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Cook County Recorder 38.00



This instrument is prepared by  
And to be returned to:  
Stephen L. Harper, Attorney at Law  
Wendy's International, Inc.  
4288 West Dublin-Granville Road  
Dublin, Ohio 43017

RIGHT OF FIRST REFUSAL

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THIS RIGHT OF FIRST REFUSAL (the "Right of First Refusal") is made and entered into as of August 30, 2002, by and between WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation, with an address and principal office at 4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio ("Wendy's"), and MARIO A. ALLEGRO, an individual, with an address and principal office at 1048 Lincoln Drive, Manteno, Illinois 60950 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the record owner of the real property situated in the City of Glenwood, County of Cook, and State of Illinois, commonly known as **18257 South Halsted, Glenwood, Illinois (Wendy's Site #8102)** and more particularly described in the legal description attached hereto and made a part hereof as Exhibit A (the "Property"); and

WHEREAS, Declarant obtained title to the Property by virtue of a certain Warranty Deed from Wendy's recorded of even date herewith (the "Deed"); and

**BOX 333-CTI**

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WHEREAS, Declarant obtained a mortgage on the Property from General Electric Capital Business Asset Funding Corporation (together with its successors and assigns "GE Capital"); which mortgage and related security documents, if any, were recorded of even date herewith (collectively the "GE Mortgage"); and

WHEREAS, as partial consideration for the Deed, Declarant has agreed to subject the Property to a right of first refusal.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Property shall be held, transferred, sold, leased, conveyed and occupied during the term hereof subject to the covenants, conditions and restrictions hereinafter set forth.

1. Prohibition Against Transfer Unless Transaction Offered to Wendy's. Declarant agrees that, for a period of twenty (20) years from the date of recording of this Right of First Refusal, or for so long as the Unit Franchise Agreement, dated October 5, 2000, between Wendy's International, Inc., as franchisor, Declarant and All-Star Management No. 7, Inc., collectively as franchisee, is in effect, or any modification, renewal, substitution or consolidation thereof, whichever period is longer, Declarant shall not sell, transfer, lease or otherwise dispose of all or any part of the Property until and unless Declarant shall have:

- (a) obtained a bona fide offer from a third party to purchase, transfer, lease or otherwise acquire all or any part of the Property (the "Offer");
- (b) delivered to Wendy's in writing a true and accurate copy of the Offer and all documentation relating to the Offer and the prospective purchaser/lessee as Wendy's may require, including, but not limited to, all material information provided to the prospective purchaser/lessee by Declarant; and
- (c) offered to sell, transfer, lease or otherwise dispose of such interest in the Property to Wendy's at the same price and upon the same terms and conditions contained in the Offer (including any consideration to be paid for the value of the business operation upon the Property, if any).

Declarant shall not execute any contract or lease or accept any offer unless the provisions of this Right of First Refusal have been satisfied.

2. Additional Items to be Provided With Information About Offer. The information to be supplied by Declarant and required by Wendy's, as set forth in

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Paragraph 1(b) above, shall be accompanied by (a) a written representation and warranty from Declarant that Declarant has provided Wendy's with all of the information required under this Right of First Refusal, and that such information is true, accurate, and complete, and (b) if Declarant is not an individual, an appropriate resolution of Declarant's board of directors (or other applicable owners, investors, or the like) approving the proposed transaction, or other evidence satisfactory to Wendy's of Declarant's intent to consummate the transaction.

3. Wendy's Right to Acquire Property on Same Terms as Offer. Wendy's shall have the right and option, exercisable within forty-five (45) days after receipt by Wendy's of all such written notification and all other information required by Wendy's, to send written notice to Declarant that Wendy's intends to acquire the Property on the same terms and conditions as set forth in the Offer. Notwithstanding the foregoing, Wendy's shall not be bound by any provision or condition in the Offer which increases the cost or otherwise changes the economic terms if Wendy's is substituted for the prospective purchaser/lessee pursuant to this Right of First Refusal.

4. Wendy's Right to Conduct Due Diligence. If Wendy's elects to exercise its option hereunder, notwithstanding anything in the Offer, Wendy's shall be entitled to conduct due diligence of the scope customary for transactions of the type proposed in the Offer for a period of not less than sixty (60) days, which period shall commence upon the date of Wendy's notice to Declarant of Wendy's election to exercise its option. Wendy's shall not be bound by the Offer until after it has completed its due diligence and determines that the Property is in all respects satisfactory.

