

**After Recording**

**Return to:**

Nanette C. Neidhardt, Esq.  
Wendy's International, Inc.  
4288 West Dublin-Granville Road  
Dublin, Ohio 43017

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** is entered into as of the Effective Date (as set forth below), between **NATIONAL RETAIL PROPERTIES, INC.**, a Maryland corporation, having an address of 450 South Orange Avenue, Suite 900, Orlando, Florida 32801 (the "**Landlord**") and **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, having an address of 1155 Perimeter Center West, Suite 1200, Atlanta, Georgia 30338, Attn: Sr. Director, Lease Management (the "**Tenant**"), to be placed upon the Public Records of Cook County, Illinois, and give notice of the Lease (as described below) between the Landlord and Tenant. Capitalized terms used but not defined herein shall have the meaning set forth in the Lease.

Pursuant to that certain Lease dated August 24, 2010 (the "**Effective Date**") between Landlord and Tenant ("**Lease**"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord those certain Premises described on **Exhibit "A"** hereto, together with all rights of ingress and egress and all other rights, easements and appurtenances pertaining to said Premises, all of which rights are more particularly described in the Lease. In addition, Landlord and Tenant do hereby give notice of the following additional terms and provisions contained in the Lease:

**ORIGINAL TERM OF LEASE:**

The Original Term shall begin on August 24, 2010 and shall end on the last day of the fifteenth (15<sup>th</sup>) Lease Year. "**Lease Year**" means each twelve (12) month period during the Term starting with the twelve (12) month period beginning on the Rent Commencement Date (as hereinafter defined) and ending on the last day of the 12<sup>th</sup> full calendar month thereafter. The Rent Commencement Date shall be the earlier of: (a) the date on which Tenant commences doing business in the Premises; or (b) one hundred twenty (120) days after Tenant receives

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possession of the Premises.

**OPTION TO EXTEND:**

Tenant has three (3) options to extend the Term for periods of five (5) years each, exercisable upon the expiration of the then current Term, as the same are more particularly set forth in Section 2.02 of the Lease.

**RIGHT OF FIRST OFFER:**

Tenant has a Right of First Offer to purchase the Premises in accordance with certain terms and conditions set forth in Section 4.04 of the Lease.

**RIGHT TO ENCUMBER PERSONALTY:**

Tenant has the right to place liens upon and grant security interests in any and all Personalty in accordance with certain conditions set forth in Section 7.05 of the Lease.

**RIGHT TO HYPOTHECATE LEASEHOLD ESTATE:**

Tenant has the right to hypothecate or collaterally assign Tenant's Leasehold Estate in accordance with certain terms and conditions set forth in Section 7.09 of the Lease.

**SUBORDINATION AND NON-DISTURBANCE:**

Tenant has the obligation to subordinate its interest in the Lease to Landlord's first in priority mortgagee, subject to the condition precedent that any such mortgagee enter into a subordination, non-disturbance and attornment agreement with Tenant reasonably acceptable to Tenant, as provided for in Section 11.04 of the Lease.

All parties are further given notice of the terms and conditions set forth in the Lease in addition to those described above. Copies of the Lease are in the possession of the Landlord and Tenant. The terms and conditions of said Lease are by this reference incorporated herein and made a part hereof.

**IN WITNESS WHEREOF**, the Landlord and the Tenant have executed this Memorandum of Lease as of the Effective Date set forth above.

*[Signatures on following page]*

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**LANDLORD:** <sup>ky</sup>  
**NATIONAL RETAIL PROPERTIES, INC.,** <sup>yes</sup>  
a Maryland corporation

Signed, sealed and delivered  
in the presence of:

By: *Paul E. Bayer*

Witnesses:  
*Kella Schauble*  
Print Name: **Kella Schauble**

Print Name: **Paul E. Bayer**  
Title: **Executive Vice President**

*Kristin Furness*  
Print Name: **Kristin Furness**

Taxpayer ID: 56-1431377

STATE OF FLORIDA  
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, **Paul E. Bayer** with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to be the **Executive Vice President** of *National Retail Properties, Inc.*, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

WITNESS my hand and official seal at office this 20<sup>th</sup> day of May, 2011.

