

Wells Fargo Bank, N.A.
Middle Market Commercial Real Estate
125 High St., 15th Floor,
Boston, MA 02110

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10/31/2018 11:11:00 AM \$34.00
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ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 12 P.

023-5930301

16-06-151-016-0000

16-06-151-022-0000

16-06-151-015-0000

SUBORDINATION, NON-DISTURBANCE,

ATTORNMEN T AND ESTOPPEL AGREEMENT

(DEED OF TRUST)

THIS AGREEMENT is entered into as of 10/4/2018, by and between Carl's Jr. Restaurants LLC, a Delaware limited liability company, successor in interest to Carl's Karcher Enterprises INC. ("Tenant"), 200 SOUTH LLC, a Delaware limited liability company ("Landlord"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

A. Bank, or its predecessor in interest, has extended credit or may hereafter extend credit to 200 South LLC, a Delaware limited liability company ("Borrower"), secured, in whole or in part, by a deed of trust (the "Deed of Trust") covering that certain real property situated in Salt Lake City, Utah, with an address of 75 East 200 South, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Tenant leases all or a portion of the Property pursuant to a lease entered into between Landlord and Tenant, or between Landlord's and/or Tenant's assignors or predecessor(s) in interest, G such may have been amended, modified, restated, or otherwise assigned, transferred or sub-let, the "Lease"). It is a condition of Bank's agreement to extend or continue credit to Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of Tenant under the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. Tenant intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Tenant's right and interest to the Property thereunder, including without limitation, all rights under any option(s) to purchase or rights of first refusal or first offer with respect to the Property, to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Tenant acknowledges that Bank, in extending credit or continuing to extend credit to Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Tenant. Tenant acknowledges that it has and will continue to obtain such information with respect to any credit extended by Bank to Borrower, and all loan documents executed in connection therewith, as Tenant deems necessary in order to grant or provide this subordination. Tenant further agrees that Bank is under no obligation or duty to, nor has Bank represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease, and any applicable option(s) to purchase or right(s) of first refusal, to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease that provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination or Cancellation. Without Bank's prior written consent, which consent shall not be unreasonably withheld or delayed, Tenant shall not: (1) consent to any modification of the Lease entered into from and after the date of this Agreement that would (i) reduce the term of the Lease, (ii) reduce the rent payable or change the due dates thereunder, (iii) change any notice or cure period set forth therein or (iv) materially increase the obligations or responsibilities of Landlord thereunder; nor (2) consent to any voluntary termination or cancellation of the Lease; provided however, that the foregoing shall not prevent Tenant from terminating the Lease as a result of a provision in this Lease which specifically provides for such termination or cancellation including, without limitation, Landlord's and Tenant's right to terminate the Lease upon 180 days' notice to the other party as provided in the Second Amendment to Lease, or a default by Landlord thereunder that is not cured within such time periods after notice, as may be applicable thereto under the terms of the Lease and this Agreement.

(b) Notice of Default. Tenant shall notify Bank in writing concurrently with any notice given to Landlord of any breach of or default by Landlord under the Lease. Tenant agrees that Bank shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and Tenant shall not declare a default of the Lease, as to Bank, if Bank cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by Landlord; provided

however, that if such breach or default cannot with diligence be cured by Bank within such thirty (30) day period, the commencement of action by Bank within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Bank pursues such cure with diligence.

(c) No Advance Rents. Tenant shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Upon receipt by Tenant of written notice from Bank that Bank has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust, and directing Tenant to make payment thereof to Bank, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord or Borrower is in default under any obligations to Bank. Bank and Landlord acknowledge and agree that Tenant shall be entitled to rely solely upon the written demand given by Bank referred to herein. Landlord, by appending its signature below, acknowledges and agrees that Tenant shall be entitled to full credit under the Lease for any rents paid to Bank in accordance with the provisions hereof to the same extent as if such rents were paid directly to Landlord.

(e) Insurance and Condemnation Proceeds. In the event there is any conflict between the terms of the Deed of Trust and the Lease regarding the use of insurance proceeds or condemnation proceeds with respect to the Property, the provisions of the Lease shall control.

3. ATTORNNMENT. If Bank or any other transferee acquires Landlord's right, title and interest in and to the Property pursuant to a foreclosure of the Deed of Trust or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Landlord under the Lease, Tenant agrees as follows for the benefit of Bank or such transferee:

(a) Payment of Rent. Tenant shall pay to Bank or such transferee all rental payments required to be made by Tenant pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. Tenant shall be bound to Bank or such transferee in accordance with all of the terms of the Lease for the remaining term thereof, and Tenant hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Landlord's interest in the Lease and giving written notice thereof to Tenant.

(c) No Offset or Lender Liability; Acts and Omissions of Landlord. Neither Bank nor such transferee shall be liable for, or subject to, any offsets or defenses that Tenant may have by reason of any act or omission of Landlord as the prior landlord under the Lease, nor for the return of any sums which Tenant may have paid to Landlord as the prior landlord under the

Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Bank or such transferee, except that Tenant shall be entitled to exercise all remedies provided Tenant under the Lease with respect to continuing defaults thereunder resulting from the acts or omissions of Landlord, and arising after Bank has received notice of such defaults and has not cured the same after notice and the opportunity to do so, as set forth in the Lease and this Agreement. The foregoing shall not relieve Bank or such transferee from performing the obligations of a landlord under the Lease arising after Bank or such transferee acquires Landlord's right, title and interest in and to the Property.

(d) Subsequent Transfer. If Bank or such transferee, by succeeding to Landlord's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or such transferee of its interest as a lessor under the Lease, all of such obligations which shall accrue from and after the date of such transfer shall terminate as to Bank or such transferee.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Landlord under the Lease, so long as there shall then exist no breach, default or event of default by Tenant under the Lease: (a) the leasehold interest of Tenant shall not be extinguished or terminated by reason of such foreclosure; (b) the Lease shall continue in full force and effect; (c) Bank and its successors-in-interest shall recognize and accept Tenant as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement; and (d) Bank will not join Tenant as a party defendant in any action or foreclosure proceeding unless such joinder is required by law to foreclose, then only for such purpose and not for the purpose of terminating the Lease. Notwithstanding the foregoing, Tenant and Bank agree that any option to purchase or any right of first refusal with respect to the Property as may be provided in the Lease (if any) shall not be binding on the Bank but shall be binding on any subsequent Transferee of the Bank.

5. ESTOPPEL. Tenant acknowledges and represents and certifies to Bank as follows:

(a) Lease Effective. The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no amendments, modifications or additions to the Lease (written or oral), other than those expressly included in the Lease definition set forth above. The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights to the Property other than as set forth in the Lease.

(b) No Default. As of the date hereof and to the best of Tenant's knowledge, (i) there exists no breach of or default under the Lease, nor any condition, act or event that with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the terms of the Lease.

(c) No Prepaid Rent. No deposits or prepayments of rent have been made by Tenant in connection with the Lease, except as follows: **None.** insert "None" or the dollar amount of the prepaid rent, if any.

6. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower, Landlord or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including, subject to applicable law, reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether or not suit is brought, and if brought whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Tenant or any other person or entity.

(c) Notices. All notices, requests and demands that any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth herein, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Borrower; Landlord. If Borrower and Landlord are the same, each reference in this Agreement to Borrower or Landlord shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the

laws of Utah, without reference to the conflicts of law or choice of law principles thereof but giving effect to federal laws applicable to national banks.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the date first written above, and as applicable, with the intention that it constitute an instrument under seal.

TENANT:

CARL'S JR. RESTAURANTS LLC
a Delaware Limited Liability Company

By: 

Name: Kathy Steininger

Title: Vice President, Real Estate Asset
Management

LANDLORD:

200 SOUTH LLC,
a Delaware limited liability company

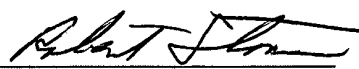
By: 

Edward B. R. Lewis

Manager

BANK:

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: 

Name: ROBERT STORER

Title: S.V.P.

ACKNOWLEDGMENT

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)

On September 25, 2018 before me, Kirk Daniel River
(insert name and title of the officer)

personally appeared Kathy Steininger,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)



State of _____)
)SS.

County of _____)

On _____, before me, the undersigned Notary Public, personally appeared _____, _____ of _____, a _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:

Notary Public

State of Utah)

)SS.

County of Summit)

On 10/3/18, before me, the undersigned Notary Public, personally appeared Edward B.R. Lewis, Manager of 200 South LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

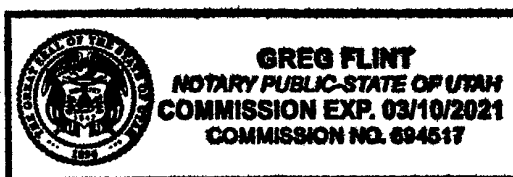
Greg Flint

Notary Public

My Commission Expires: 3/10/21

Notary Public

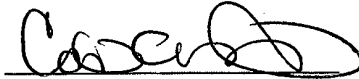
State of Utah)



State of MA)
)SS.
County of Suffolk)

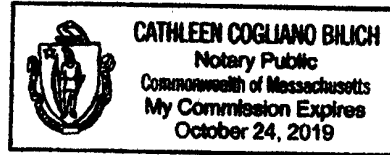
On 10-4-18, before me, the undersigned Notary Public, personally appeared Robert Steer, SVP of Wells Fargo Bank, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



My Commission Expires:

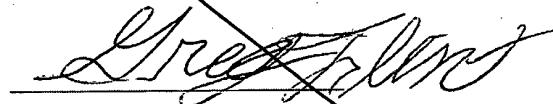
Notary Public



State of Utah)
)SS.
County of Summit)

On 10/3/18, before me, the undersigned Notary Public, personally appeared Edward B.R. Lewis, Manager of 200 South LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



My Commission Expires: 3/10/21 Notary Public

State of Utah)

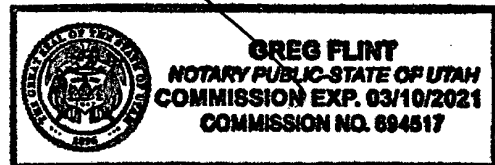


EXHIBIT 'A'

PARCEL 1: (SALT LAKE COUNTY)

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 70, PLAT "A", SALT LAKE CITY SURVEY; RUNNING THENCE WEST 140 FEET; THENCE NORTH 90.75 FEET; THENCE WEST 25 FEET; THENCE NORTH 41.25 FEET; THENCE EAST 165 FEET; THENCE SOUTH 132 FEET TO THE POINT OF BEGINNING.

PARCEL 2: (SALT LAKE COUNTY)

COMMENCING AT A POINT 132 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 1, BLOCK 70, PLAT "A", SALT LAKE CITY SURVEY; RUNNING THENCE WEST 165 FEET; THENCE NORTH 49 FEET; THENCE EAST 165 FEET; THENCE SOUTH 49 FEET TO THE POINT OF BEGINNING.

PARCEL 3: (SALT LAKE COUNTY)

COMMENCING AT A POINT 140 FEET WEST OF THE SOUTHEAST CORNER OF LOT 1, BLOCK 70, PLAT "A", SALT LAKE CITY SURVEY; RUNNING THENCE WEST 25 FEET; THENCE NORTH 90.75 FEET; THENCE EAST 25 FEET; THENCE SOUTH 90.75 FEET TO THE POINT OF BEGINNING.

A.P.N. 16-06-151-016-0000, 16-06-151-022-0000, 16-06-151-015-0000