

314 A 003 001

599-599 Warren Ave, Portland, Maine

Wendy's Restaurant

Wendy's International, Inc.

QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **WARGATE ASSOCIATES**, a Maine general partnership having a place of business in Portland, County of Cumberland, and State of Maine, for consideration paid, GRANTS to **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation whose mailing address is P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017, with **QUITCLAIM COVENANT**, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Parcel A").

EXCEPTING AND RESERVING to Grantor its successors or assigns, a non-exclusive, perpetual easement, appurtenant to Grantor's remaining land which is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Parcel B"), for the purpose of a paved road for continuous and uninterrupted vehicular and pedestrian ingress, egress and access, and the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities, to and from Parcel B and Warren Avenue, over, upon, across, and through the area described in Exhibit C, attached hereto and made a part hereof (the "Easement Area"). This easement shall include the right to enter upon such other portions of Parcel A as abut the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area and installing such utilities, provided however, Grantor, its successors or assigns, agree (i) that such use of such other portions of Parcel A shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement of even or near even date by and between Grantor and Grantee, to be recorded in the Cumberland County Registry of Deeds.

ALSO EXCEPTING AND RESERVING to Grantor, its successors or assigns a perpetual easement, appurtenant to Parcel B, for drainage from Parcel B over, under and across Parcel A and the use, maintenance and repair of any stormwater detention facilities now or hereafter located on Parcel A by Grantee, its successors or assigns. This easement shall include the right to enter upon such other portions of Parcel A as abut this easement area and as are reasonably necessary for the purpose of maintaining, repairing, and replacing said stormwater detention facilities or any culverts or other drainage apparatus as are reasonably necessary in connection with the development of Parcel B, provided however, Grantor, its successors or assigns, agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement appurtenant to Parcel B, to erect a sign, subject to requisite governmental approvals, on any sign pylon hereafter erected on Parcel A by Grantee, its successors or assigns, provided however, that for so long as a Wendy's Old Fashioned Hamburgers hamburger restaurant is continuously operated by Grantee on Parcel A, any

sign erected for the benefit of Parcel B on such pylon shall be smaller in square footage than the primary sign erected by Grantee on such pylon to advertise the Wendy's Old Fashioned Hamburgers hamburger restaurant on Parcel A. This easement shall include the right to enter upon such other portions of Parcel A as abut this easement area and as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said sign, provided however, Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. By acceptance of this deed Grantee agrees that the sign pylon will be physically designed and constructed in a manner so as to reasonably accommodate a commercially reasonable sign relating to the current or future use of Parcel B.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement, appurtenant to Parcel B, for the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities (expressly including an underground sewer line to serve Parcel B, said sewer line to run across the portion of Parcel A which is described on Exhibit D, attached hereto and made a part hereof) necessary or desirable for the development, use and occupancy of Parcel B, subject, however, to the prior approval by Grantee of the location of such utilities (other than said sewer line, the location of which is described on Exhibit D), which approval shall not be unreasonably withheld, conditioned or delayed, together with the right to enter upon such other portions of Parcel A as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said utilities, provided however, that Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

791-1214

AND GRANTOR DOES HEREBY COVENANT AND AGREE with Grantee that Parcel B shall not be used for a drive-through, quick service restaurant which sells hamburger products if such hamburger products exceed fifteen percent (15%) of its gross sales or which sells chicken products if such chicken products exceed fifteen percent (15%) of its gross sales. The foregoing restriction shall not apply to sit-down restaurants with waiter/waitress service, which may sell hamburger products exceeding the foregoing fifteen percent (15%) limitation and/or chicken products exceeding the foregoing fifteen percent (15%) limitation, so long as the restaurant does not have a drive-through facility. This restriction shall burden and run with Parcel B for a period of twenty (20) years from the date of this instrument, and shall benefit Parcel A, and the owners, successors, and assigns thereof and shall automatically expire at the expiration of said twenty (20) year period. In the event of any transfer of Parcel B, Grantor shall be relieved from, and have no further responsibility for, the enforcement of the foregoing restriction but such sale shall not preclude Grantee from enforcing the foregoing restriction against any transferee of Parcel B.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit E, attached hereto and made a part hereof, for the installation, operation, maintenance,

repair and replacement of a stormwater detention pond or stormwater drainage area (including any underground pipes and culverts in such area for the drainage of stormwater from Parcel A to the foregoing easement area), provided however, that the foregoing stormwater detention and/or drainage facilities shall not interfere in any way with the Grantor's installation, operation, maintenance, repair, or replacement of a paved driveway or roadway, for pedestrian and vehicular passage, over a strip of land on Parcel B that is at least twenty-four (24) feet wide running in a generally east-west direction, parallel with the northerly boundary of Parcel A, to provide full ingress and egress to and from the easterly portions of Parcel B via that certain 50.88-foot wide right of way described and reserved in a deed from Michael Scarks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47. Grantor, its successors, and assigns, shall have the right to use, in common with Grantee, any stormwater detention and/or drainage facilities installed by Grantee in connection with the foregoing easement and shall also have the right to modify or enlarge the same, at Grantor's sole expense, to accommodate additional drainage, detention, and/or treatment of stormwater from Parcel B, provided that such use, modification, or enlargement does not adversely impact the use of the same for the stormwater from Parcel A. By acceptance of this deed, Grantee agrees that Grantee, its successors, and assigns shall be responsible, at Grantee's sole expense, for maintaining and repairing the stormwater detention and drainage facilities to keep the same in good order, condition, and repair and in compliance with applicable laws, until such time, if any, as Grantor, its successors or assigns, develop Parcel B and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B. If Grantor develops Parcel B and makes use of the stormwater detention and drainage facilities installed by Grantee on Parcel B, either party shall have the right to maintain and repair the same, but the costs of maintenance and repair shall be shared equally by the parties, except to the extent such is done at the request of Grantor to modify or enlarge such facilities to accommodate additional drainage, detention and/or treatment of stormwater from Parcel B, in which event such costs shall be paid solely by Grantor.

IN WITNESS WHEREOF, WARGATE ASSOCIATES has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this ___ day of _____, 2002.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WARGATE ASSOCIATES

Witness

By: _____
Printed Name:
Its General Partner

STATE OF MAINE
County of Cumberland, SS.

_____, 2002

Then personally appeared the above-named _____,
General Partner of Wargate Associates, and acknowledged the foregoing instrument to be his

free act and deed in his said capacity, and the free act and deed of said Wargate Associates.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

June 12, 2002~~June 11, 2002~~

Candy Talbot
City of Portland
Planning Department
Congress St.
Portland, Maine 04101

RE: Wendy's/Warren Ave, Portland, Me.

Dear Ms. Talbot:

Please be advised Wargate Associates, c/o Boulos Property Management, One Canal Plaza, Portland, ME is the primary contact for the City relative to the private sewer main on Warren Avenue that Wendy's International will connect to. When it closes on the purchase of the land from Wargate Associates, Wendy's will acquire from Wargate Associates the right to connect to the private sewer main.

Please contact me should you have questions or comments.

Thank you.

Sincerely,

Paul Ureneck
Vice President
Project Management

And as agent for Wargate Associates

Cc: Tom Doyle

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

Division Directors
Mark B. Adelson
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

June 28, 2002

Matt Peterson
Keach-Nordstrom Associates, Inc.
10 Commerce Park North
Suite 3B
Bedford, NH 03110

RE: Wendy's Restaurant, 599 Warren Avenue
ID #2002-0037, CBL #314-A-003

Dear Mr. Peterson:

On June 25, 2002, the Portland Planning Board voted 6-0 (Delogu absent) to approve the Traffic Movement Permit and the site plan for the Wendy's Restaurant with Drive-through at 599 Warren Avenue. The approval was granted for the project with the following conditions:

- i. That the easterly drive be designed as a "right out" only for review and approval by the Traffic Engineer.
- ii. That the applicant contribute \$3,000 to the City for the installation of a 5 ft. bituminous sidewalk easterly along Warren Avenue.
- iii. That the applicant shall provide a sewer capacity letter from the Portland Water District.
- iv. That the applicant contribute \$3,000 to the City for the improvement of an existing culvert at the Handyman property.
- v. That the plans shall be revised in accordance with comments contained in Jim Seymour's letter dated June 25, 2002 for review and approval by the Development Review Coordinator regarding a cross section of the detention pond and spillway.
- vi. That light fixtures not exceed 250 watts and a revised photometric plan reflecting the relocated light pole shall be submitted for review and approval by staff.

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- vii. That executed copies of all necessary easements and an executed copy of the drainage maintenance agreement must be submitted for review and approval by Corporation Counsel and that all easements shall be shown on the approved site plan prior to issuance of a building permit. Said easements shall include a revised and executed access/egress easement to the benefit of lot 314-A-1 (also known as radio station property) for review and approval by Corporation Counsel.
- viii. That the light fixtures shown on the roof be submitted to City staff for review and approval in conformance with City standards.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #45-02, which is attached.

Please note the following provisions and requirements for all site plan approvals:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.
2. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
6. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Department at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Kandice Talbot at 874-8901.

Sincerely,



Jaimey Caron, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Program Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
William Bray, Director of Public Works
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
✓ Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter File
Correspondence File

EARL S. LAIDLAW
DAVID C. DOW
EDWARD L. DILWORTH III*
SARAH E. HECK

*ALSO ADMITTED IN NEW HAMPSHIRE

DOW'S LAW OFFICE, P.A.

