

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

Wendy's Properties, LLC
One Dave Thomas Boulevard
Dublin, OH 43107
Attention: Legal Department

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "*Easement Agreement*") is dated to be effective as of August 18, 2023 (the "*Effective Date*") and is by and between SUPERIOR COMMERCIAL SOLUTIONS, LLC, a Utah limited liability company ("*Grantor*"), and WENDY'S PROPERTIES, LLC, a Delaware limited liability company ("*Grantee*"). Grantor and Grantee are sometimes individually referred to as "*Party*" and collectively referred to as the "*Parties*".

RECITALS

A. Grantor owns that certain real property located in Box Elder County, Utah that is more particularly described on attached Exhibit A (the "*Servient Property*").

B. Grantee owns that certain real property located in Box Elder County, Utah that is more particularly described on attached Exhibit B (the "*Dominant Property*"), which is also known as Wendy's Site #7751.

C. Grantee (as successor-in-interest to Wendy's Old Fashioned Hamburgers of New York, LLC, which was the successor-by-merger to Wendy's Old Fashioned Hamburgers of New York, Inc.) and Grantor (as successor-in-interest to Shopko Stores, Inc.) are parties to that certain Declaration of Cross Easements and Covenants and Restrictions Affecting Land (the "*Declaration*") dated September 17, 1999 and recorded in the official records of Box Elder County, Utah in Book 0723, Page 0140, which Declaration the Parties intend to terminate and replace with this Easement Agreement on the Effective Date hereof.

D. In connection with Grantee's use of the Dominant Property, Grantee desires to obtain, for the benefit of the Dominant Property, certain perpetual, non-exclusive easement rights over (1) the portion of the Servient Property depicted in attached Exhibit C (the "*Access Easement Area*"); (2) the portion of the Servient Property depicted in attached Exhibit D (the "*Sign Easement Area*"); and (3) the portions, if any, of the Servient Property that are being used as of the Effective Date for existing surface water drainage or existing utilities for the benefit of the Dominant Property ("*Misc. Easement Area*" and, together with the Access Easement Area and the Sign Easement Area, the "*Easement Areas*").

E. Grantor desires to grant to Grantee the above-referenced easement rights over

the Easement Areas, pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easements.** Grantor hereby grants and conveys to Grantee:

- (a) a perpetual, non-exclusive, and appurtenant easement over the Access Easement Area for the purpose of vehicular and pedestrian access, ingress, and egress over the Access Easement Area as may be necessary or useful for the use or enjoyment of the Dominant Property;
- (b) a perpetual, non-exclusive, and appurtenant easement over the Sign Easement Area for the purpose of installing, operating, maintaining, repairing and replacing one (1) freestanding sign (the “*Sign*”) and facilities that are necessary for the Sign for Grantee’s use in advertising Grantee’s business located on the Dominant Property, together with a right of vehicular and pedestrian access over and across the Servient Property to the extent reasonably necessary for the installation, repair and maintenance of the Sign;
- (c) to the extent necessary, a perpetual, non-exclusive, and appurtenant easement over the Misc. Easement Areas for the following:
 - i. existing surface water drainage, provided that Grantor covenants not to alter the flow of surface water across the Servient Property in a way that would result in a material increase in the volume of surface water flowing across the Dominant Property; and
 - ii. existing utilities lines and related facilities serving the Dominant Property; and
- (d) to the extent necessary to satisfy any parking ratio and other municipal requirements, a perpetual, non-exclusive, and appurtenant easement in the current and future parking areas located on the Servient Property for vehicular parking.

