

2009 060124

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MICHAEL A. BROWN
RECORDER

Prepared By and After Recording

Mail to:

Chicago Title Insurance Company
171 N. Clark Street, ML03ND
Chicago, IL 60601
Attn: Courtney McLean

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

620093351CM

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**"), is made and entered into as of the 19 day of August, 2009, by and between WENDY'S INTERNATIONAL, INC., an Ohio corporation ("**Tenant**"), H.I.P., L.L.C., an Illinois limited liability corporation ("**Landlord**"), and TCF NATIONAL BANK, a national banking association (hereinafter called the "**Lender**").

This Document is the property of
the Lake County Recorder!

WITNESSETH:

WHEREAS, Lender has made a loan to Landlord (the "**Loan**") secured by that certain Commercial Mortgage, Assignment of Rents, Security Agreement and Financing Statement, dated June 26, 2009, recorded on July 9, 2009 as document number 2009-046594 in the Lake County, Indiana Recorder's Office (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 Lease (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 Shopping Center Lease originally by and between Calumet-Dyer, L.L.C., an Indiana limited liability company ("CDL") and Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation ("WOFHONY"), dated as of December 31, 2001, evidenced by that certain Memorandum of Lease by and between CDL and WOFHONY, dated December 31, 2001, recorded May 24, 2002 in the Official Public Records of Lake County, Indiana, as Instrument No. 2002-048433, as assigned from WOFHONY to Tenant pursuant to that certain Assignment and Assumption Agreement, dated February 8, 2002, as amended by that First Amendment to Shopping Center Lease dated March 14, 2002, by and between CDL and Tenant, as further amended by that certain Amendment to Lease dated May xx, 2002, and as assigned from CDL to Landlord pursuant to

Wendy's unit 8950
Dyer, IN

Handwritten initials: "d" and "26"

CHIGAGO TITLE INSURANCE COMPANY

that certain Assignment of Lease dated October 10, 2002 (as the same may have been modified and amended as of the date hereof, collectively, the "**Lease**"), pertaining to the leasing by Landlord, as "Landlord", to Tenant, as "Tenant" of the Premises, and which Lease is subject to the condition that this Agreement be executed and delivered by and among the parties hereto; and such Lease 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 Lease and agrees not to disturb same or Tenant's peaceful possession and quiet enjoyment of the Premises pursuant to the Lease, 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 Lease) as would entitle the Landlord, as "Landlord" under the Lease to terminate the Lease or would cause, without any further action on the part of Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant thereunder, the Lease shall not be terminated, nor shall the Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Lease 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 Lease 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 Lease 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 Lease and its terms shall be binding upon the person or entity acquiring the interest of the Landlord under the Lease 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 Lease (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 Lease might have against any prior Landlord under the Lease (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 Lease); or (c) bound by any base rent, or any other rental or other payments which the Tenant under the Lease 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 Lease.

2. Attornment and Recognition. If the interests of the Landlord under the Lease 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 Lease for the balance of the term thereof and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the original Landlord under the Lease, (b) Tenant, as Tenant under the Lease, does hereby attorn to the Purchaser, including the Lender if it be the Purchaser, as its Landlord under the Lease, and (c) Purchaser, including without limitation Lender if it be the Purchaser, does hereby recognize the Lease 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 Lease. The respective rights and obligations of Purchaser and of the Tenant under the Lease upon such attornment and recognition, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth in the Lease, 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 Lease 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 Lease 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 Lease, to the right, title and interest of the Lender under the Mortgage, and (b) Tenant hereby agrees that the Lease 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 Lease 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 Lease 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 Lease 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 Lease, after which time the rent and all other sums due under the Lease 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 Lease or, (ii) relieve Landlord of any obligations under the Lease.

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 Lease 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 Lease, and shall otherwise be used and applied in accordance with and subject to the terms and conditions of the Lease.

6. Notice of Default by Landlord. Tenant, as Tenant under the Lease, and Landlord, as Landlord under the Lease, each hereby covenants and agrees to give Lender written notice properly specifying wherein the other party under the Lease has failed to perform any of the covenants or obligations of such party under the Lease simultaneously with the giving of any notice of such default to

such party under the provisions of the Lease. Such notices to Lender shall be delivered to:

TCF National Bank,
its successors and/or assigns
1400 W. Fullerton 2nd Floor
Chicago, IL 60014
Attn.: Michael Chin

or to such other address as the Lender shall have designated to Tenant by giving written notice to Tenant at the following notice address for Tenant: 1155 Perimeter Center West, Suite 1200, Atlanta, Georgia, Attn.: Melissa Nuss, Senior Director, Lease Management, with a copy to such address and Attn.: General Counsel, or to such other address as may be designated by written notice from Tenant to Lender, and as the Lender shall have designated by giving written notice to Landlord at the following notice address for Landlord: H.I.P., L.L.C., 8901 Oleander Avenue, Morton Grove, IL 60053, or to such other notice as may be designated by written notice from Landlord to Lender.