A PROFESSIONAL SERVICE CORPORATION

P.O. BOX 349 266 MAIN STREET
NORWAY, MAINE 04268

WWW.DOWSLAWOFFICE.COM
E-MAIL: INFO@DOWSLAWOFFICE.COM

TELEPHONE 207 743-6351
FAX 207 743-8147

TOWER TITLE COMPANY

A DIVISION OF DOW'S
LAW OFFICE, P.A.

October 8, 2002

Via UPS Next Day

Kandice Talbot, Planner
CITY OF PORTLAND
389 Congress Street
Portland, Maine 04101

Re: **Wendy's Restaurant - 599 Warren Avenue**
ID #: 2002-0037, CBL #314-A -003

COPY FOR YOUR INFORMATION
FROM
DOW'S LAW OFFICE, P.A.
266 MAIN STREET
NORWAY, ME 04268

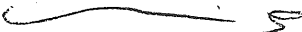
Dear Ms. Talbot:

I am responding to a letter Alexander Jaegerman e-mailed to Michael Dilworth, a member of Dilworth & Son LLC on October 7th, which is dated October 1, 2002, which said letter confirms the revision to the approved plan to Wendy's project at 599 Warren Avenue. Dilworth & Son LLC, as I believe you know, also has a right of way across the property which is granted to Wendy's which I believe interferes with the use of said right of way, and therefore I do not believe it is appropriate for the City to grant such approval.

Therefore, could you please accept this letter as a Notice of Appeal with regard to this decision. If this letter is not acceptable, would you please inform me immediately at the above number and supply me with any appropriate application or form which is necessary to appeal the planning divisions approval.

Thank you for your attention to this matter.

Very truly yours,


Edward L. Dilworth, III
Attorney at Law

ELD/is

cc: Michael Dilworth

Bruce W. Hepler, Esq.

Alexander Jaegerman, Planning Division Director

Paul D. Pietropaoli, Esq.

COPY

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QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

MAINE REAL ESTATE TAX PAGE

KNOW ALL BY THESE PRESENTS, that **OLDER BROTHER LLC**, a Maine limited liability company and **YOUNGER BROTHER LLC** a Maine limited liability company (collectively "Grantor"), for consideration paid, GRANT to **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation whose mailing address is P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017 ("Grantee"), with **QUITCLAIM COVENANT**, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Parcel A").

EXCEPTING AND RESERVING to Grantor its successors and assigns, a non-exclusive, perpetual easement, appurtenant to Grantor's remaining land which is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Parcel B"), for the purpose of a paved road for continuous and uninterrupted vehicular and pedestrian ingress, egress and access, and the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities, to and from Parcel B and Warren Avenue, over, upon, across, and through the area described in Exhibit C, attached hereto and made a part hereof (the "Easement Area"). This easement shall include the right to enter upon such other portions of Parcel A as about the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area and installing such utilities, provided however, Grantor, its successors and assigns, agree (i) that such use of such other portions of Parcel A shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement of even or near even date by and between Grantor and Grantee, to be recorded in the Cumberland County Registry of Deeds.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, the right to relocate to the Easement Area, a portion of the existing easement burdening the real estate comprised of Parcel A and Parcel B, which easement is more particularly described in instruments recorded in said Registry of Deeds in Book 3551, Page 190 and Book 7183, Page 127, as amended by Easement Amendment Agreement (Corrective) dated March 24, 2000 and recorded in said Registry of Deeds in Book 15434, Page 232.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a non-exclusive, assignable easement in gross for continuous and uninterrupted vehicular and pedestrian ingress, egress and access over, upon, across, and through the Easement Area. The assigns of the Grantor with respect to the in gross easement described in this paragraph shall be limited to those persons and entities owning or occupying that certain parcel of real estate located adjacent to and easterly of Parcel B, and identified as "N/F Maine Turnpike Authority, 430 Riverside St, Portland, Maine 6522/343" and "N/F Maine Turnpike Authority, 430 Riverside St, Portland, Maine 2282/77" (collectively, the "MTA Parcel") on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine Made For Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated

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October 30, 2001, and revised through September 12, 2002. The assignment of the easement in gross as set forth in this paragraph shall not be construed to affect or impair the other rights and easements reserved by Grantor as set forth in this instrument.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns a perpetual easement, appurtenant to Parcel B, for drainage from Parcel B over, under and across Parcel A and the use, maintenance and repair of any stormwater detention facilities now or hereafter located on Parcel A by Grantee, its successors or assigns. This easement shall include the right to enter upon such other portions of Parcel A as about this easement area and as are reasonably necessary for the purpose of maintaining, repairing, and replacing said stormwater detention facilities or any culverts or other drainage apparatus as are reasonably necessary in connection with the development of Parcel B, provided however, Grantor, its successors and assigns, agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement appurtenant to Parcel B, to erect a sign, subject to requisite governmental approvals, on any sign pylon hereafter erected on Parcel A by Grantee, its successors or assigns, provided however, that for so long as a Wendy's Old Fashioned Hamburgers hamburger restaurant is continuously operated by Grantee on Parcel A, any sign erected for the benefit of Parcel B on such pylon shall be smaller in square footage than the primary sign erected by Grantee on such pylon to advertise the Wendy's Old Fashioned Hamburgers hamburger restaurant on Parcel A. This easement shall include the right to enter upon such other portions of Parcel A as about this easement area and as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said sign, provided however, Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. By acceptance of this deed Grantee agrees that the sign pylon will be physically designed and constructed in a manner so as to reasonably accommodate a commercially reasonable sign relating to the current or future use of Parcel B.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, two (2) perpetual easements (one of which shall be appurtenant to Parcel B and one of which shall be in gross and assignable to those persons and entities owning or occupying the MTA Parcel, and the assignment of such easement in gross as aforesaid shall not be construed to impair the appurtenant easement set forth in this paragraph) for the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities (expressly including an underground sewer line to serve Parcel B and/or the MTA Parcel, said sewer line to run across the portion of Parcel A which is described on Exhibit D, attached hereto and made a part hereof) necessary or desirable for the development, use and occupancy of Parcel B and/or the MTA Parcel, subject, however, to the prior approval by Grantee of the location of such utilities (other than said sewer line, the location of which is described on Exhibit D), which approval shall not be unreasonably withheld, conditioned or delayed, together with the right to enter upon such other portions

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EXHIBIT B
(Legal Description of Parcel B)

A certain lot or parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, being all of the premises described in a deed from Bridgeside Associates to Wargate Associates dated December 1, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307, as further conveyed by Wargate Associates to Older Brother LLC and Younger Brother LLC, as tenants in common; **EXCEPTING, HOWEVER**, that portion thereof that is described in Exhibit A to this Quitclaim Deed with Covenant.

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of Parcel A as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said utilities, provided however, that Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

AND GRANTOR DOES HEREBY COVENANT AND AGREE with Grantee that Parcel B shall not be used for a drive-through, quick service restaurant which sells hamburger products if such hamburger products exceed fifteen percent (15%) of its gross sales or which sells chicken products if such chicken products exceed fifteen percent (15%) of its gross sales. The foregoing restriction shall not apply to sit-down restaurants with waiter/waitress service, which may sell hamburger products exceeding the foregoing fifteen percent (15%) limitation and/or chicken products exceeding the foregoing fifteen percent (15%) limitation, so long as the restaurant does not have a drive-through facility. This restriction shall burden and run with Parcel B for a period of twenty (20) years from the date of this instrument, and shall benefit Parcel A, and the owners, successors, and assigns thereof and shall automatically expire at the expiration of said twenty (20) year period. In the event of any transfer of Parcel B, Grantor shall be relieved from, and have no further responsibility for, the enforcement of the foregoing restriction but such sale shall not preclude Grantee from enforcing the foregoing restriction against any transferee of Parcel B.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual non-exclusive easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit E, attached hereto and made a part hereof, for the purpose of a paved road for vehicular and pedestrian ingress and access to (but not egress from) Parcel A. This easement shall include the right to enter upon such other portions of Parcel B as about the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area, provided however, Grantee, its successors and assigns, agree, by their acceptance hereof, (i) that such use of such other portions of Parcel B shall not unreasonably interfere with the then-existing use or occupancy of Parcel B; and (ii) to repair any damage to Parcel B that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement of even or near even date by and between Grantor and Grantee, to be recorded in the Cumberland County Registry of Deeds.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual non-exclusive easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit F, attached hereto and made a part hereof, for the installation, operation, maintenance, repair and replacement of a stormwater detention pond or stormwater drainage area (including any underground pipes and culverts in such area for the drainage of stormwater from Parcel A to the foregoing easement area), provided however, that the foregoing stormwater detention and/or drainage facilities shall not interfere in any way with the Grantor's installation, operation, maintenance, repair, or replacement of a paved driveway or roadway, for pedestrian and vehicular passage, over a strip of land on Parcel B that is at least twenty-four (24) feet wide running in a generally

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east-west direction, parallel with the northerly boundary of Parcel A, to provide full ingress and egress to and from the easterly portions of Parcel B via (i) that certain 50.88-foot wide right of way described and reserved in a deed from Michael Scarks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47; and (ii) the Easement Area. Grantor, its successors, and assigns, shall have the right to use, in common with Grantee, any stormwater detention and/or drainage facilities installed by Grantee in connection with the foregoing easement and shall also have the right to modify or enlarge the same, at Grantor's sole expense, to accommodate additional drainage, detention, and/or treatment of stormwater from Parcel B and/or the MTA Parcel, provided that such use, modification, or enlargement does not adversely impact the use of the same for the stormwater from Parcel A. By acceptance of this deed, Grantee agrees that Grantee, its successors, and assigns shall be responsible, at Grantee's sole expense, for maintaining and repairing the stormwater detention and drainage facilities to keep the same in good order, condition, and repair and in compliance with applicable laws, until such time, if any, as Grantor, its successors or assigns, develop Parcel B and/or the MTA Parcel and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B. If Grantor, its successors or assigns develop Parcel B and/or the MTA Parcel and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B, either party shall have the right to maintain and repair the same, but the costs of maintenance and repair shall be shared equally by the parties, except to the extent such is done at the request of Grantor, its successors or assigns to modify or enlarge such facilities to accommodate additional drainage, detention and/or treatment of stormwater from Parcel B and/or the MTA Parcel, in which event such costs shall be paid solely by Grantor, its successors or assigns. Nothing herein contained shall be construed to preclude Grantor, its successors or assigns from granting rights to others to use any portion of Parcel B (including that portion described on Exhibit F) for drainage, detention and/or treatment of stormwater.

