

**EXHIBIT "E"**

(Form Prime Lease Non-Disturbance Agreement)

**NON-DISTURBANCE AGREEMENT  
 (PRIME LANDLORD)**

*August* THIS NON-DISTURBANCE AGREEMENT (the "Agreement") is made the 25<sup>th</sup> day of ~~May~~, 2003 between **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation whose mailing address is 1550 South Redwood Road, Salt Lake City, Utah 84104, hereinafter referred to as "**Prime Landlord**", **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, having an office at 4288 W. Dublin-Granville Road, Dublin, Ohio 43017, hereinafter referred to as "**Sublessee**" and **DEE'S, INC.**, a Utah corporation, whose mailing address is 777 East 2100 South, Salt Lake City, Utah 84106, hereinafter referred to as "**Sublessor**",

WHEREAS, Prime Landlord is the owner of real estate located in Sandy, Utah, more fully described on the attached Exhibit A which real estate (hereinafter the "**Leased Premises**") is subject to a certain lease (hereinafter referred to as the "**Prime Lease**") dated May \_\_, 2003, between Prime Landlord and Sublessor; and

WHEREAS, Sublessor and Sublessee have entered into a Sublease of said Leased Premises, a copy of which is attached hereto as Exhibit B and hereinafter referred to as the "**Sublease**"; and

WHEREAS, the parties hereto desire to assure Sublessee's possession of the Leased Premises to be sublet under the said Sublease upon the terms and conditions therein set forth, irrespective of any termination of the Prime Lease;

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties hereto hereby covenant and agree as follows:

1. Prime Landlord consents to the execution and delivery of the Sublease in the form annexed as Exhibit B. It is understood between the parties hereto that Exhibit B shall not be annexed hereto for purposes of recording this agreement. However, the legal description of the Leased Premises shall be annexed hereto for the purpose of recording the agreement.

2. The Sublease shall not be terminated, nor shall Sublessee's use, possession or enjoyment of the Leased Premises (as further described in the Sublease) be interfered with, nor shall the subleasehold estate granted by the Sublease be affected in any other manner, in any foreclosure or other action or proceeding instituted under or in connection with the Prime Lease or in the event Prime Landlord otherwise has a right to take possession of the Leased Premises pursuant to any provision of the Prime Lease; provided, however, that if, at the time of, or at any time subsequent to, any such foreclosure or forfeiture action, a default exists on the part of Sublessee and such default has continued to exist for such period of time (after written notice to Sublessee as required by the Sublease that would otherwise entitle Sublessor under the Sublease

to terminate the Sublease or would entitle Sublessor to dispossess Sublessee thereunder, Prime Landlord may exercise the rights of Sublessor, by reason of such default or event, to terminate the Sublease or to dispossess Sublessee thereunder; and further provided that, if such rights are not exercised, the Sublease shall continue in full force and effect in accordance with its terms and Sublessee in such event, agrees to recognize and attorn to Prime Landlord upon receipt of written notice from Prime Landlord instructing Sublessee to do so. Sublessor waives and releases any and all claims it may otherwise have against Sublessee for rental or other payments due and coming due after Sublessee's receipt of the written notice required herein to attorn to Prime Landlord. Prime Landlord covenants and agrees to indemnify, defend and hold Sublessee harmless for any claim made against Sublessee by Sublessor and arising from Sublessee's compliance with its attornment obligations hereunder .

3. If the current term of the Prime Lease, or any renewal thereof, shall terminate before the expiration of the term of the Sublease, as the Sublease may be renewed in accordance with the terms thereof, the Sublease, if then in existence, shall continue as a lease between Prime Landlord, as lessor, and Sublessee, as lessee, with the same force and effect as if Prime Landlord and Sublessee had entered into a lease as of the date of the termination of the Prime Lease, containing the same terms, covenants and conditions as those contained in the Sublease, including the rights of renewal and option to purchase thereof, for a term equal to the unexpired term of the Sublease. Notwithstanding the foregoing, it is understood and agreed that (a) Prime Landlord shall not be bound to any provision in the Sublease which creates obligations (on a proportionate basis, if appropriate) upon Sublessor which are greater than Prime Landlord's obligations under the Prime Lease, except as provided otherwise hereunder; (c) Prime Landlord shall not be obligated to pay for any construction work or fitting out of the Leased Premises; (d) Prime Landlord shall not be liable to a Sublessee for any security deposits paid by the Sublessee under the Sublease, unless Prime Landlord actually receives from Sublessee the amount of the security deposits; and (e) Prime Landlord shall not be bound by any amendment of the Sublease, unless such amendment is consistent with the terms and provisions of the Prime Lease and a copy of the amendment is given to Prime Landlord.

4. From and after such termination of the Prime Lease:

(A) Tenant will attorn to Prime Landlord, and Prime Landlord will accept such attornment.

(B) Prime Landlord will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Sublease for the recovery of rent, for the commission of any waste or for any cause of forfeiture which Sublessor had or would have had under the Sublease.

(C) From and after the time of such attornment, Sublessee shall have the same remedies against Prime Landlord for the breach of an agreement contained in the Sublease that Sublessor might have had against Prime Landlord if the Prime Lease had not been terminated, except that Prime Landlord shall not be (i) liable for prior default or any act or omission of Sublessor, (ii) subject to any prior claims, offsets or defenses which Sublessee might have

against Sublessor, or (iii) bound by any rent or additional rent which Sublessee might have paid more than thirty (30) days in advance to Sublessor.

5. Prime Landlord agrees that in the event of damage or destruction of the Leased Premises leased by Sublessee pursuant to the Sublease, Sublessee shall be entitled to all insurance proceeds to which Sublessor would be entitled under the Prime Lease. Prime Landlord further agrees that in the event of condemnation or appropriation of any portion of the Leased Premises, Sublessor's rights to any part of the appropriation award shall be based upon the terms of the Prime Lease.

6. The term "Prime Landlord" as used in this Agreement means only the owner for the time being of the aforementioned Leased Premises, so that in the event of any sale or other transfer of an interest therein, Prime Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Prime Landlord hereunder. The provisions of this Agreement, however, shall bind any subsequent owner of the Leased Premises.

7. Any notice or demand which under the terms of this Agreement must or may be given or made by the parties hereto shall be in writing and may be given or made by mailing the same by registered or certified mail addressed to the respective addresses hereinbefore given. Either party and its respective successors in interest taking the benefit of this Agreement may designate by notice in writing a new or other address to which such notice or demand shall thereafter be so given, made or mailed. Any notice given herein by mail shall be deemed delivered when deposited in the United States Mail, enclosed in a registered prepaid envelope addressed as hereinabove provided.

8. This Agreement shall apply to and inure to the benefit of and be binding upon the parties hereto and upon their respective assigns and successors in interest.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the day, and year first above written.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PRIME LANDLORD:

SMITH'S FOOD & DRUG CENTERS, INC., a  
Delaware corporation,

By: *H. O. J. Nielson*

By: \_\_\_\_\_

SUBLESSEE: **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**

~~WENDY'S INTERNATIONAL, INC.,~~ an Ohio corporation

Constance M. Chancellor

Constance M. Chancellor

Andrea M. McGeehan

ANDREA M. MCGEEHAN

By: R. E. Musick E.V.P.

Title: **RONALD E. MUSICK**  
Executive Vice President

By: [Signature]

Title: **LAWRENCE A. LAUDICK**  
Senior Vice President  
Assistant Secretary  
General Counsel

Legal Dept. [Signature]

SUBLESSOR:

DEE'S, INC., a Utah corporation

By: [Signature]

Title: President

By: \_\_\_\_\_

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


STATE OF UTAH  
COUNTY OF SALT LAKE CITY, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 11<sup>th</sup> day of AUGUST, 2001; before me personally appeared MICHAEL OLSEN, the PRESIDENT of DEE'S, INC., a Utah corporation, 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 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.

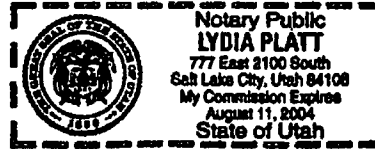
2003 LP

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

(SEAL)

  
\_\_\_\_\_  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

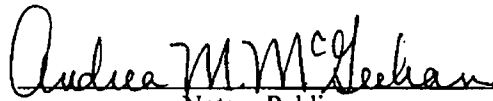


The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 13<sup>th</sup> day of August, 2003, before me personally appeared **RONALD E. MUSICK** and LAWRENCE A. LAUDICK, the Executive Vice President and Assistant Secretary respectively, of ~~WENDY'S INTERNATIONAL, INC.~~<sup>WNYM</sup> 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.



**ANDREA M. MCGEEHAN**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JAN. 24, 2006

  
\_\_\_\_\_  
Notary Public

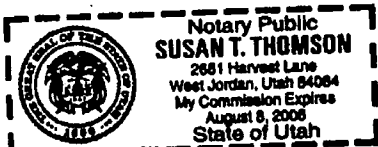
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**WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.** <sup>WNYM</sup>

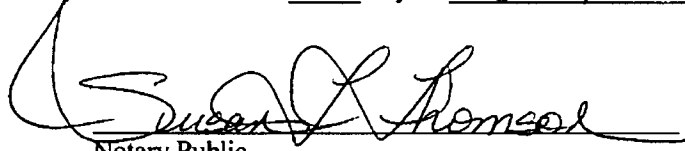
STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

Before me, the undersigned authority, on this day personally appeared H. DAVID NIELSON, VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 29<sup>th</sup> day of JULY, 2003.



My Commission Expires:  
8-8-06

  
Notary Public  
Resident of the State of Utah

**EXHIBIT "A"**  
(Legal Description for Leased Premises)

That certain real property located in Salt Lake County, State of Utah and more particularly described as follows:

**PARCEL NO. 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 NO. 2:**

An Access Easement, as more particularly described in Section 13.1 of the Lease over and across the following two Parcels:

**Parcel A:**

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 34.80 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 B:**

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.