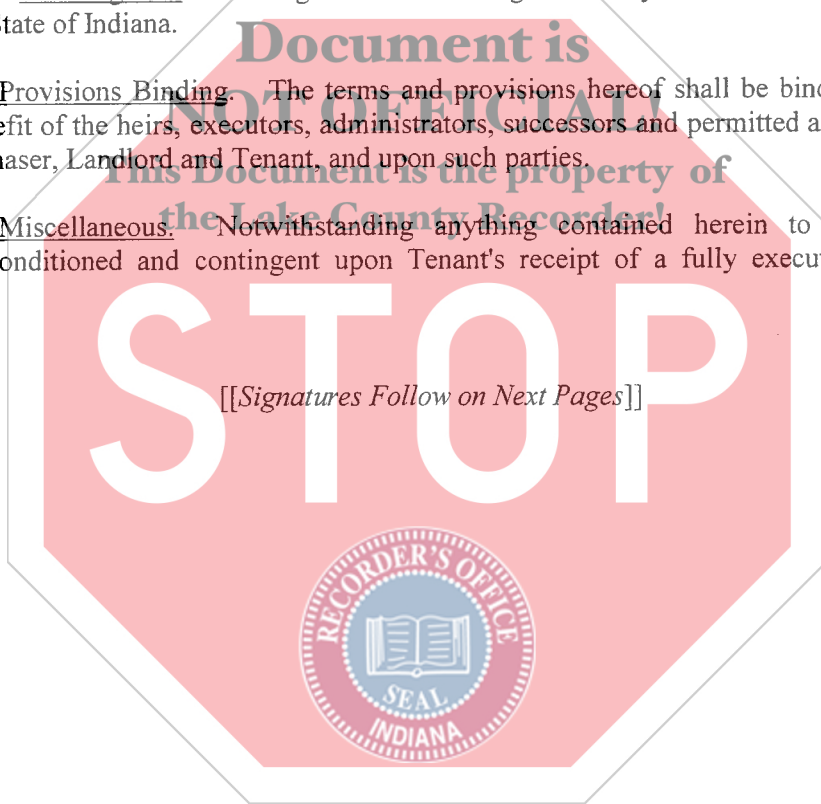
7. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

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.

[[Signatures Follow on Next Pages]]



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

WITNESSES:

LANDLORD:

Peter J. Lampari
Print Name: PETER J. LAMPERIS

H.I.P., L.L.C.,
an Illinois limited liability corporation
By: Chris Nicholopoulos
Name: Chris Nicholopoulos
Its: Manager

(SEAL)

State of ILLINOIS
County COOK

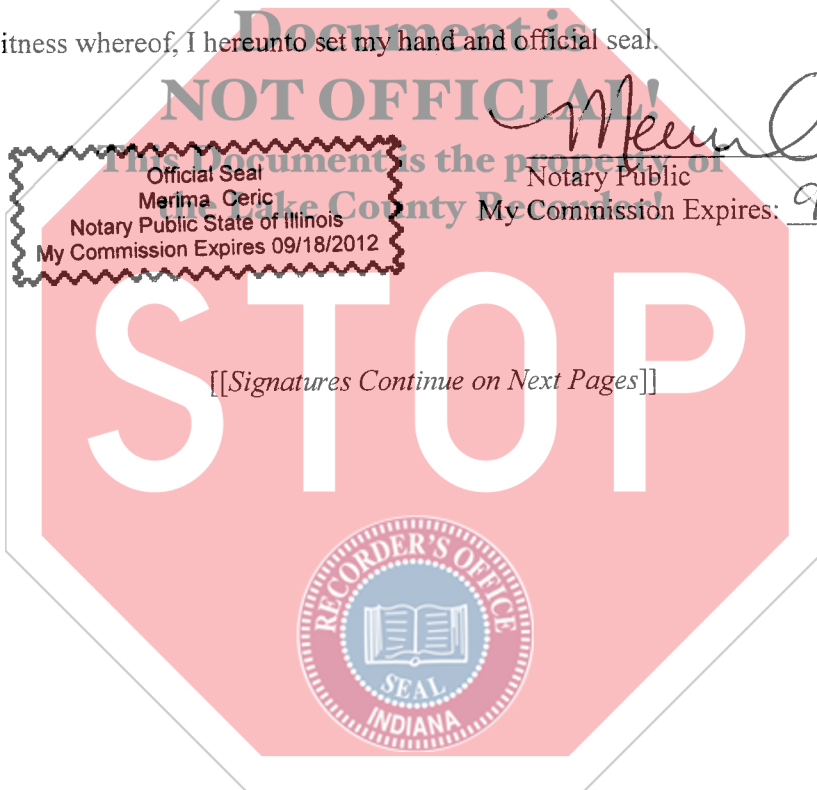
Before me Merima Ceric this 19th day of Aug 2009,
Chris Nicholopoulos the manager of HIP, L.L.C
a ILLINOIS LLC acknowledged the execution of the foregoing instrument.

