

Prepared by and Return to:

Lisa G. Gilleland
Bloomin' Brands
2202 North West Shore Boulevard
5th Floor
Tampa, FL 33607

ACCESS AND MAINTENANCE AGREEMENT

This Access and Maintenance Agreement (this "Agreement") is made on the ____ day of _____, 2019 by New Private Restaurant Properties, LLC, a Delaware limited liability company ("Developer").

RECITALS:

A. Developer is the owner of a certain tract of land legally described in Exhibit A of this Agreement (the "Property").

B. The Property consists of two lots (each a "Lot" and collectively, "Lots"), known as Lot 1 and Lot 2, together with the relating infrastructure and improvements, all as depicted on Exhibit B (the "Site Plan").

C. Developer desires to establish certain rights relating to the Property as more particularly described in this Agreement.

STATEMENT OF THE AGREEMENT:

In consideration of the premises, covenants and agreements set out below and other good and valuable consideration the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. Definitions:

a. "Occupant" means any person or entity entitled to the use and occupancy of any portion of a building on the Property under an ownership right or under any lease, sublease, license, concession or other similar agreement.

b. "Owner" or "Owners" mean Developer and all future owners of fee simple title to all or any portion of a Lot, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

c. “Permittee” means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invites, licensees, subtenant’s and concessionaire of Occupants as far as their activities relate to the intended development, use and occupancy of the Property.

2. Access Easements. Developer reserves for itself and its successors and assigns in title to the Lots, and declares and grants, for the term of this Agreement, and for the benefit of each Lot and the Occupants of each Lot and their Permittees, a non-exclusive access easement (both vehicular and pedestrian but not for parking purposes) for the passages of vehicles on, over and across the driveway areas of each Lot, and for the passage and accommodation of pedestrians over and across the sidewalk areas of each Lot, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each Lot, and shall be binding on, enforceable against and burden each Lot.

3. Maintenance. Each Owner shall maintain or cause to be maintained, including replacement due to ordinary wear and tear, at its sole cost and expense, the driveways and sidewalks on its Lot, or portions thereof, in a slightly, safe condition and good state of repair. The minimum standard of maintenance for the Lot shall be comparable to the standard of maintenance followed in other comparable retail developments of comparable size in the Aurora, Colorado area, in compliance with all applicable laws. All driveways and sidewalks on the Lots shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced.

4. Shared Areas. To the extent any drives or sidewalks are shared by the Lots, the Owner of Lot 2 shall maintain or cause to maintain the shared areas. The Owner of Lot 1 shall reimburse the Owner of Lot 2 its share of the costs of any such maintenance, in the amount of 50.42% of any total, within thirty (30) days after receipt of an invoice therefore.

5. Notices. All requests, notices and demands that are given or made in connection with this Agreement shall be in writing and shall be given by certified mail, return receipt requested; or by nationally recognized overnight courier service, with the ability to confirm delivery; or by hand delivery, evidence by a signed receipt for delivery and shall be addressed as follows:

New Private Restaurant Properties, LLC
OSI Restaurant Partners, LLC
2202 North West Shore Blvd., 5th Floor
Tampa, FL 33607
Attention: Chief Development Officer
(813) 282-1225 Phone

with a required simultaneous copy to:

OSI Restaurant Partners, LLC
2202 North West Shore Blvd., 5th Floor
Tampa, FL 33607
Attention: Sr. Director of Asset Management
(813) 830-4276 Phone

The addresses set out above may be changed by notice sent pursuant to this Section 5.

6. Binding Effect. The terms of this Agreement and all easements granted under this Agreement constitute covenants running with the land and binds the Lots and inures to the benefit of Developer and each Owner.

7. Attorneys' Fees. In any proceeding arising under this Agreement, the prevailing party is entitled to recover all reasonable attorneys' fees and costs actually incurred.

8. Severability. A determination that any provision of this Agreement is unenforceable or invalid does not affect the enforceability or validity of any other provision, and a determination that the application of any provision of this Agreement in any particular circumstances is unenforceable or invalid does not affect the enforceability or validity of such provision as it may apply to other circumstances.

9. Governing Law. This Agreement is governed by and enforced and construed in accordance with the laws of the State in which the Property is located.

