

STATE MS.-DESOTO CO.
FILED

APR 3 4 48 PM '00

BK 84 PG 783
W.F. DAVIS CH. CLK.

Prepared by and after
recording return to:
David T. Wolf, Esquire
David T. Wolf, P.C.
Suite 800
900 Circle 75 Parkway
Atlanta, Georgia 30339
770-952-8008

**SUBORDINATION AGREEMENT
(Mississippi)**

~~April~~ ^{March} THIS SUBORDINATION AGREEMENT (this "Agreement"), made this 31st day of ~~April~~ ^{March}, 2000, by and among BANK OF AMERICA, N.A., a national banking association ("Lender"), WENDELTA, INC., a Mississippi corporation ("Tenant"), and WENSTAR PROPERTIES, L.P., a Mississippi limited partnership ("Landlord");

WITNESSETH: That:

WHEREAS, Landlord is the owner of certain land and a "Wendy's restaurant building to be constructed at Commerce Street, Hernando, DeSoto County, Mississippi, as more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (the "Premises"); and Landlord and Tenant have or are about to enter into a Lease Agreement for the Premises together with any and all leases hereafter made including all extensions, modifications and renewals thereof relating to the Premises (hereinafter collectively referred to as the "Lease"); and

WHEREAS, Lender has made or has committed to make a certain loan in the original principal amount of \$3,000,000.00 (together with any and all advances made thereunder, collectively the "Loan") to Landlord and Tenant pursuant to the terms of that certain Loan and Security Agreement dated December 28, 1998, and as amended or modified from time to time, made by and among Landlord, Tenant, Lender and other third parties (the "Security Agreement"), which Loan is to be secured, in part, by a Deed of Trust, Assignment, Security Agreement and Fixture Filing dated of even date herewith (the "Deed"), and other instruments, agreements, assignments and documents given or to be given by Landlord and Tenant to Lender (or for the benefit of Lender) encumbering the Premises (any and all such Deeds, agreements, assignments and other documents given to secure the Loan, as the same may be hereafter amended, renewed, modified, consolidated, replaced, substituted and extended, from time to time, are hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, as a condition to making the Loan, Lender has required and Landlord and Tenant have agreed that the Lease will be subject and subordinate to the Loan and the Loan Documents held by Lender;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of TEN and NO/100THS DOLLARS (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, the parties hereby agree as follows:

1. Tenant has subordinated and does hereby subordinate the Lease, together with any and all rights, title, interests, estates, options, liens and charges created thereby, including, without limitation, the right of first refusal contained therein, to (a) the Loan, (b) the Loan Documents, (c) any and all advances made thereunder, and (d) any and all renewals, modifications, consolidations, replacements, extensions, transfers and assignments thereof. The Loan Documents will be superior to the right, title, interest and estate of Tenant in and to the Premises by virtue of the Lease. The Loan Documents may be amended from time to time without the consent of Tenant. In furtherance thereof, Landlord and Tenant do hereby covenant and agree that the Lease with all rights, options, purchase options, liens and charges created thereby, is and will continue to be subject and subordinate in all respects to the Deed and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder.

2. In the event Lender or any third party purchaser becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure, deed under power or otherwise, then the purchaser at such sale, either in person or by agent, with or without bringing any action or proceeding, may enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein and Tenant shall then become and be a tenant holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the powers, rights and privileges hereby granted are in addition to any and all other remedies which such purchaser may have at law or in equity;

3. So long as the Loan and the Loan Documents remain outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a copy of all notices permitted or required to be given to Landlord by Tenant under pursuant to the terms and provisions of the Lease. At any time before the rights of Landlord will have been forfeited or adversely affected because of any default of Landlord, or within the time permitted Landlord for curing any default under the Lease as therein provided (but not less than sixty (60) days from the receipt of notice), Lender may, but will have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of Landlord by the terms of the Lease; and all payments so made and all things so done and performed by Lender will be as effective to prevent the rights of Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Landlord.

4. Tenant acknowledges that Landlord has executed and delivered or will execute and deliver to Lender an assignment of the Lease as additional security for the Loan, and Tenant hereby expressly consents to such assignment.

5. Landlord and Tenant hereby certify to Lender that the Lease has been duly executed by Landlord and Tenant and is in full force and effect; that the Lease and any

modifications and amendments specified herein are a complete statement of the agreement between Landlord and Tenant with respect to the leasing of the Premises, and the Lease has not been modified or amended except as specified herein; that to the knowledge of Landlord and Tenant, no party to the Lease is in default thereunder; that no rent under the Lease has been paid more than thirty (30) days in advance of its due date; and that Tenant, as of this date, has no charge, lien or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due thereunder. So long as the Loan and the Loan Documents remain outstanding and unsatisfied, Landlord and Tenant will not alter or amend any of the terms of the Lease without the prior written consent of Lender in each instance. In the event that Landlord and Tenant make such an alteration or amendment without the prior written consent of Lender, Lender will not be bound by such alteration or amendment.

6. Unless and except as otherwise specifically provided herein, any and all notices, elections, approvals, consents, demands, requests, and responses thereto ("Communications") permitted or required to be given under this Agreement shall be given in the manner and to the addresses as set forth in the Security Agreement.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns, including, in the case of "Lender", any transferee or purchaser for Lender. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease.

8. In the event any term or condition of this Agreement conflict or are inconsistent with any terms and conditions of the Lease, this Agreement shall control. In the event any term or condition of this Agreement conflict or are inconsistent with any terms and conditions of any of the Loan Documents, the Loan Documents shall control.

9. This Agreement may be executed in multiple counterparts, and the signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart, all of which shall constitute one Agreement and shall be deemed an original.

[SIGNATURES TO FOLLOW ON PAGE 4]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above written.

