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Doc#: 0525105005 Fee: \$62.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/08/2005 09:22 AM Pg: 1 of 6

6 of 7

Property of Cook County Clerk's Office

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

6

PIN: 06-27-302-015-0000 (Affects Lot 7)

Commonly known as: Vacant land, Southwest corner of Cicero Ave.  
and Vollmer Road, Matteson, IL

After recording return to:  
Bradford L. Austin  
Nyemaster Goode Law Firm, P.C.  
700 Walnut Street, Suite 1600  
Des Moines, Iowa 50309

Stewart Title of Illinois  
2055 West Army Trail Road, Suite 110  
Addison, IL 60101  
Diane Pudelek

File Number: 444362

STEWART TITLE COMPANY  
2055 W. Army Trail Road, Suite 110  
Addison, IL 60101  
630-889-4000

444362

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## AGREEMENT OF ATTORNMENT AND NON-DISTURBANCE

THIS AGREEMENT, made this 7<sup>th</sup> day of September, 2005, by and between FARM BUREAU LIFE INSURANCE COMPANY, an Iowa corporation ("**Mortgagee**"), whose mailing address is Attn: Real Estate & Commercial Mortgage Manager, 5400 University Avenue, West Des Moines, Iowa 50266,, and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation ("**Wendy's**"), whose mailing address is Attn: Real Estate & Legal Depts., 4288 W. Dublin-Granville Road, Dublin, Ohio 43017;

### WITNESSETH:

WHEREAS, Mortgagee is the owner and holder of, and the beneficiary under, that certain Mortgage or Deed of Trust (hereinafter collectively referred to as the "**Mortgage**") given by SUTTON PARK DEVELOPERS, LLC, to secure the payment of certain indebtedness therein described, including a note in the principal amount of \$10,290,000, which Mortgage is dated Sept 7, 2005 2005, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Deed of Trust Records of Cook County, Illinois, and which constitutes a mortgage lien on certain real property (hereinafter referred to as the "**Mortgaged Premises**") in Cook County, Illinois, fully described therein; and

WHEREAS, Wendy's is in the Lessee under that certain Ground Lease (hereinafter referred to as the "**Lease**") dated March 26, 2004, with SUTTON PARK DEVELOPERS, LLC, as Lessor, covering all or a part of the Mortgaged Premises and hereinafter referred to as the "**Leased Premises**", which Leased Premises are further described on the attached **Exhibit A**; and

WHEREAS, Wendy's has been granted certain easements (the "**Easements**") over real property comprising all or part of the Mortgaged Premises, which Easements are appurtenant to Wendy's use and interest in the Leased Premises; and

WHEREAS, Wendy's and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Mortgagee and Wendy's hereby agree and covenant as follows:

1. The Lease shall not be terminated, nor shall Wendy's use, possession or enjoyment of the Leased Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner, in any foreclosure or other action or proceeding instituted under or in connection with the Mortgage or in case Mortgagee takes possession of the Mortgaged Premises pursuant to any provisions of the Mortgage; provided, however, that if, at the time of, or at any time subsequent to, any such foreclosure action, a default exists and such default has continued to exist for such period of time (after notice to Wendy's as required by the Lease) that would entitle the Lessor under the Lease to terminate the Lease or would entitle such Lessor to dispossess Wendy's thereunder, any purchaser of the Leased Premises upon or after such foreclosure may exercise the rights of the Lessor, by reason of such default or event, to terminate the Lease or to dispossess Wendy's thereunder; and further provided that, if such rights are not exercised, the Lease shall continue in full force and effect in accordance with its terms and Wendy's, in such event, agrees to recognize and attorn to the new owner pursuant to such foreclosure sale.

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2. If the interests of the Lessor under the Lease shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by any other manner, and Mortgagee succeeds to the interest of the Lessor under the Lease, Wendy's shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Mortgagee were the Lessor under the Lease, and Wendy's does hereby attorn to Mortgagee as its Lessor, the said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of the Lessor under the Lease. The respective rights and obligations of Wendy's and Mortgagee under such attornment, to the extent of the then remaining balance of the Term of the Lease, shall be and are the same as now set forth therein, except as herein otherwise expressly provided.