[SIGNATURE ON NEXT PAGE]

In Witness Whereof, Developer has executed this Agreement.

NEW PRIVATE RESTAURANT PROPERTIES,
LLC, a Delaware limited liability company

By:_____

Print Name:_____

Title: Authorized Agent

STATE OF FLORIDA)

)

COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, as Authorized Agent for New Private Restaurant
Properties, LLC, a Delaware limited liability company on behalf of said entity. He/She is
personally known to me.

(Notary Seal)

NOTARY PUBLIC

Printed Name: _____

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"

PROPERTY

All that portion of Lot 1, Block 4, Southeast Commons Subdivision Filing No. 1, County of Arapahoe, State of Colorado, according to the Plat recorded December 21, 1982, in Book 60 and Pages 28 and 29, Reception No. 2231314, described as follows:

Beginning at a point on the South line of said Lot 1, from which the Southwest corner of said Lot 1 bears N 89° 49' 43" W, 504.21 feet, thence N 89° 49' 43" W, 504.21 feet along the South line of said Lot 1 to the Southwest corner thereof;

thence N 00° 58' 01" E, 280.29 feet along the West line of said Lot 1 to a point of curve to the right;

thence Northeasterly, 31.14 feet along the Northwesterly line of said Lot 1 and along the arc of said curve to a point tangent, said arc having a radius of 20.00 feet, a central angle of 89° 12' 42" and being subtended by a chord that bears N 45° 34' 22" E, 28.09 feet;

thence S 89° 49' 17" E, 480.36 feet along the North line of said Lot 1 to a point from which the Point of Beginning bears S 00° 10' 43" W;

thence S 00° 10' 43" W, 299.92 feet to the Point of Beginning.

County of Arapahoe,
State of Colorado

EXHIBIT “B”

SITE PLAN

SOUTHEAST COMMONS SUBDIVISION FILING NO. 8

A RESUBDIVISION OF A PORTION OF LOT 1, BLOCK 1, SOUTHEAST COMMONS SUBDIVISION FILING NO. 5
SITUATED IN THE NW 1/4 OF SECTION 30, T.4S., R.66W. OF THE 6TH P.M.
CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO
SHEET 1 OF 2

DEDICATION:

KNOW ALL PEOPLE BY THESE PRESENTS THAT THE UNDERSIGNED WARRANT THEY ARE OWNERS OF A PARCEL OF LAND BEING A PORTION OF LOT 1, BLOCK 1, SOUTHEAST COMMONS SUBDIVISION FILING NO. 5, AS RECORDED AT RECEPTION NO. A6078909, ARAPAHOE COUNTY RECORDS, ALL LOCATED IN THE NW 1/4 OF SECTION 30, T.4S., R.66W. OF THE 6TH P.M., CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 1, SOUTHEAST COMMONS SUBDIVISION FILING NO. 5; THENCE S00°07'47"E ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 299.93 FEET; THENCE S89°51'47"W ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 478.65 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN A WARRANTY DEED RECORDED AT RECEPTION NO. D4015467, ARAPAHOE COUNTY, COLORADO RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING THREE (3) COURSES:
1. THENCE ALONG A CURVE TO THE RIGHT, NON-TANGENT TO THE LAST DESCRIBED COURSE, HAVING A CENTRAL ANGLE OF 03°31'15", A RADIUS OF 1330.12 FEET, AN ARC LENGTH OF 81.74 FEET, A CHORD BEARING OF N08°28'06"W AND A CHORD DISTANCE OF 81.72 FEET;
2. THENCE N03°16'35"W NON-TANGENT TO THE LAST DESCRIBED CURVE, A DISTANCE OF 66.47 FEET TO A POINT OF NON-TANGENT CURVE;
3. THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 00°24'27", A RADIUS OF 20793.36 FEET, AN ARCH LENGTH OF 147.91 FEET, A CHORD BEARING OF N00°46'38"W AND A CHORD DISTANCE OF 147.91 FEET TO A POINT ON THE SOUTH R.O.W. LINE OF EAST EVANS AVENUE; THENCE ALONG SAID SOUTH R.O.W. LINE AND THE NORTH LINE OF SAID LOT 1 AND ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 39°09'21", A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 13.67 FEET, A CHORD BEARING OF N70°17'32"E AND A CHORD DISTANCE OF 13.40 FEET; THENCE N89°52'13"E CONTINUING ALONG SAID SOUTH R.O.W. LINE AND SAID NORTH LINE OF LOT 1, A DISTANCE OF 480.36 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS (146,751 SQUARE FEET) 3.3689 ACRES, MORE OR LESS.

