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5/18/2016 12:21:00 PM \$26.00  
Book - 10432 Pg - 2886-2893  
Gary W. Ott  
Recorder, Salt Lake County, UT  
MOUNTAIN VIEW TITLE & ESCROW  
BY: eCASH, DEPUTY - EF 8 P.

After recording return to:  
Betsy Waterman, Esq.  
The Wendy's Company  
4288 W. Dublin-Granville Road  
Dublin, OH 43017

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "**Agreement**"), is made and entered into as of the 2 day of Nov, 2015, by and between **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, LLC**, an Ohio limited liability company, having an address of 4288 W. Dublin-Granville Road, Dublin, Ohio 43017, Attn: Lease Management (Unit #8972, UT) ("**Tenant**"), **PACIFIC CASTLE CANYON CENTER, LLC**, a Delaware limited liability company, having an address of 2601 Main Street, Suite 900, Irvine, California 92614 ("**Landlord**"), and **BANK OF UTAH**, Ogden Loan CRE, having an address of 2605 Washington Boulevard, Ogden, Utah 84401 ("**Lender**").

**W I T N E S S E T H:**

**WHEREAS**, Lender has agreed to make a loan to Landlord (the "**Loan**") to be secured by a mortgage or other security instrument to be recorded in the applicable public records (hereinafter collectively called the "**Mortgage**" and, collectively with any and all other documents evidencing, securing or pertaining thereto and/or to the Mortgage or the Loan, or to be secured, thereby, the "**Mortgage Documents**"), encumbering the Landlord's interest and title in and to certain premises as the same are described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Premises**"), and such other properties and interests as are described therein, and encumbering all of Landlord's rights, title and interest in and to the Sublease (as described below) and the leasehold estate created thereby to secure the payment of the indebtedness described in the Mortgage; and

**WHEREAS**, Landlord and Tenant are parties to that certain Sublease Agreement originally by and between Wendy's International, Inc. ("**WII**") and Landlord dated July 22, 2003, as assigned by that certain Assignment and Assumption Agreement from WII to Wendy's Old Fashioned Hamburgers of New, Inc. ("**WOFHNYI**") dated August 14, 2003, as further affect by that certain merger from WOFHNYI to Tenant effective January 1, 2013, (as the same may have been modified and amended as

of the date hereof, collectively, the "Sublease"), pertaining to the leasing by Landlord, as "Landlord", to Tenant, as "Tenant" of the Premises, and which Sublease is subject to the condition that this Agreement be executed and delivered by and among the parties hereto; and such Sublease is incorporated herein by this reference and made a part hereof; and

**WHEREAS**, the parties hereto desire to enter into this Agreement in order to set forth the terms and conditions upon which Tenant shall attorn to Lender upon certain conditions, Lender shall recognize the Sublease and agrees not to disturb same or Tenant's peaceful possession and quiet enjoyment of the Premises pursuant to the Sublease, all upon certain conditions, and certain other matters.

**NOW, THEREFORE**, for and in consideration of the mutual covenants hereinafter set forth, Lender, Landlord and Tenant, as Tenant, hereby covenant and agree as follows:

1. Non-Disturbance. So long as no default exists nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Sublease) as would entitle the Landlord, as "Landlord" under the Sublease to terminate the Sublease or would cause, without any further action on the part of Landlord, the termination of the Sublease or would entitle such Landlord to dispossess the Tenant thereunder, the Sublease shall not be terminated, nor shall Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Sublease be affected in any other manner, by any exercise of the power of sale contained in the Mortgage, or by any judicial or non-judicial foreclosure, conveyance in lieu of foreclosure or any action or proceeding instituted under or in connection with the Mortgage or in case the Lender takes possession of the property described in the Mortgage pursuant to any provisions thereof, unless the Landlord under the Sublease would have had such right if the Mortgage had not been made; provided, that any such sale, foreclosure or taking of possession of the property shall be subject to the Sublease and its terms, including, without limitation, any and all pre-clearance first refusal rights contained therein (if any) as well as any and all extension and renewal rights. Said Sublease and its terms shall be binding upon the person or entity acquiring the interest of the Landlord under the Sublease as a result of any such action or proceeding and the successors and assigns thereof (said person or entity and its successors and assigns being hereinafter called the "Purchaser"), except that the Purchaser shall not be: (a) liable for any act or omission of any prior Landlord under the Sublease (except to the extent, if any, that the same constitutes a continuing dispute thereunder, and then only to the extent that such dispute occurs after the Purchaser has become the Landlord); or (b) subject to any offsets or defenses which the Tenant under the Sublease might have against any prior Landlord under the Sublease (except to the extent that the same accrue or arise after Lender becomes a mortgagee-in-possession or the Mortgagee or Purchaser becomes the Landlord under the Sublease); or (c) bound by any base rent, or any other rental or other payments which the Tenant under the Sublease might have paid for more than the current month (i.e. as of the month such party becomes the Landlord) to any prior Landlord under the Sublease.

2. Attornment and Recognition. If the interests of the Landlord under the Sublease shall be transferred by reason of the exercise of the power of sale or any other provision contained in the Mortgage, or by any foreclosure or other proceeding for enforcement of the Mortgage, (a) the Tenant thereunder shall be bound to the Purchaser under all of the terms, covenants and conditions of the Sublease for the balance of the term thereof and any extensions of renewals thereof which may be effected in accordance with any option therefor in the Sublease, with the same force and effect as if the Purchaser were the original Landlord under the Sublease, (b) Tenant, as Tenant under the Sublease, does hereby attorn to the Purchaser, including the Lender if it be the Purchaser, as its Landlord under the Sublease, and (c) Purchaser, including without limitation Lender if it be the Purchaser, does hereby recognize the Sublease and the rights, title and interest of Tenant thereunder. Said attornment and recognition shall be effective and self-operative without the execution of any further instruments by Tenant or by Purchaser, upon receipt by Tenant of written notice of the succession by Purchaser to the

interest of the Landlord under the Sublease. The respective rights and obligations of Purchaser and of the Tenant under the Sublease upon such attornment and recognition, to the extent of the then remaining balance of the term of the Sublease and any such extensions and renewals, shall be and are the same as now set forth in the Sublease, except as otherwise expressly provided herein. Purchaser, including without limitation Lender if it be the Purchaser, Landlord and Tenant hereby agree that Tenant shall commence payment of rent under the Sublease to Purchaser upon receipt by Tenant of a written demand therefor, which demand shall include a current payment address for Purchaser. Upon commencement of such rental payments to Purchaser, Tenant shall have no further liability to Landlord for any rental due under the Sublease arising after the date upon which Tenant receives Purchaser's written demand.

3 Subordination. Subject to the terms and conditions of this Agreement, (a) Tenant hereby subordinates all of its right, title and interest, as Tenant under the Sublease, to the right, title and interest of the Lender under the Mortgage, and (b) Tenant hereby agrees that the Sublease now is and shall at all times continue to be subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage.

4. Assignment of Rents; Notice to Tenant. Tenant acknowledges that Landlord has or will have, as part of its loan transaction with Lender, assigned the Sublease to Lender and that Lender has, or will have, a license to collect the rent due thereunder. Tenant agrees that anytime it receives written notice from Lender requesting that the rent and all other sums due Landlord under the Sublease be paid to Lender or its designees, that, provided such notice includes remittance instructions and a completed W-9 form, Tenant hereby agrees to honor such request and will within thirty (30) days after receipt of such written notice, pay such sum directly to Lender or its designee without legal process or the necessity of proof of Landlord's default under the Loan Documents, and Landlord irrevocably consents to Tenant's reliance on such notice from Lender and shall hold Tenant harmless for performance thereunder. Such payment by Tenant will continue until the first to occur of the following: (a) the Sublease expires pursuant to its terms and no further amounts are payable by Tenant thereunder; (b) Lender gives Tenant written notice that the rents and other payments are to be paid to Landlord; or (c) Lender gives Tenant written notice that a purchaser has succeeded to the interests of Landlord and Lender under the Sublease, after which time the rent and all other sums due under the Sublease will be paid as directed by such purchaser. Payment of rents to Lender as provided for hereunder shall not be deemed to: (i) cause Lender to succeed to or to assume any obligations or responsibilities of Landlord under the Sublease or, (ii) relieve Landlord of any obligations under the Sublease.

