

UNOFFICIAL COPY

PPTY Address: Golf Road, West of Algonquin Road & East of Northwest Tollway In Rolling Meadows, Illinois

08 09 302 011  
08 09 302 010  
08 09 302 007

86107164

CJC

SUBORDINATION, ATTORNMENT, NOTICE AND NON-DISTURBANCE AGREEMENT

#18.00

THE STATE OF ILLINOIS §  
COUNTY OF COOK § KNOW ALL MEN BY THESE PRESENTS:  
§

THIS AGREEMENT made as of the 2nd day of October, 1985, by and between WENDY'S INTERNATIONAL, INC., an Ohio corporation ("Lessee") and REPUBLICBANK DALLAS, NATIONAL ASSOCIATION, a national banking association ("Lender").

W I T N E S S E T H:

WHEREAS, Lessee entered into a certain Lease (the "Lease") dated July 31, 1985 & First Amendment to Ground Lease dated 8/9/85, with Western Midwest Corporation, an Illinois corporation, pertaining to certain land in Cook County, Illinois, more fully described on Exhibit "A" attached hereto and incorporated herein for all purposes by reference and to the improvements to be constructed thereon, said land described in Exhibit "A" hereto and said improvements being hereinafter called the "Property";

WHEREAS, Western Midwest Corporation for good and valuable consideration, assigned all of its rights under the Lease to Meadowlands Associates, an Illinois Limited Partnership ("Lessor"); and

WHEREAS, Lender is making a loan to Lessor in the principal sum of \$19,800,000.00 for the construction by Lessor of improvements to the Property required by the Lease, which loan is to be secured by a Deed of Trust, Mortgage, Trust Deed and Deed to Secure Debt covering the Property (the "Mortgage");

NOW, THEREFORE, for TEN DOLLARS (\$10.00) and other valuable consideration, each to the other in hand paid, including the mutual promises set forth herein, Lessee and Lender hereby agree as follows:

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1. The Lease and the rights of the Lessee thereunder are subordinated to the Mortgage and to any and all renewals, extensions, substitutions and replacements thereof as though the Mortgage, and any and all renewals, extensions, substitutions and replacements thereof were executed and properly recorded prior in point of time to the execution of the Lease.

2. Lender agrees that it will not disturb the possession of the Lessee under the Lease upon any judicial or nonjudicial foreclosure of the Mortgage or upon acquiring title to the Property by deed in lieu of foreclosure if the Lessee is not then in default under the Lease and that Lender will accept the attornment of the Lessee thereafter so long as Lessee is not in default, and that Lender, so long as the Lessee is not in default, will recognize all renewal rights set forth in the Lease. This paragraph as to nondisturbance will apply to any purchaser at any judicial or nonjudicial foreclosure by the holder of the Mortgage if it be other than Lender.

3. In the event of the foreclosure of the Mortgage, judicially or nonjudicially, or if the holder of the Mortgage acquires title to the Property by deed in lieu of foreclosure, the Lessee agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee in such deed in lieu of foreclosure and his or its heirs, legal representatives, successors and assigns as lessor under the Lease for the balance then remaining of the term thereof, subject to all terms and conditions of the Lease.

4. The undersigned Lessee agrees to give written notice to Lender of any default by Lessor under the Lease thirty (30) days prior to terminating the Lease or exercising any other right or remedy thereunder or provided by law. Lessee further agrees that it shall not terminate the Lease or exercise any such right or remedy provided such default is cured within such thirty (30) days; provided, however, that

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(i) if such default cannot by its nature be cured within thirty (30) days, then Lessee shall not terminate the Lease or exercise any such right or remedy, provided the curing of such default is commenced within such thirty (30) days and is diligently prosecuted thereafter, and (ii) if such default cannot by its nature be cured by Lender without Lender being in possession of the Property, then Lessee shall not terminate the Lease or exercise any such right or remedy until thirty (30) days after the completion of foreclosure or similar proceedings, provided that such proceedings (or proceedings in bankruptcy to lift the automatic stay) are commenced within the thirty (30) day period following delivery of Lessee's notice to Lender and are diligently prosecuted; and, if such default cannot by its nature be cured within thirty (30) days following the completion of such foreclosure or similar proceedings, Lessee shall not terminate the Lease or exercise any such right or remedy provided the curing of such default is commenced within thirty (30) days following the completion of the foreclosure proceedings and is diligently prosecuted thereafter. Such notices shall be delivered to P. O. Box 225961, Dallas, Texas 75265, Attention: G. Walter Abbott, Real Estate Department, or to such other address or party as the holder of the Mortgage may notify Lessee in writing.

