

AFTER RECORDING RETURN TO:

Jeffrey P. Orlan, P.A.
3 Fieldcrest Drive
New City, NY 10956

RESTRICTIVE COVENANT AND EASEMENT AGREEMENT

THIS RESTRICTIVE COVENANT AND EASEMENT AGREEMENT (this "Agreement") is made this 16th day of may, 2023 (the "Effective Date") by and between Aurora Retail LLC, an Illinois limited liability company (together with its successors and assigns, "AURORA") whose legal address is 500 W. Cypress Creek Road, Suite 755, Ft. Lauderdale, FL 33309, and Wendy's Properties, LLC, a Delaware limited liability company (together with its successors and assigns, "WENDY'S"), whose street address is One Dave Thomas Blvd., Dublin, Ohio 43017, each of which may also be referred to as a "Party" and together may be referred to as the "Parties".

WITNESSETH

WHEREAS, AURORA is the fee simple title owner of that certain parcel of real property described in Exhibit "A" attached hereto (the "AURORA Property");

WHEREAS, WENDY'S is the fee simple title owner of that certain parcel of real property described in Exhibit "B" attached hereto (the "WENDY'S Property");

WHEREAS, AURORA and WENDY'S desire to impose the restrictions set forth herein on their respective properties (each, a "Property" and together, the "Properties").

NOW, THEREFORE, in consideration of the mutual promises contained herein, TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Recitals The aforesaid recitals are true and correct and are incorporated herein.
- 2. Easements.
 - (a) Wendy's Easement for Ingress and Egress.

(i) AURORA hereby grants, in favor of and for the benefit of the WENDY'S Property, a perpetual, nonexclusive easement (the "WENDY'S Ingress And Egress Easement") upon, over, and across the AURORA Property common element driveways as they may be modified from time to time in accordance with this Agreement (the "AURORA Easement Area"), for the purpose of vehicular and pedestrian ingress and egress to and from East Mississippi Avenue and/or South Chambers Road, including by customers, employees, tenants, and its and their licensees, invitees, and by the general public (subject to Section 14 below) seeking to access the WENDY'S Property (collectively, the "WENDY'S Invitees"), and for no other use and/or purpose.

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Recording Requested by:
FNTG-NCS Colorado

(ii) The WENDY'S Ingress And Egress Easement shall be a perpetual, nonexclusive easement and servitude upon, over, and across the AURORA Easement Area as such AURORA Easement Area shall exist from time to time. Use of the WENDY'S Ingress and Egress Easement by the WENDY'S Invitees shall be free of charge. AURORA shall have the right to revise, modify, or rearrange the improvements, drive aisles, access points, and any and all other aspects, improvements, size, location and/or layout of the AURORA Easement Area, provided that the servitude rights granted under this Section 2(a) are not materially, adversely affected. AURORA shall have the right to create and enforce reasonable rules and regulations to regulate the use of the AURORA Easement Area, provided that such rules and regulations are not in violation of this Agreement, and that the enforcement of such rules and regulations shall not be exercised in such manner as to discriminate, in any material way, against the WENDY'S Invitees. WENDY'S shall enforce all such rules and regulations against the WENDY'S Invitees.

(iii) AURORA shall have the right to take such steps as it deems necessary to prevent persons not authorized by this Agreement to use the AURORA Easement Area from using the AURORA Easement Area. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the AURORA Easement Area (or any other portion of the AURORA Property) except along the common boundary line of the AURORA Property and the WENDY'S Property; provided that such steps shall not unreasonably and materially interfere with access or circulation within the AURORA Easement Area by those parties entitled to utilize the easements set forth in this Section 2(a).

(b) AURORA Easement for Ingress, Egress.

(i) WENDY'S hereby grants, in favor of and for the benefit of the AURORA Property, a perpetual, nonexclusive easement (the "AURORA Ingress And Egress Easement") upon, over, and across the WENDY'S Property common element driveways as they may be modified from time to time in accordance with this Agreement (the "WENDY'S Easement Area"), for the purpose of vehicular and pedestrian ingress and egress to and from East Mississippi Avenue and/or South Chambers Road, including by customers, employees, tenants, and its and their licensees, invitees, and by the general public (subject to Section 14 below) seeking to access the AURORA Property (collectively, the "AURORA Invitees"), and for no other use and/or purpose.

