

PALMER MEMORANDUM OF SALE

This Memorandum of Sale is made this February 26, 2008, by and among Wendy's International, Inc. (the "Mortgage Holder"), Aaron Posnik & Company, Inc., of 83 State Street, Springfield, MA 01103 (the "Auctioneer") and _____ of _____ (the "Buyer").

1. MORTGAGE HOLDER'S SALE AT PUBLIC AUCTION. Pursuant to a public auction (the "Auction") conducted on February 26, 2008 by the Auctioneer on behalf of the Mortgage Holder as holder of a Mortgage from a Massachusetts limited liability company to Fleet Business Credit, LLC dated December 27, 2000, recorded in the Hampden County Registry of Deeds at Book 12826, Page 413 (the "Mortgage"), which Mortgage was assigned to GEC PAC Investment II, Inc. by Assignment dated August 30, 2004, recorded in said Registry at Book 14944, Page 524, and reassigned to Wendy's International, Inc. by Assignment recorded in said Registry at Book 17100, Page 364 (the "Mortgage") and pursuant to the Power of Sale contained therein, the Buyer, as the highest bidder, agrees to purchase the property described below (the "Property") in accordance with the terms hereof.

2. DESCRIPTION OF THE PROPERTY. The Property shall mean the following:

a. The Property. A certain parcel of land with the buildings thereon situated at 1213 Thorndike Street, Palmer, Hampden County, Massachusetts, as more particularly described in the Mortgagee's Notice of Sale ("Mortgagee's Notice") attached as Exhibit B and incorporated herein by reference, together with the property and subject to the terms and conditions set forth in said Mortgagee's Notice (the "Property").

b. Inaccuracy of the description of the Property and known and unknown defects SHALL NOT BE REASON FOR FAILURE ON THE PART OF THE BUYER TO COMPLETE THE SALE. The Buyer will consider the Property as sufficiently described by the descriptions available at the time of the Auction. Verbal qualifications by the Mortgage Holder or Auctioneer or their respective agents SHALL NOT INVALIDATE nor become part of this sale as THE BUYER HAS EXAMINED THE PROPERTY TO HIS/HER SATISFACTION.

3. TRANSFER OF THE PROPERTY. The Property shall be conveyed by mortgagee's deed (Massachusetts General Laws, Chapter 183), under the statutory power of sale, and delivered together with an Affidavit, each in the form set forth in and attached as Exhibit A.

4. PRICE AND DEPOSIT. The bid price for which the Property has been sold to the Buyer is \$_____ of which \$50,000.00 has been paid this day in escrow to Shatz, Schwartz and Fentin, P.C. ("Escrow Agent") in accordance with the terms of the Mortgagee's Notice. The Buyer shall also be responsible for paying a 3.5% commission payment to the auctioneer in addition to the bid price, as described in the Mortgagee's Notice. The Deposit shall not be invested in an interest bearing account and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the deposit. Within three (3) business days after the sale an additional deposit shall be paid by the successful bidder sufficient to bring the aggregate deposit up to an amount equal to ten (10%) per cent of the auction price.

5. BALANCE OF PRICE; CLOSING. The deed and associated papers shall be delivered and the balance of the consideration paid by certified or bank treasurer's check at the office of Shatz, Schwartz and Fentin, P.C., 1441 Main Street, Springfield, Massachusetts at ten o'clock (10:00) A.M. on or before the Closing Date hereafter described.

6. RIGHT OF FIRST REFUSAL; CLOSING. The sale is subject to the Right of First Refusal granted by the mortgagor to Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's") recorded in said Registry at Book 12826, Page 405. At the conclusion of the auction and the execution of this Memorandum of Sale, the Mortgage Holder will notify Wendy's of the terms of the foreclosure sale. If Wendy's notifies Mortgage Holder within forty-five days of Wendy's intention to exercise its rights under the Right of First Refusal, the Buyer's rights hereunder shall be deemed assigned to Wendy's, the premises will be sold to Wendy's for the highest bid price, Buyer's deposit will be returned to Buyer and Buyer's rights and obligations hereunder shall terminate. If Wendy's notifies the Mortgage Holder that it does not intend to exercise its Right of First Refusal, or does not timely notify the Mortgage Holder of its intent to do so, then the Buyer shall be obligated to complete the sale in accordance with the terms of this Memorandum of Sale on or before the first to occur of (i) thirty days after receipt of notice from Mortgage Holder that Wendy's elected not to exercise its Right of First Refusal, or (ii) May 12, 2008, time being of the essence, unless Mortgage Holder otherwise agrees (the "Closing").

7. TITLE. Buyer acknowledges that it has reviewed this Memorandum of Sale, the Mortgagee's Notice, the Municipal Lien Certificate, and all other materials delivered at the sale (referred to collectively as the "Bidder's Package"), and agrees

to purchase the Property subject to the items disclosed in such Bidder's Package.

In the event the Mortgage Holder cannot convey title to the Property as stipulated, for any reason whatsoever except the fault of the Buyer, the deposit shall be refunded and all rights hereunder shall cease, and the Buyer shall have no recourse against the Mortgage Holder or Escrow Agent or their employees, agents and representatives, whether at law or in equity; provided, however, that at the election of the Buyer and the Mortgage Holder, Buyer may accept such title as the Mortgage Holder can deliver to the Property in its then condition and to pay therefor the purchase price without deduction.

8. RISK OF LOSS/INJURY.

a. Mortgage Holder shall be under no obligation to maintain casualty insurance covering the Property after the execution of this Agreement. If the Property is damaged by fire or other casualty after the date hereof and prior to the Closing, Buyer shall nonetheless accept the deed to the Property and pay therefor the full balance of the bid price. Buyer may at its expense, obtain insurance on the Property upon the execution of this Agreement to insure itself against any loss or damage occurring prior to Closing. In the event of any loss or damage has occurred to the Property prior to the execution of this Agreement, any insurance proceeds now or hereafter received for such damage shall belong to the Mortgage Holder, it being acknowledged that, except as stated herein, the Premises shall be delivered in their AS IS condition.

b. Neither Buyer nor any of its agents or employees shall enter upon the Property prior to Closing for any purpose without obtaining the prior written authorization of the Mortgage Holder. In the event Mortgage Holder, in its sole and exclusive discretion, permits the Buyer or its agents to enter upon the Property, Buyer indemnifies Mortgage Holder for any loss, damage, liability or expense, including reasonable attorneys' fees, incurred on account of such entry and any activity conducted by Buyer, it being acknowledged that any entry or activity shall be at the sole risk and expense of the Buyer.

9. ACCEPTANCE OF DEED. The acceptance of a deed to the Property by the Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed or arising out of said Auction on the part of the Mortgage Holder to be performed or observed. The Mortgage Holder shall be under no obligation to provide any

certifications or affidavits to the Buyer, Buyer's lender or title company with regard to the conduct of the sale or condition of the Property.