5. Closing After Acceptance of Offer. In the event Wendy's elects to exercise its option hereunder, closing on such transaction shall occur within the later of: (i) sixty (60) days from the date of notice by Wendy's to Declarant of the election to exercise its option, (ii) such period as may have been provided by in the Offer, or (iii) such period as may be necessary to conduct due diligence as provided herein. The purchase price shall be due from Wendy's to Declarant at closing in the form of cash or a cashier's or certified check made payable to Declarant. Wendy's may substitute cash for any non-monetary consideration set forth in the Offer so long as Declarant is fully compensated for the value of any non-monetary consideration, including, but not limited to, any favorable financing provisions or tax savings associated with such non-monetary consideration. Wendy's shall be entitled to possession of the Property on the next day following the closing, unless the Offer provides otherwise. If the Offer involves a sale of the Property, Declarant shall convey the Property to Wendy's by General Warranty Deed, unless the Offer provides otherwise, and all costs and expenses incurred in connection with Wendy's purchase of the Property shall be borne by Declarant.

6. Rejection of Offer. In the event Wendy's either rejects the Offer or fails to give notice of its election to exercise its option with respect to the Offer within forty-five (45) days after the date of receipt of the information set forth in Paragraphs 1 and 2 hereof

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(hereinafter collectively referred to as a "**Rejection**"), the Property may thereafter be sold, transferred, leased or otherwise disposed of to the original offeror at the same price and upon the same terms and conditions contained in the Offer. Unless the transaction is otherwise excepted by the provisions of Paragraphs 7 and 8 below, this Right of First Refusal shall continue in full force and effect and be applicable to subsequent sales, transfers, leases or other dispositions of all or any part of the Property.

7. Termination Upon Sale for Non-Wendy's Use. This Right of First Refusal shall remain in effect for the remainder of its term notwithstanding a transfer or disposition of the Property, except that, in the event (a) of a Rejection and (b) where Declarant transfers fee simple title to the Property pursuant to the Offer for a use other than as a Wendy's Old Fashioned Hamburgers Restaurant, and Wendy's International, Inc. has agreed to a termination of the Unit Franchise Agreement, then this Right of First Refusal, and any restriction upon the Property in the Deed that requires that the Property be used for the operation of a Wendy's Old Fashioned Hamburgers Restaurant, shall terminate. Wendy's shall, upon the request of Declarant, execute and deliver a statement of such termination in recordable form, provided that Declarant can provide evidence satisfactory to Wendy's that the Property was transferred pursuant to the Offer.

8. Termination Upon Transfer to Wendy's. Upon any vesting of title in Wendy's, all covenants, conditions, restrictions and reservations imposed hereunder shall automatically terminate and be of no further force and effect.

9. Change in Offer Constitutes New Offer. Any material change in the terms of the Offer shall constitute a new offer subject to the same rights of first refusal by Wendy's as in the case of the initial offer, and notice of any such material change shall be provided in writing by the Declarant promptly to Wendy's.

10. Exception for Acquisition of Property By A Mortgagee. This Right of First Refusal shall be inapplicable to the acquisition of the Property by a third party mortgagee, trustee or beneficiary pursuant to a bona fide foreclosure proceeding (or deed given in lieu of foreclosure) instituted by such third party mortgagee, trustee or beneficiary against the then owner of the Property pursuant to the terms of any mortgage or deed of trust securing the cost of acquisition of the Property or the construction of improvements thereon, or any refinancing thereof. Notwithstanding the foregoing, this Right of First Refusal shall be binding upon and effective against any subsequent transfer of the Property by such mortgagee, beneficiary or trustee.

11. Exception for Acquisition of Property By GE Capital. In the event of foreclosure by GE Capital or the exercise of such similar remedy by GE Capital as provided under the provisions of the GE Mortgage, Wendy's shall have a period of thirty (30) days after receipt of notice from GE Capital to exercise this right of first refusal for a purchase price equal to the then outstanding balance on the GE Mortgage. In the event Wendy's fails to properly exercise its right of first refusal strictly in accordance with the

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terms hereof then this Right of First Refusal, and any restriction upon the Property in the Deed that requires that the Property be used for the operation of a Wendy's Old Fashioned Hamburgers Restaurant, shall terminate and be of no further force or effect with respect to the Property.