5. Use of Insurance or Condemnation Proceeds. Lender hereby covenants and agrees that any and all insurance proceeds payable under those policies of insurance maintained pursuant to the Sublease and arising by reason of destruction or damage of the Premises, or any condemnation award acquired by Lender as a result of the condemnation of all or any part of the Premises, shall be used for restoration and repair to the extent required by the Sublease, and shall otherwise be used and applied in accordance with and subject to the terms and conditions of the Sublease.

6. Notices. Tenant agrees to give written notice to Lender (and to any successor in interest to Lender of which Tenant has been notified in writing) of any default of the Landlord under the Sublease if such default is of such a nature as to give Tenant a right to terminate the Sublease. Lender shall have the option, in Lender's sole discretion, to elect to cure any such default for or on behalf of Landlord, and Tenant shall permit Lender or its designees to cure such default within the greater of (a) such time as Landlord is permitted to cure under the Sublease, or (b) thirty (30) days from Lender's receipt of such notice. No termination of the Sublease by Tenant related to any default of Landlord shall be effective so long as Lender elects to cure such default within such time period and thereafter diligently pursues such cure to completion. Notices hereunder shall be delivered to the parties at the addresses set forth above, or

to such other address as may be designated by written notice from time to time.

7. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

9. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Purchaser, Landlord and Tenant, and upon such parties.

10. Miscellaneous. Notwithstanding anything contained herein to the contrary, this Agreement is conditioned and contingent upon Tenant's receipt of a fully executed original of this Agreement.

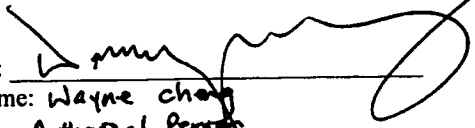
11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts.

*[[Signatures Follow on Next Pages]]*

IN WITNESS WHEREOF, the Landlord, Tenant and Lender have executed this Agreement as of the date first written above.

**LANDLORD:**

**PACIFIC CASTLE CANYON CENTER, LLC**

By:   
Name: Wayne Cheng  
Its: Authorized Person

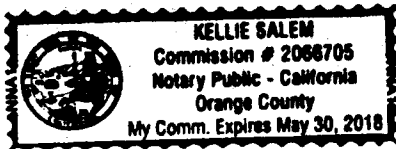
(SEAL)

State of California  
County Orange

On this 3<sup>rd</sup> day of November, 2015, personally appeared before me Wayne Cheng, who being by me duly sworn (or affirmed), did say that he/she is the \_\_\_\_\_ (or other officer or agent) of **PACIFIC CASTLE CANYON CENTER, LLC**, and that said instrument was signed on behalf of said company by authority of its bylaws (or of a resolution of its board of directors, as the case may be) and said officer, acknowledged to me that said corporation executed the same.

Kellie Salem, Notary Public  
Notary Public

Kellie Salem  
Printed Name of Notary  
My Commission Expires: 5-30-18



[[Signatures Continue on Next Pages]]

[[Signatures Continued from Previous Page]]

**TENANT:**

**WENDY'S OLD FASHIONED HAMBURGERS OF  
NEW YORK, LLC**

By: [Signature]  
Name: **Kris A. Kaffenbarger**  
Its: **VP - Franchise Development**

(CORPORATE SEAL)



State of Ohio  
County of Franklin

On this 16th day of October, 2015, personally appeared before me  
Kris A. Kaffenbarger, who being by me duly sworn (or affirmed), did say  
that he/she is the VP - Franchise Development (or other officer or agent) of **WENDY'S OLD  
FASHIONED HAMBURGERS OF NEW YORK, LLC**, and that said instrument was signed on  
behalf of said company by authority of its bylaws (or of a resolution of its board of directors, as the case  
may be) and said officer, acknowledged to me that said corporation executed the same.