10. CONDITION OF THE PROPERTY. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AS OF THE DATE OF CLOSING. MORTGAGE HOLDER WILL MAKE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE THE PROPERTY. MORTGAGE HOLDER AND AUCTIONEER SPECIFICALLY DISCLAIM ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY OR ITS OPERATION, OR ANY OF THE INFORMATION CONTAINED IN THE BIDDER'S PACKAGE, EXCEPT AS SPECIFICALLY SET FORTH IN THE MEMORANDUM OF SALE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO CONSTRUCTION, FITNESS FOR HABITATION, ZONING, USE, OR CONDITION OF THE PROPERTY, OR THE EXISTENCE ON OR UNDER THE PROPERTY OF ANY OIL, HAZARDOUS WASTE, SUBSTANCES, OR MATERIALS, ASBESTOS, UREA FORMALDEHYDE FOAM INSULATION, LEAD PAINT OR ABOVE GROUND OR UNDERGROUND STORAGE TANKS FOR OIL OR OTHER MATERIALS. BUYER SHOULD INDEPENDENTLY EXAMINE, OR HAVE ITS OWN CONSULTANTS EXAMINE, ALL FINANCIAL AND LEGAL DOCUMENTS, CONTRACTS, LICENSES, PERMITS, ENVIRONMENTAL MATTERS, AND INFORMATION RELATING TO THE PROPERTY. ALL PURCHASES OF THE PROPERTY WILL BE BASED SOLELY ON BUYER'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY MORTGAGE HOLDER OR AUCTIONEER. IN THE EVENT ANY INFORMATION CONTAINED IN THE BIDDER'S PACKAGE VARIES FROM DATA OBTAINED ELSEWHERE, THE INFORMATION CONTAINED IN THE BIDDER'S PACKAGE SHALL GOVERN, SUBJECT TO BEING UPDATED AT THE SALE.

Without limiting the generality of the foregoing, it is acknowledged as follows:

a. No representation or warranty is made as to whether any contracts, leases, licenses or permits (including without limitation any licenses or permits needed to operate any aspect of the Property) are in full force and effect, whether the same are transferable or assumable, or whether they terminate upon sale of the Property.

b. No representation is made as to the zoning or permitted use of the Property, including without limitation, whether the Property can be used as a restaurant of any type.

c. No representation is made as to whether any Certificate of Municipal Liens or any tax information is accurate or complete or whether the Property can be used for any particular purpose. Buyer assumes full responsibility with regard to municipal charges, including without limitation, taxes

and tax titles or tax takings, outstanding as of the date of the foreclosure sale and those outstanding as of the Closing and for determining the proper uses for the Property.

d. The Buyer agrees to investigate all of the foregoing prior to the sale to its satisfaction and indemnifies and holds the Mortgage Holder harmless from all liability and expenses, including reasonable attorney's fees, incurred by Mortgage Holder on account of the condition or use of the Property.

11. BUYER'S DEFAULT; DAMAGES. The Auction sale is not complete until the Buyer has executed this Memorandum of Sale and made the required deposit. Failure of the Buyer to execute this Memorandum of Sale or failure by the Buyer to fulfill the Buyer's agreements herein, shall constitute a default hereunder. Upon Buyer's default, Mortgage Holder shall be entitled, at its election, to either retain the deposit as liquidated damages or to hold Buyer responsible for all damages caused by its breach of contract, including, without limitation any deficiency resulting from a resale, whether to the second highest bidder, Mortgage Holder, or otherwise, together with costs of resale and any costs of maintaining or owning the Property. In the event Mortgage Holder resells the Property, Buyer shall have no claim to any excess of the eventual sale price over the amount bid.

12. ASSIGNMENT. The successful bidder may not assign the bid or its rights under this Memorandum of Sale without the prior written consent of the Mortgage Holder.

13. DEED STAMPS, DETECTORS, FEES, ADJUSTMENTS. The Buyer shall pay all recording fees and documentary stamps and sales tax in connection with the transfer of the Property, all costs of obtaining smoke detectors and carbon monoxide detectors and smoke and carbon monoxide detector certificates, any real estate taxes, tax titles, tax takings, or tax lien, and municipal charges due as of the date of this Agreement and those due from the date of this Agreement to the date of the Closing, as well as all of Buyer's costs in connection with the transaction, including but not limited to title examinations and title premiums. There shall be no adjustments whatsoever, whether for taxes, municipal charges, deed stamps, rent, utilities or otherwise.

14. CONSTRUCTION OF AGREEMENT. This instrument is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors,

administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Mortgage Holder and the Buyer. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Memorandum or to be used in determining the intent of the parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum in multiple counterparts as of the date first written above.

MORTGAGE HOLDER
WENDY'S INTERNATIONAL, INC.