IN WITNESS WHEREOF, each Grantor has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this 27th day of ~~September~~ 2002.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



OLDER BROTHER LLC

By: 
Joseph F. Boulos
Its Manager



YOUNGER BROTHER LLC

By: 
Gregory W. Boulos
Its Manager

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STATE OF MAINE
County of Cumberland, SS.

September 24, 2002

Then personally appeared the above-named Joseph F. Boulos, Manager of Older Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Older Brother LLC.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: Paul D. Petrucci

STATE OF MAINE
County of Cumberland, SS.

September 24, 2002

Then personally appeared the above-named Gregory W. Boulos, Manager of Younger Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Younger Brother LLC.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: Paul D. Petrucci

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EXHIBIT A**(Legal Description of Parcel A)**

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Lot, 52,173 S.F., 1.1977 Acres" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine; Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002; being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E through land of the Grantor a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to a point;

thence S 05° 39' 10" E through land of the Grantor a distance of Two Hundred Eleven and 71/100 (211.71) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

Specifically excluded from this conveyance is all right, title, or interest of Grantor in and to a certain access and utility easement over the parcel which abuts the westerly sideline of the above-described premises as set forth in a deed from Michael Sears to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229; Page 47, which access and utility easement is hereby excepted and reserved by Grantor for the benefit of the land described in Exhibit B to this deed.

Doc#1 79662 Bk118138 Pg: 178

EXHIBIT C**(Legal Description of Basement Area)**

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-3-A" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E along the northerly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached) a distance of Eighty-One and 00/100 (81.00) feet to a point;

thence S 41° 02' 56" W a distance of Ninety-Four and 78/100 (94.78) feet to a point;

thence S 05° 39' 10" E a distance of Eighty-Four and 11/100 (84.11) feet to a point;

thence S 22° 37' 24" E a distance of Forty-One and 11/100 (41.11) feet to a point;

thence southerly, along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Twenty-Eight and 60/100 (28.60) feet to the northerly sideline of said Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of said Warren Avenue a distance of Seventy-Three and 45/100 (73.45) feet to the point of beginning.

Doc# 79642 Blk118138 Pgt 179

EXHIBIT D

(Legal Description of Sewer Line Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Utility Easement for Lot 314-3-A" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220F, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Ten and 18/100 (10.18) feet to a point;

thence N 83° 43' 00" E a distance of Two Hundred Sixty-Two and 15/100 (262.15) feet to a point on the easterly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached);

thence S 05° 39' 10" E along the easterly boundary of said Parcel A a distance of Ten and 00/100 (10.00) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

Doc# 79462 Bk:18138 Pt: 180

EXHIBIT E

(Legal Description of Access Easement to Benefit Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-B-A-2" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-2201, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning at a point on the northerly sideline of Warren Avenue at the southeasterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 83° 43' 00" E a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 05° 39' 10" W a distance of Sixty and 00/100 (60.00) feet;

thence N 83° 43' 00" E a distance of Seventy-Eight and 27/100 (78.27) feet;

thence S 06° 17' 00" E a distance of Thirty and 04/100 (30.04) feet;

thence southwesterly along a curve concave to the left having a radius of Fifteen and 00/100 (15.00) feet, and an arc distance of Twenty-Eight and 99/100 (28.99) feet;

thence southerly along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Eleven and 17/100 (11.17) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along said northerly sideline of Warren Avenue a distance of Seventy and 44/100 (70.44) feet to the point of beginning.

Doc# 79542 Blk118138 Pg1 181

EXHIBIT F

(Legal Description of Stormwater Easement Area)

A certain parcel of land situated on the northerly side of, but not adjacent to, Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Drainage Easement" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning at the northwesterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 04° 24' 12" E a distance of Two Hundred Seventeen and 97/100 (217.97) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence continuing N 04° 24' 12" E along the easterly boundary of said Lot 2 a distance of Seventy-Four and 10/100 (74.10) feet;

thence N 83° 42' 58" E a distance of Two Hundred Fifty and 00/100 (250.00) feet;

thence S 06° 17' 02" E a distance of Forty-Five and 00/100 (45.00) feet;

thence S 45° 04' 27" W a distance of Forty-Eight and 53/100 (48.53) feet;

thence S 84° 20' 50" W a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to the point of beginning.

Received
Recorded Registrar of Deeds
Sep 23, 2002 02:26:11PM
Cumberland County
John B. B. Brien

Doc#: 79642 Ak118128 Pg1 177

EXHIBIT B
(Legal Description of Parcel B)

A certain lot or parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, being all of the premises described in a deed from Bridgeside Associates to Wargate Associates dated December 1, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307, as further conveyed by Wargate Associates to Older Brother LLC and Younger Brother LLC, as tenants in common; **EXCEPTING, HOWEVER**, that portion thereof that is described in Exhibit A to this Quitclaim Deed with Covenant.

Doc#: 79542 Bk:18138 Pg: 181

EXHIBIT F**(Legal Description of Stormwater Easement Area)**

A certain parcel of land situated on the northerly side of, but not adjacent to, Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Drainage Easement" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning at the northwesterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 04° 24' 12" E a distance of Two Hundred Seventeen and 97/100 (217.97) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence continuing N 04° 24' 12" E along the easterly boundary of said Lot 2 a distance of Seventy-Four and 10/100 (74.10) feet;

thence N 83° 42' 58" E a distance of Two Hundred Fifty and 00/100 (250.00) feet;

thence S 06° 17' 02" E a distance of Forty-Five and 00/100 (45.00) feet;

thence S 45° 04' 27" W a distance of Forty-Eight and 53/100 (48.53) feet;

thence S 84° 20' 50" W a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to the point of beginning.

Received
Recorded Register of Deeds
Sep 25, 2002 02:26:11PP
Cumberland County
John B. O'Brien

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

AA. 5
Division Directors
Mark B. Adelson
Housing & Neighborhood Services
Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

October 1, 2002

Mr. Edward F. Mitchell
Wendy's International, Inc.
234 Littleton Road
Suite 1F
Westford, MA 01886

RE: Wendy's Restaurant, 599 Warren Avenue
ID #2002-0037, CBL #314-A-003

Dear Mr. Mitchell:

This letter is to confirm the revision to the approved plan of the Wendy's project located at 599 Warren Avenue. The approved revision includes the relocation of the easterly access drive. The revised plan has been reviewed and approved by the project review staff including representatives of the Planning, Public Works, Building Inspections, Fire and Parks Departments.

If you have any questions regarding the revision please contact Kandice Talbot at 874-8901.

Sincerely,


Alexander Jaegerman
Planning Division Director

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Program Manager
✓ Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Approval Letter File
Correspondence File

PLANNING BOARD REPORT #63-02

**VICINITY OF 599 WARREN AVENUE
ABUTTER'S APPEAL
OF AN ADMINISTRATIVE APPROVAL
OF DRIVEWAY AMENDMENT
TO A PREVIOUSLY APPROVED
WENDY'S DRIVE THROUGH RESTAURANT**

Submitted to:
Portland Planning Board
Portland, Maine
October 22, 2002

Submitted by:
Kandice Talbot, Planner

I. INTRODUCTION

Findings:

Zoning:	B-4 Commercial Corridor Zone
Parcel Size:	47,814 sq. ft.
Parking Spaces:	
Required:	22 parking spaces
Provided:	38 parking spaces
Building Floor Area:	3,260 sq. ft.

Notices were sent to 69 neighboring property owners.

Background

On June 25, 2002, the Planning Board approved the Wendy's Drive Through Restaurant proposed at 599 Warren Avenue with conditions. At that time, two driveways were proposed for the site, on the Wendy's site. One driveway was proposed as an entrance/exit for the parking area and drive-through lane. The Traffic Engineer is recommending that the exit lane for the easterly driveway be a right exit only, but vehicles may enter by turning either left or right off Warren Avenue. The second driveway was proposed as an exit only for the drive-through and any vehicles from the Radio Tower property and the abutting Boulos property that would be taking a left hand turn on Warren Avenue. The June 25, 2002 approval letter is included as Attachment 3. The plan, as approved by the Planning Board is included as Attachment 4.

