

RECORDATION REQUESTED BY:

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AGREE- AGREEMENT
Rashelle Hobbs, Recorder, Salt Lake County, Utah
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WHEN RECORDED MAIL TO:

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Cincinnati, Ohio 45202

CT-153741-CAP

TIN 28-05-331-002, 28-05-451-013, 28-05-451-014
28-05-451-011

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**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made this 15 day of MARCH, 2022 between PANDA EXPRESS, INC., a California corporation ("Tenant"), NATIONWIDE LIFE INSURANCE COMPANY, an Ohio corporation, its successors and assigns ("Lender"), whose address in One Nationwide Plaza, 1-05-701, Columbus, Ohio, 43215 Attention: Real Estate Investments (Loan Servicing), and BOYER QUARRY BEND, L.C., a Utah limited liability company ("Landlord")

BACKGROUND

A. Lender is the owner and holder of: (i) that certain Trust Deed and Security Agreement (the "Deed of Trust") dated as of the date hereof, in the original amount of \$23,100,000.00, on the real estate more commonly known as 1075 East 9400 South, Sandy, Salt Lake County, Utah 84094, and more particularly described in the Deed of Trust and on Exhibit A attached hereto (the "Property"); and (ii) that certain Assignment of Leases, Rents and Profits (the "Assignment"). The Deed of Trust, the Assignment and any other instruments evidencing the loan to Landlord are collectively referred to as the "Security Documents".

A. Landlord and Tenant have executed that certain Shopping Center Ground Lease dated as of September 18, 2007 (the "Original Lease"), which Original Lease has been amended by that certain First Amendment to Shopping Center Ground Lease dated as of January 2008 (the "First Amendment" and collectively with the Original Lease, the "Lease"), and memorandum of such Lease has been recorded as Instrument Number 10381608 in the office of the Salt Lake County, Utah Recorder.

B. Pursuant to the Lease, Landlord has demised to Tenant approximately 2,475 square feet of space (the "Premises"), within the building located in Sandy, Utah and constituting a portion of the Property.

C. Tenant, Landlord and Lender desire to confirm their understanding with respect to the Security Documents and the Lease.

NOW THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree and covenant as follows:

1. Subordination. The Lease and all rights, options, liens and charges of Tenant thereunder are hereby subordinated and made subject to the Security Documents, and any modification, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Security Documents, and each such modification, renewal, substitution, extension or replacement were executed and recorded, and the advance made, prior to the execution of the Lease; provided, however, in the event Lender at any time elects to have this Lease constitute a prior and superior lien to its Deed of Trust, then, and in such event, upon Lender or Landlord notifying Tenant to that effect in writing, the Lease will be deemed prior and superior in lien to the Deed of Trust, whether the Lease is dated prior to or subsequent to the date of the Deed of Trust.
2. Non-Disturbance. Lender hereby acknowledges and agrees that no foreclosure (whether judicial or non-judicial), deed in lieu of foreclosure, or other sale of the Property in connection with the enforcement of the Security Documents or otherwise in satisfaction of the underlying loan shall terminate the Lease or disturb Tenant's rights thereunder to possess and use the Premises, subject to the following: (i) Tenant is in possession of the Premises, and (ii) Tenant is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods.
3. Attornment. If Lender succeeds to the interest of Landlord, as landlord under the Lease, or if the Property or the Premises are sold pursuant to Lender's rights under the Security Documents to a purchaser ("Purchaser"), Tenant shall attorn to Lender or to Purchaser and each party shall recognize the other as landlord or tenant under the Lease and agree to be bound to each other under all the terms, covenants and conditions of the Lease and any modification, renewal, substitution, extension or replacement thereof. Such attornment shall be effective and self-operative without the execution of any further instruments.
4. Lender's Rights and Obligations. If Lender exercises any of its rights under the Security Documents, or if Lender shall succeed to the interest of Landlord under the Lease, or if any Purchaser acquires the Security Documents, the Property, or the Premises, then Lender or Purchaser shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any applicable notice and cure period) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or Purchaser had not succeeded to the interest of the present Landlord. Lender or Purchaser shall be bound to Tenant under all terms, covenants and conditions under the Lease and for any landlord defaults which arise after Lender or Purchaser succeeds to Landlord's interest under the Lease. All Tenant claims shall be satisfied only out of the interest and the issues therefrom, if any, of Lender, or Purchaser in the Property. Tenant acknowledges the Assignment and after advance written notice

