

E 3426495 B 7863 P 1710-1719
RICHARD T. NAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/12/2021 01:22 PM
FEE \$40.00 Pgs: 10
DEPT REC'D FOR FIRST AMERICAN TI
TLE COMPANY

PREPARED FOR OR BY AND UPON
RECORDATION RETURN TO:

Ryan P. Thompson, Esq.
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202

Jurisdiction: **Davis County, UT**
Tax Parcel Number: 093640004 ✓
Property Address: 1344 E HWY 193, LAYTON, UT 84040

RETURNED
OCT 12 2021

COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE

THIS COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE (this "Assignment") is made as of September 17 2021, by **WEND SALT LAKE CITY LLC**, a Delaware limited liability company (together with its successors and assigns, "Assignor") to **BANK OF AMERICA, N.A.**, a national banking association having an address of 900 West Trade Street, Mail Code NC1-026-06-03, Charlotte, North Carolina 28255, Attention: Agency Management, acting in its capacity as administrative agent pursuant to the Credit Agreement described below (in such agency capacity, together with any successor administrative agent appointed pursuant to the terms of the Credit Agreement (as defined below), the "Agent") for the Secured Parties. The "Secured Parties", as used herein, means the Agent, the Lenders parties to the Credit Agreement from time to time, each Hedge Bank party to a Secured Hedge Agreement from time to time, and each Cash Management Bank party to a Secured Cash Management Agreement from time to time.

RECITALS:

A. Assignor is the lessee under the lease described in **Schedule 1** attached hereto (said lease, as amended, restated, supplemented, replaced, or otherwise modified from time to time, being hereinafter referred to as the "Lease") between Assignor and the lessor thereunder (together with its successors and assigns, "Lessor"), pertaining to the premises described in **Exhibit A** attached hereto (the "Premises").

B. Assignor, **WEND AMERICAN GROUP LLC**, a Delaware limited liability company, and certain other Borrowers identified therein, the Lenders identified therein and the Agent have entered into that certain Credit Agreement, dated as of March 24, 2021 (as the same may be extended, amended, modified, supplemented, replaced or amended and restated from time to time, the "Credit Agreement") (the Credit Agreement and each other Loan Document, and each Secured Hedge Agreement and Secured Cash Management Agreement, as each may be extended, amended, modified, supplemented, replaced, or amended and restated, collectively, the "Transaction Documents"). As a condition to Agent and the other Secured Parties agreeing to

make loans and other financial accommodations and extensions of credit (collectively, the "Loans") to Assignor and its affiliates, Agent and the other Secured Parties require, among other things, liens on all of the Assignor's personal property located on the Premises and that Assignor enter into this Assignment and grant a collateral assignment of the Lease in favor of Agent for the benefit of itself and the other Secured Parties.

C. Assignor has agreed to collaterally assign the Lease to Agent for the benefit of itself and the other Secured Parties as additional collateral security for the Loans and all other obligations of Assignor and Assignor's affiliates to Agent and the other Secured Parties arising under or in connection with the Transaction Documents (collectively, the "Obligations"). Notwithstanding anything to the contrary contained herein, the term "Obligations" shall exclude any Excluded Swap Obligations, and this Assignment shall not secure any Excluded Swap Obligations.

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

1. Definitions. All capitalized terms used in this Assignment (including without limitation in the introductory paragraph and the recitals above) but not otherwise defined in this Assignment that are defined in the Credit Agreement shall have the meanings ascribed to such terms in the Credit Agreement.

2. The Assignment. In order to induce Agent and the other Secured Parties to make the Loans to Assignor and its affiliates and as additional security for the payment of the Obligations and for the performance and observance of all the agreements contained herein and in the Transaction Documents, Assignor does hereby assign, set over and transfer to Agent for the benefit of itself and the other Secured Parties, and its successors and assigns upon the terms and conditions hereinafter contained, and grants to Agent for the benefit of itself and the other Secured Parties a continuing security interest in, the Lease, together with all the right, title and interest of Assignor therein and thereto, to have and to hold the same unto Agent for the benefit of itself and the other Secured Parties, its successors and assigns forever, or for such shorter period as hereinafter may be indicated, as additional collateral security for the payment of the Obligations and for the performance and observance of all the agreements contained herein and in the Transaction Documents.

