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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 09/12/2019 12:09 PM PG: 1 OF 10

Prepared By:

After Recording  
Return to:

Megan K. Roberts, Esq.  
The Wendy's Company  
4288 W. Dublin-Granville Road  
Dublin, OH 43017

CEHI1903652LD  
DG 6066

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "**Agreement**"), is made and entered into as of the 10 day of September, 2019, by and between **WENDY'S PROPERTIES, LLC**, a Delaware limited liability company, having an address c/o The Wendy's Company, One Dave Thomas Boulevard, Dublin, OH 43017, Attn: Lease Management (Unit #10420, IL) ("**Tenant**"), **GOOD KOZ, LLC**, a California limited liability company, having an address of 33 Edelman, Irvine, CA 92688 ("**Landlord**"), and **PARTNERS BANK OF CALIFORNIA**, a California, having an address of 27201 Puerto Real, Ste. 160, Mission Viejo, CA 92691 ("**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 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 the current parties to that certain Lease dated August 10, 2015, evidenced by that certain Memorandum of Lease recorded September 20, 2016 as Document No. 1626422074, Cook County, Illinois records (as the same may have been modified and amended as of the

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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 of 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

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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. 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 Lease if such default is of such a nature as to give Tenant a right to terminate the Lease. 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 Lease, or (b) thirty (30) days from Lender's receipt of such notice. No termination of the Lease 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 below, or to such other address as may be designated by written notice from time to time.

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To Tenant: Wendy's Properties, LLC  
c/o The Wendy's Company  
One Dave Thomas Blvd.  
Dublin, Ohio 43017  
Attn: Property Management (Unit #10420, IL)

To Landlord: Good Koz, LLC  
32 Edelman  
Irvine, CA 92688  
\_\_\_\_\_  
\_\_\_\_\_

To Lender: Partners Bank of California  
27201 Puerta Real, Ste. 160  
Mission Viejo, CA 92691  
Attn: \_\_\_\_\_

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.

[[Signatures Follow on Next Pages]]

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

**WITNESSES:**

Signed, sealed and delivered  
in the presence of:

**LANDLORD:**

**GOOD KOZ, LLC**, a California limited  
liability company

By: [Signature]

Print Name: Karim Boukai  
Title: Manager

Witness:  
[Signature]  
Print Name: Jason Ben

Print Name: \_\_\_\_\_

[Signature]

Omar Boukai  
Manager

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to be the \_\_\_\_\_ of Good Koz, LLC, a California limited liability company, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

(NOTARY SEAL)

[[Signatures Continue on Next Pages]]

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[[Signatures Continued from Previous Page]]

**TENANT:**

**WENDY'S PROPERTIES, LLC,**  
a Delaware limited liability company

Signed, sealed and delivered  
in the presence of:

Witness:

[Signature]  
Print Name: Rob J. Smith

[Signature]  
Print Name: Candace S. Mertz

By: [Signature]

Print Name: Leigh A. Burnside  
Title: Chief Accounting Officer

Legal Approved: MR

STATE OF OHIO  
COUNTY OF FRANKLIN

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, Leigh A. Burnside, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to be the Chief Accounting Officer of **WENDY'S PROPERTIES, LLC**, a Delaware limited liability company, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

WITNESS my hand and official seal at office this 21st day August, 2019.

My Commission Expires:

5/22/2022

[Signature]  
Notary Public



(NOTARY SEAL)

[[Signatures Continue on Next Page]]

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[[Signatures Continued from Previous Page]]

Signed, sealed and delivered  
in the presence of:

Witness:

Becky Edson  
Print Name: Becky Edson

Print Name: \_\_\_\_\_

**LENDER:**

**PARTNERS BANK OF CALIFORNIA,**  
a \_\_\_\_\_

By: *BFH*

Print Name: Bradford C. Hoover  
Title: Executive Vice President

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

(NOTARY SEAL)

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## CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

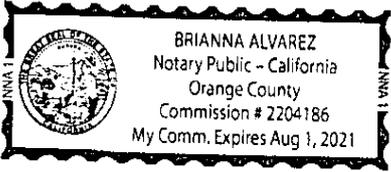
Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

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

State of California  
 County of Orange

Subscribed and sworn to (or affirmed) before me  
 on this 5<sup>th</sup> day of September, 2019,  
 by \_\_\_\_\_  
Date Month Year

(1) KARIM BOUKAI  
 (and (2) OMAR BOUKAI),  
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.

Signature \_\_\_\_\_  
Signature of Notary Public

*Seal*  
 Place Notary Seal Above

### OPTIONAL

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

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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## CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_

2 \_\_\_\_\_

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6 \_\_\_\_\_

Signature of Document Signer No. 1

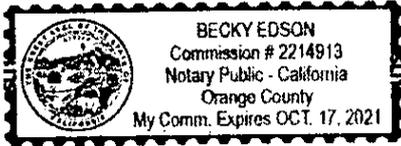
Signature of Document Signer No. 2 (if any)

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

State of California  
 County of Orange

Subscribed and sworn to (or affirmed) before me  
 on this 5<sup>th</sup> day of September, 2019,  
 by \_\_\_\_\_  
Date Month Year

(1) Bradford Hoover  
 \_\_\_\_\_  
 (and (2) \_\_\_\_\_),  
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.

Signature Becky Edson  
 \_\_\_\_\_  
Signature of Notary Public

Seal  
 Place Notary Seal Above

### OPTIONAL

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

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 4 IN PULASKI PROMENADE SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 3, LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE, IN TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 14, 2019 AS DOCUMENT 1916516052, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER:

19-03-201-004-0000

19-03-201-047-0000

ADDRESS: 4100 SOUTH PULASKI ROAD, CHICAGO, IL 60632

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