

Loan No. 254-1683624-01-001

**WHEN RECORDED, RETURN TO:**

Zions First National Bank  
Real Estate Banking Group  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attn: Jeffrey A. Holt  
03-036-0115, 03-036-0116,  
03-036-0117, 03-036-0118

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN AGREEMENT AND ESTOPPEL CERTIFICATE  
(Carl's Jr. Lease)**

This Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate (the "Agreement") is made and executed as of the 12<sup>th</sup> day of November, 2013, by and among Zions First National Bank, a national banking association (the "Lender"), Bountiful Plaza Holdings, LLC, a Utah limited liability company (the "Landlord"), and Carl's Jr. Restaurants LLC, a Delaware Limited Liability Company, successor in interest to Carl Karcher Enterprises, Inc., (the "Tenant").

**RECITALS**

A. Tenant and Bel Air Sheet and Tube, a California limited partnership, as to an undivided 50.02% interest in the Property as defined below, Carl M. Buck Building Co., Profit Sharing Plan and Trust, as to an undivided 22.60% interest in the Property; 655 Deep Valley Investors, a California general partnership, as to an undivided 15.08% interest in the Property, ISCHUA, Inc. Retirement Trust, as to an undivided 4.1% interest in the Property, Frank Hamblen, as to an undivided 4.1% interest, and Gary F. Jones Racing Stables Inc., a California Corporation, as to an undivided 4.1% interest in the Property (collectively the "Original Landlord"), executed and entered into a Commercial Center Land and Building Lease dated September 25, 1997, and that certain Common Area Maintenance Agreement dated October 2, 1989, and that certain Memorandum of Lease dated September 24, 1997, and that certain Rent Commencement Date Memorandum dated April 7, 1998, and that certain Termination of Interim Sublease dated January 25, 1999, and that certain Amendment of Lease dated June 15, 1999; and all of Original Landlord's landlord interests in such agreements were subsequently assigned to 2DF No. 5, L.C., a Utah limited liability company ("2DF") under that certain Assignment and Assumption of Landlord's Interests Under Leases dated January 31, 2005, and that certain Lease Assignment and Assumption Agreement dated April 1, 2013, (all agreements referred to in this Recital A, (together with any and all amendments, modifications and extensions thereof are hereafter collectively referred to as the "Lease.")

LTC#52631-B

B. 2DF's landlord interests under the Lease were assigned to Landlord pursuant to that certain Assignment and Assumption of Leases dated August 28, 2013.

C. Under the terms of the Lease, Tenant has agreed to lease from Landlord and Landlord has agreed to lease to Tenant the real property described therein as the leased or demised premises, which leased or demised premises are located in Davis County, State of Utah, together with the improvements now or hereafter located on the leases or demised premises, and are more particularly described in Exhibit A attached hereto and incorporated into this Agreement by this reference ("Property").

D. On the condition that the Lease and all of Tenant's rights in the Property (the "Lease Rights") be subordinated as provided below, and that Tenant enter into this Agreement, Lender has agreed to make a construction loan (the "Loan") in the principal amount of Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000.00) to provide construction and term loan financing for Landlord. In connection with the Loan, Landlord has or will be executing a Construction and Term Loan Agreement (the "Loan Agreement"), a Promissory Note (the "Note"), a Construction and Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed"), an Assignment of Leases (the "Assignment of Leases"), and any and all other documents required by Lender to evidence and/or secure Landlord's obligations under the Loan and the Loan Documents.

#### AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord, and Tenant agree as follows:

**1. Estoppel Certificate.** Tenant and Landlord hereby certify to and agree with Lender that, as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant and Landlord as consideration for Lender executing this Agreement, and in the making of the Loan evidenced by the Note and secured by the Trust Deed, Assignment of Leases, and other collateral identified in the Loan Documents:

a. The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

b. All requirements for the commencement and validity of the Lease have been satisfied.

c. Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

d. There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.

e. None of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance.

f. Tenant has a right of first offer and a right of first refusal as set forth in Section 20 of the Lease to acquire the Property.

g. Lender shall not be bound by any modification or amendment to the Lease made after the date of this Agreement.

h. Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, as extended or modified, agrees to not assign or sublet any or all of its interest under the Lease, except as allowed under Section 4.1 of the Lease, without the prior written consent of Lender.

**2. Subordination to Loan Documents.** Notwithstanding anything in the Lease to the contrary, the Lease and Lease Rights are hereby made subject, subordinate, inferior, and junior to the Loan Documents and the liens created by the Loan Documents, and to all sums advanced on the security for the Loan Documents, including all sums advanced or costs incurred in connection with the Loan Documents or the Loan, and including all renewals, modifications, consolidations, replacements, and extensions of the Loan and any of the Loan Documents, including, without limitation, any increases in the principal amount of the Loan and changes in the interest rate of the Loan, and any future lien or liens affecting the Property held by or made for the benefit of Lender. The Lease and Lease Rights are hereby subordinated to the Loan Documents and the liens created by the Loan Documents, the same and as fully as if the Loan Documents had been executed and delivered, and recorded, where applicable, prior to execution, delivery, and recording of the Lease.