(the "Rent Notice") is given to Tenant by Lender, Tenant shall thereafter pay to Lender all rent and other amounts due or to become due (the "Rent") to Landlord under the Lease and Tenant shall not be liable to Lender for Rent paid to Landlord prior to receipt of the Rent Notice provided no Rent has been paid more than thirty (30) days in advance unless required per the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on the Rent Notice, without any inquiry into the factual basis or any prior notice to or consent from Landlord and hereby releases Tenant from all liability, excepting Tenant fraud, to Landlord in connection with Tenant's compliance with the Rent Notice. Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against Landlord or prior landlord for prior losses or damages and against Lender or Purchaser for all losses or damages arising from and after the date that Lender or such Purchaser takes title to the Property.

5. Notice and Right to Cure. Tenant agrees, until the Deed of Trust is released by Lender, to provide Lender (at the address noted above) with a copy of each notice of default that would enable Tenant to terminate the Lease given to Landlord under the Lease at the same time such notice of default is given to Landlord. In the event Lender, has begun action to cure the default, but not completed the default during the same cure period provided to Landlord under the Lease, Tenant agrees that Lender shall have a reasonable period of time to cure such default; however, such additional reasonable period of time shall not exceed sixty (60) days. Notwithstanding the foregoing, Lender shall have no obligation to cure any default under the Lease.

6. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and/or assigns. Any party may record this Agreement at any time.

7. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

8. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument. Landlord or Lender must return a fully-executed original of this Agreement to Tenant within ninety (90) days from the date Tenant has executed the same, and if Landlord or Lender fail to return a fully-executed original of this Agreement to Tenant within such ninety (90) day period, Tenant, at its option, may deem this Agreement lapsed and terminated.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

[TENANT, LENDER AND LANDLORD'S SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

TENANT:

PANDA EXPRESS, INC.,
a California corporation

By: _____
Name: Perry Tsang Cherng
Title: Co-chair / Co-CEO

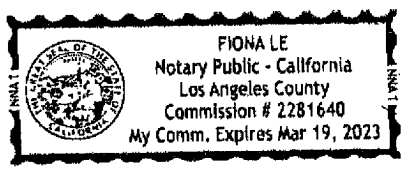
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)
) SS:
COUNTY OF Los Angeles)

On this 10th day of March, 2022, before me, the undersigned officer, personally appeared Perry Tsang Cherng, who acknowledged ~~himself/herself~~ to be the Co-chair / Co-CEO of **PANDA EXPRESS, INC.**, a California corporation, and that ~~he/she~~, as such Co-chair / Co-CEO being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:
3/19/23



[LENDER AND LANDLORD'S SIGNATURE PAGES FOLLOW]

LENDER:

**NATIONWIDE LIFE INSURANCE
COMPANY,**
an Ohio corporation

By: 

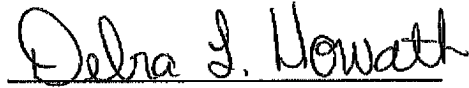
Name: Michael C. Beidelman

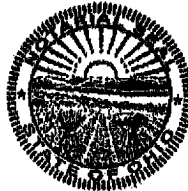
Title: Senior Investment Professional
Real Estate Investments, Authorized Signatory (els)

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

On this 14th day of March, 2022, before me, the undersigned officer, personally appeared Michael C. Beidelman, who acknowledged himself to be the Senior Investment Professional and Authorized Signatory of **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation, and that he/she, as such Senior Investment Professional being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
My Commission Expires:
07-17-2023



DEBRA L. HORVATH
Notary Public, State of Ohio
My Commission Expires
07-17-2023

[LANDLORD'S SIGNATURE PAGE FOLLOWS]

LANDLORD:

BOYER QUARRY BEND, L.C.,
a Utah limited liability company

By: The Boyer Company, L.C., a Utah limited liability company, its Manager

By: [Signature]
Print Name: BRIAN GOCHNOUR
Title: Manager

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

On this 8 day of March, 2022, before me, the undersigned officer, personally appeared Brian Gochmour, who acknowledged himself/herself to be the Manager of **THE BOYER COMPANY, L.C.**, a Utah limited liability company, the Authorized Manager of **BOYER QUARRY BEND, L.C.**, a Utah limited liability company, and that he/she, as such Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature: Beverly Bott]
Notary Public
My Commission Expires:
1/25/26

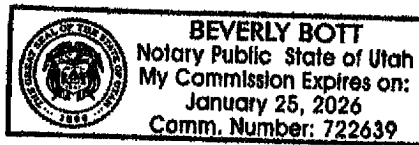


EXHIBIT A

Legal Description

[See attached.]