By: _____

BUYER

By: _____

AUCTIONEER
Aaron Posnik & Company, Inc.

By: _____

Received from Buyer the sum of \$50,000.00 as a deposit on account of the above Memorandum, subject to the terms and conditions of sale hereinabove set forth.

SHATZ, SCHWARTZ AND FENTIN, P.C.
attorney for the Mortgage Holder

By: _____
Gary S. fentin
authorized officer

Exhibits

- A - Form of Deed and Affidavit
- B - Mortgagee's Notice

Exhibit A

Palmer Foreclosure Deed

Wendy's International, Inc. organized and existing under the laws of the State of Ohio, having a usual place of business at 4288 W. Dublin-Granville Road, Dublin, Ohio 43017,

holder of a mortgage

from XCL Enterprises, LLC, a Massachusetts limited liability company, ("Mortgagor")

to Fleet Business Credit, LLC

dated December 27, 2000, recorded in the Hampden County Registry of Deeds at Book 12826, Page 413

which was assigned to GECPAC Investment II, Inc. by Assignment dated August 30, 2004, recorded in said Registry at Book 14944, Page 524, and reassigned to Wendy's International, Inc. by Assignment recorded in said Registry at Book 17100, Page 364

by power conferred by said mortgage and every other power, for \$_____, paid, grants to _____

the premises conveyed by said mortgage.

Executed under seal this ____ , 2008.

WENDY'S INTERNATIONAL, INC.

By_____

STATE OF OHIO

County of _____

On this _____, 2008 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, namely the person was [known to me, identified by affirmation of a credible witness, or identified in _____], to be the person whose name is signed on the preceding or attached document and acknowledged to me that such person is the duly authorized _____ of Wendy's International, Inc., and that such person signed such document voluntarily as such person's free act and deed for its stated purpose on behalf of such Wendy's International, Inc. .

_____ sign and stamp

Affidavit of Sale

_____, the _____ of Wendy's International, Inc., named in the foregoing deed, make oath and say that the principal and interest mentioned in the above-described mortgage were not paid or tendered or performed when due prior to the sale and that

I caused to be published on February 4, 11 and 18, 2008, in The Republican, a newspaper published or by its title page purporting to be published in Palmer, MA or having a general circulation in such city/town, a notice of which a true copy is attached hereto as Exhibit A and made a part hereof.

I also complied with Chapter 244, Section 14 of the Massachusetts General Laws, as amended, by mailing the required notices by registered mail, return receipt requested.

Pursuant to said notice at the time and place therein appointed, Wendy's International, Inc. sold the mortgaged premises at public auction by Aaron Posnik & Company, Inc., of Springfield, MA, a licensed auctioneer, to _____ for _____ bid by said _____, being the highest bid made therefore at said auction.

Executed under seal this _____, 2008.
WENDY'S INTERNATIONAL, INC.

By _____

STATE OF OHIO

County of _____

On this _____, 2008 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, namely the person was [known to me, identified by affirmation of a credible witness, or identified in _____], to be the person whose name is signed on the preceding or attached document and acknowledged to me that such person is the duly authorized _____ of Wendy's International, Inc., and that such person signed such document voluntarily as such person's free act and deed for its stated purpose on behalf of such Wendy's International, Inc. .

_____ sign and stamp

Exhibit B

NOTICE OF MORTGAGEE'S SALE OF REAL ESTATE in PALMER

By virtue and in execution of the Power of Sale contained in a certain Mortgage, Security Agreement, Financing Statement and Assignment of Rents and Leases dated December 18, 2002 from XCL Enterprises, LLC, a Massachusetts limited liability company to Fleet Business Credit, LLC dated December 27, 2000, recorded in the Hampden County Registry of Deeds at Book 12826, Page 413 (the "Mortgage"), which Mortgage was assigned to GECPAC Investment II, Inc. by Assignment dated August 30, 2004, recorded in said Registry at Book 14944, Page 524, and reassigned to Wendy's International, Inc. by Assignment recorded in said Registry at Book 17100, Page 364

for breach of the conditions of said Mortgage and for the purpose of foreclosing the same, the premises described in said Mortgage, all and singular, will be sold at Public Auction on Tuesday, February 26, 2008 at 2:00 p.m. at the mortgaged premises known as 1213 Thorndike Street, Palmer, MA, more particularly described as follows:

Parcel 1:

Certain real estate situated in Palmer, Hampden County, Massachusetts on the Southeasterly side of Thorndike Street (1926 County Relocation of the 1889 Layout) being known and designated as Lot No. 8 as shown on a Plan of Lots recorded in Hampden County Registry of Deeds in Book of Plans 86, Page 74, bounded and described as follows:

Beginning at an iron pin on the Southeasterly side of Thorndike Street at the northwesterly corner of Lot No. 7 shown on said plan, conveyed to Leonard Roy et ux, by deed dated May 1, 1961 and recorded in said Registry of Deeds, Book 2820, Page 70, said iron pin being also S. 69° 59' W., 131.36 feet from a concrete bound opposite Stations 43+86.26 in the aforesaid 1926 County Relocation of said Street

thence running S. 20° 01' E., 200 feet along the Southwesterly side of said Lot .No. 7 as shown on said plan, conveyed to said Roy, et ux to an iron pin;

thence turning and running S. 69° 59' W., 100 feet along land now or formerly of Emile G. Tetreault et ux to a point, thence turning and running N. 20° 01' W., 200 feet along said last-named land to a point on the southeasterly side of Thorndike Street,

thence turning and running N. 69° 59' E., 100 feet along the south-easterly side of Thorndike street to the point of beginning.

Parcel 2:

A certain lot or parcel of land on the southerly side of Thorndike Street in Palmer, Hampden County, Massachusetts, said lot or parcel being known and designated as Parcel 2 as shown on a plan entitled "Plan of Land in Depot Village Palmer, Ma., surveyed for and owned by John Lizak", said plan being recorded in Hampden County Registry of Deeds in Plan Book 299, Page 82, said lot or parcel being more particularly bounded and described as follows:

Northwesterly by Thorndike Street as shown on said plan, 100.00 feet;

Northeasterly by land of Mark T. Baldyga as shown on said plan, 161.32 feet;

Southerly by other land of John Lizak, Inc. and John Lizak as shown on said plan, 74.78 feet;

Southwesterly by other land of John Lizak as shown on said plan, 41.73 feet;

Westerly by last-named land, 113.70 feet.

Containing 14,703 square feet of land according to said plan.

Parcel 1 and Parcel 2 are also defined as Lot shown on a plan, dated December 19, 2002, recorded with said Deeds, Plan Book 327, Plan 105.

There is also included in the sale all equipment and fixtures situated on the premises to the extent they are part of the realty.

Said mortgaged premises will be sold and conveyed subject to and with the benefit of the following, if any there be, insofar as in force and applicable and having priority over the Mortgage: any and all restrictions, easements, improvements, covenants, unpaid taxes, tax titles, municipal liens, assessments, other liens or claims in the nature of liens, attachments and encumbrances, boundary line disputes, overlaps, encroachments and any matters which would be disclosed by an accurate survey and inspection of the premises.

Said mortgaged premises will also be sold subject to and with the benefit of the following, to the extent the same are in force and applicable: Deed restrictions described in a deed from Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's") recorded in said Registry at Book 12826, Page 400; Right of First Refusal granted to Wendy's recorded in said Registry at

Book 12826, Page 405; Aqueduct rights recorded at Book 503, Page 412; Railway Rights recorded at Book 644, Page 26; utility easements recorded respectively at Book 739, Page 32, Book 853, Page 502 and Book 873, Page 49; Well rights as recorded at Book 1620, Page 103; Restriction recorded at Book 9323, Page 102; Notice of Decision recorded at Book 10324, Page 326; Special Permit recorded at Book 10324, Page 330; Notice of Decision recorded at Book 12488, Page 392; and Order of Conditions recorded in said Registry at Book 12488, Page 398.