(ii) The AURORA Ingress And Egress Easement shall be a perpetual, nonexclusive easement and servitude upon, over, and across the WENDY'S Easement Area as such WENDY'S Easement Area shall exist from time to time. Use of the AURORA Ingress And Egress Easement by the AURORA Invitees shall be free of charge. WENDY'S shall have the right to revise, modify, or rearrange the improvements, drive aisles, and any and all other aspects, improvements, size, location and/or layout of the WENDY'S Easement Area, provided that the servitude rights granted under this Section 2(b) are not materially, adversely affected. WENDY'S shall have the right to create and enforce reasonable rules and regulations to regulate the use of the WENDY'S Easement Area, provided that such rules and regulations are not in violation of this Agreement, and that the enforcement of such rules and regulations shall not be

exercised in such manner as to discriminate, in any material way, against the AURORA Invitees. AURORA shall enforce all such rules and regulations against the AURORA Invitees.

(iii) WENDY'S shall have the right to take such steps as it deems necessary to prevent persons not authorized by this Agreement to use the WENDY'S Easement Area from using the WENDY'S Easement Area. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the WENDY'S Easement Area (or any other portion of the WENDY'S Property) except (x) along the common boundary line of the AURORA Property and the WENDY'S Property, and (y) on any portion of the access road from South Chambers Road to the AURORA Property; provided that such steps shall not unreasonably and materially interfere with access or circulation within the WENDY'S Easement Area by those parties entitled to utilize the easements set forth in this Section 2(b).

(c) Easement for Utility Lines and Facilities.

(i) Each of AURORA, and WENDY'S hereby establish, in favor of each other, a perpetual, non-exclusive easement under, through, across and between the AURORA Property and the WENDY'S Property for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located on the AURORA Property or the WENDY'S Property). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved areas on each of the AURORA Property or the WENDY'S Property or with the normal operation of any business on such Properties. The Party seeking to install any improvements pursuant to this Section 2(c) on the Property of the other Party shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Property on which such easement facilities are being installed which result from such use, installation, operation, maintenance, repair and/or replacement, and shall provide as-built plans for all such facilities to the Party on whose Property such utility lines and facilities are located within thirty (30) days after the completion of construction of same.

(ii) At any time and from time to time, any Party shall have the right to relocate on its own Property any existing utility line or facility which is then located on the Property of such Party (the "Relocating Party") and which serves the Property of the Relocating Party and/or the non-Relocating Party (as defined below), provided that any such relocation: (i) shall be performed only upon at least thirty (30) days' prior written notice of such Relocating Party's intention to undertake the relocation to the other Party (the "non-Relocating Party") whose property is served by the utility line or facility sought to be relocated; (ii) shall not unreasonably interfere with or diminish utility service to the property of the non-Relocating

Party served by the utility line or facility; (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility with respect to the Property of the non-Relocating Party; (iv) shall be performed without cost or expense to the non-Relocating Party; and (v) shall provide for the original and relocated area to be restored to the original condition and specifications. If the relocated utility lines and/or facilities serve the Property of the non-Relocating Party, then the Relocating Party shall provide as-built plans for all such relocated utility lines and facilities to the non-Relocating Party within thirty (30) days after the date of completion of such relocations.

(iii) The grant of easement established by this Section 2(c) shall burden each of the AURORA Property and the WENDY'S Property and shall apply to the construction and/or relocation reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Agreement.

(d) Indemnification.

Each Party shall and hereby does indemnify, defend and hold harmless the other Party, its successors and assigns, from and against any and all claims, suits, penalties, liabilities, and expenses (including, without limitation, legal fees) for injury to persons (including death), destruction or damage to property, adverse effects on the environment, and/or any violations of governmental laws, regulations or orders, in any such event arising out of or resulting from, or in any way in connection with, the indemnifying Party's exercise of its rights set forth in this Section 2.

(e) Liability Insurance.

Each Party, as grantee of the easements described in this Section 2, shall, at its sole expense, maintain comprehensive, broad form, general liability insurance sufficient to cover such indemnification with minimum limits of two million dollars (\$2,000,000.00) on account of bodily injuries to or death as the result of any one accident, occurrence or disaster (the "Policy of Insurance"). The Policy of Insurance shall be issued by responsible insurance companies well rated by national rating organizations and authorized to do business in the State of Colorado and shall name the other Party, its successors and assigns, as additional named insureds. Each grantee Party shall deliver certificates of the Policy of Insurance to the other Party prior to such grantee Party, its agents, contractors and/or employees first entering onto the other Party's Property, and from time to time thereafter promptly following written request by the other Party. All Policies of Insurance shall provide that such policy shall not be canceled without the insurer endeavoring to give a minimum of ten (10) days prior written notice to the parties named as additional insureds. Notwithstanding the foregoing, (i) the liability insurance required by this Section 2(e) may be satisfied by an occupant/tenant of the respective Property, and (ii) if such occupant/tenant maintains a net worth of at least one hundred million dollars (\$100,000,000.00) as reasonably demonstrated to the Parties, then such occupant/tenant may satisfy this liability insurance requirement through self-insurance.

(f) No Liens.

Each Party shall forthwith pay all liens of contractors, subcontractors, subsubcontractors, mechanics, laborers, and materialmen and all other items of like character, with respect to the other Party's Property. Each Party shall and hereby does indemnify, defend and hold harmless the other Party, its successors and assigns, from and against all legal costs and charges, bond premiums for release of liens, including all attorney's fees, incurred in and about the prosecution or defense of any suit in discharging the other Party's Property and/or any part or portion thereof from any liens, charges, judgments, or encumbrances caused or suffered to be caused, directly or indirectly, by such Party.

3. Maintenance.

(a) Except as set forth herein to the contrary, each Party shall, without cost to the other, maintain, repair and replace as is reasonably necessary the respective Easement Areas located upon such Party's Property so as to maintain same in good condition, order and repair and in accordance with applicable law, including but not limited to snow removal. For purposes of this Section 3(a), the owner of the Property to be maintained, repaired and/or replaced is referred to as the "Owner Party" and the owner of the other Property is referred to as the "Non-Owner Party"). Notwithstanding the foregoing, if the need for such maintenance, repair and/or replacement arises from the negligence and/or intentional misconduct of a Non-Owner Party and/or its tenants and/or licensees and/or any of their respective employees, contractors and/or agents, then the Non-Owner Party shall within thirty (30) days after written demand reimburse the Owner Party for the actual, reasonable, third party costs and expenses incurred by the Owner Party with respect to such maintenance, repair and/or replacement.

(b) As consideration for AURORA's execution and delivery of this Agreement, and to compensate AURORA for its costs of maintaining the AURORA Easement Area, WENDY'S shall pay to AURORA five thousand dollars (\$5,000.00) per annum (the "Maintenance Payment"), in advance commencing on the date of this Agreement and thereafter due and payable on or before each anniversary of said date. The Maintenance Payment shall increase by three percent (3%) per annum. Further, WENDY'S shall maintain, repair and replace the WENDY'S drive-thru lane on the AURORA Property so as to keep such drive-thru lane in good condition, order and repair and in accordance with applicable law, failing which, in addition to any and all other rights and remedies available hereunder, AURORA may perform such maintenance, repair and/or replacement and invoice WENDY'S for all charges incurred, plus ten percent (10%) administrative costs, such invoice to be paid by WENDY'S within thirty (30) days of the date of its delivery.

(c) In the event that either Owner Party fails to perform or cause to be performed any emergency or otherwise time-sensitive maintenance action (e.g. snow removal) on such Owner Party's Property which may cause an unreasonable lack of access to or otherwise emergent situation negatively impairing the use of the Non-Owner Party's Property (in the commercially reasonable discretion of the Non-Owner Party), and subject to at least 24 hours prior notice to the designated property management contacts (as the same shall be updated from time to time between the Parties), each Non-Owner Party shall have the limited right of access to enter the Owner Party's Property to make such minimal actions or corrections solely to allow access or safe usage to and from the Non-Owner Party's Property. If such Non-Owner Party perform such maintenance, it may invoice the Owner Party for all charges reasonably incurred, plus ten

percent (10%) administrative costs, such invoice to be paid by the Owner Party within thirty (30) days of the date of its delivery

4. Property Restrictions.

(a) AURORA Property Restrictions. The AURORA Property currently contains the following use restrictions (collectively, the "AURORA Exclusives"). All terms capitalized in this Section 4 and not otherwise defined herein shall have the meaning ascribed to them in the underlying lease document(s) from which such use restrictions originate:

- (i) Clifford Keifer dba The Book Niche: Used book sales.
- (ii) Sally Beauty Supply, LLC: Primary business is the sale or retail beauty supplies
- (iii) Hero Dental of Aurora, P.C.: Primary business is practicing dentistry on persons under the age of 21.
- (iv) Aurora Health & Fitness, LLC: Primary business is operation of an health club offering wide variety of group and individual training facilities and classes, including multiple varieties of both exercise equipment, such as cardiovascular, resistance and free weights, and fitness classes such as aerobics and spin classes.
- (v) Roche Fashions, Inc.: Primary business is men's clothing store that is 5,000 sf or less.
- (vi) Mobile Addiction, LLC: Prepaid phone service
- (vii) Scott Rybicki dba LA Insurance Agency CO1, LLC: Primary business is the sale of auto and homeowners insurance.
- (viii) Rent-A-Center West, Inc.: Any business which leases, markets, provides, rents with the option to own and occasionally sells consumer durable goods.
- (ix) Douglas David Tumbleson dba Continetal Cleaners: Primary business is a dry cleaner.
- (x) Ken's Auto Service, Inc.: Primary business is an automotive repair shop.
- (xi) Advance America: Any business whose business is 10% or more non-secured cash advancing.
- (xii) Domino's Pizza: Pizza delivery
- (xiii) Wavemax: Primary business is providing laundry or other wash and fold services.

WENDY'S hereby represents, warrants and covenants that the WENDY'S Property shall not violate any of the AURORA Exclusives for so long as such AURORA Exclusive (each considered separately and individually) remains in effect. Further, WENDY'S hereby represents, warrants and covenants that the WENDY'S Property shall not violate any covenant, restriction, condition, lease or other title matter encumbering the AURORA Property at the time of such use (the "AURORA Use Restrictions"). WENDY'S shall enforce such AURORA Exclusives and AURORA Use Restrictions upon all tenants, occupants and other users of the WENDY'S Property. Further, WENDY'S covenants and agrees that the WENDY'S Property shall be used only for the WENDY'S Exclusive Use (as defined in Section 4(b) hereof) for a period of ten (10) years following the date of this Agreement, unless WENDY'S has obtained the prior written consent from the fee owner of the AURORA Property, not to be unreasonably withheld, conditioned or delayed for any change in such use.

(b) WENDY'S Property Restrictions. For so long as WENDY'S, its successors and/or assigns or tenant or subtenant, continue to operate the WENDY'S Property for the

WENDY'S Exclusive Use (as defined below) (but otherwise for a term not to exceed a period of ten (10) years from the date of this Agreement) at no time shall any portion of the AURORA Property be used as a quick service restaurant where fifteen percent (15%) or more of its gross sales (exclusive of tax, beverage and dairy product sales) consist of hamburgers or any other type of beef products served in sandwich form (the "WENDY'S Exclusive Use").

(c) Use Restrictions. No portion of the WENDY'S Property shall be used for any of the following uses (the "Prohibited Uses"):

- (i) Flea markets;
- (ii) Gambling, off-track betting parlor or operation, electronic gaming or bingo parlor;
- (iii) Laundries and dry cleaning plants;
- (iv) Marijuana and hemp related uses;
- (v) Head shop;
- (vi) Outdoor storage of equipment, vehicles, and materials;
- (vii) Pawn shops;
- (viii) Sexually oriented businesses;
- (ix) Substance abuse or criminal half-way house, treatment center, or correction facility or mental health facility or outpatient drug treatment facility;
- (x) Tattoo parlors;
- (xi) Discotheque, dance hall, nightclub, amusement gallery, tavern, bar or pool room (provided that nothing herein shall prevent a dining establishment that sells alcohol as part of its menu, and such alcohol sales are ancillary to the primary business as a dining establishment)
- (xii) Abortion clinic or medical office performing terminations of pregnancies
- (xiii) Unemployment agency; food stamp center.

5. WENDY'S Property Building Restrictions. WENDY'S hereby represents, warrants and covenants that the size of any and all buildings, structures and improvements on the Property shall not exceed (a) twenty-eight feet (28') in height measured from the finished floor elevation of such buildings, structures and other improvements to the highest point of the roof(s) of such buildings, structures and other improvements, including but not limited to any architectural features and rooftop equipment, and (b) an aggregate of four thousand five hundred (4,500) gross building square feet.

6. Invalidity. If any provision of this Agreement shall be invalid or shall be determined to be void by any court of competent jurisdiction, then such provision or determination shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

7. Litigation. In the event of any litigation in connection with this Agreement, the prevailing party shall be entitled to recover court costs and reasonable attorney's fees. Venue shall be in Arapahoe County, CO. This Agreement shall be governed by, construed under and

enforced in accordance with the laws of the State of Colorado.