**EXHIBIT A
PROPERTY DESCRIPTION**

PARCEL 1:

Lot 5, QUARRY BEND SUBDIVISION, according to the official plat thereof, recorded December 7, 2005 as Entry No. 9575193 in Book 2005P at Page 392 in the office of the Salt Lake County Recorder.

LESS AND EXCEPTING THEREFROM any portion lying within the tract identified and described as "Road Dedication B" in that certain plat entitled "Road Dedication SR-209" recorded June 15, 2006 as Entry No. 9754372 in Book 2006P at Page 168 in the office of the Salt Lake County Recorder.

PARCEL 2:

All that land being part of Quarry Bend Subdivision, recorded as Entry No. 9575193 in Book 2005P at Page 392, official records in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the South line of said Subdivision located 820.81 feet South 89°06'33" East along the Section line and 91.73 feet North from the South quarter corner of said Section 5, and running thence North 00°00'03" West 91.04 feet to a point of curvature; thence Northwesterly along the arc of a 225.00 foot radius curve to the left a distance of 213.61 feet (central angle equals 54°23'46", and long chord bears North 27°11'56" West 205.68 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 1500.00 foot radius curve to the right a distance of 116.54 feet (central angle equals 04°27'05", and long chord bears North 52°10'17" West 116.51 feet); thence North 39°17'17" East 30.25 feet to the Westerly line of Lot 3 of said Subdivision; thence along said Westerly lines of said Lot 3 the following two (2) courses: North 50°59'35" West 22.80 feet to the most Westerly corner thereof; and North 39°00'26" East 50.22 feet; thence South 89°45'08" East 495.31 feet along the Southerly line of Lot 1 of said Quarry Bend Subdivision; thence North 00°17'59" East 35.95 feet; thence South 89°42'01" East 119.62 feet; thence South 01°32'10" West 156.25 feet; thence South 07°27'07" West 151.14 feet; thence South 09°17'57" West 90.28 feet; thence South 15°55'37" West 47.56 feet; thence South 21°06'01" West 31.55 feet to the South line of said Subdivision; thence along said South line the following three (3) courses: North 89°06'33" West 166.01 feet; North 86°49'06" West 200.22 feet to a point of curvature; and Northwesterly along the arc of a 788.05 foot radius curve to the right a distance of 33.45 feet (center bears North 00°53'28" East, central angle equals 02°25'55", and long chord bears North 87°53'34" West 33.45 feet) to the point of beginning.

PARCEL 3:

All that land being part of Quarry Bend Subdivision, recorded as Entry No. 9575193 in Book 2005P at Page 392, official records in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

A part of the Southeast quarter of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah, described as follows:

Beginning at a point on the Northerly line of 9400 South Street located 820.81 feet South 89°06'33" East along the Section line, and 91.73 feet North from the South quarter corner of said Section 5, and running thence along said Northerly line of 9400 South Street the following five (5) courses: Northwesterly along the arc of a 788.05 foot radius curve to the right a distance of 146.61 feet (center bears North 03°19'23" East, central angle equals 10°39'34", and long chords bears North 81°20'50" West 146.40 feet; North 00°14'51" East 10.30 feet; Northwesterly along the arc of a 778.05 foot radius curve to the right a distance of 31.99 feet (center bears North 14°09'45" East, central angle equals 02°21'21", and long chord bears North 74°39'34" West 31.99 feet); North 61°40'05" West 116.01 feet; and Northwesterly along the arc of an 893.50 foot radius curve to the right a distance of 80.71 feet (center bears North 25°56'30" East, central angle equals 05°10'33", and long chord bears North 61°28'14" West 80.69 feet); thence along the Southeasterly line of a Public Road as widened the following two (2) courses: North 13°39'11" East 18.20 feet; and North 39°17'17" East 249.85 feet; thence Southeasterly along the

arc of a 1500.00 foot radius curve to the left a distance of 116.54 feet (center bears North 40°03'16" East, central angle equals 04°27'05", and long chord bears South 52°10'17" East 116.51 feet) to a point of reverse curvature; thence Southeasterly along the arc of a 225.00 foot radius curve to the right a distance of 213.61 feet (central angle equals 54°23'46", and long chord bears South 27°11'56" East 205.68 feet) to a point of tangency; thence South 00°00'03" East 91.04 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

