not breach any agreement, written or oral, to which Landlord is a party;

24.2. It has not received any notice regarding and has no knowledge of the presence, either presently or in the past, of any environmental conditions or substances, including, without limitation, any presence of Hazardous Substances, on the Property.

24.3. There are no suits, actions or proceedings pending to which Landlord is a party relating in any manner to the Property, or otherwise, nor does it have any knowledge of any contemplated actions or proceedings against it.

24.4. There are no attachments, executions or assignments for the benefit of creditors, receiverships, conservators or voluntary or involuntary bankruptcy proceedings pursuant to any other debt relief laws contemplated by Landlord or filed by Landlord or pending in judicial or administrative proceedings against Landlord.

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24.5. That, as of the Signing Date of this Lease, there are no liens of any nature, other than property taxes for the current calendar year, or unpaid items which could, with the passage of time, become a lien against the Property.

25. Miscellaneous Provisions.

25.1. Waiver and Cumulative Remedies. The waiver by Landlord of the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such Rent. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

25.2. Quiet Possession. Upon its paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease. Landlord specifically covenants that during the term of this Lease and any extensions thereunder it shall not allow any lien, encumbrance, mortgage or related impediment created by Landlord, to voluntarily, to interfere with Tenant's Estate or the business operations pursued thereunder by Tenant or its Subtenants.

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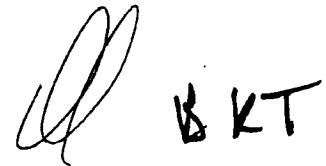
25.3. Prior Agreements, Lease Amendments and Time Effective. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto and their respective successors in interest. This Lease shall not be effective or binding on either party until fully executed by both parties hereto.

25.4. Inability to Perform. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason not the fault of the party delayed, then performance of the action in question shall be excused for the period of delay and the period of performance of such act shall be extended for a period equivalent to the period of such delay.

25.5. Severability. If any one or more of the provisions of this Lease or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Lease and any other application thereof shall not in any way be affected or impaired.

25.6. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Utah.

25.7. Landlord's and Tenant's Statement. Landlord and Tenant shall at any time and from time to time, within five (5) days after receiving written request therefor,

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execute, acknowledge, and deliver to the requesting party a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect, and the date to which the rental and other charges hereunder have been paid, and (b) certifying that there are not any defaults on the part of the requesting party, or specifying such defaults if any are claimed, and (c) setting forth the term hereof, and (d) setting forth such other matters as may be reasonably requested. Any such statement may be relied upon by any prospective Subtenant or other party in interest of all or any portion of the Property

25.8. Non Disturbance. Landlord shall also issue a commercially reasonable non-disturbance and attornment agreement (a "Non-Disturbance Agreement"), to each Subtenant of a Sublease requesting same, which Non-Disturbance Agreement shall require such Subtenant to acknowledge in writing to the effect that this Lease is prior to and paramount to the Sublease, and providing that Landlord shall recognize the Sublease and not disturb the Subtenant's possession thereunder so long as Subtenant is not in default under its Sublease and agrees to attorn to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant. Any such Non-Disturbance Agreement may condition the Subtenant's right to non-disturbance on Landlord's continued receipt of Rent in the amount provided herein. In addition, such Non-Disturbance Agreement shall not prohibit the right of the Landlord to (or to require Tenant to) demolish Improvements on the Property other than the premises under Sublease to which such Non-Disturbance Agreement relates.



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Notwithstanding anything contained herein to the contrary, Landlord agrees to provide, as part of any Non-Disturbance Agreement, reasonable assurances to a Subtenant upon its request, which may include the following: (1) Confirmation that the Lease is in effect, was properly executed and is not in default, and that no modifications to the Lease have occurred except as may be noted; (2) Subtenant's intended use of the Premises will not be in violation of the Lease; (3) Landlord will provide written notice to the Subtenant of notices to the Tenant including a notice of default by Tenant under the lease, together with a reasonable opportunity to cure such default; (4) That upon termination of the Lease or the Sublease, that Subtenant shall have the right to remove trade name indicia (including external and internal signage), trade fixtures and improvements as well as furniture, fixtures, equipment and other personal property of the Subtenant; (5) The covenants made by Landlord under any non-disturbance agreement shall inure to the benefit of Landlord, the Subtenant and their respective legal representatives, successors and assigns; (6) For those subleases with substantial or prominent Subtenants who have a general reputation for success and viability and who have received prior written approval by the Landlord of such a sublease (hereinafter called "Approved Sublease"), termination of the Lease, by cancellation or otherwise, prior to termination or expiration of the Approved Sublease, shall not serve to cancel the Approved Sublease, but rather shall operate as an automatic assignment to and assumption by Landlord of such an Approved Sublease. Approval by the Landlord under this paragraph 25.8(6) may not be unreasonably withheld. In the event that Tenant or a Subtenant presents to Landlord a Sublease for its approval, Landlord agrees to promptly

  
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review the Sublease or applicable agreement and, within seven days of receipt, to respond to the request for approval.