**3. Acknowledgement of Assignment of Rents.** Tenant agrees and acknowledges that it has notice, and notwithstanding anything to the contrary in the Lease hereby consents, that the Lease, the Lease Rights, the rents, and all other sums due under the Lease have been assigned or are to be assigned to Lender. Specifically, but without limitation, Tenant consents to the Assignment of Leases executed by Landlord to Lender. In the event that Lender notifies Tenant of a default under any of the Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.

**4. Notice and Opportunity to Cure.** Tenant agrees to deliver to Lender, within five (5) days of delivery to Landlord, a copy of all notices and other documents delivered to Landlord in connection with the Lease, specifically including, but without limitation, any notices of default or termination. If any default occurs under the Lease, Lender shall have the right for a period of thirty (30) days after receipt of notice of the default to cure such default. If the nature of the

default is such that it cannot reasonably be cured within such thirty (30) day period, then Lender shall have such longer period as is reasonably necessary to cure such default not in any event to exceed ninety (90) days after receipt of Notice of Default. No default shall be deemed to exist under the Lease so long as Lender is seeking, in good faith, to cure the default.

**5. Requirement of Non-Disturbance.** Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

**6. Non-Disturbance.** In the event of foreclosure of the Trust Deed, or upon a sale of the Property pursuant to the trustee's power of sale contained in the Trust Deed, or upon a transfer of the Property by conveyance in lieu of foreclosure (collectively, a "Transfer"), then so long as Tenant is not in default under any of the terms, covenants, or conditions of the Lease, Lender shall not name or join Tenant in any foreclosure proceeding, unless such joinder is necessary, in Lender's discretion, to complete the foreclosure, nor shall Lender disturb the possession of Tenant, its successors and assigns. In the event of a Transfer, Lender will perform and be bound by all of the obligations imposed on Landlord by the Lease for the balance of the term of the Lease, and any extension or renewals of the Lease, as long as no event of default has occurred under the Lease, which has continued to exist for such period of time, after notice and opportunity to cure, if any, required by the Lease, as would entitle Landlord under the Lease to terminate the Lease, or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant under the Lease.

**7. Attornment.** Upon the occurrence of a Transfer, Tenant hereby agrees to attorn to, adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, such attornment to be self-operative without the execution of any further instruments.

**8. No Liability for Lender.** Lender, or any successor owner of the Property resulting from a Transfer, shall not be (a) liable for any obligations under the Lease which arise or accrue prior to a Transfer except for any obligations or defaults which continue after a Transfer or which arise or accrue at any time after Lender ceases to be the owner of the Property; (b) liable for any damages or other relief attributable to any act or omission of a prior landlord, including Landlord; (c) liable for any damages or other relief attributable to any latent or patent defect in the Property; (d) liable for any damages or other relief attributable to any breach by any prior landlord, including Landlord, under the Lease or any representation or warranty made in connection with the Lease; (e) subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; (f) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord, including Landlord, for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord, including Landlord that is not paid over to or deposited with Lender; (g) bound by any modification of the Lease made without the prior written consent of Lender after the date of this Agreement; or (h) liable for any indirect or consequential damages, including loss of sublet rentals, loss of profits, or damage to goodwill or reputation.

Nothing in this Agreement is intended to constitute an agreement by Lender to perform any obligation of Landlord as landlord under the Lease prior to the time Lender obtains title to the Property by Transfer or otherwise obtains possession of the Property pursuant to the terms of the Loan Documents. Specifically, but without limitation, Lender shall have no obligations with respect to the erection or completion of any improvements on the Property, either at the commencement of the term of the Lease or upon any renewal or extension of the term of the Lease, or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations imposed upon Lender under this Agreement or under the Lease, and Lender is hereby released and relieved of any other obligations under this Agreement and the Lease.

**9. No Assignment or Subletting.** Except as allowed under Section 4.1 of the Lease, Tenant agrees not to assign or sublet the Leased Premises or the Property or any part of the Leased Premises or the Property, without the prior written consent of Lender and any attempt to do so without such consent shall be void as to Lender. Lender shall not be obligated to give its consent until, at least, Tenant has assigned the sublease to Lender, granted a lien on Tenant's interest in the Property to Lender as collateral for the Loan and all obligations of Landlord under the Loan Documents, and subtenant has executed and delivered to Lender a Subordination, Non-Disturbance Attornment Agreement and Estoppel Certificate acceptable to Lender.