In witness whereof, I hereunto set my hand and official seal.



Merima Ceric
Notary Public
My Commission Expires: 9/18/2012


[[Signatures Continue on Next Pages]]

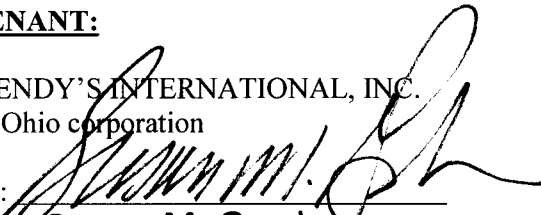


[[Signatures Continued from Previous Page]]

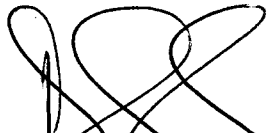
TENANT:

WENDY'S INTERNATIONAL, INC.
an Ohio corporation


Print Name: SARA SLEZAK

By: 
Name: Susan M. Gordon
Its: VP and Legal Counsel

(CORPORATE SEAL)


Print Name: SARA SLEZAK

By: 
Name: Daniel T. Collins
Its: Senior Vice President

(CORPORATE SEAL)

State of GA
County DEKALB

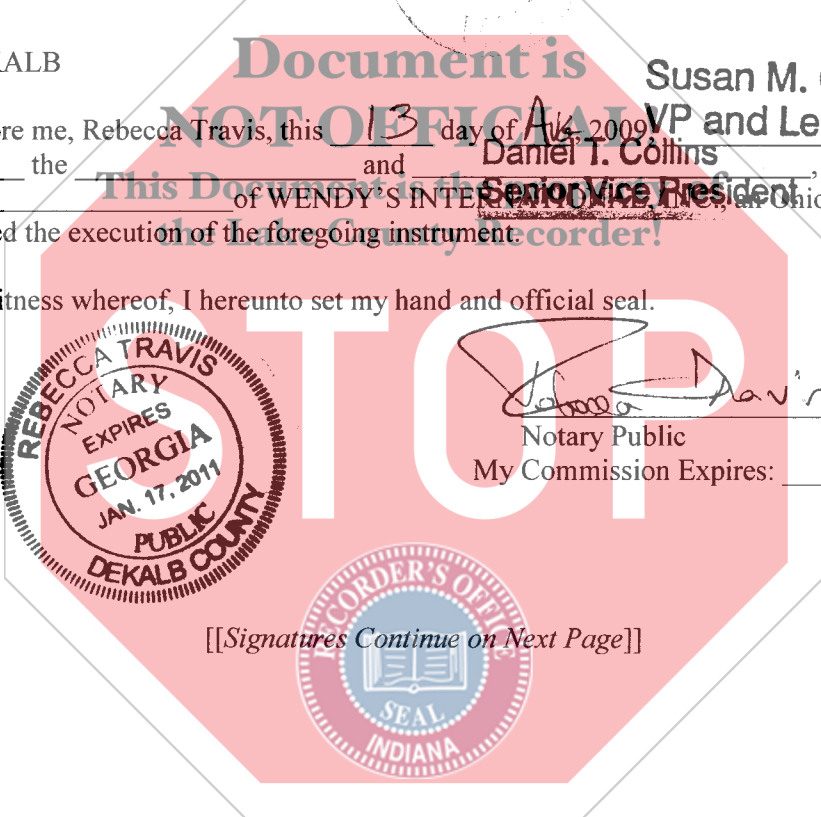
Before me, Rebecca Travis, this 13 day of Aug, 2009, Susan M. Gordon VP and Legal Counsel
the Daniel T. Collins, the Senior Vice President
of WENDY'S INTERNATIONAL, INC., an Ohio corporation,
acknowledged the execution of the foregoing instrument.

In witness whereof, I hereunto set my hand and official seal.




Notary Public
My Commission Expires: _____

[[Signatures Continue on Next Page]]





[[Signatures Continued from Previous Page]]

LENDER:

TCF NATIONAL BANK
a National Banking Association

Michael Chin
Print Name:

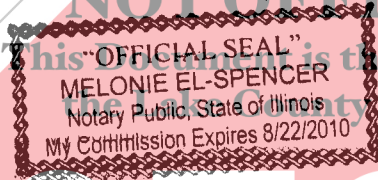
By: [Signature]
Name: Michael Chin
Its: Senior Vice-President

(SEAL)

State of Illinois
County Cook

Before me Michael Chin, SNP this 19th day of August, 2009,
Senior Vice President the TCF BANK of _____
a _____ acknowledged the execution of the foregoing instrument.

In witness whereof, I hereunto set my hand and official seal.



[Signature]
Notary Public
My Commission Expires: 8-22-2010

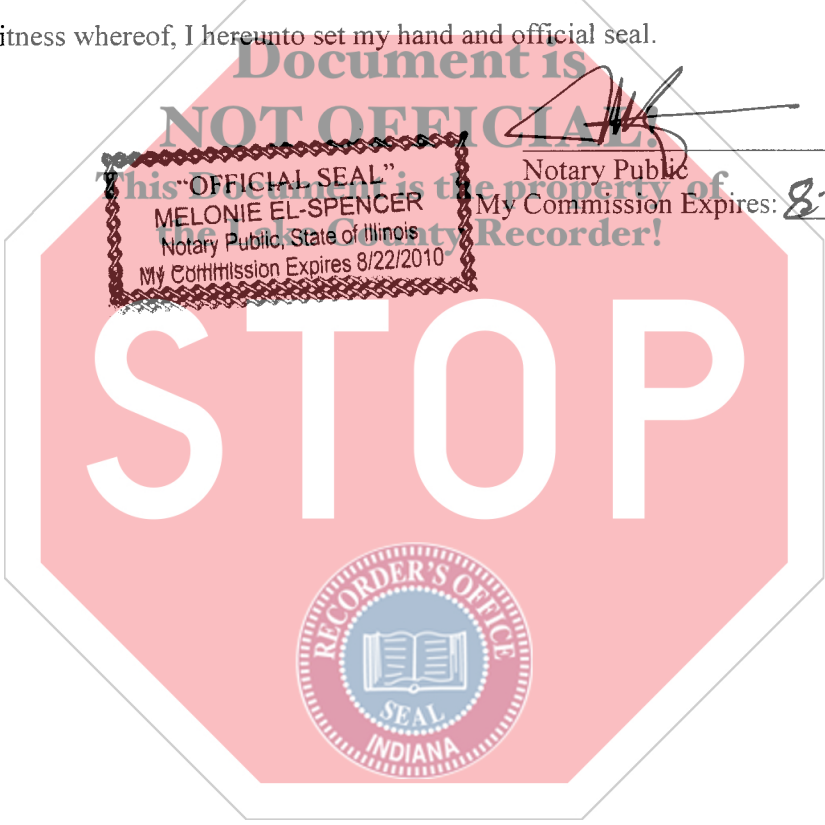


EXHIBIT A
TO
COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND
FINANCING STATEMENT
DATED AS OF JUNE 26, 2009 BETWEEN
H.I.P., L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY
AND
TCF NATIONAL BANK

LEGAL DESCRIPTION

LOT 2 IN CHECKER COMMERCIAL PARK RESUBDIVISION OF LOTS 1 AND 2, AN ADDITION TO THE TOWN OF DYER, LAKE COUNTY, INDIANA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 91, PAGE 54, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

Commonly known as: 790 Joliet Street, Dyer, Indiana 46311

P.I.N.: 45-11-18-102-002.000-034

PREPARED BY AND AFTER RECORDING MAIL TO:

TCF NATIONAL BANK
800 Burr Ridge Parkway 380-04-0
Burr Ridge, Illinois 60527
Attn: Commercial Lending Department

I affirm, under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law _____