26. Attorney Fees. If any action is brought to recover any Rent or other amount under this Lease, or because of any default under or to enforce or interpret any of the provisions of this Lease, or for recovery of possession of the Property, the party prevailing in such action shall be entitled to recover from the other reasonable attorney fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

27. Legal Counsel. Both Landlord and Tenant have negotiated this Lease, and have had the opportunity to be advised by competent legal counsel respecting each and every provision contained herein, and each has had the opportunity to approve each and every provision herein. Both Landlord and Tenant believe that the Lease is the product of all their efforts, that it expresses their agreement, and that it should not be interpreted in favor of or against either Landlord or Tenant merely because of their efforts in preparing this Lease.

28. Confidentiality. Landlord will treat the monetary and operating terms and conditions of this Lease as confidential and will not divulge same to any person. Landlord will not furnish copies of any part of this Lease to any person except his own legal and financial accounting advisors without the written permission of Tenant which shall not be unreasonably withheld. Notwithstanding anything elsewhere herein to the contrary, Landlord's permission shall not be required with respect to Tenant's disclosure to any financial institution considering any financing for Improvements to be placed on the Property. Tenant shall have the right to record this Lease or a memorandum of the

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same, at its election.

29. Miscellaneous. All Exhibits, addenda, riders, and provisions, if any, attached to this Lease are a part hereof. Either party, upon the request of the other, agrees to execute, in recordable form, a memorandum or short form hereof. The headings and titles of the various provisions of this Lease shall have no effect upon the construction or interpretation of any part hereof as used in this Lease. The singular shall include the plural, the plural shall include the singular, the whole shall include each part thereof, and any gender shall include the other genders. The covenants and conditions herein contained shall apply to and bind the heirs, personal representatives, successors, and assigns of the parties hereto.

30. [REDACTED]

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[REDACTED]

31. [REDACTED]

[REDACTED]

4.4.1 4.4.2 *[Signature]* BKT

[REDACTED]

4.4.2 *[Signature]* BKT

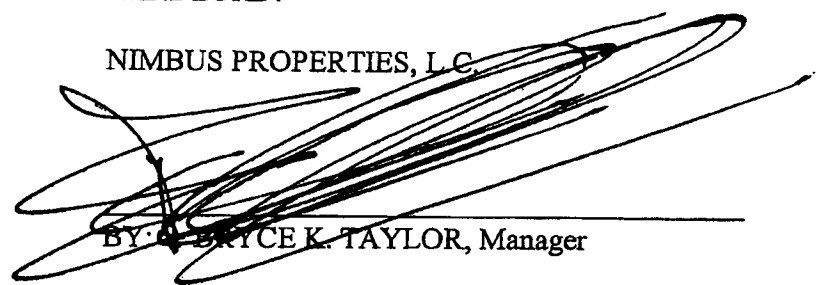
[REDACTED]

*[Signature]* BKT

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed on or as  
of the day and year first above written.

LANDLORD:

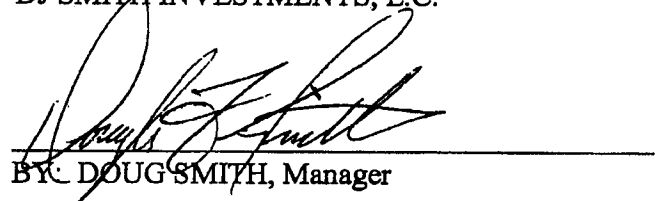
NIMBUS PROPERTIES, L.C.

A large, stylized handwritten signature in black ink, appearing to read 'Bryce K. Taylor', is written over a horizontal line.

BY: ~~BRYCE K. TAYLOR~~, Manager

TENANT:

DJ SMITH INVESTMENTS, L.C.

A handwritten signature in black ink, appearing to read 'Doug Smith', is written over a horizontal line.