3. Warranties, Representations and Covenants. Assignor hereby covenants, represents, warrants and agrees as follows:

(a) (i) The Lease is, to the best of Assignor's knowledge, in full force and effect, and represents the valid and binding obligation of Assignor enforceable in accordance with its terms except as limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally, and has not been amended or modified in any material respect except as described herein or therein; (ii) Assignor is the lessee under the Lease hereby assigned, is the sole owner of the entire interest of the lessee under the Lease and has good right and authority to collaterally assign its interest in the same, and no other person, firm or corporation has any right, title or interest therein except for the Permitted Encumbrances, and (iii) Assignor has not previously sold, assigned, transferred,

mortgaged, pledged, granted a security interest in or otherwise encumbered its interest in the Lease to any other person or entity which is still in effect. For purposes of this Assignment, "Permitted Encumbrances" shall mean: (a) the lien and security interests created by this Assignment and the other Loan Documents, (b) intentionally omitted, (c) liens, if any, imposed by any Governmental Authority for Taxes not yet due or delinquent, (d) liens permitted by Section 7.01 of the Credit Agreement, (e) other liens or encumbrances that Lessor grants after the date of this Assignment that are (i) expressly permitted to be granted by Lessor without Assignor's consent or (ii) not expressly conditioned upon Assignor's prior consent; provided that, in each case, such liens or encumbrances would not, individually or in the aggregate, reasonably be expected to materially and adversely affect Assignor's quiet enjoyment of and operations on the Premises or Agent or Lenders' interest therein, and (f) such other title and survey exceptions as expressly permitted by the terms of the Credit Agreement or as Agent may approve in writing in its sole discretion.

(b) To the best of Assignor's knowledge, a true, correct and complete copy of the Lease, including all material amendments thereto and assignments thereof, has been delivered to Agent, and such Lease represents the entire agreement between the parties thereto with respect to the Lease.

(c) Assignor shall: (i) inform Agent, in writing, of any assertion of any material claims, offsets or counterclaims under the Lease; and (ii) furnish to and inform Agent of all material information relating to or adversely affecting the Lease.

(d) Assignor shall observe, perform and discharge, duly and punctually, the obligations, terms, covenants, conditions and warranties of the Lease on the part of Assignor to be kept, observed and performed, and shall give prompt notice to Agent of any failure on the part of Assignor to observe, perform and discharge same, and shall appear in and defend any action or proceeding occurring under, arising out of, or in any manner connected with the Lease or the obligations, duties or liabilities of Assignor and/or the Lessor thereunder, and, upon request by Agent, will do so in the name and behalf of Agent but at the expense of Assignor, and shall pay all costs and expenses of Agent, including reasonable attorneys' and paralegals' fees in any action or proceeding in which Agent may appear.

(e) To the knowledge of Assignor (i) no breach, default, or event of default has occurred and is continuing under the Lease that will not be cured by the tenant party thereto no longer being in bankruptcy and Assignor assuming such tenant's obligations under the Lease and (ii) no event or circumstance now exists that, with the passage of time or the giving of notice or both, would constitute a breach, default, or event of default under the Lease.

(f) Assignor hereby agrees that neither Agent nor any other Secured Party shall be deemed to have assumed any obligation, duty or liability under the Lease by reason of this Assignment including, without limitation, any exercise of remedies pursuant to Section 8 hereof which results in Agent taking possession of the Premises and excluding Assignor therefrom.

(g) Assignor hereby agrees to indemnify and hold Agent and the other Secured Parties, and their officers, directors, agents and representatives (each, an "Indemnified Person") harmless of, from and against any and all liability, loss, damage or expense which Agent may incur by reason of this Assignment, except to the extent that such liability, loss, damage or expense is determined by a court of competent jurisdiction, in a final, non-appealable ruling to have been caused by such Indemnified Person. Should Agent incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' and paralegals' fees) shall be payable by Assignor.