LENDER:

BANK OF AMERICA, N.A.

By: Robert D. Daniel
Vice President

[AFFIX BANK SEAL]

TENANT:

WENDELTA, INC., a Mississippi corporation

By: _____
Title: Chief Executive Officer

[AFFIX CORPORATE SEAL]

LANDLORD:

WENSTAR PROPERTIES, L.P.,
a Mississippi limited partnership

By: Carlisle Corporation, a Tennessee corporation, its General Partner

By: _____
Title: Chief Executive Officer

[AFFIX CORPORATE SEAL]

[SIGNATURES CONTINUED ON PAGE 5]

STATE OF GEORGIA

COUNTY OF COBB

PERSONALLY appeared before me the undersigned authority in and for said County and State, on this 31st day of ~~April~~ ^{March}, 2000, within my jurisdiction, the within named Robert Daniel, who acknowledges that he is a Vice-President of Bank of America, N.A., and for and on behalf of said Lender, and that in as its act and deed he executed the above and foregoing instrument, after first having been duly authorized so to do.

Robin B. Berglund
Notary Public



My Commission Expires:
Notary Public, Barrow County, Georgia
My Commission Expires December 27, 2002

[AFFIX NOTARIAL SEAL]

STATE OF TENNESSEE

COUNTY OF SHELBY

PERSONALLY appeared before me the undersigned authority in and for said County and State, on this ____ day of April, 2000, within my jurisdiction, the within named Gene D. Carlisle, who acknowledges that he is the Chief Executive Officer of WENDELTA, Inc., a Mississippi corporation, and for and on behalf of said corporation, and as its act and deed he executed the above and foregoing instrument, after first having duly authorized so to do.

Notary Public

My Commission Expires:

[AFFIX NOTARIAL SEAL]

[SIGNATURES CONTINUED ON PAGE 6]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above written.

LENDER:

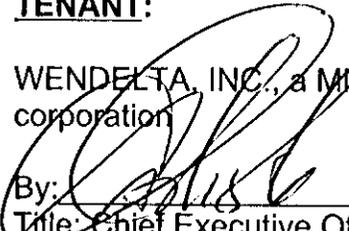
BANK OF AMERICA, N.A.

By: _____
Vice President

[AFFIX BANK SEAL]

TENANT:

WENDELTA, INC., a Mississippi corporation

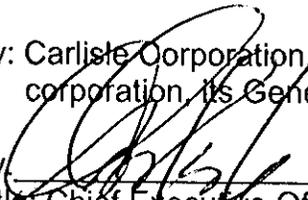
By:  _____
Title: Chief Executive Officer

[AFFIX CORPORATE SEAL]

LANDLORD:

WENSTAR PROPERTIES, L.P.,
a Mississippi limited partnership

By: Carlisle Corporation, a Tennessee corporation, its General Partner

By:  _____
Title: Chief Executive Officer

[AFFIX CORPORATE SEAL]

[SIGNATURES CONTINUED ON PAGE 5]

STATE OF GEORGIA

COUNTY OF COBB

PERSONALLY appeared before me the undersigned authority in and for said County and State, on this ____ day of April, 2000, within my jurisdiction, the within named Robert Daniel, who acknowledges that he is a Vice-President of Bank of America, N.A., and for and on behalf of said Lender, and that in as its act and deed he executed the above and foregoing instrument, after first having been duly authorized so to do.

Notary Public

My Commission Expires:

[AFFIX NOTARIAL SEAL]

STATE OF TENNESSEE

COUNTY OF SHELBY

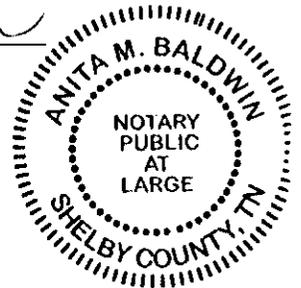
PERSONALLY appeared before me the undersigned authority in and for said County and State, on this 3rd day of April, 2000, within my jurisdiction, the within named Gene D. Carlisle, who acknowledges that he is the Chief Executive Officer of WENDELTA, Inc., a Mississippi corporation, and for and on behalf of said corporation, and as its act and deed he executed the above and foregoing instrument, after first having duly authorized so to do.

Anita M. Baldwin
Notary Public

My Commission Expires:

July 19, 2003

[AFFIX NOTARIAL SEAL]



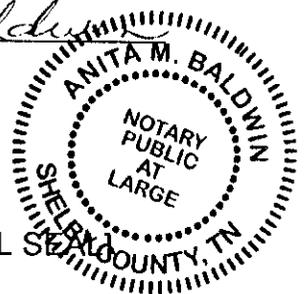
[SIGNATURES CONTINUED ON PAGE 6]

STATE OF TENNESSEE

COUNTY OF SHELBY

PERSONALLY appeared before me the undersigned authority in and for said County and State, on this 3rd day of April, 2000, within my jurisdiction, the within named Gene D. Carlisle, who acknowledges that he is the Chief Executive Officer of Carlisle Properties, Inc., a Tennessee corporation and the General Partner of WENSTAR PROPERTIES, L.P. a Mississippi limited partnership, and for and on behalf of said corporation in its capacity as general partner of said limited partnership and for an on behalf of said limited partnership, and as the act and deed of said limited partnership he executed the above and foregoing instrument, after first having been duly authorized by said corporation and limited partnership so to do.

Anita M. Baldwin
Notary Public



My Commission Expires:

July 19, 2003

wendelta3.2000/subordin

[AFFIX NOTARIAL SEAL]

EXHIBIT "A"

Lot 1 of Phase 1 of Fidelity Commercial Subdivision in Section 13, Township 3 South, Range 7 West, City of Hernando, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 70, Page 48, in the office of the Chancery Clerk of DeSoto County, Mississippi.