**10. New Lease.** Upon the written request of Lender to Tenant after a Transfer, Tenant shall execute and deliver to Lender a lease of the Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such Transfer, plus any extension or renewal provided for in the Lease.

**11. Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and trustor under the Trust Deed, acknowledges and agrees for itself and its heirs, successors, and assigns agrees to each of the following:

a. This Agreement does not constitute a waiver by Lender of any of its rights under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, and/or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Trust Deed.

b. The provisions of the Trust Deed, Assignment of Leases, and all other Loan Documents remain in full force and effect and must be complied with by Landlord.

c. In the event of a default under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Loan Documents.

**12. Right to Sublease and Mortgage.** Notwithstanding anything to the contrary in the Lease, upon the occurrence of a Transfer, Tenant agrees that Lender, its successor or assign, or any purchaser at a foreclosure sale, may mortgage, lien, encumber, or otherwise transfer its interest in the Property or assign all of its or Landlord's rights in the Lease without the consent of Tenant.

**13. Memorandum of Lease.** If required by Lender, Tenant agrees to execute and cause to be recorded in the county recorder's office of the county in which the Property is located, a memorandum of lease for the Lease in a form reasonably acceptable to Lender.

**14. Future Estoppel Certificates.** Tenant agrees to execute and deliver to Lender, within fifteen (15) days of request by Lender, estoppel certificates in a form similar to this Certificate regarding such matters as Lender requests. Tenant shall not be obligated to deliver an estoppel certificate more often than one (1) time per calendar year, unless Lender determines, in its reasonable discretion, that an estoppel certificate is required more often.

**15. No Merger.** If any lien granted on the Property or assignment of any lease of the Property made to Lender and the fee title to the Property shall at any time become vested in one owner, the lien created under any trust deed granted or assignment made to Lender shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender, beneficiary, and assignee and, if applicable, fee title owner, as to the separate estates. In addition, upon the foreclosure of any such lien or assignment, any leases or subleases then existing and created by Tenant shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender, its successor or assign, or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender, its successor or assign, or any such purchaser shall constitute a termination of any lease or sublease unless Lender, its successor or assign, or such purchaser shall give written notice of such termination to such tenant or subtenant.

**16. Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender: Zions First National Bank  
Real Estate Banking Group  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attn: Jeffrey A. Holt

With copies to: Callister Nebeker & McCullough  
Zions Bank Building  
10 East South Temple, Suite 900  
Salt Lake City, Utah 84133  
Attn: John B. Lindsay

Landlord: Bountiful Plaza Holdings, LLC  
595 South Riverwoods Parkway, Suite 400  
Logan, Utah 84321  
Attn: Dell Loy Hansen

With copies to: Olson & Hoggan P.C.  
130 South Main Street, Suite 200  
Logan, Utah 84321  
Attn: Robert B. Funk

Wasatch Acquisitions and Capital, Inc.  
595 South Riverwoods Parkway, Suite 400  
Logan, Utah 84321  
Attn: Dylan Olsen

Tenant: Carl's Jr. Restaurants LLC  
1325 N. Anaheim Blvd.  
Anaheim, CA. 92801  
Attn: Real Estate Asset Management

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

**17. Attorneys Fees.** Upon the occurrence of a default under this Agreement by Tenant, Lender may employ an attorney or attorneys to protect Lender's rights under this Agreement, and Tenant shall pay Lender reasonable attorneys fees and costs actually incurred by Lender, whether or not action is actually commenced against Tenant by reason of such breach. Tenant shall also pay to Lender any attorneys fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Tenant or any guarantor of the Lease as a debtor.

**18. No Derogation of Liens.** Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Trust Deed, Assignment of Leases, or any other lien created by the Loan Documents.

**19. Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

20. **Successors and Assigns.** This Agreement is and shall be binding upon and shall inure to the benefit of Tenant, Lender and their respective successors and assigns.

21. **Defined Terms.** Unless otherwise defined in this Agreement, capitalized terms used herein have the meanings given them in the Loan Agreement. The term Loan Documents shall include all amendments and modifications to the Loan Documents.

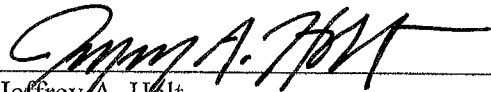
*[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]*



DATED: ~~October~~ <sup>November</sup> 12, 2013.