BY: DOUG SMITH, Manager

**Exhibit A**

**Landlord Property**

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, S.L.B.&M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, S.L.B.&M., UTAH COUNTY, UTAH; THENCE N.89°53'25"W. ALONG THE NORTH LINE OF SAID SECTION 771.29 FEET AND SOUTH 143.72 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.00°56'47"E. 593.72 FEET TO THE NORTH RIGHT OF WAY LINE OF I-15; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING 2 COURSES AND DISTANCES; (1) N.69°57'50"W. 344.14 FEET; (2) THENCE N.62°12'58"W. 27.09 FEET; THENCE N.00°04'37"E. 316.05 FEET; THENCE S.89°28'19"E. 7.15 FEET; THENCE N.00°31'00"E. 150.09 FEET TO THE SOUTH LINE OF MAIN STREET; THENCE S.89°29'00"E. ALONG SAID SOUTH LINE 328.55 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 4.14 ACRES OF LAND.



BKT

EXHIBIT "B"

PERMITTED EXCEPTIONS

None



BKT



BKT

**EXTENSION AND ACKNOWLEDGMENT  
OF  
RENT COMMENCEMENT DATE  
AND  
MODIFICATIONS TO GROUND LEASE**

This instrument is executed this 9<sup>th</sup> day of November, 2007, by and between the NIMBUS PROPERTIES, LC, an Utah limited liability company ("Landlord") and DJ SMITH INVESTMENTS, LC, an Utah limited liability company and Warren G. Tate, Manager of WGT AMERICAN FORK, LLC, an Utah Limited Liability Company, ("Tenants"), agreeing and acknowledging as follows:

**RECITALS**

WHEREAS, a Ground Lease was entered into between DJ Smith Investment, LC, on January 12, 2007 ("Ground Lease"), and

WHEREAS, WGT American Fork, LLC, has now acquired an interest from DJ Smith Investments, LC in the Ground Lease, and

WHEREAS, the Rent Commencement Date, as defined in the Ground Lease, was extended by mutual agreement dated May 15, 2007 until June 15, 2007 and again extended by mutual agreement dated June 15, 2007 until July 15, 2007, and

WHEREAS, during the time of the extensions, the Tenants have conducted their due diligence activities described in the Ground Lease, and have resolved all contingencies precedent to the commencement of the obligations under the Ground Lease to their satisfaction, and

NOW, THEREFORE, in consideration of the above recitals and the representations and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged,

**IT IS ACKNOWLEDGED AND AGREED:**

1. Rent Commencement Date. The Rent Commencement Date shall be July 15, 2007, pursuant to the terms of the Ground Lease as extended.
2. Other Dates. All other dates contained within the Ground Lease that are in any way contingent upon or related to the Rent Commencement date shall also be extended for an identical period of time, with the exception of the Effective Date described in the Ground Lease, which date shall be, as provided in paragraph 4 below, the date this instrument is signed by both parties herein.

BKT 

3. Condemnation or Purchase. In the event that the Utah Department of Transportation ("UDOT"), its agents or assigns, condemn or purchase a portion of the Landlord's property for any reason, "Rent" as that term is described in Section 4, page 6 of the Ground Lease, shall be reduced by the percentage of land taken by UDOT as it relates to the total square footage of the Landlord's property as described on Exhibit A to the Ground Lease.

4. Revocation of Contemporaneous Duties. Paragraph 20.5 of the Ground Lease requiring contemporaneous duties between the parties and Innes Family LLC, the owner of ground that is contiguous to the Landlord's ground, is hereby revoked and shall be of no further force and effect. The parties acknowledge that Innes Family LLC has released any obligation requiring contemporaneous duties between the two properties.

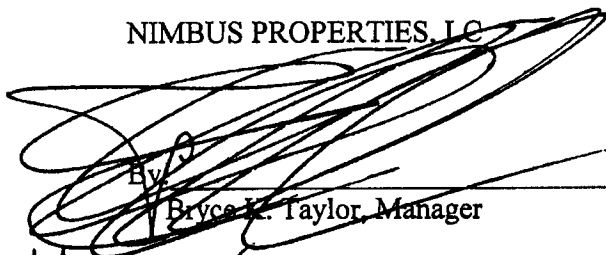
5. Additional Leasee. The Parties acknowledge the assignment to WGT American Fork, LLC as a co-leasee of the Ground Lease, and of the assumption of the duties, obligations and benefits by the said co-leasee. Nothing contained herein shall be construed as a release of DJ Smith Investments, LC of any of the duties, obligations and benefits of the Ground Lease.

6. Republication and Effective Date. All other terms, conditions, covenants and agreements contained within the Ground Lease not otherwise modified by this instrument, are hereby acknowledged as being in full force and effect, FULLY ENFORCEABLE AS AGAINST ALL PARTIES, as of July 15, 2007.

Dated this 9<sup>th</sup> day of November, 2007.

LANDLORD:

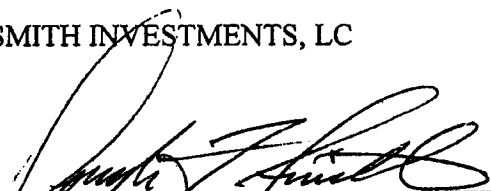
NIMBUS PROPERTIES, LC

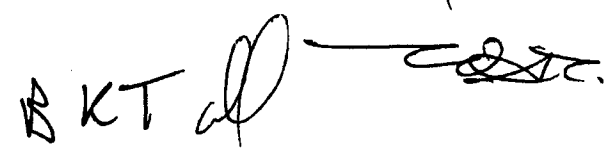
  
By: \_\_\_\_\_  
Bryce L. Taylor, Manager

Dated this 12<sup>th</sup> day of November, 2007.

TENANTS:

DJ SMITH INVESTMENTS, LC

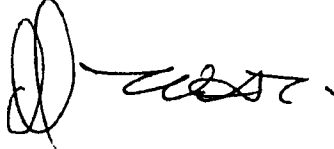
By:   
\_\_\_\_\_  
Douglas F. Smith, Manager



Dated this 6th day of November, 2007.

WGT AMERICAN FORK, LLC

By:   
Warren G. Tate, Manager

BKT 

## ASSIGNMENT AND ASSUMPTION OF LEASE

DJ SMITH INVESTMENTS, L.C., a Utah limited liability company, and WGT AMERICAN FORK, LLC, a Utah limited liability company, hereinafter collectively referred to as "Assignor" or "Assignors," for \$10.00 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby deliver, transfer, assign, and set over to D.W. ASSOCIATES, L.L.C., a Utah limited liability company, hereinafter referred to as "Assignee," all of the Assignors' right, title and interest in and to that certain Ground Lease dated January 12, 2007, between Nimbus Properties, L.C., a Utah limited liability company, as Landlord, and DJ Smith Investments, L.C., a Utah limited liability company, as Tenant (the "Lease"), relating to that certain property located in the City of American Fork, Utah, which property is legally described in Exhibit A of the Lease (the "Property"). A copy of the Lease is attached hereto as Exhibit A. The Lease was amended under the terms of an Extension and Acknowledgment of Rent Commencement Date and Modifications to Ground Lease dated November 9, 2007, wherein WGT AMERICAN FORK, LLC was added as an additional Tenant.

Assignee shall have and hold the Property for its benefit, and its successors and assigns, with full power and authority in the name, place and stead of the Assignor to sue for and collect the same for its own use and benefit.

Assignor hereby represents, covenants and warrants to the Assignee, its successors and assigns, that Assignor is the lawful owner of the leasehold interest in said Lease and the rights and interest thereunder; that the Assignor has good right, title, power and authority to convey the same pursuant hereto; that the consent of the Landlord is not a condition precedent to the within assignment; that said rights, interest and properties are free and clear of all liens and encumbrances of any nature whatsoever; that the Lease is not now in default; and that there does not exist any fact, circumstance or event which, with the passage of time or the giving of notice, will constitute an event of default thereunder.


The Assignee hereby assumes each and every term, covenant, obligation and condition of any kind or nature relating to the obligations or agreements required to be performed by the Assignor under the Lease and agrees to perform all of such terms, obligations, conditions and covenants, including, but not limited to, full and timely payment of any and all amounts due thereunder. The Assignee hereby agrees to and shall indemnify the Assignor against any and all payments, actions, claims and demands whatsoever, including the legal and other costs of investigating or defending the same, arising by any act or omission of the Assignee with regard to the obligations herein assumed by it.




DATED this \_\_\_ day of November, 2008.

ASSIGNOR:


DJ SMITH INVESTMENTS, L.C.

By   
Douglas F. Smith, Manager

By   
JoAnn L. Smith, Manager

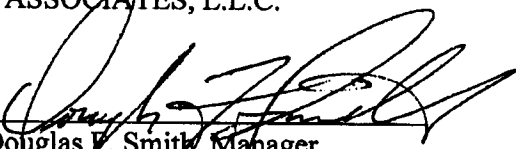
WGT AMERICAN FORK, LLC

By   
Warren G. Tate, Manager

By   
Suzanne J. Tate, Manager

ASSIGNEE:

D.W. ASSOCIATES, L.L.C.

By   
Douglas F. Smith, Manager

By   
Warren G. Tate, Manager

ENT 130155:2008 PG 1 of 4  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2008 Dec 12 1:21 by FEA 11.08 BY EO  
RECORDED FOR TITLE WEST TITLE COMPANY  
ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Warren G. Tate  
P.O. Box 17393  
Salt Lake City, Utah 84117

ENT 96577:2009 PG 50 of 60

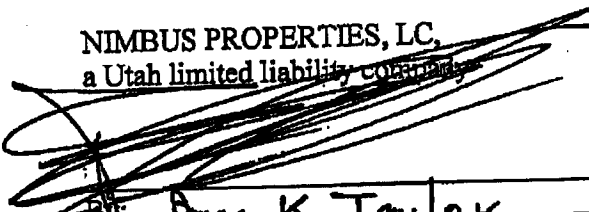
**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** is dated December 12, 2008, by and between NIMBUS PROPERTIES, LC, a Utah limited liability company ("Landlord"), and DW ASSOCIATES, L.L.C., a Utah limited liability company ("Lessee").

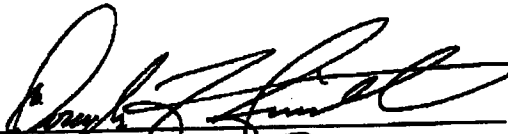
Notice is hereby given that DW Associates, LLC is the lessee of that certain real property described on Exhibit "A" hereto, pursuant to that certain Ground Lease dated January 12, 2007, originally made between Landlord and DJ SMITH INVESTMENTS LC, a Utah limited liability company ("DJS"), and WGT AMERICAN FORK LLC, a Utah limited liability company ("WGT"), which original ground lease was partially assigned to WGT and modified on November 9, 2007, which was clarified by Addendum 1 to the Ground Lease dated August 30, 2008, and which was subsequently assigned by an Assignment and Assumption of Lease dated the 10<sup>th</sup> day of December, 2008 by DJS and WGT to DW ASSOCIATES, L.L.C., a Utah limited liability company (hereinafter together called the "Lease"). The Lease was then assigned as collateral to Brighton Bank by virtue of a Collateral of Assignment of Ground Lease and Landlord's Consent signed December 10<sup>th</sup>, 2008, and made effective November 17, 2008. The Lease grants to Lessee the right to possess the real property upon the terms and conditions of the Lease, and further provides the terms of an option under which Lessee may purchase the property.


The foregoing constitutes only a few selected provisions of the Lease, and interested parties should obtain a complete copy of the Lease from Landlord and/or Tenant and carefully review all provisions thereof.

NIMBUS PROPERTIES, LC,  
a Utah limited liability company

  
By: Bryce K. Taylor  
Its: Manager

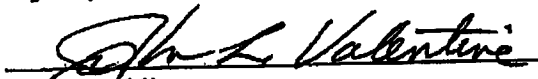
DW ASSOCIATES, L.L.C.,  
a Utah limited liability company

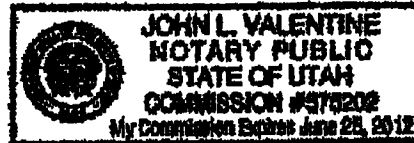
  
By: Douglas F. Smith  
Its: Manager

  
By: Warren G. Tate  
Its: Manager

STATE OF UTAH  
COUNTY OF Utah

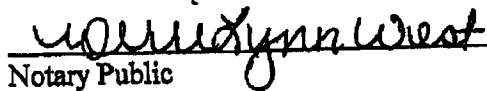
On this 12<sup>th</sup> day of December, 2008, personally appeared before me the undersigned Notary Public, Bryce K. Taylor, the MANAGER of NIMBUS PROPERTIES, LC, a Utah limited liability company and acknowledged that he executed the foregoing instrument in that capacity.