2. **Use and Location of the Easement Areas.** Grantee shall have the non-exclusive right to use the Easement Areas for the purposes set forth in Section 1 hereof. Notwithstanding, Grantee shall have the right to allow its contractors, subcontractors, agents, employees, lessees, invitees and licensees (collectively, the “*Grantee Parties*”) to use the Easement Areas in accordance with the terms of this Easement Agreement. Within six (6) months after the Effective Date, Grantor will obtain and provide to Grantee (1) a surveyed metes-and-bounds legal description of the Access Easement Area prepared by a licensed surveyor (the “*Access Legal Description*”); and (2) a surveyed metes-and-bounds legal description of the Sign Easement Area prepared by a licensed surveyor (the “*Sign Legal*

Description”). Following Grantee’s review and approval of the Access Legal Description and the Sign Legal Description, not to be unreasonably withheld, conditioned or delayed, the Parties shall execute and record an amendment to this Easement Agreement to replace the depiction of the Access Easement Area in Exhibit C with the Access Legal Description, and the depiction of the Sign Easement Area in Exhibit D with the Sign Legal Description. Following the execution of such amendment, all references in this Easement Agreement to the Access Easement Area shall mean and refer to the property included within the Access Legal Description, and all references in this Easement Agreement to the Sign Easement Area shall mean and refer to the property included within the Sign Legal Description.

3. **No Interference**. Grantor’s use of the Servient Property, and any grant of rights Grantor makes to any person or entity to use the Servient Property, shall not, currently or in the future, materially interfere with the exercise of Grantee’s rights pursuant to this Easement Agreement. Grantor further agrees that no barricade or other temporary or permanent structure shall be erected so that access to the Access Easement Area shall be impaired or interrupted at any time unless necessary due to a casualty or to avoid a claim of prescriptive easement, public right of way, condemnation or similar action. Grantor shall not materially modify or alter nor consent to the material modification or alteration of the Access Easement Area without the prior written consent and approval of Grantee, which shall not be unreasonably withheld, conditioned or delayed; provided, however, it shall not be unreasonable for Grantee to withhold its consent or approval to any such modifications that would have a material adverse effect on ingress and egress to/from the Access Easement Area and the adjacent public roads or private rights of way.

4. **Indemnity**. Grantee hereby agrees to indemnify, defend and hold Grantor harmless and against any and all liabilities, claims, causes of action, damages, losses, and costs (including reasonable attorneys’ fees) (collectively, “*Claims*”) that result from: (1) any acts, omissions, negligence or default of Grantee or the Grantee Parties in connection with Grantee’s and the Grantee Parties’ use or operation of the Easement Areas, and (2) any breach of this Easement Agreement by Grantee. Grantor hereby agrees to indemnify, defend and hold Grantee harmless and against any and all Claims resulting from the acts or omissions of Grantor or its agents, contractors or employees and/or with respect to any breach of this Easement Agreement by Grantor.

5. **Property Taxes and Assessments**. Nothing in this Easement Agreement shall be deemed to create in Grantee an obligation to pay any property taxes or assessments charged against the Easement Areas or any other portion of the Servient Property. Grantor shall timely and properly pay all such taxes and assessments.

6. **Sign Requirements**. The Sign shall be installed, operated, and maintained in accordance with all applicable laws, ordinances, and regulations of governmental entities. Grantee shall obtain and maintain all permits required by governmental authorities with jurisdiction for the Sign. The Sign shall not emit any sound which is audible to any occupants of the Grantor Property. The Sign shall not exhibit, post or display anything of an obscene, indecent, immoral or unlawful nature. The Sign may be illuminated from dusk to dawn, or during such other legally permissible times mutually agreed upon by the Parties from time to

time. Grantee shall operate and maintain the Sign in good repair and condition at Grantee's sole cost and expense.

7. **No Parking Signs.** Grantor agrees that within 60 days after receipt of written request from Grantee, Grantor shall, at its cost and expense, install signs ("No Parking Signs") prohibiting Grantor's tenants and their guests from parking on the Dominant Property. The location and form of such No Parking Signs shall be mutually agreed upon by Grantor and Grantee.

8. **Default.** The failure to observe or perform any of the covenants, conditions or obligations of this Easement Agreement within fifteen (15) days after written notice is given to the defaulting Party by the non-defaulting Party specifying the nature of the default claimed, or such longer time period as shall be reasonably necessary to effect such cure if the nature of such condition is curable and will take longer than fifteen (15) days to complete, provided that the party receiving such notice commences such cure within such fifteen (15) day period and diligently pursues the same thereafter to completion, but in any event completes such cure in not more than sixty (60) days after receipt of the written notice of default, shall constitute a material default and breach of this Easement Agreement by the defaulting Party. Notwithstanding anything to the contrary, no default under this Agreement shall entitle Grantor to cancel, rescind or otherwise terminate this Easement Agreement of the rights hereunder.