TERMS OF SALE. The successful bidder will be required to make a deposit at the sale in the amount of \$50,000 and, within three (3) business days after the sale an additional deposit shall be paid by the successful bidder sufficient to bring the aggregate deposit up to an amount equal to ten (10%) per cent of the auction price. The deposit shall be paid to and held by Shatz, Schwartz and Fentin, P.C. ("Escrow Agent") at the time and place of sale as earnest money, by certified or bank cashier's check, unless otherwise announced at the sale. The balance of the purchase price is to be paid at closing as described below. The high bidder shall be responsible for paying a 3.5% commission payment to the auctioneer in addition to the bid price. **TIME WILL BE OF THE ESSENCE.**

The sale is subject to the Right of First Refusal granted by the mortgagor to Wendy's described above. At the conclusion of the auction and the execution of the Memorandum of Sale, the Mortgage Holder will notify Wendy's of the terms of the foreclosure sale. If Wendy's notifies Mortgage Holder within forty-five days of Wendy's intention to exercise its rights under the Right of First Refusal, the successful bidder's deposit shall be returned, the successful bidder's rights under the Memorandum of Sale shall be deemed assigned to Wendy's and the premises will be sold to Wendy's for the highest bid price. If Wendy's notifies the Mortgage Holder that it does not intend to exercise the Right of First Refusal, or does not timely notify the Mortgage Holder of its intent to do so, then the successful bidder shall be obligated to complete the sale in accordance with the terms of the Memorandum of Sale on or before the first to occur of (i) thirty days after receipt of notice from Mortgage Holder that Wendy's elected not to exercise its Right of First Refusal, or (ii) May 12, 2008.

In the event that the successful bidder at the public auction shall default in purchasing the within described property according to the terms of this Notice of Mortgagee's Sale and/or the terms of the Memorandum of Sale executed at the public auction, the Mortgage Holder reserves all of its rights

against such successful bidder and in addition, Mortgage Holder may, at its election, purchase the mortgaged property for the amount bid by the successful bidder or sell the property to the second highest bidder at the public auction, provided that Mortgage Holder in its discretion may require, (i) said second highest bidder to deposit with the Escrow Agent the amount of the required deposit as set forth herein within three (3) business days after written notice to the second highest bidder of the default of the previous highest bidder, (ii) the second highest bidder to execute a Memorandum of Sale and (iii) the closing to occur within twenty (20) days of said written notice, time being of the essence unless the Mortgage Holder agrees otherwise.

The Mortgage Holder reserves the right to sell any parcel or any portion thereof separately, or in any order that Mortgage Holder may choose and/or to postpone this sale to a later time or date by public proclamation at the time and date appointed for the sale and to further postpone any adjourned sale date by public proclamation at the time and date appointed for the adjourned sale date. The description for the premises contained in said Mortgage shall control in the event of a typographical error in this publication.

The successful bidder shall pay all recording fees and documentary stamps in connection with the transfer of the premises, any costs of obtaining smoke and carbon monoxide detector certificates and the transfer or issuance of any licenses, all real estate taxes, tax titles, and municipal charges due as of the date of sale and those due thereafter through the date of Closing, as well as all of its costs in connection with the transaction, including but not limited to title examinations and title premiums. No adjustments whatsoever will be made, whether for taxes, municipal charges, utilities or otherwise.

Other terms, if any, will be announced at the sale. The successful bidder will be required to sign at the auction sale a Memorandum of Sale containing the terms of sale.

Date: February 4, 2008

Wendy's International, Inc.
Present holder of said Mortgage
By Shatz, Schwartz and Fentin, P.C.
Its attorneys
Gary S. Fentin, Esquire
1441 Main Street

Springfield, MA 01103
(413) 737-1131