("Road Dedication West")

All that land being part of a parcel shown as "New Lot 8" in that Special Warranty Deed recorded December 2, 2009 as Entry No. 10850685 in Book 9785 at Page 1035 of the official records of the Salt Lake County Recorder, in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and being more particularly described as follows:

Beginning at the West corner of said parcel, said point being South 89°06'33" East 472.23 feet and North 00°00'00" East 220.69 feet from the South quarter corner of said Section 5, and running thence North 13°39'11" East 18.20 feet; thence North 39°17'17" East 4.89 feet, to the beginning of a non-tangent curve concave to the East, with a radius of 20.00 feet and a radial bearing of South 52°56'36" East; thence Southerly 33.84 feet along said curve, through a central angle of 96°55'41", to the beginning of a non-tangent curve concave to the Northeast, with a radius of 893.50 feet and a radial bearing of North 30°07'31" East; thence Northwesterly 15.47 feet along said curve, through a central angle of 00°59'32", to the point of beginning.

ALSO LESS AND EXCEPTING THEREFROM the following:

("Road Dedication East")

All that land being part of a parcel shown as "New Lot 8" in that Special Warranty Deed recorded December 2, 2009 as Entry No. 10850685 in Book 9785 at Page 1035 of the official records of the Salt Lake County Recorder, in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and being more particularly described as follows:

Beginning at a point on the South line of said parcel, said point being South 89°06'33" East 820.81 feet, North 00°00'00" East 91.73 feet, to the beginning of a non-tangent curve concave to the North with a radius of 788.05 feet and a radial bearing of North 03°19'23" East, and Westerly 139.11 feet along said curve, through a central angle of 10°06'52" from the South quarter corner of said Section 5, and thence continuing 7.50 feet along said curve, through a central angle of 00°32'42", to the East line of Road Dedication C per Road Dedication SR-209 Plat recorded June 15, 2006 as Entry No. 9754372 in Book 2006P of Plats at Page 168 of the official records of the Salt Lake County Recorder; thence North 00°14'51" East 2.15 feet along said East line; thence South 61°39'59" East 8.26 feet to the point of beginning.

PARCEL 4:

All that land being part of Quarry Bend Subdivision, recorded as Entry No. 9575193 in Book 2005P at Page 392, official records; in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point located 1320.05 feet South 89°06'33" East along the Section line, 832.63 feet North 00°26'14" East along the Sixteenth Section line, and 17.09 feet North 89°45'09" West from the South quarter corner of said Section 5, and running thence South 15°30'00" East 34.86 feet to a point of curvature; thence Southerly along the arc of a 135.00 foot radius curve to the right a distance of 94.98 feet (central angle equals 40°18'42", and long chord bears South 04°39'21" West 93.04 feet) to a point of reverse curvature; thence Southwesterly along the arc of a 295.00 foot radius curve to the left a distance of 119.84 feet (central angle equals 23°16'32", and long chord bears South 13°10'26" West 119.02 feet); thence South 01°32'10" West 35.59 feet; thence North 89°42'01" West 119.62 feet; thence North 00°17'59" East 277.79 feet; thence South 89°45'09" East 144.48 feet to the point of beginning.

PARCEL 5:

Easements for ingress and egress as created under that certain Easements with Covenants and Restrictions Affecting Land recorded December 7, 2005 as Entry No. 9575196 in Book 9227 at Page 3154 and in that First Amendment to Easements with Covenants and Restrictions Affecting Land recorded December 2, 2009 as Entry No. 10850686 in Book 9785 at Page 1039.

Tax Id No.: 28-05-331-002, 28-05-451-013, 28-05-451-014 and 28-05-451-011