9. **Remedies.** With respect to any default described above which is not timely cured, any non-defaulting Party shall have the right, but not the obligation, after expiration of the applicable cure period without cure, together with all rights and remedies at law and or equity, to cure such default by the payment of money, or the performance of the obligation for the account of and at the expense of the defaulting Party and the defaulting Party shall reimburse the non-defaulting Party for the reasonable costs thereof within fifteen (15) days after written demand therefor; provided, however, that in the event the default shall constitute an emergency condition, the non-defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.

10. **Maintenance of Easement Areas.** Grantor shall maintain the Easement Areas in good order and repair, at its sole cost and expense, provided that Grantee shall, at its cost and expense, repair any damage to the Easement Area caused by Grantee or the Grantee Parties and maintain the Sign and the appurtenant utilities and facilities.

11. **Construction on Servient Property.** Grantor intends to construct a multifamily housing development and related facilities (the "Project") on the Servient Property. In connection with the construction of the Project, Grantor shall not unreasonably interfere with Grantee's use and enjoyment of the Dominant Property or access to/from the Dominant Property; provided, however, that dust, noise, light, and vehicular and pedestrian traffic that are customary for construction projects similar to the Project shall be deemed reasonable.

12. **Environmental Indemnity.** Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold the other Party (the "Indemnified Party") and its officers, partners,

directors, shareholders, employees, franchisees and agents harmless from any claims, judgments, damages, fines, penalties, costs (including attorney, consultant and expert fees), liabilities (including sums paid in settlement of claims) or loss in connection with the presence or suspected presence of Hazardous Substances (as defined below) in the soil, groundwater, or soil vapor on, under or about the Indemnifying Party's land which migrate to or other adversely affect the Indemnified Party's land, and the Indemnifying Party shall immediately remediate all such Hazardous Substances at its sole cost and expense in compliance with all applicable laws.

"Hazardous Substances" means and shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under applicable federal, state or local laws and the regulations promulgated thereunder as (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. **"Hazardous Substances"** shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, mold, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

13. **Grantee Right to Terminate.** Grantee may terminate this Easement Agreement as to all or any part of the Easement Areas at any time, effective upon written notice to Grantor.

14. **Easements Appurtenant; Covenants and Equitable Servitudes.** The easements granted under this Easement Agreement shall be easements appurtenant to the Servient Property and the Dominant Property. All provisions of this Easement Agreement shall be binding upon the respective successors and assigns of the Parties and shall be deemed to run with the Servient Property and the Dominant Property as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Servient Property and the Dominant Property, and to all persons hereafter acquiring or owning any interest in the Servient Property or the Dominant Property, however such interest may be obtained.

15. **Notices.** All notices or other communications required or permitted by this Easement Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Grantor:	Superior Commercial Solutions, LLC 263 S. River Bend Way, Suite 400 North Salt Lake, Utah 84054 Attention: Jordan Farr, CEO
If to Grantee:	Wendy's Properties, LLC Site #7751 One Dave Thomas Boulevard Dublin, OH 43107 Attention: Legal Department

Any Party may change its address for purposes of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

16. **Amendment.** This Easement Agreement may be amended only with the consent of the Parties. Any such amendment shall be in writing, executed and acknowledged by the Parties, and duly recorded in the official records of Box Elder County, Utah.

17. **No Waiver; No Abandonment.** No waiver of any right under this Easement Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Easement Agreement. Further, no act or failure to act on the part of Grantee shall be deemed to constitute an abandonment, surrender or termination of any easement, except upon recordation by Grantee of a termination of this Easement Agreement.