(h) Upon the satisfaction of the conditions set forth in the Credit Agreement for release of this assignment, this Assignment shall be terminated and shall be of no further effect, and Agent shall, promptly upon demand therefor by Assignor, execute a release to be filed of record at Assignor's sole cost and expense.

4. Notices. Assignor promptly shall: (a) notify Agent in writing of any monetary or material non-monetary breach, default or event of default or claim of breach, default or event of default by any party to the Lease of which Assignor becomes aware; (b) notify Agent in writing of the receipt by Assignor of any notice (and promptly cause a copy of each such notice received by Assignor to be delivered to Agent) from the Lessor (i) noting or claiming any breach, default or event of default by Assignor under the Lease or (ii) stating Lessor's intention to terminate the Lease or to reenter the Premises, or the commencement of a proceeding to eject or dispossess Assignor; and (c) execute and deliver to Agent upon Agent's request therefor, such instruments as may be reasonably deemed by Agent to be required to (i) permit Agent to cure any breach, default or event of default under the Lease or (ii) permit Agent to take such other action required to enable Agent to cure or remedy said breach, default or event of default, or (iii) preserve the interest of Agent in the Lease.

5. Transfers, Modification, Surrender, Etc. Except as permitted under the terms of the Credit Agreement, Assignor shall not sell, assign, pledge, transfer, mortgage, grant a security interest in or otherwise encumber Assignor's interest in the Lease, and Assignor shall otherwise comply with the terms of the Credit Agreement including, without limitation, Section 6.16 thereof, with respect to the Lease. Unless permitted under the Credit Agreement, Assignor shall not exercise any purchase option without Agent's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

6. Power of Attorney. Assignor hereby authorizes and appoints Agent its attorney in fact to exercise any option to renew or purchase the Lease in the name of and upon behalf of Assignor, which power of attorney shall be irrevocable and deemed to be coupled with an interest; provided that Agent shall have and may exercise rights under the foregoing power of attorney only upon the occurrence and during the continuance of an Event of Default. Subject to the foregoing, if Assignor defaults under Section 3(d) hereof by failing to make any payment required to be made by Assignor pursuant to the provisions of the Lease or to keep, observe, or perform, or cause to be kept, observed, or performed, any of the terms, covenants, provisions or agreements of the Lease (unless waived by Lessor), Assignor agrees that Agent may (but shall not be obligated to) take any action on behalf of Assignor (with right of entry onto the Premises), to keep or cause to be kept, observed, or performed any such terms, covenants, provisions, or agreements, and to enter upon the Premises (after reasonable advance notice to Assignor) and take all such action thereon as may

be reasonably necessary therefor, and all money so expended by Agent, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Assignor to Agent promptly upon demand by Agent and shall be added to the Obligations secured by this Assignment. If Agent shall make any payment or perform any act or take any action in accordance with the preceding sentence, then the payment, performance or action shall not remove or waive, as between Assignor and Agent, the corresponding default under the terms of this Assignment.

7. Event of Default. The occurrence of an Event of Default under the Credit Agreement shall constitute an Event of Default ("**Event of Default**") hereunder.

8. Exercise of Rights. Agent, on behalf of itself and the other Secured Parties, hereby confers upon Assignor a license to possess and operate the Premises and to exercise the rights and remedies provided to Assignor under the Lease, which such license shall terminate immediately upon notice by Agent after the occurrence and during the continuance of an Event of Default. Although it is the intent of the parties that this Assignment is a present assignment, it is expressly understood and agreed, notwithstanding anything to the contrary herein contained, that Agent shall not exercise any of the rights and powers conferred upon it hereunder unless and until there shall have occurred and be continuing an Event of Default hereunder. Assignor hereby acknowledges and agrees that Agent does not assume any obligations of Assignor under the Lease unless and until Agent shall exercise its rights and remedies hereunder to take possession of the Premises and exclude Assignor therefrom. Upon the occurrence of an Event of Default hereunder and during the continuation thereof, Agent, in its sole election and in its sole discretion, may do any one or more of the following, subject to the terms and conditions contained in the Lease or any agreement between Lessor and Agent:

(a) Enter upon, take possession of, manage and operate the Premises or any part thereof pursuant to the terms and conditions of the Lease, and Assignor agrees to surrender possession of the same to Agent, or, as the case may be, to have a receiver appointed pursuant to the appropriate applicable statute(s) and to operate the business as may be provided thereunder or in any court order regarding the same.

(b) Foreclose this instrument as an assignment of an interest in real property in any court of competent jurisdiction with such foreclosure occurring, at the option of the Agent, either by court action or by advertisement or such other method as allowed by law. This assignment conveys the right and power to sell the interest in the real property.

(c) Exercise any and all rights and remedies afforded to Agent under the Transaction Documents and the Uniform Commercial Code and any and all other applicable provisions of law, including the right to sell Assignor's interest in the Lease at a public or private sale.

In addition to the foregoing, and notwithstanding anything to the contrary in the other provisions of this Assignment or in the Transaction Documents, in the event of the occurrence of a breach, default or event of default by Assignor under the Lease which has not been cured within any applicable cure period therefor, Agent may, but shall not be required to, cure said breach, default or event of default under the Lease within the curative times provided in the Lease or any agreement between Lessor and Agent.

9. Nature of Remedies. The rights and remedies of Agent hereunder are cumulative and are in addition to, and not in lieu of, any rights and remedies that Agent and the other Secured Parties may have under the Transaction Documents, or at law or in equity, which rights and remedies may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken hereunder. The rights and remedies of Agent may be exercised from time to time and as often as such exercise is deemed expedient and the failure of Agent to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time or at any time or times, shall not be construed or deemed to be a waiver of any rights and remedies under the terms hereof.

10. Notices. Any notice or other communication required or permitted to be given shall be in writing addressed and served as provided in the Credit Agreement.

11. Interpretation and Definitions. The captions and headings contained herein are for convenience only and are not intended, nor shall they be considered, to limit in any way the provisions hereof. Whenever herein the context so requires, the singular number shall be deemed to include the plural and vice versa and any gender herein shall be deemed to include the masculine, feminine or neuter.

12. Separability. Each provision of this Assignment shall be deemed to be separable, and if for any reason any one or more of the provisions hereof is determined to be invalid under any law or decision now or hereafter existing, such invalidity shall not impair the operation or effect of any provisions hereof.

13. Successors and Assigns. Whenever the term "**Assignor**" is used herein, it is hereby understood that the same includes and shall be binding on successors, assigns and legal representatives of Assignor, including successors by consolidation, and any party or parties holding title by, through or under Assignor. This Assignment shall be assignable by Agent subject to the terms of the Credit Agreement, and all of the representations, warranties, covenants, agreements, rights, powers, privileges and immunities herein contained or granted and assigned to Agent hereunder shall also inure to its successors, assigns and legal representatives.

14. Governing Law. This Assignment shall be governed and controlled in all respects by the internal laws and decisions of the state where the Premises is located.

15. Secured Hedge Agreements and Secured Cash Management Agreements. No Hedge Bank or Cash Management Bank who obtains the benefit of any Lien by virtue of the provisions of this Assignment shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Premises (including the release or impairment of the Premises) other than in its capacity as Lender and only to the extent expressly provided in the other Loan Documents. Each Hedge Bank and each Cash Management Bank not a party to the Credit Agreement who obtains through the Agent the benefit of the lien of this Assignment shall be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of, and on the terms set forth in, the Credit Agreement, and that with respect to the actions and omissions of the Agent hereunder or otherwise relating hereto that do or may affect such secured party, the Agent and its Related Parties shall be entitled to all the rights, benefits and immunities conferred under Article IX of the Credit Agreement. Upon request by Agent, each Hedge Bank and each Cash Management Bank as a

condition to continuing to have the benefit of the security of this Assignment and as a condition to continuing to be a Secured Party hereunder, shall execute (within such reasonable time as Agent may require by written notice) such document or documents as Agent may reasonably request to confirm that such Hedge Bank or Cash Management Bank, as applicable, has appointed Agent to act as its agent for purposes of holding the security evidenced by this Assignment.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Assignment has been duly executed the day and year first above written.

