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DEPT-01 RECORDING 831.0  
10004 TRAM 1145 07/28/95 15:17:00  
47349 LF \* 95-494718  
COOK COUNTY RECORDER

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## AGREEMENT OF ATTORNMENT AND NON-DISTURBANCE

THIS AGREEMENT, made this 19th day of July, 1995, by and between LaSalle National Bank, a national banking association, ("Mortgagee"), and WENDY'S INTERNATIONAL, INC., an Ohio corporation ("Wendy's");

### WITNESSETH:

WHEREAS, Mortgagee is the owner and holder of, and the beneficiary under, that certain Mortgage or Deed of Trust (hereinafter collectively referred to as the "Mortgage") given by M & J Wilkow, Ltd., as agent for the beneficiary of American National Bank and Trust Company of Chicago, under Trust No. 1014430-01, Trustee, to secure the payment of certain indebtedness therein described, including a note in the principal amount of \$2,750,000.00, which Mortgage is dated July 21, 1995, recorded in Volume 1145, Page 15, Deed of Trust Records of Cook County, Illinois and which constitutes a mortgage lien on certain real property (hereinafter referred to as the "Mortgaged Premises"), in Cook County, Illinois, more fully described therein; and

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WHEREAS, Wendy's is the Lessee under a certain Lease Agreement (hereinafter referred to as the "Lease") dated December 28, 1984, with M & J Wilkow, Ltd., as agent for the beneficiary of American National Bank and Trust Company of Chicago, under Trust No. 101443-01 as Lessor, covering all or a part of the Mortgaged Premises and hereinafter referred to as the "Leased Premises", which Leased Premises are further described on the attached Exhibit A; and

WHEREAS, Wendy's and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Mortgagee and Wendy's hereby agree and covenant as follows:

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1. The Lease shall not be terminated, nor shall Wendy's use, possession or enjoyment of the Leased Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner, in any foreclosure or other action or proceeding instituted under or in connection with the Mortgage or in case Mortgagee takes possession of the Mortgaged Premises pursuant to any provisions of the Mortgage; provided, however, that if, at the time of, or at any time subsequent to, any such foreclosure action, a default exists and such default has continued to exist for such period of time (after notice to Wendy's as required by the Lease) that would entitle the Lessor under the Lease to terminate the Lease or would entitle such Lessor to dispossess Wendy's thereunder, any purchaser of the Leased Premises upon or after such foreclosure may exercise the rights of the Lessor, by reason of such default or event, to terminate the lease or to dispossess Wendy's thereunder; and further provided that, if such rights are not exercised, the Lease shall continue in full force and effect in accordance with its terms and Wendy's, in such event, agrees to recognize and attorn to the new owner pursuant to such foreclosure sale.

2. If the interests of the Lessor under the Lease shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by any other manner, and Mortgagee succeeds to the interest of the Lessor under the Lease, Wendy's shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Mortgagee were the Lessor under the Lease, and Wendy's does hereby attorn to Mortgagee as its Lessor, the said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of the Lessor under the Lease. The respective rights and obligations of Wendy's and Mortgagee under such attornment, 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 therein, except as herein otherwise expressly provided.

3. If Mortgagee shall succeed to the interest of the Lessor under the Lease, Mortgagee shall be bound to Wendy's under all of the terms, covenants and conditions of the Lease and, from and after Mortgagee's succession to the interest of the Lessor under the Lease, Wendy's shall have the same rights and remedies against Mortgagee for the enforcement of its rights thereunder and the breach of any agreement contained in the Lease that Wendy's might have had under the Lease against the Lessor thereunder if Mortgagee had not succeeded to the interest of such Lessor; provided, however, that Mortgagee shall not be:

- (a) liable for any act or omission of any prior or subsequent Lessor; or

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- (b) subject to any offsets or defenses which Wendy's might have against any prior Lessor; or
- (c) bound by any rent or additional rent which Wendy's might have paid for more than thirty-one (31) days in advance to any prior Lessor; or
- (d) bound by any amendment or modification of the Lease made without Mortgagee's prior written consent.