My Commission Expires:

*Kella Schauble*  
Notary Public

(NOTARY SEAL)



[Signatures continued on following page]

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TENANT:

**WENDY'S OLD FASHIONED  
HAMBURGERS OF NEW YORK,  
INC.,**  
an Ohio corporation

Signed, sealed and delivered  
in the presence of:

Witnesses: (As to both)

Joanne B. Krimm  
Print Name: **JOANNE B. KRIMM**

Kelly J. Smith  
Print Name: **Kelly J. Smith**

By: Kris A. Kaffenberger

Print Name: **Kris A. Kaffenberger**  
Title: **SVP, Business Development**

By: Greg S. Haggis

Print Name: **Greg S. Haggis**  
Title: **SVP, Finance and Brand Chief Financial Officer**

Legal Approved: AKW

STATE OF OHIO  
COUNTY OF FRANKLIN

PERSONALLY APPEARED before me, the undersigned authority, a Notary Public in and for said County and State, Kris A. Kaffenberger and Greg S. Haggis, the SVP Business Development and SVP Finance and Brand Chief Financial Officer respectively of **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged to hold the aforesaid positions or titles and that as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained as and for the company.

WITNESS my hand and official seal at office this 21 day of January, 2011.

My Commission Expires:

Kelly J. Smith  
Notary Public

(NOTARY SEAL)



Kelly J. Smith  
Notary Public, State of Ohio  
My Commission Expires 12-19-2011

**UNOFFICIAL COPY****EXHIBIT A****PARCEL 1:**

THE WEST 150.00 FEET OF THE EAST 1300.00 FEET OF THE SOUTH 250.00 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS EXCEPT THAT PART TAKEN FOR THE WIDENING OF 159TH STREET PURSUANT TO CIRCUIT COURT OF COOK COUNTY CASE NUMBER 93L51184 AND DESCRIBED AS FOLLOWS::

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:: BEGINNING AT THE SOUTHWEST CORNER OF THE EAST 1300.00 FEET OF SAID SOUTHEAST 1/4; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES, 47 MINUTES, 00 SECONDS WEST, ON THE WEST LINE OF THE EAST 1300 FEET OF SAID SOUTHEAST 1/4, 14.62 FEET TO A POINT 60.00 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE CENTER LINE OF 159TH STREET; THENCE NORTH 68 DEGREES, 33 MINUTES, 18 SECONDS EAST, PARALLEL WITH SAID CENTER LINE, 150.00 FEET TO A 5/8" REBAR WITH AN ALLIED STAMPED STATE OF ILLINOIS DIVISION OF HIGHWAY RIGHT OF WAY CORNER P.L.S 2377, AND TO THE WEST LINE OF THE EAST 1150.00 FEET OF SAID EAST QUARTER, THENCE SOUTH 1 DEGREES, 47 MINUTES, 00 SECONDS EAST, ON SAID WEST LINE, 12.97 FEET TO THE SOUTH LINE OF SAID SOUTHEAST 1/4; THENCE SOUTH 87 DEGREES, 55 MINUTES, 28 SECONDS WEST ON SAID SOUTH LINE, 150.00 FEET TO THE POINT OF BEGINNING);

AND ALSO EXCEPT;

THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 1150.00 FEET OF SAID SOUTHEAST 1/4 OF SECTION 13 WITH THE NORTH LINE OF A PARCEL TAKEN FOR WIDENING OF 159TH STREET IN CIRCUIT COURT OF COOK COUNTY CASE NO 93L51184; THENCE SOUTH 88 DEGREES 33 MINUTES 18 SECONDS WEST, ALONG SAID NORTH LINE OF A PARCEL TAKEN FOR WIDENING OF 159TH STREET, 150.00 FEET, TO A POINT ON THE WEST LINE OF THE EAST 1300.00 FEET OF SAID SOUTHEAST 1/4 OF SECTION 13; THENCE NORTH 01 DEGREES 47 MINUTES 10 SECONDS WEST, ALONG SAID WEST LINE OF THE EAST 1300.00 FEET, 17.40 FEET; THENCE NORTH 88 DEGREES 56 MINUTES 54 SECONDS EAST, 150.01 FEET, TO A POINT ON SAID WEST LINE OF THE 1150.00 FEET; THENCE SOUTH 01 DEGREES 47 MINUTES 10 SECONDS EAST, ALONG SAID

WEST LINE OF THE EAST 1150.00 FEET, 16.37 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.