HAVE LAID OUT, PLATTED, AND SUBDIVIDED THE SAME INTO LOTS AND A BLOCK AS SHOWN ON THIS PLAT, UNDER THE NAME AND STYLE OF **SOUTHEAST COMMONS SUBDIVISION FILING NO. 8**, AND BY THESE PRESENTS DO HEREBY DEDICATE TO THE CITY OF AURORA, COLORADO, FOR THE PERPETUAL USE OF THE PUBLIC, THE STREETS AND EASEMENTS, AS SHOWN HEREON AND NOT PREVIOUSLY DEDICATED TO THE PUBLIC.

COVENANTS:

THE UNDERSIGNED OWNER(S), FOR THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS, COVENANT AND AGREE WITH THE CITY OF AURORA;

NO STRUCTURE CONSTRUCTED ON ANY PORTION OF THE PLATTED LAND SHOWN HEREIN SHALL BE OCCUPIED OR USED UNLESS AND UNTIL ALL PUBLIC IMPROVEMENTS, AS DEFINED BY CHAPTER 147 OF THE CITY CODE OF AURORA, COLORADO, ARE IN PLACE AND ACCEPTED BY THE CITY OR CASH FUNDS OR OTHER SECURITY FOR THE SAME ARE ESCROWED WITH THE CITY OF AURORA AND A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED BY THE CITY;

ALL ELECTRICAL, COMMUNITY UTILITY LINES AND SERVICES, AND STREET LIGHTING CIRCUITS, EXCEPT AS PROVIDED IN SECTION 126-505 OF THE CITY CODE AS THE SAME MAY BE AMENDED FROM TIME TO TIME, SHALL BE INSTALLED UNDERGROUND;

ALL CROSSINGS OR ENCROACHMENTS BY PRIVATE UTILITIES INTO EASEMENTS OWNED BY THE CITY OF AURORA ARE ACKNOWLEDGED BY THE UNDERSIGNED AS BEING SUBJECT TO THE CITY OF AURORA'S USE AND OCCUPANCY OF SAID EASEMENTS; AND HEREBY AGREE TO INDEMNIFY THE CITY OF AURORA FOR ANY LOSS, DAMAGE, OR REPAIR TO CITY FACILITIES RESULTING FROM THE INSTALLATION, OPERATION, OR MAINTENANCE OF SAID PRIVATE UTILITIES; AND THEY FURTHER AGREE TO HOLD HARMLESS THE CITY OF AURORA, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OF DAMAGES TO PRIVATE UTILITIES ARISING FROM THE CITY'S USE OR OCCUPANCY OF THE EASEMENTS OWNED BY THE CITY OF AURORA.

OWNER:

NEW PRIVATE RESTAURANT PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____
SIGNATURE

PRINT NAME & TITLE

NOTARIAL:

STATE OF _____)
COUNTY OF _____) §

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20_____, A.D., BY _____

WITNESS MY HAND AND OFFICIAL SEAL:

NOTARY PUBLIC

MY COMMISSION EXPIRES

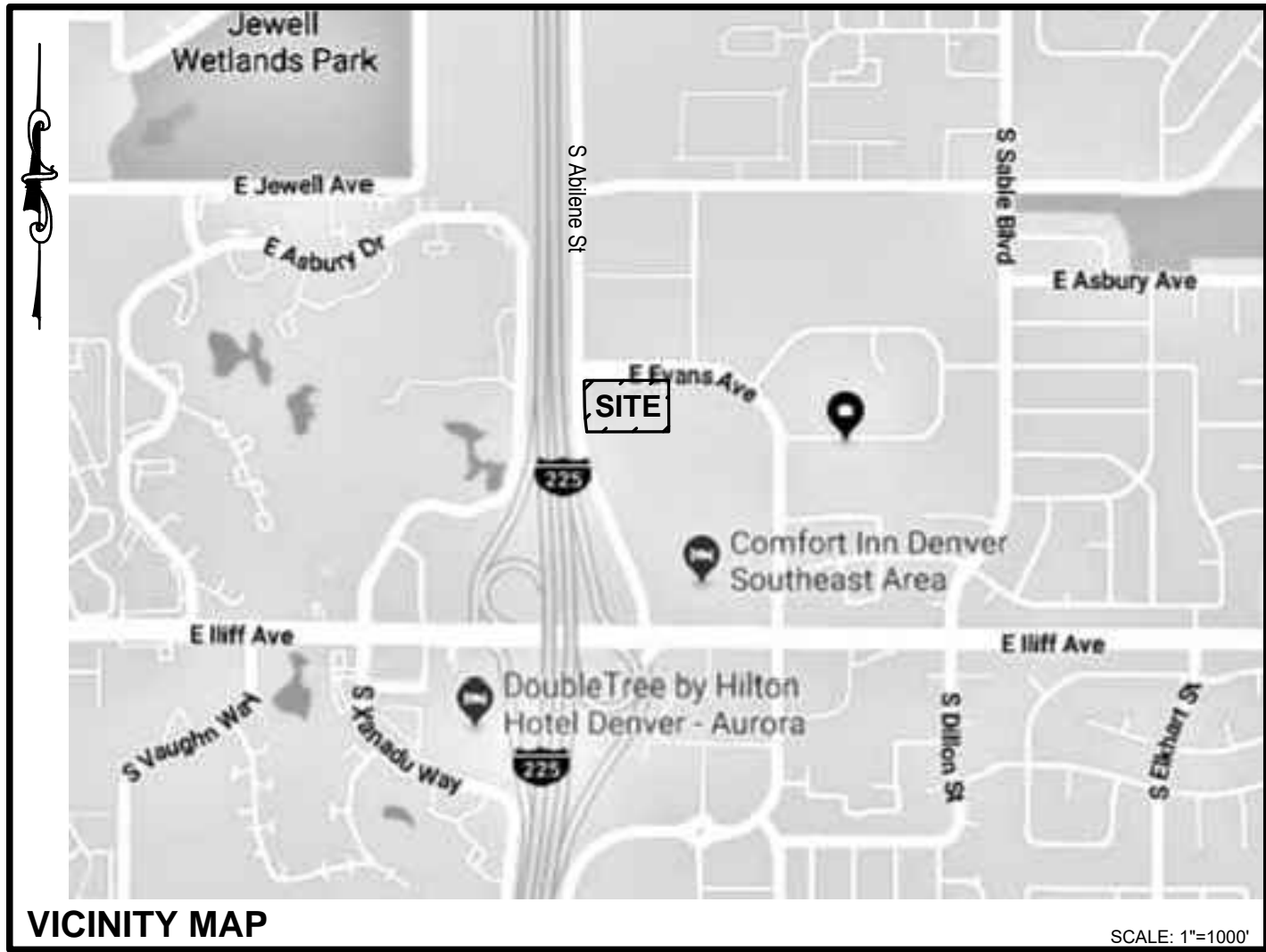
CONSENT TO SUBDIVIDE:

THE UNDERSIGNED AS MORTGAGE HOLDER ON PART OR ALL OF THE HEREON SHOWN REAL PROPERTY, DOES HEREBY AGREE AND CONSENT TO THE PLATTING OF SAID PROPERTY AS SHOWN HEREON.

WELLS FARGO BANK, NATIONAL ASSOCIATION

BY: _____
SIGNATURE

PRINT NAME & TITLE



SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY I WAS IN RESPONSIBLE CHARGE OF THE SURVEY WORK USED IN THE PREPARATION OF THIS PLAT; THE POSITIONS OF THE PLATTED POINTS SHOWN HEREON HAVE AN ACCURACY OF NOT LESS THAN ONE (1) FOOT IN TEN THOUSAND (10,000) FEET PRIOR TO ADJUSTMENTS; AND ALL BOUNDARY MONUMENTS AND CONTROL CORNERS SHOWN HEREON WERE IN PLACE AS DESCRIBED ON _____.