In September, the applicant submitted a revision to relocate the easterly driveway. This driveway would be relocated to the east on the Boulos property and was proposed as an entrance/exit drive for the Boulos property and the Radio Tower property. The Wendy's customers, however, would have to exit through the westerly driveway. To achieve this, the applicant is proposing an extended island and a "Do Not Enter" sign to direct customers to the westerly driveway. The Planning Authority approved the revision on October 1, 2002. The revision approval letter is included as Attachment 5. The revised plan is included as Attachment 6.

Dilworth & Son, LLC, owner of the Radio Tower property, appealed the approved revision on October 8, 2002. His appeal letter is included as Attachment 1. The appeal is based on the easement agreement which states "In the event that Grantor relocates the Easement and the Access Road, the new Easement and Access Road shall forever to at least of the width and type as the presently existing Access Road, and any such relocation shall be done in the manner which least interferes with the Grantee's use of said easement..."

Staff Review and Comments

When the driveway was originally approved, the Traffic Engineer had required a right in/right-out for the driveway based on the heavy peak hour volumes predicted for the restaurant on Warren Avenue. This restriction was meant to eliminate the left turn in conflict with the left turn out given the volumes expected. The Traffic Engineer reviewed the relocated driveway and because the drive-thru and the parking lot for Wendy's has been reconfigured so that exiting vehicles from Wendy's will still have to exit where originally planned, this proposal was adequate. The only vehicles that are expected to exit the Wendy's entrance will be vehicles from the radio tower property, and given the low traffic count from the radio tower site, should not interfere with the Wendy's customers.

Staff believes that the revised driveway location is a better solution for all properties involved. This relocated driveway now eliminates vehicles from the radio tower property driving through the Wendy's site.

MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #63-02_relevant to standards for site plan regulations, and other findings, the Board finds:

That the amendment to the site plan ~~is/is not~~ in conformance with the site plan standards of the land use code; therefore the Planning Board ~~approves/denies~~ the applicant's request.

6-0
Luck
absent

Attachments:

1. Appellant's request for Appeal
2. Easement Amendment Agreement
3. Planning Board June 25, 2002 Approval Letter
4. Plan Approved by Planning Board
5. Planning Authority letter of approval for amendment, October 1, 2002
6. Revised Site Plan
7. Traffic Engineer's Memo dated October 18, 2002
8. Letter from Wendy's International, Inc. Attorney dated October 18, 2002
9. Letter from Boulos Property Attorney dated October 17, 2002

EARL S. LAIDLAW
DAVID C. DOW
EDWARD L. DILWORTH III*
SARAH E. HECK
*ALSO ADMITTED IN NEW HAMPSHIRE

DOW'S LAW OFFICE, P.A.
A PROFESSIONAL SERVICE CORPORATION

P.O. Box 349 266 MAIN STREET
NORWAY, MAINE 04268

WWW.DOWSLAWOFFICE.COM
E-MAIL: INFO@DOWSLAWOFFICE.COM

TELEPHONE 207 743-6351
FAX 207 743-8147

AA.1
TOWER TITLE COMPANY
A DIVISION OF DOW'S
LAW OFFICE, P.A.

October 8, 2002

Via UPS Next Day

Kandice Talbot, Planner
CITY OF PORTLAND
389 Congress Street
Portland, Maine 04101

**Re: Wendy's Restaurant - 599 Warren Avenue
ID #: 2002-0037, CBL #314-A -003**

Dear Ms. Talbot:

I am responding to a letter Alexander Jaegerman e-mailed to Michael Dilworth, a member of Dilworth & Son LLC on October 7th, which is dated October 1, 2002, which said letter confirms the revision to the approved plan to Wendy's project at 599 Warren Avenue. Dilworth & Son LLC, as I believe you know, also has a right of way across the property which is granted to Wendy's which I believe interferes with the use of said right of way, and therefore I do not believe it is appropriate for the City to grant such approval.

Therefore, could you please accept this letter as a Notice of Appeal with regard to this decision. If this letter is not acceptable, would you please inform me immediately at the above number and supply me with any appropriate application or form which is necessary to appeal the planning divisions approval.

Thank you for your attention to this matter.

Very truly yours,



Edward L. Dilworth, III
Attorney at Law

ELD/is

cc: Michael Dilworth

Bruce W. Hepler, Esq.

Alexander Jaegerman, Planning Division Director

Paul D. Pietropaoli, Esq.

#1447 P 002/005
ORIGINAL SENT
TO DATE
SMITH
Att. 2

EASEMENT AMENDMENT AGREEMENT
(Corrective)

This Easement Amendment Agreement made this 24 day of March, 2000, by and between Wargate Associates, a Maine general partnership with a mailing address of c/o Douglas Property Management, One Canal Plaza, 5th Floor, Portland, ME 04101 ("Grantor"), and (Itadel Broadcasting Company, a Nevada corporation with a mailing address of 7201 West Lake Mead Boulevard, Suite 400, Las Vegas NV 89128 ("Grantee").

WHEREAS, Grantor is the owner of certain real property located on Warren Avenue, in Portland, Maine, described in and by virtue of a Short Form Quitclaim Deed With Covenant dated December 1, 1994, recorded in the Cumberland County Registry of Deeds in Book 1750, Page 307 ("Grantor's Land");

WHEREAS, Grantee is the owner of certain real property located adjacent to Grantor's Land and described in a Warranty Deed from WCSO Broadcasting Company Limited Partnership to Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines, dated October 2, 1996, recorded in the aforesaid Registry at Book 12757, Page 100 ("Grantee's Land"), Grantee being the successor by merger to Fuller-Jeffrey Broadcasting Companies, Inc., which in turn was the successor by merger to Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines;

WHEREAS, Grantee's Land is benefited by a certain easement for access as more fully described in Deeds from Horace K. Sowles, Jr., dated May 10, 1974 and May 21, 1985, respectively, and recorded in the aforesaid Registry at Book 3551, Page 190 and Book 7183 Page 127, respectively (the "Easement");

WHEREAS, an unpaved access road has been located on the Grantor's Land pursuant to the terms of the Easement and Grantee desires permission to pave the said access road in the location as it exists on the date hereof (the "Access Road") and as the same may be relocated from time to time by Grantor;

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the Parties agree to amend the Easement as follows:

1. Grantee shall have the right, at Grantee's sole cost and expense and risk, to pave the Access Road, and any similar access road located in the Easement as the Easement may be relocated by the Grantor from time to time in Grantor's sole discretion. In the event that Grantor relocates the Easement and the Access Road, the new Easement and Access Road shall forever be at least of the width and type as the presently existing Access Road, and any such relocation shall be done in the manner which least interferes with the Grantee's use of said easement, and the Grantor shall bear all costs of any such relocation, except that Grantee shall bear the cost of paving the relocated Access Road should Grantee at its option decide to pave the relocated Access Road. Grantee shall have the right and obligation to keep the Access Road or any relocated access road in good repair and covenants to repair and maintain same; provided, however, that such right is expressly subject to Grantor's prior written approval (which approval shall not be unreasonably withheld or delayed) of all plans for such paving, which plans Grantor shall submit to Grantor in form and detail as reasonably required by Grantor. In the event Grantor exercises Grantor's right to relocate the Easement from time to time, Grantor shall have no obligation whatsoever to pave or bear any portion of the cost or expense to pave any access

2A

road or way across the Easement as relocated. However, the Grantor shall have the right but not the obligation to repair and maintain the Access Road or any relocated access road if the same is not maintained or repaired adequately by Grantee in Grantor's reasonable opinion and the Grantee will, upon demand, reimburse Grantor for its actual and verifiable costs of repair and maintenance.

2. Grantee, its successors and assigns, agree to indemnify and hold harmless Grantor, its successors and assigns, from and against any and all damages, liabilities, losses, expenses, claims and suits (including without limit costs of enforcing this indemnity and all reasonable attorneys' fees) incurred or suffered in connection with or arising out of the rights granted under the Easement, as the same may be relocated from time to time and as herein amended, or the use, maintenance or repair by Grantee, its successors and assigns of the Easement, as the same may be relocated from time to time and as herein amended, and/or Grantee's or its successors' and assigns', or their agents' presence upon the Grantor's Land in connection therewith or for any other reason.

3. The rights granted by Grantor herein are granted without warranty or covenant of title whatsoever, are not exclusive, and are subject to any and all rights, easements or encumbrances of record in force now or in the future and applicable to the Grantor's Land and/or said rights.

4. All of the provisions of the Easement not amended hereby remain in full force and effect.

The purpose of this instrument is to correct a certain Easement Amendment Agreement by and between Warren Properties Limited Partnership and WCO Broadcasting Limited Partnership (said WCO Broadcasting Limited Partnership being Grantee's predecessor-in title as the owner of the Grantee's Land) dated September 19, 1995 and recorded in the Cumberland County Registry of Deeds in Book 12136, Page 214. Said Easement Amendment Agreement erroneously identified both (i) the Grantor; and (ii) the Grantor's Land, all of which should have been as stated in this instrument. Grantee is releasing any right, title and interest in and to the property of Warren Properties Limited Partnership pursuant to a Release of Easement Rights of even or near date to be recorded in said Registry of Deeds.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized undersigned representatives as of the day first above-written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Eric J. [Signature]
Witness

Janelle J. Metz
Witness

GRANTOR:
WARGATE ASSOCIATES

By: [Signature]
Printed Name:
Its General Partner

GRANTEE:
CITADEL BROADCASTING COMPANY

By: [Signature]
Printed Name: STUART STANLEY
Its VP.