4. Mortgagee agrees that in the event of damage or destruction of the Leased Premises leased by Wendy's pursuant to the Lease, Wendy's shall be entitled to all insurance proceeds to which it would be entitled under the Lease regardless of any provision of the Mortgage to the contrary, provided that Wendy's shall repair or restore the Leased Premises following any casualty in accordance with the terms of the Lease. Mortgagee further agrees that in the event of condemnation or appropriation of any portion of the Leased Premises pursuant to the Lease, Wendy's rights to any part of the appropriation award shall be based upon the terms of the Lease regardless of any provision of the Mortgage to the contrary, provided that Wendy's shall restore the Leased Premises following any condemnation or appropriation in accordance with the terms of the Lease.

5. Except as otherwise expressly set forth herein, 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, and/or replacements of the Mortgage, and to any present or future mortgage or mortgages which may now or hereafter affect the Leased Premises, but any and all such renewals, modifications, increases, extensions, substitutions, and/or replacements, or any such other mortgage or mortgages, nevertheless shall be subject to and entitled to the benefits or the terms of this Agreement.

6. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

7. The Mortgagee shall not be bound by or liable for any security deposit which tenant may have paid to any prior Landlord unless such deposit has been made available to the Mortgagee.

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EXECUTED as of the day and year first above written.

Mortgagee:

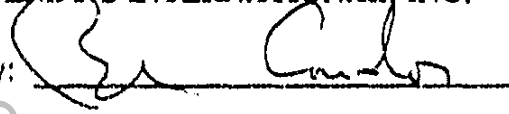
LaSALLE NATIONAL BANK,  
a national banking association

By:   
Vice President

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

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

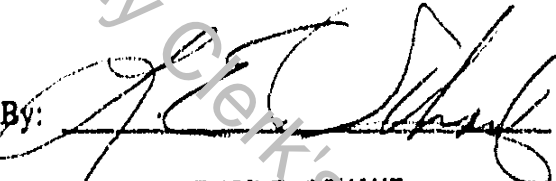
WENDY'S INTERNATIONAL, INC.

By:   
GEORGE CONDOS  
Executive Vice President

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

Title: \_\_\_\_\_

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

By: 

LAWRENCE E. SCHAUF  
Senior Vice President  
General Counsel & Secretary

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

Title: \_\_\_\_\_

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

LAW DEPARTMENT 

STATE OF Illinois  
COUNTY OF Cook, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 26<sup>th</sup> day of July, 1995, before me personally appeared David M. Ritchon, the Vice President of LaSalle National Bank, a national banking association, who was known to me as the person and officer described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledged that he held the position or title set forth in the instrument and

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certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



*Rae Rivero*  
\_\_\_\_\_  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 19<sup>th</sup> day of July, 1995, before me personally appeared GEORGE CONDOS and LAWRENCE E. SCHÄUF, the Executive Vice President and Senior Vice President, the General Counsel & Secretary

and \_\_\_\_\_ respectively, of **WENDY'S INTERNATIONAL, INC.**, an Ohio corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledge that they held the positions or titles set forth in the instrument and certificate, that they signed the instrument on behalf of the corporation by proper authority, and that the instrument was the act of the corporation for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

*Ronda K. Megger*  
\_\_\_\_\_  
Notary Public

(SEAL)

This instrument prepared by:  
Lori A. Black, Attorney at Law  
Wendy's International, Inc.  
4288 West Dublin-Granville Road  
Dublin, Ohio 43017



RONDA K. MEGGER  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES APRIL 29, 1998

After recording, return to:

Schwartz, Cooper, Greenberger & Krauss  
180 N. LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Jerrold M. Peven, Esq.

BOX 15

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## EXHIBIT A

### Legal Description of Real Estate

#### Parcel 1:

Lots 5 through 24, both inclusive, in Block 9 in Cochran's Third Addition to Edgewater in the East 1/2 of the Northwest 1/4 of Section 8, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax Number: 14-08-121-030 Volume: 477  
(affects Lots 5 through 10, both inclusive)

14-08-121-022  
(affects Lots 11 and 12)

14-08-121-023  
(affects Lot 13)

14-08-121-024  
(affects Lot 14)

14-08-121-025  
(affects Lots 15 and 16)

14-08-121-026  
(affects Lots 17, 18 and 19)

14-08-121-027  
(affects Lots 20 through 24 both inclusive)

P/A 5300 N. BROADWAY  
CHICAGO, IL

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