

Record and Return To:
Fidelity National Title Insurance Company
National Commercial Services
1900 West Loop South, Suite 200
Houston, Texas 77027
Attn: Marni Zarin

Tax Parcel Number:
Lot 6 - 21-22-381-017

13331759
7/17/2020 12:40:00 PM \$40.00
Book - 10981 Pg - 2801-2806
RASHELLE HOBBS
Recorder, Salt Lake County, UT
INGEO SYSTEMS
BY: eCASH, DEPUTY - EF 6 P.

Space Above for County Recorder's Use

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

**WEINGARTEN REALTY INVESTORS
("Mortgagee")**

**WENDY'S OLD FASHIONED HAMBURGERS
OF NEW YORK, LLC
("Tenant")**

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

THIS AGREEMENT is dated the 14th day of JULY, 2020, and is made between WEINGARTEN REALTY INVESTORS, a Texas real estate investment trust, ("Mortgagee"), and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, LLC ("Tenant").

RECITALS:

I. Tenant has entered into a certain lease (the "Lease") dated February 25, 1999, with West Jordan Retail Associates, LLC ("Landlord") covering certain premises known as West Jordan Town Center located in West Jordan, Salt Lake County, Utah (the "Premises").

II. Mortgagee has agreed to make a mortgage loan in the amount of up to Ten Million and 00/100 Dollars (\$10,000,000.00) (together with all amendments, modifications, supplements, renewals, extensions, spreaders and consolidations thereto, the "Mortgage") to the Landlord, secured by the Premises, and the parties desire to set forth their agreement herein.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

A. The Lease is and shall be subject and subordinate to the Mortgage insofar as it affects the real property of which the Premises form a part to the full extent of the amounts secured thereby and interest thereon.

B. Tenant agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the Premises by deed in lieu of foreclosure, and the successors and assigns of such purchaser(s), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of such Lease upon the same terms and conditions set forth in such Lease.

C. If it becomes necessary to foreclose the Mortgage, Mortgagee will not terminate such Lease nor join Tenant in summary or foreclosure proceedings (unless such joinder shall be required to protect Mortgagee's interest under the Mortgage and in which case Mortgagee shall not seek affirmative relief from Tenant in such action or proceeding) so long as Tenant is not in default under any of the terms, covenants, or condition of such Lease beyond applicable notice and cure periods.

D. If Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee shall not be:

1. liable for any act or omission of any prior landlord (including Landlord); or
2. liable for the return of any security deposit not transferred to Mortgagee; or

3. subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

4. bound by any rent or additional rent which Tenant might have paid for more than thirty (30) days in advance to any prior landlord (including Landlord); or

5. bound by any amendment, modification, extensions or renewal of the Lease that has the effect of either causing the term thereof to expire earlier or lowering the rent set forth therein, made without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed and which shall have been deemed granted if not objected to within ten (10) business days following receipt of written notice of such request (and further provided that Lender's consent shall not be required for any reduction of the rent if made in connection with an extension or renewal of the Lease at prevailing market terms; or

6. except for those representations and warranties made by Landlord and already existing under the Lease as of the date hereof, bound by any representation or warranty made by any prior landlord (including Landlord).

E. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

F. Tenant agrees to give Mortgagee, by registered or certified mail, return receipt requested, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rent and Leases, or otherwise) of the address of such Mortgagee. Tenant further agrees that Tenant shall not terminate the Lease nor abate rents thereunder or claim an offset against rents thereunder unless notice has been given to Mortgagee and Mortgagee has been given a reasonable period of time (including a period of time to commence and complete a foreclosure proceeding) to cure such default.

G. Tenant acknowledges that it has notice that Landlord's interest under the Lease and the rents thereunder have been collaterally assigned to Mortgagee as part of the security for the obligations secured by the Mortgage. Notice from Mortgagee to Tenant directing payment of rent and all other sums due under the Lease shall have the same effect under the Lease as a notice to Tenant from Landlord and Tenant agrees to be bound by such notice. In the event of any conflict or inconsistency between a notice from Landlord and a notice from Mortgagee, the notice from Mortgagee shall control.

H. This Agreement shall not be modified, amended or terminated except by a writing duly executed by the party against whom the same is sought to be enforced.

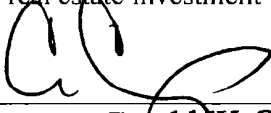
I. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the laws of conflicts) of the State of Utah.

Signatures on following pages; remainder of this page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

MORTGAGEE:

WEINGARTEN REALTY INVESTORS,
a Texas real estate investment trust

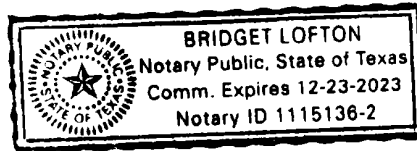
By: 
Name: Gerald W. Crump Jr.
Title: Sr. Vice President

Address: 2600 Citadel Plaza Dr., Suite 125
Houston, TX 77008

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 14th day of July, 2020, by Gerald W. Crump, Jr., the Sr. Vice President of Weingarten Realty Investors, a Texas real estate investment trust.


Notary Public in and for the State of Texas



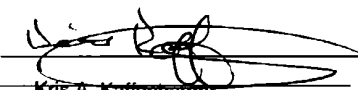
Tenant's signature on following page

TENANT:

**WENDY'S OLD FASHIONED HAMBURGERS
OF NEW YORK, LLC**



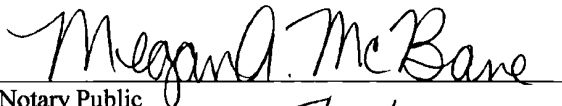
wendy's Site #8135
Legal Approved:
David Sutton

By: 
Name: Kris A. Kaffenbarger
Title: VP - Global System Optimization,
Franchise & Portfolio Management
Address: One Dave Thomas Blvd.
Dublin, OH 43017

STATE OF OHIO)
) SS
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this 13th day of July, 2020 by Kris A. Kaffenbarger the VP – Global System Optimization, Franchise & Portfolio Management of Wendy’s Properties, LLC, a Delaware limited liability company, on behalf of the limited liability company.




Notary Public
My commission expires: 5/22/2022

Legal Description

West Jordan Town Center

Parcel 1:

ALL OF LOT 6, WEST JORDAN TOWN CENTER, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND AS RECORDED AS ENTRY No. 7016834 IN BOOK 98-7P AT PAGE 176 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

Parcel 2 (Easement):

Non-exclusive easements as granted in that certain Declaration of Restrictions and Easements, recorded July 2, 1998, as Entry No. 7016835, in Book 8027 at Page 1563, and by that certain First Amendment to Declaration of Restrictions and Easements, recorded October 8, 1998 as Entry No. 7114083, in Book 8120 at Page 2006, and by that certain Second Amendment to Declaration of Restrictions and Easements, recorded February 19, 1999 as Entry No. 7261935, in Book 8251 at Page 216 and that certain Third Amendment to Declaration of Restrictions and Easements, recorded December 19, 2003 as Entry No. 8929682, in Book 8925 at Page 8920 of official records.

Parcel 3 (Easement):

Non-exclusive rights of vehicular ingress and egress as granted in that certain Declaration of Easements, Covenants, Conditions and Restrictions, recorded July 2, 1998, as Entry No. 7016838, in Book 8027 at Page 1715 of official records.

Wendy's Old Fashioned Hamburgers of New York, LLC d/b/a
Wendy's