-7-

2B

STATE OF MAINE
County of Cumberland, SS

March 24, 2000

Personally appeared before me the above named Joseph F. Bojko,
general partner of Wargate Associates, and acknowledged the foregoing instrument to be his free
act and deed in his said capacity and the free act and deed of said Wargate Associates.

Before me,

LYNDA S. HARJULA
Notary Public, Maine
My Commission Expires March 9, 2008

Lynnda S. Harjula
Notary Public
Printed Name: LYNDA S. HARJULA

STATE OF Nevada
County of Clark, SS

March 28th, 2000

Personally appeared the above named Stuart Stanek in
his/her capacity as VP of Citadel Broadcasting Company and
acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity
and the free act and deed of said Citadel Broadcasting Company.

Before me,

LYNDA S. HARJULA
Notary Public, Maine
My Commission Expires March 9, 2008

Ginger Lee Ludwig
Notary Public
Printed Name: Ginger Lee Ludwig



Att. 3

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

Division Directors
Mark B. Adelson
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

June 28, 2002

Matt Peterson
Keach-Nordstrom Associates, Inc.
10 Commerce Park North
Suite 3B
Bedford, NH 03110

RE: Wendy's Restaurant, 599 Warren Avenue
ID #2002-0037, CBL #314-A-003

Dear Mr. Peterson:

On June 25, 2002, the Portland Planning Board voted 6-0 (Delogu absent) to approve the Traffic Movement Permit and the site plan for the Wendy's Restaurant with Drive-through at 599 Warren Avenue. The approval was granted for the project with the following conditions:

- i. That the easterly drive be designed as a "right out" only for review and approval by the Traffic Engineer.
- ii. That the applicant contribute \$3,000 to the City for the installation of a 5 ft. bituminous sidewalk easterly along Warren Avenue.
- iii. That the applicant shall provide a sewer capacity letter from the Portland Water District.
- iv. That the applicant contribute \$3,000 to the City for the improvement of an existing culvert at the Handyman property.
- v. That the plans shall be revised in accordance with comments contained in Jim Seymour's letter dated June 25, 2002 for review and approval by the Development Review Coordinator regarding a cross section of the detention pond and spillway.
- vi. That light fixtures not exceed 250 watts and a revised photometric plan reflecting the relocated light pole shall be submitted for review and approval by staff.

O:\PLANDEVREV\WARRN599\APPRVLTR.DOC

- vii. That executed copies of all necessary easements and an executed copy of the drainage maintenance agreement must be submitted for review and approval by Corporation Counsel and that all easements shall be shown on the approved site plan, prior to issuance of a building permit. Said easements shall include a revised and executed access/egress easement to the benefit of lot 314-A-1 (also known as radio station property) for review and approval by Corporation Counsel.
- viii. That the light fixtures shown on the roof be submitted to City staff for review and approval in conformance with City standards.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #45-02, which is attached.

Please note the following provisions and requirements for all site plan approvals:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.
2. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
6. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Department at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Kandice Talbot at 874-8901.

3B

Sincerely,



Jaimey Caron, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Program Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
William Bray, Director of Public Works
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter File
Correspondence File

Att. 7

From: Larry Ash
To: Kandi Talbot
Date: Fri, Oct 18, 2002 11:49 AM
Subject: Wendy's

Kandi: the right in/right-out that was part of the original plan for Wendy's took into account the very heavy peak hour volumes predicted for the restaurant on Warren Ave. This restriction was meant to eliminate the left turn in conflict with the left turn out given the volumes expected. The drive-thru and the parking lot for Wendy's has been reconfigured so that exiting vehicles from Wendy's will still have to exit where originally planned. The only vehicles expected to exit the Wendy's entrance now would be vehicles from the radio tower area which is 4 or 5 vehicles in a day and probably less on a weekend. This number of vehicles I do not expect to cause problems for the Wendy's users who, as I expect, will still be exiting at the other driveway.

Hope this clarifies the situation.



Att. 8

Thomas R. Doyle

One Monument Square
Portland, ME 04101

207-791-1214 voice
207-791-1350 fax
tdoyle@pierceatwood.com
pierceatwood.com

October 18, 2002

Kandi Talbot
Portland Planning Office
City of Portland
389 Congress Street
Portland, ME 04104

RE: Wendy's Restaurant – 599 Warren Avenue
ID# 2002-0037, CBL# 314-A-003
Appeal of Dilworth & Son, LLC

Dear Kandi:

This firm represents Wendy's International, Inc. and Wendy's Old Fashioned Hamburgers of New York ("Wendy's"). This letter responds to the October 8, 2002 Notice of Appeal letter from Dilworth & Son, LLC ("Dilworth").

Unfortunately, the Notice of Appeal does not include any facts or arguments to justify or support the appeal. Consequently, it is difficult to understand the basis for Dilworth's appeal or how Dilworth could be adversely affected by the Planning Department's Minor Site Plan revision dated October 1, 2002. We also have received a letter dated October 17, 2002 from Attorney Bruce Hepler representing Older Brother LLC and Younger Brother LLC (the "Brothers"), which own the larger parcel from which Wendy's recently purchased its 1.19 acre parcel. Mr. Hepler's letter accurately sets forth the facts of this matter and multiple reasons for why the Dilworth appeal lacks merit. We support the arguments set forth in Mr. Hepler's letter.

In addition, we stress that Wendy's Restaurant proposal is a Minor Site Plan, which only required review from the Planning Board because of the City's delegated traffic review from the Maine Department of Transportation. Throughout the Site Plan Review process, Wendy's has done everything required of it by the City's Ordinances, the City Planning Department, and the Planning Board to meet all applicable City standards. Indeed, we believe Wendy's has gone significantly beyond what is required by the City Ordinances to satisfy City concerns with perceived off-site impacts (e.g., contributions for (i) installation of a bituminous sidewalk easterly on Warren Avenue and (ii) improvement of an existing culvert on the Handyman property). To date, Wendy's has attended two Planning Board workshops and a separate public

Kandi Talbot
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Page 2

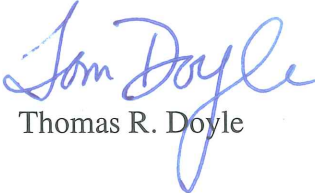
8A

hearing on its project. As you can imagine, Wendy's is ready to move forward to construct its restaurant. The minor revision approved October 1 actually is a revision of the approved Site Plan to accommodate concerns raised by Dilworth to the Brothers after the Planning Board's June 25 approval, and we strongly believe it is an improvement for all parties. Moreover, this minor revision has been reviewed by representatives of multiple City departments, including Planning, Public Works, Building Inspections, Fire and Parks.

For these reasons and for those set forth in Mr. Hepler's October 17 letter, we request that the Planning Board dismiss the Dilworth appeal and affirm the Planning Department's revised site plan in all respects.

Thank you for your consideration of this matter.

Very truly yours,


Thomas R. Doyle

TRD:pmp

cc: Penny Littell, Esq.
Lee Urban, Esq.
Bruce Hepler, Esq.
Edward Dilworth, Esq.
Dave Sanderson
Ed Mitchell

Bruce W. Hepler
Attorney

Email:
BHEPLER@FGWL-LAW.COM

October 17, 2002

Kandice Talbot, Planner
CITY OF PORTLAND
389 Congress Street
Portland, Maine 04101

RE: Wendy's Restaurant – 599 Warren Avenue

Dear Ms. Talbot:

The purpose of this letter is to respond to the October 8, 2002 notice of appeal sent on behalf of Dilworth & Son LLC to the revised site plan for 599 Warren Avenue.

Background Facts

This law firm represents Older Brother LLC and Younger Brother LLC which owned a parcel of real property of approximately 2.57 acres on Warren Avenue in Portland (the "Property"). On or about September 25, 2002, our clients sold the westerly half of the Property to Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's"). We understand that Dilworth & Son LLC ("Dilworth") owns a parcel of property abutting the Property (the "Radio Station Property").

The Radio Station Property has an easement that allows access to it by traveling over the Property (the "Easement"). The location of the Easement is not set or defined. Rather, the Easement provides that it "may be relocated by the Grantor from time to time in Grantor's sole discretion." The Easement does not require that the Grantor obtain Dilworth's consent before changing the location of the Easement. In addition, the Easement states that the access rights which it grants "are not exclusive." Accordingly, Dilworth must share the use of the Easement with others. What is more, the Easement provides that the rights it grants "are subject to any and all rights, easements or encumbrances of record in force now or in the future and applicable to the Grantor's Land and/or said rights."

Before closing on the purchase of the westerly half of the Property, Wendy's applied for approval from the Portland Planning Board to construct a restaurant. We understand that neither Dilworth nor the former owner of the Radio Station Property made any comments or objections to Wendy's requested site plan.

On or about June 25, 2002, the Portland Planning Board approved a site plan for Wendy's (the "Original Site Plan"). In the Original Site Plan, the Easement shares a curb cut with Wendy's and is located on Wendy's property. In addition, there could be no left-hand turn out of that curb cut, and the users of the Radio Station Property would have to drive around the Wendy's Restaurant to make a left-hand turn from the curb cut by Wendy's drive-thru.

With this configuration, Dilworth made two complaints: (1) there could be no left-hand turn from the shared curb cut, and (2) he would have to go around the Wendy's Restaurant to make a left-hand turn. There was no complaint about having to share a curb cut with Wendy's. Rather, Dilworth's attorney suggested that Wendy's site plan be reconfigured to eliminate the curb cut by the drive-thru and there would be just one curb cut. That one curb cut would be shared by Wendy's and the access road and there could be both right and left-hand egress from it.

Wendy's was not required under the Easement to obtain the consent of Dilworth to its site plan. Nevertheless, Wendy's made changes to the Original Site Plan to address the two concerns articulated by Dilworth. Wendy's revised the site plan to move the curb cut for the access road off of Wendy's property and closer to the Radio Station Property. In addition, the users of the Radio Station Property would be able to make a left-hand egress from that curb cut and would not ever have to enter Wendy's parcel at all. Apparently, Wendy's has also revised the site plan so that all of its traffic must exit from the westernmost (drive-thru) curb cut on the Wendy's parcel.

The City approved Wendy's revisions to the Original Site Plan (the "Revised Site Plan"). Thereafter, on or about September 25, 2002, our clients sold the westerly half of the Property to Wendy's. Concurrent with that closing, our clients provided Dilworth with a Notice of Relocation of Easement.

The Appeal Lacks Any Merit

On or about, October 1, 2002, the City provided notice of the Revised Site Plan to Dilworth and others. Thereafter, on October 8, 2002, Dilworth gave notice that he wished to appeal the approval of the site plan. Dilworth's appeal is merely an appeal of the Revised Site Plan (and not the Original Site Plan) because it was sent too late to be an appeal of the Original Site Plan and because it was only sent in response to the City's October 1, 2002 notice of the Revised Site Plan.

Due to the brevity of the Dilworth's notice of appeal, it is very difficult to ascertain the rationale for the appeal or to respond to such appeal. However, there can be absolutely no merit to Dilworth's appeal of the Revised Site Plan because the Revised Site Plan is more favorable to Dilworth than the Original Site Plan for at least the following four reasons:

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First, the Revised Site Plan has a curb cut for the Easement that is closer to the Radio Station's Property than the Original Site Plan. Indeed, the curb cut for the Easement in the Revised Site Plan is very close to the existing curb cut. Accordingly, there is very little change to the location of the Easement.

Second, with the Original Site Plan, the curb cut was on Wendy's property, but that is no longer the case. Rather, with the Revised Site Plan, the curb cut has been moved to the parcel retained by Younger Brother LLC and Older Brother LLC and is closer to the Radio Station Property. Accordingly, this is better for the users of the Radio Station Property because they will no longer have to go through the parking lot of the Wendy's Restaurant or even enter Wendy's parcel at all.

Third, with the Revised Site Plan, there is right-hand and left-hand egress from the curb cut for the Easement. This is different from the Original Site Plan which did not allow left-hand egress. Accordingly, this is better for Dilworth because it allows him to make a left-hand turn from that curb cut without having to travel around the Wendy's Restaurant before making a left-hand egress.

Fourth, unlike the Original Site Plan, the Revised Site Plan forces all of Wendy's traffic to exit only at the westernmost (drive-thru) curb cut on the Wendy's parcel, thereby lessening the impact on the curb cut used by Dilworth.

For each of these reasons and others, there can be no merit to the appeal. Accordingly, the appeal should be denied and the Revised Site Plan should be affirmed.

Very truly yours,



Bruce W. Hepler

BWH:cc

Cc: Mr. Greg Boulos
Tom Doyle, Esq.
Edward Dilworth, Esq.

Fax # 871-8026

Fax # 774-0317

0021374

BK T5434 PG 232

EASEMENT AMENDMENT AGREEMENT
(Corrective)

This Easement Amendment Agreement made this 24 day of MARCH, 2000, by and between Wargate Associates, a Maine general partnership with a mailing address of c/ooulos Property Management, One Canal Plaza, 5th Floor, Portland, ME 04101 ("Grantor"), and Chadel Broadcasting Company, a Nevada corporation with a mailing address of 7201 West Lake Mend Boulevard, Suite 400, Las Vegas NV 89128 ("Grantee").

WHEREAS, Grantor is the owner of certain real property located on Warren Avenue, in Portland, Maine, described in and by virtue of a Short Form Quitclaim Deed With Covenant dated December 1, 1994, recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307 ("Grantor's Land");

WHEREAS, Grantee is the owner of certain real property located adjacent to Grantor's Land and described in a Warranty Deed from WCSO Broadcasting Company Limited Partnership to Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines, dated October 2, 1996, recorded in the aforesaid Registry at Book 12757, Page 100 ("Grantee's Land"), Grantee being the successor by merger to Fuller-Jeffrey Broadcasting Companies, Inc., which in turn was the successor by merger to Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines;

WHEREAS, Grantee's Land is benefited by a certain easement for access as more fully described in Deeds from Horace K. Sowles, Jr., dated May 10, 1974 and May 21, 1986, respectively, and recorded in the aforesaid Registry at Book 3551, Page 190 and Book 7183, Page 127, respectively (the "Easement");

WHEREAS, an unpaved access road has been located on the Grantor's Land pursuant to the terms of the Easement and Grantee desires permission to pave the said access road in the location as it exists on the date hereof (the "Access Road") and as the same may be relocated from time to time by Grantor;

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the Parties agree to amend the Easement as follows:

1. Grantee shall have the right, at Grantee's sole cost and expense and risk, to pave the Access Road, and any similar access road located in the Easement as the Easement may be relocated by the Grantor from time to time in Grantor's sole discretion. In the event that Grantor relocates the Easement and the Access Road, the new Easement and Access Road shall forever be at least of the width and type as the presently existing Access Road, and any such relocation shall be done in the manner which least interferes with the Grantee's use of said easement, and the Grantor shall bear all costs of any such relocation, except that Grantee shall bear the cost of paving the relocated Access Road should Grantee at its option decide to pave the relocated Access Road. Grantee shall have the right and obligation to keep the Access Road or any relocated access road in good repair and covenants to repair and maintain same; provided, however, that such right is expressly subject to Grantor's prior written approval (which approval shall not be unreasonably withheld or delayed) of all plans for such paving, which plans Grantee shall submit to Grantor in form and detail as reasonably required by Grantor. In the event Grantor exercises Grantor's right to relocate the Easement from time to time, Grantor shall have no obligation whatsoever to pave or bear any portion of the cost or expense to pave any access

*amends
is this
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road or way across the Easement as relocated. However, the Grantor shall have the right but not the obligation to repair and maintain the Access Road or any relocated access road if the same is not maintained or repaired adequately by Grantee in Grantor's reasonable opinion and the Grantee will, upon demand, reimburse Grantor for its actual and verifiable costs of repair and maintenance.

2. Grantee, its successors and assigns, agree to indemnify and hold harmless Grantor, its successors and assigns, from and against any and all damages, liabilities, losses, expenses, claims and suits (including without limit costs of enforcing this indemnity and all reasonable attorneys' fees) incurred or suffered in connection with or arising out of the rights granted under the Easement, as the same may be relocated from time to time and as herein amended, or the use, maintenance or repair by Grantee, its successors and assigns of the Easement, as the same may be relocated from time to time and as herein amended, and/or Grantee's or its successors' and assigns', or their agents' presence upon the Grantor's Land in connection therewith or for any other reason.

3. The rights granted by Grantor herein are granted without warranty or covenant of title whatsoever, are not exclusive, and are subject to any and all rights, easements or encumbrances of record in force now or in the future and applicable to the Grantor's Land and/or said rights.

4. All of the provisions of the Easement not amended hereby remain in full force and effect.

The purpose of this instrument is to correct a certain Easement Amendment Agreement by and between Warren Properties Limited Partnership and WCSO Broadcasting Limited Partnership (said WCSO Broadcasting Limited Partnership being Grantee's predecessor-in-title as the owner of the Grantee's Land) dated September 19, 1993 and recorded in the Cumberland County Registry of Deeds in Book 12136, Page 214. Said Easement Amendment Agreement erroneously identified both (i) the Grantor; and (ii) the Grantor's Land, all of which should have been as stated in this instrument. Grantee is releasing any right, title and interest in and to the property of Warren Properties Limited Partnership pursuant to a Release of Easement Rights of even or near date to be recorded in said Registry of Deeds.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized undersigned representatives as of the day first above-written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Eric D. [Signature]
Witness

Corelle J. [Signature]
Witness

GRANTOR:
WAROATE ASSOCIATES

By: [Signature]
Printed Name: JOSEPH F. DOULOS
Its General Partner

GRANTEE:
CITADEL BROADCASTING COMPANY

By: [Signature]
Printed Name: STRAAT STANLEY
Its V.P.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

EXHIBIT A

(Legal Description of Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Lot, 52,173 S.F., 1.1977 Acres" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E through land of the Grantor a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to a point;

thence S 05° 39' 10" E through land of the Grantor a distance of Two Hundred Eleven and 71/100 (211.71) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

Specifically excluded from this conveyance is all right, title, or interest of Grantor in and to a certain access and utility easement over the parcel which abuts the westerly sideline of the above-described premises as set forth in a deed from Michael Scarks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47, which access and utility easement is hereby excepted and reserved by Grantor for the benefit of the land described in Exhibit B to this deed.

EXHIBIT B

(Legal Description of Parcel B)

A certain lot or parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, being all of the premises described in a deed from Bridgeside Associates to Wargate Associates dated December 1, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307, as further conveyed by Wargate Associates to Older Brother LLC and Younger Brother LLC, as tenants in common, EXCEPTING, HOWEVER, that portion thereof that is described in Exhibit A to this Quitclaim Deed with Covenant.