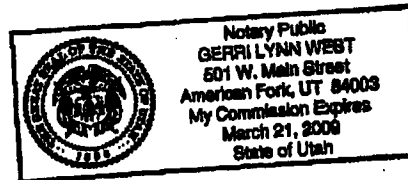
  
Notary Public



STATE OF UTAH  
COUNTY OF Utah

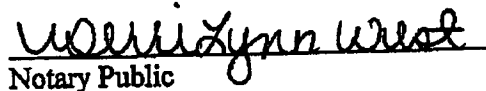
On this 12 day of Dec, 2008, personally appeared before me the undersigned Notary Public, Douglas F. Smith, the manager of DW, LLC, a Utah limited liability company and acknowledged that he executed the foregoing instrument in that capacity.

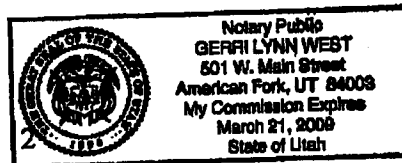
  
Notary Public



STATE OF UTAH  
COUNTY OF Utah

On this 12 day of Dec, 2008, personally appeared before me the undersigned Notary Public, Warren Tate, the manager of DW, LLC, a Utah limited liability company and acknowledged that he executed the foregoing instrument in that capacity.

  
Notary Public



## Exhibit A

### Landlord Property

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, S.L.B.&M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, S.L.B.&M., UTAH COUNTY, UTAH; THENCE N.89°53'25"W. ALONG THE NORTH LINE OF SAID SECTION 771.29 FEET AND SOUTH 143.72 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.00°56'47"E. 593.72 FEET TO THE NORTH RIGHT OF WAY LINE OF I-15; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING 2 COURSES AND DISTANCES; (1) N.69°57'50"W. 344.14 FEET; (2) THENCE N.62°12'58"W. 27.09 FEET; THENCE N.00°04'37"E. 316.05 FEET; THENCE S.89°28'19"E. 7.15 FEET; THENCE N.00°31'00"E. 150.09 FEET TO THE SOUTH LINE OF MAIN STREET; THENCE S.89°29'00"E. ALONG SAID SOUTH LINE 328.55 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 4.14 ACRES OF LAND.

**EXHIBIT "A"****Parcel 1: Utah County Property**

Commencing South 24'14" West 142.81 feet and West 769.59 feet from the Northeast corner of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 53'36" East 593.20 feet; thence North 69°43'42" West .28 feet; thence 69°57'50" West 344 feet; thence 62°12'58" West 27.09 feet; thence North 04'37" East 316.05 feet; thence South 89°28'19" East 7.15 feet; thence North 00°31'00" East 149.54 feet; thence South 89°29'00" East 329.25 feet to the point of beginning.

Also described by survey legal as follows:

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 I-15; thence along said right of way the following 2 courses and distances; (1) North 69°57'50" West 344.14 feet; (2) thence 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 ID / Parcel No. 13:042:0013.

**AGREEMENT TO EXTEND RENT COMMENCEMENT DATE**

This Agreement to Extend Rent Commencement Date ("Agreement") is made and entered by and between NIMBUS PROPERTIES, LC, a Utah limited liability company ("Landlord") and DJ SMITH INVESTMENTS, LC, a Utah limited liability company ("Tenant") with respect to the following facts:

**RECITALS**

WHEREAS, a Ground Lease was entered by and between the parties on January 12, 2007; and

WHEREAS, the Ground Lease entitles the Tenant to perform certain due diligence activities and to perform other tasks deemed appropriate by it prior to the Effective Date and prior to the Rent Commencement Date as those terms are defined in the Ground Lease, and gives the Tenant the right to give notice of cancellation of lease, and also gives the parties a right to extend the Rent Commencement Date; and

WHEREAS, the Tenant desires additional time to perform its due diligence activities and to resolve, to their satisfaction, other matters that have arisen relating to the Ground Lease; and

WHEREAS, the Landlord is willing to extend the Rent Commencement Date and related dates under these circumstances.

NOW, THEREFORE, in consideration of the above recitals and the representations and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landlord and Tenant agree as follows:

1. The Rent Commencement Date shall be extended to
2. All other dates contained within the Agreement that are in any way contingent upon or related to the Rent Commencement Date shall also be extended for an identical period of time. By way of example only, the Effective Date shall be extended until . . . . . In addition, the Tenant's right to issue a Notice of Cancellation of Lease as provided under paragraphs 2, 20 and elsewhere in the Ground Lease is hereby extended until . . . . . Similarly, the parties' right to extend the Rent Commencement Date shall likewise be extended.

DATED this 15<sup>th</sup> day of May, 2007.