5. The Lessee shall not pay rental under the Lease for more than one month in advance, and shall not modify, alter or amend the Lease without the prior written consent of Lender.

6. Nothing in the Agreement shall be construed to require Lender to see to the application of the proceeds of the loan secured by the Mortgage, and Lessee's agreements set forth herein shall not be impaired on account of any renewal, extension or modification of the documents evidencing and securing said loan, including any increase in the principal

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amount of the loan. Lessee acknowledges that Lender is obligated only to Lessor to make said loan, and only upon the terms and subject to the conditions set forth in the Loan Agreement between Lender and Lessor pertaining to said loan. Lessee further acknowledges and agrees that neither Lender nor any purchaser of the Property at foreclosure sale or any grantee named in a deed of the Property in lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (hereinafter "Lender's Successor") shall (i) have any responsibility or liability for any act or omission of the Lessor under the Lease occurring prior to Lender or Lender's Successor obtaining possession of the Property; (ii) be subject to any offsets or defenses which Lessee may have with respect to the Lease or the Lessor thereunder arising prior to Lender or Lender's Successor obtaining possession of the Property; (iii) be bound by or responsible for any security deposits paid under the Lease unless Lender or Lender's Successor obtains possession of such deposits, and (iv) have any personal liability for the obligations of the Lessor under the Lease; provided, however, that the Lessee may terminate the Lease, or exercise any other right or remedy provided thereby or by law, not involving personal liability, in the event of any failure by Lender or Lender's Successor to perform any material obligation of the Lessor under the Lease after Lender or Lender's Successor obtains possession of the Property, if such failure is not cured as provided in Paragraph 4 hereof.

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

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EXECUTED as of the date first entered above.

Wendy's International, Inc.  
an Ohio Corporation

By: Thomas M. Nash THOMAS M. NASH

By: SS S.S. JESKA Vice President, Site Acquisition  
Its S.S. JESKA  
Vice President, Site Acquisition

REPUBLICBANK DALLAS,  
NATIONAL ASSOCIATION

LAW DEPT [Signature]

By: [Signature]  
Its SR. VICE PRES

THE STATE OF Ohio §  
COUNTY OF Franklin §

BEFORE ME, the undersigned authority, on this day personally appeared Thomas M. Nash and S.S. Jeska V.P. Site Acquisition  
V.P. Site Acquisition of Wendy's International  
an International corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of October, 1985.

Beverly Thurston  
Notary Public in and for  
County, [Blank]

My Commission Expires:

BEVERLY THURSTON  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires July 16, 1987

MAIL To

NEIL VAN Winkle  
Wendy's International  
PO Box 256  
4288 West Dublin Granville Road  
Dublin, Ohio 43017

BCS - 22

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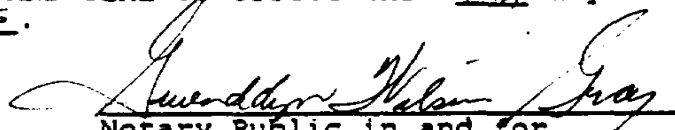
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THE STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Jack Killough, Senior Vice President, Vice President of REPUBLICBANK DALLAS, NATIONAL ASSOCIATION, a national banking association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of October, 1985.

  
Notary Public in and for  
Dallas County, Texas

My Commission Expires:

12-04-88

PROPERTY RECORD  
1985 MAR 19 PM 12:08

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Property of Cook County Clerk's Office

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## EXHIBIT A

### ROLLING MEADOWS, ILLINOIS

Of that part of Lot 2 in JCP Meadows P.U.D., being a resubdivision of Lot 1 in the JCP Meadows Subdivision, in the southwest  $\frac{1}{4}$  of Section 9, Township 41 north, Range 11 east of the third principal meridian, according to the plat thereof recorded in the Cook County Recorder's Office on December 18 of 1985, as Document #85-379240 all in Cook County, Illinois; more particularly described as follows: Commencing at the southeast corner of Lot 2 in said JCP Meadows P.U.D.; thence north  $90^{\circ}$  west along the south line of said Lot 2 a distance of 43 feet to the Point Of Beginning, thence continuing along the south line of said Lot 2 north  $90^{\circ}$  west, a distance of 77 feet; thence north  $0^{\circ}$  west, a distance of 142 feet; thence south  $90^{\circ}$  east, a distance of 77 feet; thence south  $0^{\circ}$  east, a distance of 142 feet to the Point of Beginning, all in Cook County, Illinois.