ASSIGNOR:

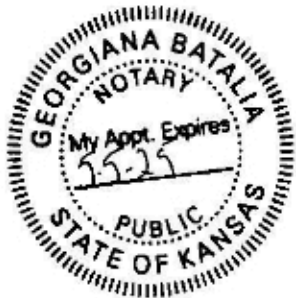
WEND SALT LAKE CITY LLC,
a Delaware limited liability company

By: *Patrick Eulberg*
Name: Patrick Eulberg
Title: Vice President - Real Estate

ACKNOWLEDGMENT

STATE OF KANSAS)
)SS.
COUNTY OF JOHNSON)

On Sept 2nd, 2021, before me a Notary Public within and for said County and State, personally appeared Patrick Eulberg, to me personally known, who, being by me duly sworn did say that he is the Vice President - Real Estate of **WEND SALT LAKE CITY LLC**, the limited liability company named in the foregoing instrument, and that the instrument was signed on behalf of all members of the limited liability company and Patrick Eulberg acknowledged the instrument to be the free act and deed of the limited liability company.



Georgiana Batalia
Notary Public, Johnson County
My Commission expires 9-5-25

SCHEDULE 1

- (1) Ground Lease dated May 6, 2004 by and between Wyndom Square, LLC, a Utah limited liability company, and Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation.
- (2) First Amendment to Ground Lease dated August 27, 2004 by and between Wyndom Square, LLC, a Utah limited liability company, and Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation.
- (3) Sublease Agreement dated December 9, 2013 by and between Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation, and NPC Quality Burgers, Inc., a Kansas corporation.
- (4) Notice of Renewal dated August 19, 2014 by Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation.
- (5) Notice of Renewal dated August 16, 2019 by Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation.

1344 E. Hwy 193
Layton, Utah 84040
Wendy's Unit #9776

EXHIBIT "A"

W-6063

PREMISES

PARCEL 1

BEGINNING AT THE NORTHWEST CORNER OF THE "FINAL PLAT OF WYNDOM SQUARE SHOPPING CENTER" LOCATED IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH WHICH POINT IS ALSO ON THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 193 AND RUNNING THENCE SOUTH 0°34'38" WEST 218.88 FEET ALONG THE WEST BOUNDARY OF SAID SUBDIVISION SUBDIVISION RECORD BEARING IS SOUTH 01°15'12" WEST THENCE NORTH 89°05'08" WEST 60.42 FEET, THENCE NORTH 86°24'27" WEST 49.41 FEET THENCE NORTH 73°10'10" WEST 45.18 FEET, THENCE DUE NORTH 221.98 FEET TO A POINT ON A NON-TANGENT 3804.85 FOOT RADIUS CURVE TO THE LEFT, WHICH POINT IS ALSO ON THE SOUTH RIGHT OF WAY OF SAID HIGHWAY 193 AND RUNNING ALONG SAID RIGHT OF WAY 157.89 FEET ALONG THE ARC (CENTRAL ANGLE = 01°33'36" CHORD BEARING AND DISTANCE = SOUTH 81°53'32" EAST 157.89 FEET, TO THE POINT OF BEGINNING.

PARCEL 2

SUBJECT TO AND TOGETHER WITH ALL RIGHTS DISCLOSED BY THAT CERTAIN EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") RECORDED JUNE 24, 2003 AS ENTRY NO 1881919 IN BOOK 3318 AT PAGE 1906 OF OFFICIAL RECORDS

Also known as ALL OF LOT 4, WYNDOM SQUARE COMMERCIAL SUBDIVISION PHASE 2, Davis County, Utah.