[Signature]  
Notary Public



**KELLY J SMITH**  
Notary Public, State of Ohio  
My Commission Expires 12-19-2016

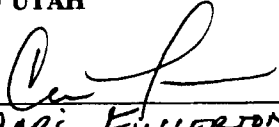
**Kelly J. Smith**  
Printed Name of Notary  
My Commission Expires: 12/19/16

[[Signatures Continue on Next Page]]

[[Signatures Continued from Previous Page]]

**LENDER:**

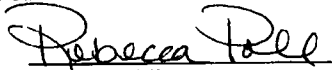
**BANK OF UTAH**

By:   
Name: CARI FULLERTON  
Its: SVP

(SEAL)

State of Utah  
County Weber

On this 28 day of April, 2018, personally appeared before me Cari Fullerton, who being by me duly sworn (or affirmed), did say that he/she is the Senior Vice President (or other officer or agent) of **BANK OF UTAH**, and that said instrument was signed on behalf of said bank by authority of its bylaws (or of a resolution of its board of directors, as the case may be) and said Cari Fullerton, acknowledged to me that said corporation executed the same.

  
Notary Public

Rebecca Poll  
Printed Name of Notary  
My Commission Expires: 12/13/19

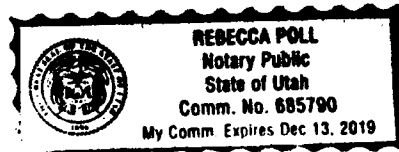


EXHIBIT A

LEGAL DESCRIPTION - PREMISES

PARCEL 1

Beginning at a point located North 89°56'00" East long the Section line 142 32 feet and North 0°21'28" East 81 77 feet from the Southwest Corner of Section 3, Township 3 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°21'28" East 204 09 feet, thence North 89°56'00" East 138 05 feet, thence South 0°21'28" West 204 09 feet, thence South 89°56'00" West 138 05 feet to the point of beginning

PARCEL 2

An access easement for the purpose of ingress and egress, as defined by an Unrecorded SubLease, dated July 22, 2003, and disclosed of record by Memorandum or Sublease dated August 25, 2003, and recorded August 25, 2003, as Entry No 8788745, in Book 8869, at Page 4715, of the Official Records, over the following described parcel

Beginning at a point on the Easterly right of way line of 2000 East Street, said point being located North 0°21'28" East 290 25 feet and North 89°56'00" East 122 44 feet from the Southwest Corner of Section 3, Township 3 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°21'28" East along said right of way line 30 42 feet, thence North 89°56'00" East 70 91 feet, thence South 0°21'28" West 34 00 feet to a point on the North line of Parcel 1, thence South 89°56'00" West along said North line 31 52 feet, thence North 0°21'28" East 4 38 feet, thence South 89°56'00" West 39 39 feet to the point of beginning

PARCEL 3

An access easement for the purpose of ingress and egress, as defined by an Unrecorded SubLease, dated July 22, 2003, and disclosed of record by Memorandum or Sublease dated August 25, 2003, and recorded August 25, 2003, as Entry No 8788745, in Book 8869, at Page 4715, of the Official Records, over the following described parcel

Beginning at a point North 89°56'00" East 280 37 feet and North 0°21'28" East 81 77 feet from the Southwest Corner of Section 3, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°21'28" East 25 75 feet, thence North 89°56'00" East 118 03 feet, thence South 0°21'28" West 54 52 feet to the North right of way line, thence South 89°56'00" West along said right of way line 40 60 feet, thence North 0°21'28" East 28 77 feet, thence South 89°56'00" West 77 43 feet to the point of beginning

*The following is shown for informational purposes only Part of Tax Sidwell No 28-03-351-029*