LANDLORD:

NIMBUS PROPERTIES, LC

By: 

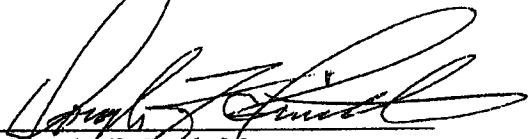
Bryce K. Taylor, Manager

DATED this 15 day of May, 2007.

TENANT:

DJ SMITH INVESTMENTS, LC

By:



Douglas F. Smith, Manager

**EXTENSION AND ACKNOWLEDGMENT  
OF  
RENT COMMENCEMENT DATE  
AND  
MODIFICATIONS TO GROUND LEASE**

This instrument is executed this 9<sup>th</sup> day of November, 2007, by and between the NIMBUS PROPERTIES, LC, an Utah limited liability company ("Landlord") and DJ SMITH INVESTMENTS, LC, an Utah limited liability company and Warren G. Tate, Manager of WGT AMERICAN FORK, LLC, an Utah Limited Liability Company, ("Tenants"), agreeing and acknowledging as follows:

**RECITALS**

WHEREAS, a Ground Lease was entered into between DJ Smith Investment, LC, on January 12, 2007 ("Ground Lease"), and

WHEREAS, WGT American Fork, LLC, has now acquired an interest from DJ Smith Investments, LC in the Ground Lease, and

WHEREAS, the Rent Commencement Date, as defined in the Ground Lease, was extended by mutual agreement dated May 15, 2007 until \_\_\_\_\_ and again extended by mutual agreement dated June \_\_\_\_\_, until July 1 \_\_\_\_\_, and

WHEREAS, during the time of the extensions, the Tenants have conducted their due diligence activities described in the Ground Lease, and have resolved all contingencies precedent to the commencement of the obligations under the Ground Lease to their satisfaction, and

NOW, THEREFORE, in consideration of the above recitals and the representations and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged,

**IT IS ACKNOWLEDGED AND AGREED:**

1. Rent Commencement Date. The Rent Commencement Date shall be \_\_\_\_\_, pursuant to the terms of the Ground Lease as extended.

2. Other Dates. All other dates contained within the Ground Lease that are in any way contingent upon or related to the Rent Commencement date shall also be extended for an identical period of time, with the exception of the Effective Date described in the Ground Lease, which date shall be, as provided in paragraph 4 below, the date this instrument is signed by both parties herein.

BKT 



3. Condemnation or Purchase. In the event that the Utah Department of Transportation ("UDOT"), its agents or assigns, condemn or purchase a portion of the Landlord's property for any reason, "Rent" as that term is described in Section 4, page 6 of the Ground Lease, shall be reduced by the percentage of land taken by UDOT as it relates to the total square footage of the Landlord's property as described on Exhibit A to the Ground Lease.

4. Revocation of Contemporaneous Duties. Paragraph 20.5 of the Ground Lease requiring contemporaneous duties between the parties and Innes Family LLC, the owner of ground that is contiguous to the Landlord's ground, is hereby revoked and shall be of no further force and effect. The parties acknowledge that Innes Family LLC has released any obligation requiring contemporaneous duties between the two properties.

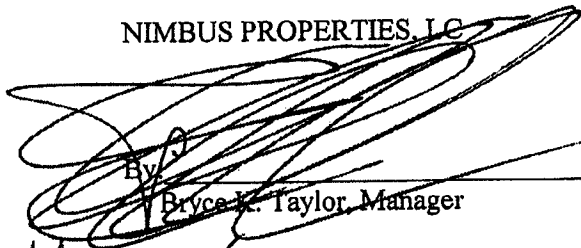
5. Additional Lessee. The Parties acknowledge the assignment to WGT American Fork, LLC as a co-lessee of the Ground Lease, and of the assumption of the duties, obligations and benefits by the said co-lessee. Nothing contained herein shall be construed as a release of DJ Smith Investments, LC of any of the duties, obligations and benefits of the Ground Lease.

6. Republication and Effective Date. All other terms, conditions, covenants and agreements contained within the Ground Lease not otherwise modified by this instrument, are hereby acknowledged as being in full force and effect, FULLY ENFORCEABLE AS AGAINST ALL PARTIES, as of July 15, 2007.

Dated this 9<sup>th</sup> day of November, 2007.