3. If Mortgagee shall succeed to the interest of the Lessor under the Lease, Mortgagee shall be bound to Wendy's under all of the terms, covenants and conditions of the Lease and, from and after Mortgagee's succession to the interest of the Lessor under the Lease, Wendy's shall have the same rights and remedies against Mortgagee for the enforcement of its rights thereunder and the breach of any agreement contained in the Lease that Wendy's might have had under the Lease against the Lessor thereunder if Mortgagee had not succeeded to the interest of such Lessor; provided, however, that Mortgagee shall not be:

- (a) liable for any act or omission of any prior or subsequent Lessor; or
- (b) subject to any offsets or defenses which Wendy's might have against any prior Lessor; or
- (c) bound by any rent or additional rent which Wendy's might have paid for more than thirty-one (31) days in advance to any prior Lessor; or
- (d) bound by any amendment or modification of the Lease made without Mortgagee's prior written consent.

4. Mortgagee agrees that in the event of damage or destruction of the Leased Premises leased by Wendy's pursuant to the Lease, Wendy's shall be entitled to all insurance proceeds to which it would be entitled under the Lease regardless of any provision of the Mortgage to the contrary, provided that Wendy's shall repair or restore the Leased Premises following any casualty in accordance with the terms of the Lease.

5. Except as otherwise expressly set forth herein, the Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, and/or replacements of the Mortgage, and to any present or future mortgage or mortgages which may now or hereafter affect the Leased Premises, but any and all such renewals, modifications, increases, extensions, substitutions, and/or replacements, or any such other mortgage or mortgages, nevertheless shall be subject to and entitled to the benefits or the terms of this Agreement.

6. The Easements shall not be terminated, nor shall Wendy's use, possession or enjoyment of the Easements be interfered with, nor adversely affected in any other manner, in any foreclosure or other action or proceeding instituted under or in connection with the mortgage or in case Mortgagee takes possession of the Mortgaged Premises pursuant to any provisions of the Mortgage.

7. If the interests of the Mortgagor shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by Mortgagee, or by any other manner, and Mortgagee succeeds to the interest of the Mortgagor, Wendy's shall be

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bound to Mortgagee under all of the terms, covenants and conditions of the Easements with the same force and effect as if Mortgagee were the Grantor under the Easements, and Wendy's does hereby attorn to the Mortgagee as its Grantor, the same Attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of the Mortgagor.

8. Except as otherwise expressly set forth herein, the Easements now are, and shall at all times continue to be, subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modifications, extensions, substitutions, and/or replacements of the Mortgage, and to any present or future mortgage or mortgages which may now or hereafter affect the Easements, but any and all such renewals, modifications, increases, extensions, substitutions, and/or replacements, or any other mortgage or mortgages, nevertheless shall be subject to and entitled to the benefits or the terms of this Agreement.

9. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

EXECUTED as of the day and year first above written.

WITNESSES:

William M. Keating  
William M. Keating  
(Print Name)

Mortgagee:

**FARM BUREAU LIFE INSURANCE COMPANY**

By: Roger P. Soener  
Title: **ROGER PJ SOENER**  
**Investment Vice President**  
**Real Estate**

WITNESSES {AS TO BOTH}:

Robinson F. Zelinski  
ROBIN F. ZELINSKI  
(Print Name)

LESSEE:

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

By: Ronald F. Wallace  
Title: **RONALD F. WALLACE**  
**VICE PRESIDENT**

Victor Layne  
VICTOR LAYNE  
(Print Name)

By: W. Stephen Wirt  
Title: **W. STEPHEN WIRT**  
**Senior Vice President**

LAW DEPARTMENT RM

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STATE OF IOWA  
COUNTY OF POLK, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 18<sup>th</sup> day of Sept, 2005, before me personally appeared Roger P. Soener, the Invest VP-RE of **FARM BUREAU LIFE INSURANCE COMPANY**, an Iowa corporation, who was known to me as the person and officer described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledged that he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



Michelle L. Cook  
Notary Public

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 18<sup>th</sup> day of August, 2005, before me personally appeared RONALD F. WALLACE and W. STEPHEN WIRT, the VICE PRESIDENT and Senior Vice President respectively, of **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledge that they held the positions or titles set forth in the instrument and certificate, that they signed the instrument on behalf of the corporation by proper authority, and that the instrument was the act of the corporation for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



**ROBIN P. ZELINSKI**  
Notary Public, State of Ohio  
My Commission Expires 05-11-09

Robin P. Zelinski  
Notary Public

This instrument prepared by:  
Beth Dreitler, Esq.  
Wendy's International, Inc.  
4288 W. Dublin-Granville Road  
Dublin, Ohio 43017

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## EXHIBIT A

LOT 7 IN THE FINAL PLAT OF SUBDIVISION OF SUTTON PARK BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 22, AND PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

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