8. Enforcement and Default. Enforcement hereof shall be by action at law or in equity against any Parties or persons violating or attempting to violate any covenants set forth herein, to restrain the violation, to specifically enforce this Agreement, and/or to recover damages. A Party shall be deemed to be in default of this Agreement only upon the expiration of thirty (30) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice of default. However, such Party shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period and such person is acting in good faith and using its best efforts to rectify the particulars specified in the notice of default, provided however that in such event such Party will be in default if such Party has not rectified the particulars specified in said notice of default within ninety (90) days of delivery of such notice of default.

9. Provisions Run With Land. The provisions hereof shall touch and run with the land, shall be binding on and shall inure to the benefit of the Parties and their respective successors, heirs and assigns and may be waived or modified only by written instrument in recordable form executed by all of the owners of both Properties. It is further agreed that no modification, amendment or alteration of terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

10. Sole Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or undertakings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

11. Construction and Recordation. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. This Agreement shall be recorded in the real property records of Arapahoe County, Colorado. All recording fees shall be paid by WENDY'S.

12. Mortgage Subordination. Any mortgage now or hereafter affecting any portion of the AURORA Property or the WENDY'S Property shall at all times be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure, shall acquire title subject to all of the terms and provisions of this Agreement.

13. Subdividing. Nothing herein shall be construed as prohibiting the fee owner of any Property from subdividing same (or otherwise selling fee and/or condominium ownership in portions of same) without the consent, approval or joinder of any other person or entity; however the provisions of this Agreement shall remain applicable to the affected Property.

14. Notices. Any notice required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is hand delivered, sent by a nationally recognized overnight courier service, or mailed by registered or certified mail, return receipt requested, to the parties at the addresses shown above or to such other address as the respective parties may from time to time designate by like notice, on the date of delivery if by hand, the first business day after deposit with the overnight courier service, or the fifth (5th) business day following the date of mailing. In the event any portion of the AURORA Property and/or WENDY'S Property thereof is sold, then for purposes of notice hereunder, such address for the owner of a parcel shall be as set forth on the tax rolls as maintained by the Arapahoe County, CO Property Appraiser.

15. Not a Public Dedication. Nothing herein shall be deemed a gift or dedication of any portion of the Easement Area, the AURORA Property, or the WENDY'S Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties hereto that this Agreement be strictly limited to and for the purposes herein expressed.

16. Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

17. Waiver. The failure of any Party to insist upon strict performance of this Agreement shall not be deemed a waiver of any rights or remedies they may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of this Agreement by the same or any other person.

Signatures follow this page.

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IN WITNESS WHEREOF, WENDY'S has executed this Agreement as of the 15th day of May, 2023.

WENDY'S PROPERTIES, LLC, a Delaware limited liability company

By: [Signature]
Kris Kaffenbarger, VP Global System Optimization, Franchise and Portfolio Management

STATE OF Ohio)
COUNTY OF Franklin)

Legal Approval: [DS MR]

The foregoing instrument was sworn to and subscribed before me by means of (X) physical presence this 15th day of May, _____, by Kris Kaffenbarger, VP - Global System Optimization, Franchise and Portfolio Management of WENDY'S PROPERTIES, LLC, a Delaware limited liability company, on behalf of the company, who is (X) personally known to me.

Witness my hand and official seal.

My commission expires: 12-27-26

[Signature]
Notary Public



Brenda Williamson
Notary Public, State of Ohio
My Commission Expires 12/27/2026

EXHIBIT A
AURORA Property Legal Description

LOTS 1, 2 AND 4, BLOCK 1, MARSHALL'S AURORA PLAZA SUBDIVISION FILING NO. 2,
ACCORDING TO THE PLAT AS RECORDED MAY 2, 2023 AT RECEPTION NUMBER E3029238,
COUNTY OF ARAPAHOE, STATE OF COLORADO

EXHIBIT B
WENDY'S Property Legal Description

LOT 3, BLOCK 1, MARSHALL'S AURORA PLAZA SUBDIVISION FILING NO. 2, ACCORDING TO THE PLAT AS RECORDED MAY 2, 2023 AT RECEPTION NUMBER E3029238, COUNTY OF ARAPAHOE, STATE OF COLORADO.

