

This document prepared by;
After recording return to

Security Services Federal Credit Union
Attn: Commercial Services
15000 IH-10 West
San Antonio, TX 78249

Parcel No. 16-06-402-017

01459-28058

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of January [18], 2019, by and between Security Service Federal Credit Union, its successors, participants, and assigns ("Lender"), whose address is 15000 IH-10 West, San Antonio, TX 78249, and Edgar Ibarra P. dba Beto's Mexican Food and dba Mesquite Mexican Food, whose address is 435 East 400 South, Salt Lake City, UT 84105 ("Tenant").

RECITALS

A. WDG Hill Manor, LLC, a Utah limited liability company ("Borrower") is the owner in fee simple of the Property.

B. Lender is making or has made a loan to Borrower evidenced or to be evidenced by a promissory note made by Borrower to the order of Lender (the "Note") and secured or to be secured by a Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing (the "Security Instrument") granted by Borrower to or for the benefit of Lender recorded against the Property. The Note, Security Instrument, and all other documents evidencing, governing, or securing the Loan are collectively referred to herein as the "Loan Documents."

C. Steve Black, an individual, and Millcreek Partners LLC, a Utah limited liability company (collectively "Sub-Landlord") lease from Borrower all or a portion of the property located in Salt Lake County, Utah, and more particularly described on EXHIBIT A attached hereto (the "Property") pursuant to the provisions of a certain lease dated December 6, 2011 between Petty Investment Company (predecessor in interest to Borrower) as landlord, and HM 1, LLC (predecessor in interest to Sub-Landlord), as tenant.

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D. Tenant leases from Sub-Landlord all or a portion of the Property pursuant to a sublease dated March 25, 2002, and amended on May 5, 2015 (as amended, supplemented, or extended, the "Lease"). The portion of the Property leased by Tenant is referred to herein as the "Leased Property."

E. Tenant has agreed to subordinate the Lease to the lien of the Security Instrument, and Lender has agreed not to disturb Tenant's tenancy under the Lease on the terms and conditions set forth below.

AGREEMENT

For good and valuable consideration, Tenant and Lender agree as follows:

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies, and options of Tenant thereunder, including, without limitation, any rights to payment following a default by Borrower under the Lease or casualty or condemnation with respect to the Property, are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including, without limitation, all renewals, increases, modifications, spreading agreements, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless Tenant is in default under the Lease at the time such action or proceeding is commenced or unless joinder is required by law. As long as Tenant is not in default under any of the terms, covenants or conditions of the Lease or of this Agreement beyond any applicable cure period both at the time of the commencement of any such action or proceeding and at the time of any foreclosure sale or the exercise of any other rights or remedies of Lender under the Security Instrument, (a) such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the Leased Property, and (b) the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Loan Documents shall be made subject to all rights of Tenant under the Lease, as expressly modified by this Agreement.

3. **ATTORNMEN**

3.1. If (a) Lender or any other purchaser of the Property becomes the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter

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referred to as “Purchaser”), and (b) there was no default by Tenant permitting Purchaser to terminate the Lease in connection with its foreclosure action in accordance with Section 2 above, then upon Purchaser’s acquisition of the Property, the Lease shall not be terminated or affected by Purchaser’s acquisition, but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease. Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of acquiring the Property, shall be deemed to have agreed to accept such attornment.

3.2. Subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease, and subject to Purchaser’s termination right in Section 2 above, Purchaser shall recognize the leasehold estate of Tenant for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease; *provided, however*, that Purchaser shall not be:

3.2.1. liable for the failure of any prior landlord (any such prior landlord, including Borrower, Sub-Landlord, and any of their respective successors-in-interest, being hereinafter referred to as a “Prior Landlord”) to perform any of its obligations under the Lease that accrued prior to the date on which Purchaser became the owner of the Property, but this limitation of liability does not limit Purchaser’s obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser became the owner of the Property, (ii) violate Purchaser’s obligations as landlord under the Lease, and (iii) Purchaser received written notice of such condition and had the opportunity to cure the same pursuant to the terms and conditions of Section 5 of this Agreement;

3.2.2. subject to any offsets or other monetary obligations, defenses, abatement, or counterclaims that have accrued in favor of Tenant against any Prior Landlord prior to Purchaser’s acquisition of the Property;

3.2.3. liable for the return of security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless Purchaser actually receives such security deposits from a Prior Landlord;

3.2.4. bound by any payment of rents, additional rents or other sums Tenant may have prepaid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser and (ii) such prepayment was expressly approved by Purchaser in writing;

3.2.5. bound by any agreement terminating the Lease or any voluntary surrender of the Leased Property made without Lender’s or Purchaser’s prior written consent prior to Purchaser’s acquisition of the Property;

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3.2.6. bound by any amendment or modification of the rent or any other material economic term of the Lease, the commencement date of the Lease, the Lease term, or any of landlord's rights or obligations under the Lease made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Borrower's interest in the Property;

3.2.7. responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation;

3.2.8. bound by any representations or warranties of any Prior Landlord; or

3.2.9. bound by any indemnity or defense obligations of any Prior Landlord.

In the event that any liability of Purchaser arises pursuant to this Agreement or under the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. **NOTICE TO TENANT.** After notice is given to Tenant by Lender that Borrower is in default under the Loan Documents and that the amounts due from Tenant under the Lease should be paid to Lender pursuant to the terms of the Security Instrument, Tenant shall thereafter pay directly to Lender or as otherwise directed by Lender, all rents and other amounts due or to become due to Borrower under the Lease, and Borrower hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Borrower on account of any such payments.

5. **NOTICE TO LENDER AND RIGHT TO CURE.** Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default of Borrower under the Lease that would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder. Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease, and no abatement or reduction of the rent payable thereunder, shall be effective unless (a) Lender has received notice of the default and (b) Lender has failed, within thirty (30) days after both Lender's receipt of such notice and the time when Lender became entitled under the Security Instrument to remedy such default, to (i) commence to cure the default and thereafter diligently prosecute such cure to completion or (ii) if Lender cannot commence a cure without possession of the Property, to commence judicial or non-judicial proceedings within the 30-day period to obtain possession of the Property and thereafter diligently prosecute such efforts and cure to completion. However, if such default is not susceptible of cure by Lender, and Lender or an affiliate of Lender obtains possession of the Property, such default shall be waived. Notwithstanding the foregoing,

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Lender shall have no obligation to cure any default by Borrower except as specifically provided in Section 3.2.1 upon Lender's acquisition of the Property.

6. **NOTICES.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next Business Day after delivered to such courier service for delivery on the next Business Day; or (d) if by e-mail transmission, on the day of transmission so long as a copy is sent on the same day by Federal Express or other nationally recognized overnight courier, to the addresses set forth below, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice:

If to Tenant:

Edgar Ibarraq P. dba Mesquite Mexican Food
435 East 400 South
Salt Lake City, UT 84105

If to Lender:

Security Service Federal Credit Union
15000 IH-10 West
San Antonio, TX 78249
Attn: Commercial Services

For purposes of this Section 6, the term "Business Day" means any day other than Saturday or Sunday on which commercial banks are required or authorized to be open in San Antonio, Texas.

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. **GOVERNING LAW.** This Agreement shall be governed by federal law applicable to Lender and, to the extent not preempted by federal law or as otherwise specifically prohibited by applicable Utah law, the laws of the state of Texas without regard to its conflicts of law provisions.

9. **ASSIGNMENT.** Tenant shall not, without Lender's prior written consent, assign its interest in the Lease or sublet its interest in the Property if the assignment or sublease will result in a release of Tenant's liability under the Lease.

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10. **AUTHORITY.** The individuals signing this Agreement represent and warrant that they are authorized to do so on behalf of the parties for whom they are signing.

11. **MISCELLANEOUS.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

**[Remainder of page intentionally left blank;
signatures appear on the following page]**

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Executed as of the date of this Agreement.

TENANT:

**EDGAR IBARRA P. DBA BETO'S MEXICAN
FOOD AND DBA MESQUITE MEXICAN FOOD**

By: Edgar Ibarra P.
Name: Edgar Ibarra P.

LENDER:

SECURITY SERVICE FEDERAL CREDIT UNION,

By: Travis De Vere
Name: Travis De Vere
Title: Senior Commercial Loan Officer

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to be bound by, Section 4 of the Agreement.