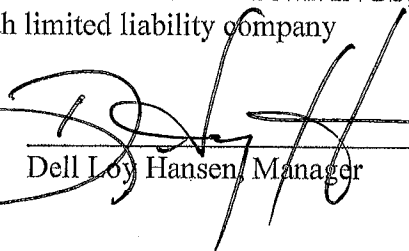
LENDER

**ZIONS FIRST NATIONAL BANK,**  
a national banking association

By:   
\_\_\_\_\_  
Jeffrey A. Holt  
Senior Vice President

LANDLORD

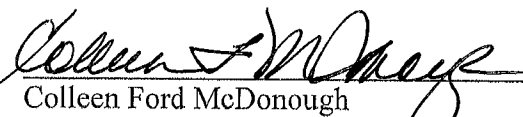
**BOUNTIFUL PLAZA HOLDINGS, LLC,**  
a Utah limited liability company

By:   
\_\_\_\_\_  
Dell Loy Hansen, Manager

TENANT

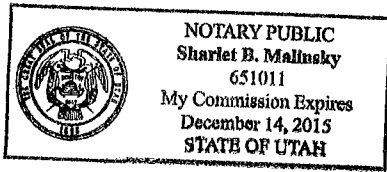
**CARL'S JR. RESTAURANTS LLC,**  
a Delaware Limited Liability Company



By:   
\_\_\_\_\_  
Colleen Ford McDonough  
Its: Vice President, Real Estate Asset Management

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

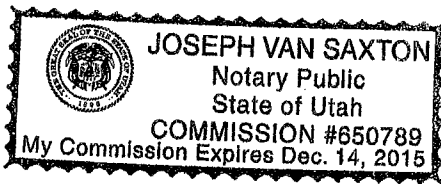
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2013, by Jeffrey A. Holt, Senior Vice President of Zions First National Bank, a national banking association.



*Sharlet B. Malinsky*  
NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this 20 day of ~~October~~ <sup>November</sup>, 2013, by Dell Loy Hansen, Manager of Bountiful Plaza Holdings, LLC, a Utah limited liability company.



*[Signature]*  
NOTARY PUBLIC

STATE OF CALIFORNIA }  
COUNTY OF ORANGE }

On 11-12-13, before me, Hazel E. Streetmaker, Notary Public, personally appeared Colleen Ford McDonough, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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: Hazel E. Streetmaker (Seal)



**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

The real property located in Davis County, State of Utah, and more particularly described as follows:

***[SEE ATTACHED]***

**PARCEL 1: (03-036-0115)**

Beginning at a point North 89°44'04" East 166.96 feet and South 0°15'56" East 11.00 feet from the Northwest corner of Block "L", NORTH MILL CREEK PLAT, Bountiful Townsite Survey, in the City of Bountiful and running thence North 89°44'04" East 231.75 feet; thence South 0°15'56" East 67.25 feet, thence North 89°44'04" East 9.01 feet; thence South 0°15'56" East 80.55 feet; thence North 89°44'04" East 141.01 feet; thence North 0°15'56" West 5.00 feet; thence North 89°44'04" East 110.13 feet; thence South 0°09'34" West 267.98 feet, thence South 69°34'33" West 88.28 feet; thence North 80°58'26" West 162.70 feet; thence North 67°12'26" West 88.10 feet; thence South 59°37'34" West 87.00 feet; thence South 86°28'33" West 86.97 feet; thence North 0°09'34" East 161.09 feet, thence South 89°44'01" West 173.54 feet, thence North 0°09'34" East 93.43 feet; thence North 89°44'04" East 168.33 feet; thence North 0°15'56" West 174.50 feet to the point of beginning.

**PARCEL 2: (03-036-0116)**

Beginning at a point North 89°44'04" East 398.71 feet and South 0°15'56" East 11.00 feet from the Northwest corner of Block "L", NORTH MILL CREEK PLAT, Bountiful Townsite Survey, in the City of Bountiful and running thence North 89°44'04" East 261.21 feet, thence South 0°09'34" West 142.80 feet, thence South 89°44'04" West 110.13 feet; thence South 0°15'56" East 5.0 feet, thence South 89°44'04" West 141.01 feet, thence North 0°15'56" West 80.55 feet; thence South 89°44'04" West 9.01 feet; thence North 0°15'56" West 67.25 feet to the point of beginning.

**PARCEL 3: (03-036-0117)**

Beginning at a point South 0°09'34" West 11.00 feet from the Northwest corner of Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'04" East 167.04 feet; thence South 0°15'56" East 174.50 feet; thence South 89°44'04" West 168.33 feet; thence North 0°09'34" East 174.50 feet to the point of beginning.

**PARCEL 4: (03-036-0118)**

Beginning at a point South 0°09'34" West 278.93 feet from the Northwest corner of Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'01" East 173.54 feet; thence South 0°09'34" West 161.09 feet; thence South 86°28'33" West 43.63 feet; thence North 72°14'26" West 42.40 feet; thence North 88°41'25" West 89.60 feet; thence North 0°09'34" East 147.99 feet to the point of beginning.