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Exhibit B

## INGRESS/EGRESS EASEMENT

### LEGAL DESCRIPTION FOR EASEMENT FOR INGRESS & EGRESS AND EGRESS

OF THAT PART OF OUTLOT "A" IN "JCP MEADOWS P.U.D.", BEING A RESUBDIVISION OF LOT 1 IN "JCP MEADOWS SUBDIVISION", IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED IN THE COOK COUNTY RECORDER'S OFFICE ON DECEMBER 18, 1985, AS DOCUMENT NO. 05 327247 ALL IN COOK COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID "JCP MEADOWS P.U.D."; THENCE NORTH 90° 00' 00" WEST ALONG THE SOUTH LINE OF SAID "JCP MEADOWS P.U.D."; A DISTANCE OF 455.00 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 90° 00' 00" WEST A DISTANCE OF 61.00 FEET, THENCE NORTH 00° 00' 00" WEST A DISTANCE OF 95.00 FEET, THENCE NORTH 90° 00' 00" WEST A DISTANCE OF 574.72 FEET, THENCE SOUTH 00° 00' 00" EAST A DISTANCE OF 84.06 FEET TO THE SOUTH LINE OF SAID "JCP MEADOWS P.U.D."; THENCE ALONG THE SAID SOUTH LINE NORTH 88° 04' 15" WEST A DISTANCE OF 95.50 FEET TO THE SOUTHWEST CORNER OF SAID "JCP MEADOWS P.U.D."; THENCE NORTH 01° 27' 05" EAST ALONG THE WEST LINE OF SAID "JCP MEADOWS P.U.D."; A DISTANCE OF 105.88 FEET, THENCE SOUTH 90° 00' 00" EAST A DISTANCE OF 443.48 FEET TO THE SOUTHWEST CORNER OF LOT 2 IN SAID "JCP MEADOWS P.U.D."; THENCE SOUTH 00° 00' 00" EAST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 160.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2, THENCE ALONG THE EASTERLY EXTENSION OF SAID SOUTH LINE OF SAID LOT 2, SOUTH 90° 00' 00" EAST A DISTANCE OF 125.00 FEET, THENCE SOUTH 00° 00' 00" EAST A DISTANCE OF 120.00 FEET TO THE SOUTH LINE OF SAID "JCP MEADOWS P.U.D."; SAID POINT ALSO BEING THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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## EXHIBIT C

### SIGN AND UTILITY EASEMENT

LEGAL DESCRIPTION FOR PROPOSED EASEMENT FOR TELEPHONE & ELECTRICAL SERVICE AS SHOWN HEREON  
OF THAT PART OF OUTLOT "A" IN "JCP MEADOWS P.U.D.", BEING A RESUBDIVISION OF LOT 1 IN "JCP MEADOWS SUBDIVISION", IN THE  
SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE  
PLAT THEREOF RECORDED IN THE COOK COUNTY RECORDER'S OFFICE ON DECEMBER 18, 1985, AS DOCUMENT NO. 85-027240  
ALL IN COOK COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN  
SAID "JCP MEADOWS P.U.D.", THENCE NORTH 90° 00' 00" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 60.00 FEET  
TO THE POINT OF BEGINNING, THENCE SOUTH 00° 00' 00" EAST A DISTANCE OF 115.00 FEET, THENCE NORTH 90° 00' 00" EAST A  
DISTANCE OF 104.00 FEET, THENCE NORTH 00° 00' 00" EAST A DISTANCE OF 15.00 FEET, THENCE NORTH 90° 00' 00" EAST A DIS-  
TANCE OF 10.00 FEET, THENCE SOUTH 00° 00' 00" EAST A DISTANCE OF 20.00 FEET TO THE SOUTH LINE OF SAID "JCP MEADOWS  
P.U.D.", THENCE NORTH 90° 00' 00" WEST ALONG SAID SOUTH LINE A DISTANCE OF 134.00 FEET, THENCE NORTH 00° 00' 00" WEST  
A DISTANCE OF 120.00 FEET TO THE SOUTH LINE OF LOT 2 IN SAID "JCP MEADOWS P.U.D.", THENCE SOUTH 90° 00' 00" EAST ALONG  
THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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