BORROWER:

**WDG HILL MANOR, LLC,
a Utah limited liability company**

By: Spencer Wright
Name: Spencer Wright
Its: Manager

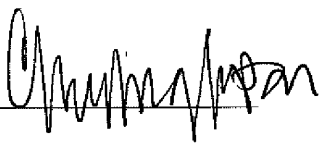
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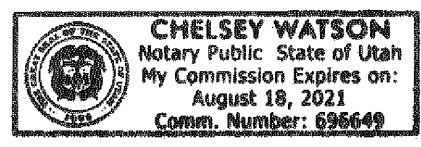
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BK 10753 PG 905

STATE OF Utah)
COUNTY OF Salt Lake) : ss


On the 18 day of January, personally appeared before me Edgar Ibarra P., who being duly sworn, acknowledged to me that he executed the foregoing agreement.

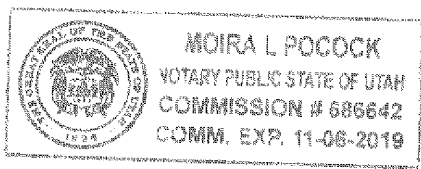
Chelsey Watson 
Name (typed or printed):
NOTARY PUBLIC in and for the State of Utah
Residing at Chartway Credit Union
My appointment expires: August 18, 2021



STATE OF Utah)
COUNTY OF Salt Lake) : ss

On the 13 day of February 2019, personally appeared before me Travis DeVere, who being duly sworn, did say that he is the Senior Commercial Loan Officer of Security Service Federal Credit Union, and that said instrument was signed on behalf of said company, and acknowledged to me that she/he executed the same.

Moira L Pocock 
Name (typed or printed):
NOTARY PUBLIC in and for the State of Utah
Residing at Salt Lake City Utah
My appointment expires: Nov 19

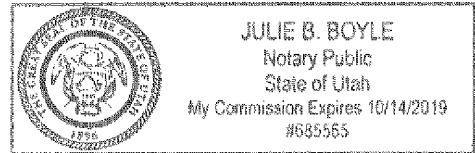


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STATE OF Utah)
 : ss
COUNTY OF Davis)

On the 23rd day of January, personally appeared before me Spencer Wright, the manager of WDG Hill Manor, LLC, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, who duly acknowledged before me that he signed the foregoing instrument for and on behalf of said company, having all requisite authority to so act, and acknowledged that he executed the same.

Julie B. Boyle
Name (typed or printed): Julie B. Boyle
NOTARY PUBLIC in and for the State of Utah
Residing at Farmington, Utah
My appointment expires: 10-14-2019



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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The following real property is located in Salt Lake County, Utah:

Parcel 1:

Commencing 140 feet East and 171 feet North of the Southwest corner of Lot 3, Block 37, Plat "B", Salt Lake City Survey; and running thence North 40 feet; thence West 128 feet; thence South 40 feet; thence East 128 feet to the place of commencement.

Also: Commencing 25 feet West of the Southeast corner of said Lot 3 and running thence West 93-1/3 feet; thence North 159 feet; thence East 93-1/3 feet; thence South 159 feet to the place of commencement.

Less and excepting therefrom any portion lying within the following described property: Commencing at the Southwest corner of Lot 3, Block 37, Plat B, Salt Lake City Survey, thence East 46-2/3 feet; thence North 178 feet; thence West 46-2/3 feet; thence South 178 feet to beginning.

Parcel 2:

Commencing at a point 178 feet North of the Southeast corner of Lot 4, Block 37, Plat "B", Salt Lake City Survey, and running thence North 33 feet; thence East 12 feet; thence South 33 feet; thence West 12 feet to the place of commencement.

Also: Commencing at a point 140 feet East and 159 feet North of the Southwest corner of Lot 3, Block 37, Plat "B", Salt Lake City Survey, and running thence West 93-1/3 feet; thence North 12 feet; thence East 93-1/3 feet; thence South 12 feet to the place of commencement.

Parcel 1A:

Subject to a right of way; Commencing 178 feet North of the Southeast corner of Lot 4, Block 37, Plat "A", Salt Lake City Survey; and running thence East 140 feet; thence North 14 feet; thence West 140 feet; thence South 14 feet to the place of commencement.

Parcel 1B:

Subject to and together with a right of way over: Commencing 140 feet East and 159 feet North of the Southwest corner of said Lot 3, and running thence West 140 feet; thence North 132 feet; thence East 12 feet; thence South 120 feet; thence East 128 feet; thence South 12 feet to the place of commencement.

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Said property is also known by the street address of:
435 E 400 South, Salt Lake City, UT 84105

Parcel No. 16-06-402-017

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