CHARLES N. BECKSTROM
PROFESSIONAL L.S. NO. 33202
FOR AND ON BEHALF OF
ENGINEERING SERVICE COMPANY



GENERAL NOTES:

- THIS PLAT WAS BASED ON TITLE COMMITMENT NUMBER ABJ70611435 PREPARED BY LAND TITLE GUARANTEE COMPANY AS AGENT FOR OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, WITH A EFFECTIVE DATE OF FEBRUARY 22, 2019, AND DOES NOT CONSTITUTE A TITLE SEARCH BY THIS SURVEYOR FOR OTHER EASEMENTS AND/OR EXCEPTIONS OF RECORD.
- BEARINGS ARE BASED ON THE EAST LINE OF LOT 1, BLOCK 1, SOUTH EAST COMMONS SUBDIVISION FILING NO. 5 BEARING S00°07'47"E PER THE CITY OF AURORA DEPARTMENT OF PUBLIC WORKS HORIZONTAL CONTROL NETWORK AND BOUNDED BY THE MONUMENTS SHOWN HEREON.
- ALL MEASUREMENTS SHOWN HEREON ARE IN U.S. SURVEY FEET.
- ALL THE OWNERS OF THE LOTS ADJACENT EAST EVANS AVENUE AND SOUTH ABILENE STREET SHALL BE REQUIRED TO COMPLY WITH REQUIREMENTS OF THE AURORA CITY CODE THAT MAY RESTRICT THE ABILITY TO BUILD A FENCE ALONG THOSE STREETS OR THE TYPES AND SIZES OF FENCES THAT CAN BE BUILT ALONG THOSE STREETS.
- RIGHT-OF-WAY FOR INGRESS AND EGRESS FOR SERVICE AND EMERGENCY VEHICLES IS GRANTED OVER, ACROSS, ON, AND THROUGH ANY AND ALL PRIVATE ROADS, WAYS, AND FIRE LANES NOW OR HEREAFTER ESTABLISHED ON THE DESCRIBED PROPERTY. THE SAME ARE HEREBY DESIGNATED AS FIRE LANES AND EMERGENCY AND SERVICE VEHICLE ROADS, AND SHALL BE POSTED "NO PARKING - FIRE LANE".
- THE EASEMENT AREA WITHIN EACH LOT IS TO BE CONTINUOUSLY MAINTAINED BY THE OWNER OF THE LOT EXCEPTING THE CITY OF AURORA FROM SUCH RESPONSIBILITY. ANY STRUCTURES INCONSISTENT WITH THE USE GRANTED IN THE EASEMENT ARE PROHIBITED.

NOTICE:

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

ANY PERSON WHO KNOWINGLY REMOVES, ALTERS, OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT, LAND BOUNDARY MONUMENT, OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR, PURSUANT TO STATE STATUTE 18-4-508 OF THE COLORADO REVISED STATUTES.

CITY OF AURORA APPROVALS:

THE FOREGOING INSTRUMENT IS APPROVED FOR FILING, AND CONVEYANCE OF THE STREETS AND EASEMENTS AS SHOWN HEREON AND IS ACCEPTED BY THE CITY OF AURORA, COLORADO THIS _____ DAY OF _____, 20_____, A.D., SUBJECT TO THE CONDITION THAT THE CITY SHALL UNDERTAKE MAINTENANCE OF ANY SUCH STREETS ONLY AFTER CONSTRUCTION HAS BEEN COMPLETED BY THE SUBDIVIDER TO THE CITY OF AURORA SPECIFICATIONS.

PUBLIC WORKS DIRECTOR

DATE

CITY ATTORNEY

DATE

PLANNING DIRECTOR

DATE

CLERK AND RECORDER'S CERTIFICATE:

ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF ARAPAHOE COUNTY, COLORADO, ON THIS _____ DAY OF _____, 20_____, AD, AT _____ O'CLOCK _____ M.

COUNTY CLERK AND RECORDER

DEPUTY

BOOK NO.: _____

PAGE NO.: _____

RECEPTION NO.: _____

ENGINEERING SERVICE COMPANY	14190 East Evans Avenue Aurora, Colorado 80014 engineeringserviceco.com		
<i>Creative Solutions Since 1954</i> CIVIL ENGINEERS & LAND SURVEYORS	P 303.337.1393 F 303.337.7481 T/F 1.877.273.0659		
Survey No.: 19075-P	Project No.: 374-18	Date: 04/23/2019	Revised:

