

RIGHT OF FIRST REFUSAL

THIS RIGHT OF FIRST REFUSAL (the "Right of First Refusal") is made and entered into as of Dec 27, 2000, 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 XCL ENTERPRISES, LLC, with an address and principal office at 7664 Earliston Court, Dublin, Ohio 43017 ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the record owner of the real property situated in the City of Springfield, County of Hampden, and Commonwealth of Massachusetts, commonly known as 757 Boston Road 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 Limited Warranty Deed from Wendy's dated December 8th (the "Deed"); 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 December,

between Wendy's International, Inc., Declarant, ROBERT T. BURDA and BURDA ENTERPRISES Enterprises, LLC 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 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 (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 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. 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.

12. 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: XCL Enterprises, LLC
7664 Earliston Court
Dublin, Ohio 43017
Attention: Robert T. Burda

If to Wendy's: Wendy's International, Inc.
4288 West Dublin-Granville Road
P. O. Box 256
Dublin, Ohio 43017

Attention: Legal Department

13. 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.

14. 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.

15. 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.

16. 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.

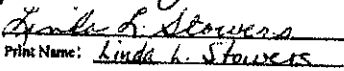
17. Counterparts. This Right of First Refusal may be executed in several counterparts, but together shall constitute an original.

18. 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.

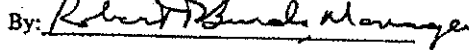
IN WITNESS WHEREOF, this Right of First Refusal has been executed by the duly authorized officers of the parties hereto as of the day and year first above written.

Signed ^{and} and acknowledged in the presence of:


Print Name: JANELLE R. JOHNSTON


Print Name: Linda L. Stowers

XCL ENTERPRISES, LLC

By: 

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

Erica E. Armentrout

Print Name: ERICA E. ARMENTROUT

Janelle R. Johnston

Print Name: JANELLE R. JOHNSTON

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

By: *Ronald E. Wallace*

Title: RONALD E. WALLACE
Vice President

By: *Raymond W. Baker*

Title: RAYMOND W. BAKER
Vice President

Legal Dept. *7100*

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 27 day of December, 2000, before me personally appeared Robert T. Burda and _____, as Manager Members of XCL ENTERPRISES, LLC, a Massachusetts limited liability company, who were known to me as the persons and members described in and who executed the foregoing instrument on behalf of said company, and who acknowledged that they held the position or title set forth in the instrument and certificate, they signed the instrument on behalf of the company by proper authority, and the instrument was the act of the company for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



JANELLE R. JOHNSTON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 28, 2003

Janelle R. Johnston
Notary Public

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 8th day of December, 2000, before me personally appeared RONALD E. WALLACE and DAVIDSON W. BAKER, 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.



ERICA ELAINE ARMENTROUT
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT. 30, 2002

Erica Elaine Armentrout
Notary Public

This instrument is prepared by:
Michael G. O'Kane, Attorney at Law
Wendy's International, Inc.
4288 West Dublin-Granville Road
P. O. Box 256
Dublin, Ohio 43017

EXHIBIT A

Bk 11461 Pg470 #86066

A certain of land situated in the City of Springfield, County of Hampden, Commonwealth of Massachusetts and is more particularly bounded and described as follows:

Beginning at an iron pipe in the westerly sideline of a public way known as Wilkes Street. Said point also marks the southeasterly corner of land now or formerly of Western Auto Supply Company;

Thence running S03-04-35E along the westerly sideline of said Wilkes Street a distance of 52.45 feet to a point. Said point also marks the northeasterly corner of remaining land of Triple Seven Realty Trust;

Thence running the following two (2) courses along the northerly line of remaining land of said Triple Seven Realty Trust:

S79-23-01W a distance of 107.81 feet to a point; and

S59-34-07W a distance of 182.75 feet to a point in the easterly line of land now or formerly of Richard D. LeMire. Said point also marks the northwesterly corner of remaining land of said Triple Seven Realty Trust;

Thence running N03-04-35W along the easterly line of said Lemire a distance of 377.30 feet to a point in the southerly sideline of a public way known as Boston Road. Said point also marks the northeasterly corner of land of said LeMire;

Thence running N78-20-30E along the southerly sideline of Boston Road a distance of 131.86 feet to a point. Said point also marks the northwesterly corner of said Western Auto Supply Company;

Thence running the following two (2) courses along land of said Western Auto Supply Company:

S03-04-35E a distance of 264.66 feet to an iron pipe; and

N79-25-50E a distance of 140.00 feet to the point of beginning.

Said parcel being shown as "Lot 1, Area = 1.23 Acres" on a plan entitled "Plan of Land prepared for Wendy's International, 757 Boston Road, Springfield, MA" which plan is dated 6-16-00 drawn by Foresight Land Surveyors and recorded in the Hampden County Registry of Deeds, Book of Plans 318, Page 41.

DONALD E. ASHE, REGISTER
HAMPDEN COUNTY REGISTRY OF DEEDS