12. Enforceability. If any term, provision or condition contained in this Right of First Refusal shall, to any extent, be invalid or unenforceable, the remainder of this Right of First Refusal (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Right of First Refusal shall be valid and enforceable to the fullest extent permitted by law.

13. Notice. All notices, waivers, statements, demands, approvals or other communications to be given under or pursuant to this Right of First Refusal shall be in writing, addressed to the parties at their respective addresses as provided below, and shall be delivered by certified or registered mail, postage prepaid, as follows:

If to Declarant: Mario A. Allegro  
1048 Lincoln Drive  
Manteno, Illinois 60950

If to Wendy's: Wendy's Old Fashioned Hamburgers of New York, Inc.  
4288 West Dublin-Granville Road  
P. O. Box 256  
Dublin, Ohio 43017  
Attention: Legal Department

14. Covenant Running With the Land. The foregoing covenants, conditions and restrictions shall be binding upon and inure to the benefit of Declarant, Wendy's, and their respective successors and assigns, and shall run with the land.

15. Amendment. This Right of First Refusal shall not be amended or modified, in whole or in part, unless such amendment or modification is in writing and signed by Declarant and Wendy's.

16. Non-Waiver. The failure of Wendy's to insist upon strict performance of any covenants, conditions or terms of this Right of First Refusal shall not be construed as a waiver or relinquishment of any such covenants, conditions or terms, but the same shall be and remain in full force and effect.

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17. Headings. The captions and headings used herein are for convenience of reference only and shall not affect the interpretation of this Right of First Refusal.

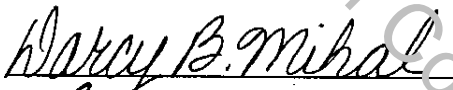
18. Counterparts. This Right of First Refusal may be executed in several counterparts, but together shall constitute an original.

19. Governing Law. This Right of First Refusal shall be governed by and construed in accordance with the law of the jurisdiction where the Property is located.

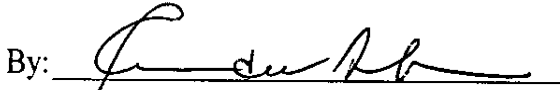
IN WITNESS WHEREOF, this Right of First Refusal has been executed by the duly authorized officers of the parties hereto as of the day and year first above written.

Signed and acknowledged in the presence of (as to both):

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



Print Name: **DARCY B. MIHAL**

By: 

Title: **RAYMOND W. BAKER**  
Vice President



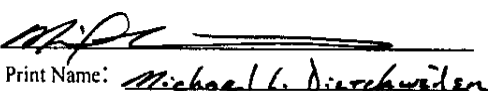
Print Name: **ERICA E. ARMENTROUT**

By: 

Title: **W. STEPHEN WIRT**  
Vice President

Legal Dept. 

Signed and acknowledged in the presence of:



Print Name: **Michael L. Dierckwiden**



**MARIO A. ALLEGRO**

Print Name: \_\_\_\_\_

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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 28<sup>th</sup> day of August, 2002, before me personally appeared RAYMOND W. BAKER and W. STEPHEN WIRT, the Vice President and 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.



DARCY B. MIHAL  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUGUST 23, 2005

Darcy B. Mihal  
Notary Public

STATE OF OHIO  
COUNTY OF Cook, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 30<sup>th</sup> day of August, 2002, before me personally appeared **MARIO A. ALLEGRO**, who was known to me as the person described in and who acknowledged that he signed the instrument 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.

(SEAL)



Patricia Butler  
Notary Public

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## EXHIBIT A

A Tract of land comprising part of the Southwest 1/4 of Section 33, Township 36 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, said Tract of land being described as follows: Beginning at a point on a line drawn perpendicular to the South line of said Section 33, said perpendicular line passing through a point on said South line, 345 feet East of the Southwest corner of said Section and said point of beginning being 40 feet North of said South line of Section 33; thence North along said perpendicular line, a distance of 250 feet; thence West parallel with said South line of Section 33, a distance of 241.71 feet to the East line of Halsted Street, as heretofore dedicated by "Ford Airplane Subdivision," thence South along said East line of Halsted Street, a distance of 184.15 feet; thence Southeasterly along a curved line, convexed Southwestward, tangent to the last described course and having a radius of 65 feet, a distance of 102.97 feet to a point of tangency with a line drawn parallel with and 40 feet North of said South line of Section 33, thence East along last described parallel line (being the North line of Arquilla Drive), a distance of 179.15 feet to the point of beginning.

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