EXHIBIT C

(Legal Description of Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-A-7" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E along the northerly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached) a distance of Eighty-One and 00/100 (81.00) feet to a point;

thence S 41° 02' 56" W a distance of Ninety-Four and 78/100 (94.78) feet to a point;

thence S 05° 39' 10" E a distance of Eighty-Four and 11/100 (84.11) feet to a point;

thence S 22° 37' 24" E a distance of Forty-One and 11/100 (41.11) feet to a point;

thence southerly, along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Twenty-Eight and 60/100 (28.60) feet to the northerly sideline of said Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of said Warren Avenue a distance of Seventy-Three and 45/100 (73.45) feet to the point of beginning.

EXHIBIT D

(Legal Description of Sewer Line Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Utility Easement for Lot 314-A-7" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Ten and 18/100 (10.18) feet to a point;

thence N 83° 43' 00" E a distance of Two Hundred Sixty-Two and 15/100 (262.15) feet to a point on the easterly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached);

thence S 05° 39' 10" E along the easterly boundary of said Parcel A a distance of Ten and 00/100 (10.00) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

EXHIBIT E

(Legal Description of Access Easement to Benefit Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-A-3" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning at a point on the northerly sideline of Warren Avenue at the southeasterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 83° 43' 00" E a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 05° 39' 10" W a distance of Sixty and 00/100 (60.00) feet;

thence N 83° 43' 00" E a distance of Seventy-Eight and 27/100 (78.27) feet;

thence S 06° 17' 00" E a distance of Thirty and 04/100 (30.04) feet;

thence southwesterly a-long a curve concave to the left having a radius of Fifteen and 00/100 (15.00) feet, and an arc distance of Twenty-Eight and 99/100 (28.99) feet;

thence southerly along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Eleven and 17/100 (11.17) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along said northerly sideline of Warren Avenue a distance of Seventy and 44/100 (70.44) feet to the point of beginning.

EXHIBIT F

(Legal Description of Stormwater Easement Area)

A certain parcel of land situated on the northerly side of, but not adjacent to, Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Drainage Easement" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning at the northwesterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 04° 24' 12" E a distance of Two Hundred Seventeen and 97/100 (217.97) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence continuing N 04° 24' 12" E along the easterly boundary of said Lot 2 a distance of Seventy-Four and 10/100 (74.10) feet;

thence N 83° 42' 58" E a distance of Two Hundred Fifty and 00/100 (250.00) feet;

thence S 06° 17' 02" E a distance of Forty-Five and 00/100 (45.00) feet;

thence S 45° 04' 27" W a distance of Forty-Eight and 53/100 (48.53) feet;

thence S 84° 20' 50" W a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to the point of beginning.

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

Division Directors
Mark B. Adelson
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

November 6, 2002

Mr. Jon Hill
Hilson Contractors, Inc.
524 Route 119
Rindge, NH 03461

RE: Wendy's Restaurant, 599 Warren Avenue
ID #2002-0037, CBL #314-A-003

Dear Mr. Hill:

This letter is to confirm the revision to the approved plan of the Wendy's project located at 599 Warren Avenue. The approved revision includes changing the curb type from Granite to Concrete within the property lines. As discussed, the transitions from Granite to Concrete on the westerly exit should not occur on the radius, and the transitions on the easterly entrance should occur at the side boundary line. The revised plan has been reviewed and approved by the project review staff including representatives of the Planning, Public Works, Building Inspections, Fire and Parks Departments.

Sincerely,

Alexander Jaegerman
Planning Division Director

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Program Manager
✓ Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
File

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From: Thomas Doyle <tdoyle@PierceAtwood.com>
To: "Penny Littell" <pl@ci.portland.me.us>
Date: Thu, Oct 24, 2002 9:57 AM
Subject: RE: Wendy's Old Fashioned Hamburgers of New York, Inc.

Based on a conference call I just arranged with Penny and Scott, I believe we're all set about the need for minor revisions (correct City Tax map lot references) to Exhibits C, D, and E of the deed to address the City's concerns. Scott Herrick will follow-up with Paul Pietropaoli to address the minor corrections that need to be made.

Let me also confirm that Penny Littell has been very helpful throughout this process, and at the same time has maintained the objectivity required of her position advising the City Planning Department and Planning Board. She has been a consummate professional.

-----Original Message-----

From: Penny Littell [mailto:pl@ci.portland.me.us]
Sent: Thursday, October 24, 2002 9:27 AM
To: SHerrick@DDLAW.com; tdoyle@pierceatwood.com
Cc: JMR@ci.portland.me.us; KCOTE@ci.portland.me.us;
LDU@ci.portland.me.us; bill_spencer@wendys.com; joanne_krimm@wendys.com
Subject: Re: Wendy's Old Fashioned Hamburgers of New York, Inc.

Scott: As you and I discussed at length yesterday, I do not disagree that the deed description and the referenced plan originally submitted by Wendy's are consistent in describing the various easements. However, as I explained to you (following your email below) the City strives to maintain consistency between deeds and plans involving approved projects AND its own tax map and other filings which are kept on record and open to public inspection in the City's Public Works vault. The lots referenced in the Wendy's deed and earlier plan are inconsistent with the City's existing records. For the sake of clarity and to avoid confusion with other existing lots, the City is requiring a corrective deed. (The approved plan has already been changed and approved by the Planning Board.)

I am not trying to make things difficult for Wendy's. To the contrary, I think Ed Mitchell will agree that I have tried to speed things along on this project to the extent that I am able.

As far as obtaining a corrective deed from The Boulous Company/Big Brother/Little Brother, I trust this will not be difficult. Greg Boulous was kind enough to wait around City Hall on Tuesday evening until after 10:30 in order to provide testimony on behalf of Wendy's.

Finally, as I indicated to you, as long as I have the draft corrective deed language by Monday, October 28, the Wendy's project will not be stopped. The expectation, however, is that a copy of an executed corrective deed will be forwarded to the City shortly thereafter.

Please contact me should you have any further questions. I think the Wendy's on Warren Ave will be terrifically successful.

>>> "Herrick, Scott E." <SHerrick@DDLAW.com> 10/23 3:35 PM >>>

Dear Attorney's Doyle and Littell:

I represented Wendy's International in the purchase of property located on Warren Avenue, Portland, Maine. I have reviewed Attorney Doyle's fax to Wendy's with the requested corrections, the legal description, and the survey entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., dated October 30, 2001 and revised through September 12, 2002 (hereinafter "Survey").

The easement described on Exhibit C and the easement that is clearly shown as "PROPOSED ACCESS EASEMENT FOR LOT 314-3-A" on the Survey have the same metes and bounds. The description on Exhibit C does not state that the easement benefits Lot 314-3-A, but only indicates that the easement is shown as "PROPOSED ACCESS EASEMENT FOR LOT 314-3-A". Between correct reference to the title/label of the easement on the Survey and the metes and bounds description that matches the what is shown on the Survey, I believe that there can be no doubt as to which easement is being referred to.

The proposed change on Exhibit C cannot be made for the simple reason that there is no easement shown as "Proposed Access Easement for Lot 314-A-7" on the Survey. Such a revision will make a reference to an easement that is not part of the Survey.

Similarly, I believe if the parties review the Survey, they will see that the clear designation for each of the easements is correctly identified on Exhibit C, D and E.

If the City still requires that the Deed be amended and re-recorded, I would request that they take into consideration that Wendy's must get the signature and approval of the Sellers prior to recording. I would request that the City allow adequate time for that to be accomplished.

Please let me know if the City of Portland will require the three proposed revisions. Also, please let me know if there are additional changes that need to be made.

Sincerely,

Scott E. Herrick
Drummond & Drummond, LLP (207) 774-0317 (tel)
One Monument Way (207) 761-4690 (fax)
Portland, ME 04101

CC: "Paul D. Pietropaoli" <ppietropaoli@perkinsthomp...

From: Penny Littell
To: "SHerrick@DDLAW.com"@Portland.gwgwia; "tdoyle@Pie...
Subject: tax map id

I have confirmed with Jim Robbins (public works vault) and Don Hall (assessors) that 314-A-7 identifies the remaining Boulos/big bros/little bros lot on Warren Ave. Thank you for your attention.

CC: Kandi Talbot

From: Penny Littell
To: "SHerrick@DDLAW.com"@Portland.gwgwia; "tdoyle@pie...
Date: Thu, Oct 24, 2002 9:26 AM
Subject: Re: Wendy's Old Fashioned Hamburgers of New York, Inc.

Scott: As you and I discussed at length yesterday, I do not disagree that the deed description and the referenced plan originally submitted by Wendy's are consistent in describing the various easements. However, as I explained to you (following your email below) the City strives to maintain consistency between deeds and plans involving approved projects AND its own tax map and other filings which are kept on record and open to public inspection in the City's Public Works vault. The lots referenced in the Wendy's deed and earlier plan are *inconsistent* with the City's existing records. For the sake of clarity and to avoid confusion with other existing lots, the City is requiring a corrective deed. (The approved plan has already been changed and approved by the Planning Board.)

I am not trying to make things difficult for Wendy's. To the contrary, I think Ed Mitchell will agree that I have tried to speed things along on this project to the extent that I am able.

As far as obtaining a corrective deed from The Boulos Company/Big Brother/Little Brother, I trust this will not be difficult. Greg Boulos was kind enough to wait around City Hall on Tuesday evening until after 10:30 in order to provide testimony on behalf of Wendy's.