18. **Construction and Interpretation.** Wherever possible, each provision of this Easement Agreement shall be interpreted in such manner as to be valid under applicable law, but, if any provision of this Easement Agreement shall be invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or the remaining provisions of this Easement Agreement. This Easement Agreement shall be construed as if both Parties jointly prepared this Easement Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender, and vice versa. The headings of the several paragraphs of this Easement Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

19. **Attorneys' Fees.** Should any Party hereto employ an attorney for the purpose of enforcing or construing this Easement Agreement, or any judgment based on this Easement Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing, the prevailing Party shall be entitled to receive from the other Party thereto reimbursement for all reasonable attorneys' fees and costs, including, but not limited to, service of process, filing fees, court and court reporter costs, investigative costs, and expert witness fees.

20. **Governing Law.** This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

21. **Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, and such counterparts shall together constitute but one agreement.

22. **Severability.** Invalidation of any of the provisions contained in this Easement Agreement, or of the application thereof to any person or entity by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity and the same shall remain in full force and effect.

23. **Negation of Partnership.** None of the terms or provisions of this Easement Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered separate, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

24. **Not A Public Dedication; No Third Party Beneficiaries.** Nothing in this Easement Agreement shall be deemed to be a gift or dedication of the Easement Areas or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

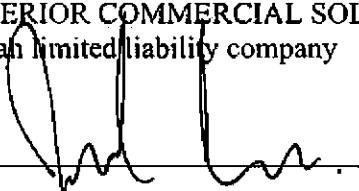
25. **Time.** Time is of the essence of this Easement Agreement.

26. **Entire Agreement.** This Easement Agreement contains the entire agreement between the Parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement as of the Effective Date.

GRANTOR:

SUPERIOR COMMERCIAL SOLUTIONS, LLC,
a Utah limited liability company

By: 

Name: Jared Isom

Title: President

STATE OF Utah)
: ss
COUNTY OF Davis)

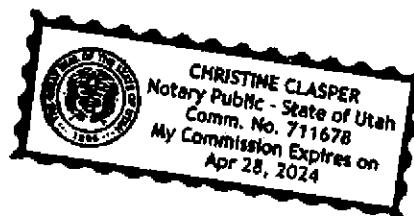
The foregoing instrument was acknowledged before me on August 18, 2023, by
Jared Isom, as President of
Superior Commercial Solutions, LLC, a Utah limited liability company.



NOTARY PUBLIC
Residing at 510 S. 4015 W. ROY UT 84067

My Commission Expires:

April 28, 2024



[Signature Page to Access and Sign Easement Agreement]

GRANTEE:

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

By: Kirk A. Vidra
Name: Kirk Vidra
Title: VP-Global Development & International Counsel

By: Suzi Thuerk
Name: Suzi Thuerk
Title: Chief Accounting Officer
Legal approved: SIM

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 16th day of August, 2023 by
Kirk A. Vidra - VP Global Development & Int'l Counsel and Suzi Thuerk - Chief Accounting Officer, of
WENDY'S PROPERTIES, LLC, a Delaware limited liability company, on behalf of the limited liability
company.



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

Brenda Williamson
Notary Public

My Commission Expires:
12.27.26

[Signature Page to Access and Sign Easement Agreement]

Exhibit A

Legal Description of the Servient Property

A parcel of land being located in Brigham City, Utah in the South Half of Section 24, and the North half of Section 25, Township 9 North, Range 2 West, Salt Lake Base and Meridian, and being more particularly described as follows:

All of Lot 1 of the Amendment to Lot 1 Brigham Intermountain Development Plat E Subdivision as recorded in the Box Elder County Recorder's Office, Box Elder County, Utah September 10, 1999 at 9:13 a.m. as Entry No. 132795.

Tax Parcel Nos.: 03-146-0152 and 03-146-0156

Exhibit B

Legal Description of the Dominant Property

A parcel of land being located in Brigham City, Utah in the South Half of Section 24, and the North half of Section 25, Township 9 North, Range 2 West, Salt Lake Base and Meridian, and being more particularly described as follows:

All of Lot 1A of the Amendment to Lot 1 Brigham Intermountain Development Plat E Subdivision as recorded in the Box Elder County Recorder's Office, Box Elder County, Utah September 10, 1999 at 9:13 a.m. as Entry No. 132795.

Tax Parcel No.: 03-146-0169

Exhibit C

Depiction of the Access Easement Area

(Attached)

Exhibit D

Depiction of the Sign Easement Area

(Attached)