LANDLORD:

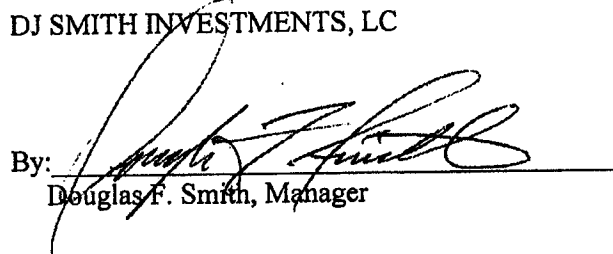
NIMBUS PROPERTIES, LC

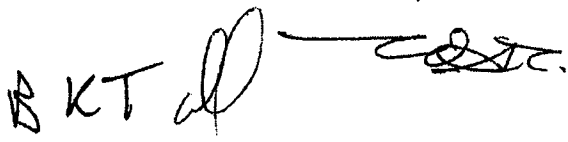
  
By: Bryce K. Taylor, Manager

Dated this 12<sup>th</sup> day of November, 2007.

TENANTS:

DJ SMITH INVESTMENTS, LC

By:   
Douglas F. Smith, Manager



Dated this 12th day of November, 2007.

WGT AMERICAN FORK, LLC

By:   
Warren G. Tate, Manager

BKT 

## ASSIGNMENT AND ASSUMPTION OF LEASE

DJ SMITH INVESTMENTS, L.C., a Utah limited liability company, and WGT AMERICAN FORK, LLC, a Utah limited liability company, hereinafter collectively referred to as "Assignor" or "Assignors," for \$10.00 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby deliver, transfer, assign, and set over to D.W. ASSOCIATES, L.L.C., a Utah limited liability company, hereinafter referred to as "Assignee," all of the Assignors' right, title and interest in and to that certain Ground Lease dated January 12, 2007, between Nimbus Properties, L.C., a Utah limited liability company, as Landlord, and DJ Smith Investments, L.C., a Utah limited liability company, as Tenant (the "Lease"), relating to that certain property located in the City of American Fork, Utah, which property is legally described in Exhibit A of the Lease (the "Property"). A copy of the Lease is attached hereto as Exhibit A. The Lease was amended under the terms of an Extension and Acknowledgment of Rent Commencement Date and Modifications to Ground Lease dated November 9, 2007, wherein WGT AMERICAN FORK, LLC was added as an additional Tenant.

Assignee shall have and hold the Property for its benefit, and its successors and assigns, with full power and authority in the name, place and stead of the Assignor to sue for and collect the same for its own use and benefit.


Assignor hereby represents, covenants and warrants to the Assignee, its successors and assigns, that Assignor is the lawful owner of the leasehold interest in said Lease and the rights and interest thereunder; that the Assignor has good right, title, power and authority to convey the same pursuant hereto; that the consent of the Landlord is not a condition precedent to the within assignment; that said rights, interest and properties are free and clear of all liens and encumbrances of any nature whatsoever; that the Lease is not now in default; and that there does not exist any fact, circumstance or event which, with the passage of time or the giving of notice, will constitute an event of default thereunder.

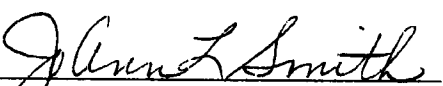
The Assignee hereby assumes each and every term, covenant, obligation and condition of any kind or nature relating to the obligations or agreements required to be performed by the Assignor under the Lease and agrees to perform all of such terms, obligations, conditions and covenants, including, but not limited to, full and timely payment of any and all amounts due thereunder. The Assignee hereby agrees to and shall indemnify the Assignor against any and all payments, actions, claims and demands whatsoever, including the legal and other costs of investigating or defending the same, arising by any act or omission of the Assignee with regard to the obligations herein assumed by it.

DATED this \_\_\_ day of November, 2008.


ASSIGNOR:

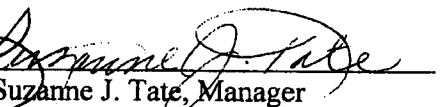
DJ SMITH INVESTMENTS, L.C.

By   
Douglas F. Smith, Manager

By   
JoAnn L. Smith, Manager

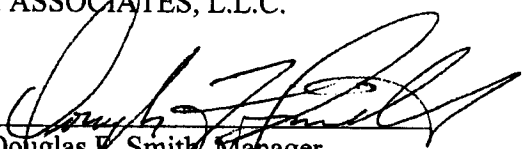
WGT AMERICAN FORK, LLC


By   
Warren G. Tate, Manager

By   
Suzanne J. Tate, Manager

ASSIGNEE:

D.W. ASSOCIATES, L.L.C.

By   
Douglas F. Smith, Manager

By   
Warren G. Tate, Manager