Finally, as I indicated to you, as long as I have the draft corrective deed language by Monday, October 28, the Wendy's project will not be stopped. The expectation, however, is that a copy of an executed corrective deed will be forwarded to the City shortly thereafter.

Please contact me should you have any further questions. I think the Wendy's on Warren Ave will be terrifically successful.

>>> "Herrick, Scott E." <SHerrick@DDLAW.com> 10/23 3:35 PM >>>

Dear Attorney's Doyle and Littell:

I represented Wendy's International in the purchase of property located on Warren Avenue, Portland, Maine. I have reviewed Attorney Doyle's fax to Wendy's with the requested corrections, the legal description, and the survey entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., dated October 30, 2001 and revised through September 12, 2002 (hereinafter "Survey").

The easement described on Exhibit C and the easement that is clearly shown as "PROPOSED ACCESS EASEMENT FOR LOT 314-3-A" on the Survey have the same metes and bounds. The description on Exhibit C does not state that the easement benefits Lot 314-3-A, but only indicates that the easement is shown as "PROPOSED ACCESS EASEMENT FOR LOT 314-3-A". Between correct reference to the title/label of the easement on the Survey and the metes and bounds description that matches the what is shown on the Survey, I believe that there can be no doubt as to which easement is being referred to.

The proposed change on Exhibit C cannot be made for the simple reason that there is no easement shown as "Proposed Access Easement for Lot 314-A-7" on the Survey. Such a revision will make a reference to an easement that is not part of the Survey.

Similarly, I believe if the parties review the Survey, they will see that the clear designation for each of the easements is correctly identified on Exhibit C, D and E.

If the City still requires that the Deed be amended and re-recorded, I would request that they take into consideration that Wendy's must get the signature and approval of the Sellers prior to recording. I would request that the City allow adequate time for that to be accomplished.

Please let me know if the City of Portland will require the three proposed revisions. Also, please let me know if there are additional changes that need to be made.

Sincerely,

Scott E. Herrick
Drummond & Drummond, LLP (207) 774-0317 (tel)
One Monument Way (207) 761-4690 (fax)
Portland, ME 04101

CC: "bill_spencer@wendys.com"@Portland.gwgwia; "joann...

*Tokanely
Tul 157 file
Wendup*

City of Portland, Maine



City Hall
389 Congress Street
Portland, Maine 04101

FACSIMILE MESSAGE COVER SHEET
RETURN FAX NUMBER
(207) 874-8497

DATE: 10-24-02

This facsimile transmission is confidential, and may be privileged and is intended for the use of the addressee only. If you are not the addressee (or a person responsible for delivering this transmission to the addressee), DO NOT use this transmission in any way, but promptly contact the sender by telephone. Thank You.

MESSAGE to the attention of: Scott Herrick

Company/Entity: Drummond + Drummond

Message From: Penny Littell
Department: Corporation Counsel
Phone #: (207) 874-8480

Receiving FAX number: 207-761-7690

Total # of Pages including cover sheet: 2

MESSAGE: for your files.
Thank you.

CITY OF PORTLAND, MAINE
PLANNING BOARD

Jaimey Caron, Chair
Deborah Krichels, Vice Chair
Mark Malone
Orlando E. Delogu
Sarah Luck
Kevin Beal
Lee Lowry III

October 23, 2002

Thomas R. Doyle
Pierce Atwood
One Monument Square
Portland, ME 04101

RE: Wendy's Restaurant, 599 Warren Avenue
ID #2002-0037, CBL #314-A-003

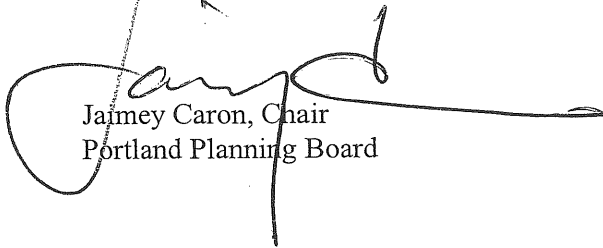
Dear Mr. Doyle:

On October 22, 2002, the Portland Planning Board voted 6-0 (Luck absent) to approve the site plan amendment for the driveway relocation for the Wendy's project located at 599 Warren Avenue.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #63-02, which is attached.

If there are any questions, please contact Kandice Talbot at 874-8901.

Sincerely,



Jaimey Caron, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Program Manager
✓ Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Approval Letter File
Correspondence File
Matt Peterson, Keach-Nordstrom Associates, Inc., 10 Commerce Park North, Suite 3B,
Bedford, NH 03110
Edward L. Dilworth, III, Dow's Law Office, P.A., P.O. Box 349, 266 Main Street,
Norway, ME 04268
Bruce W. Hepler, Friedman Gaythwaite Wolf & Leavitt, Six City Center, P.O. Box 4726
Portland, ME 04112

AH-21

Also set easement mod. for roadway from P+D letters

QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **WARGATE ASSOCIATES**, a Maine general partnership having a place of business in Portland, County of Cumberland, and State of Maine, for consideration paid, GRANTS to **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation whose mailing address is P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017, with **QUITCLAIM COVENANT**, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Parcel A").

EXCEPTING AND RESERVING to Grantor its successors or assigns, a non-exclusive, perpetual easement, appurtenant to Grantor's remaining land which is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Parcel B"), for the purpose of a paved road for continuous and uninterrupted vehicular and pedestrian ingress, egress and access, and the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities, to and from Parcel B and Warren Avenue, over, upon, across, and through the area described in Exhibit C, attached hereto and made a part hereof (the "Easement Area"). This easement shall include the right to enter upon such other portions of Parcel A as abut the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area and installing such utilities, provided however, Grantor, its successors or assigns, agree (i) that such use of such other portions of Parcel A shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement of even or near even date by and between Grantor and Grantee, to be recorded in the Cumberland County Registry of Deeds.

front of site

ALSO EXCEPTING AND RESERVING to Grantor, its successors or assigns a perpetual easement, appurtenant to Parcel B, for drainage from Parcel B over, under and across Parcel A and the use, maintenance and repair of any stormwater detention facilities now or hereafter located on Parcel A by Grantee, its successors or assigns. This easement shall include the right to enter upon such other portions of Parcel A as abut this easement area and as are reasonably necessary for the purpose of maintaining, repairing, and replacing said stormwater detention facilities or any culverts or other drainage apparatus as are reasonably necessary in connection with the development of Parcel B, provided however, Grantor, its successors or assigns, agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

drainage across site

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement appurtenant to Parcel B, to erect a sign, subject to requisite governmental approvals, on any sign pylon hereafter erected on Parcel A by Grantee, its successors or assigns, provided however, that for so long as a Wendy's Old Fashioned Hamburgers hamburger restaurant is continuously operated by Grantee on Parcel A, any

sign section

Boulis - Wargate Associate - Paul
Paul Petropoulos

right to relocate it

paved areas

reserve - subj' to rights to radio tower

97* 137-141

21a

sign erected for the benefit of Parcel B on such pylon shall be smaller in square footage than the primary sign erected by Grantee on such pylon to advertise the Wendy's Old Fashioned Hamburgers hamburger restaurant on Parcel A. This easement shall include the right to enter upon such other portions of Parcel A as about this easement area and as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said sign, provided however, Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. By acceptance of this deed Grantee agrees that the sign pylon will be physically designed and constructed in a manner so as to reasonably accommodate a commercially reasonable sign relating to the current or future use of Parcel B.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement, appurtenant to Parcel B, for the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities (expressly including an underground sewer line to serve Parcel B, said sewer line to run across the portion of Parcel A which is described on Exhibit D, attached hereto and made a part hereof) necessary or desirable for the development, use and occupancy of Parcel B, subject, however, to the prior approval by Grantee of the location of such utilities (other than said sewer line, the location of which is described on Exhibit D), which approval shall not be unreasonably withheld, conditioned or delayed, together with the right to enter upon such other portions of Parcel A as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said utilities, provided however, that Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

utilities

AND GRANTOR DOES HEREBY COVENANT AND AGREE with Grantee that Parcel B shall not be used for a drive-through, quick service restaurant which sells hamburger products if such hamburger products exceed fifteen percent (15%) of its gross sales or which sells chicken products if such chicken products exceed fifteen percent (15%) of its gross sales. The foregoing restriction shall not apply to sit-down restaurants with waiter/waitress service, which may sell hamburger products exceeding the foregoing fifteen percent (15%) limitation and/or chicken products exceeding the foregoing fifteen percent (15%) limitation, so long as the restaurant does not have a drive-through facility. This restriction shall burden and run with Parcel B for a period of twenty (20) years from the date of this instrument, and shall benefit Parcel A, and the owners, successors, and assigns thereof and shall automatically expire at the expiration of said twenty (20) year period. In the event of any transfer of Parcel B, Grantor shall be relieved from, and have no further responsibility for, the enforcement of the foregoing restriction but such sale shall not preclude Grantee from enforcing the foregoing restriction against any transferee of Parcel B.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit E, attached hereto and made a part hereof, for the installation, operation, maintenance,

Easement on Parcel B for driveway

21b

repair and replacement of a stormwater detention pond or stormwater drainage area (including any underground pipes and culverts in such area for the drainage of stormwater from Parcel A to the foregoing easement area), provided however, that the foregoing stormwater detention and/or drainage facilities shall not interfere in any way with the Grantor's installation, operation, maintenance, repair, or replacement of a paved driveway or roadway, for pedestrian and vehicular passage, over a strip of land on Parcel B that is at least twenty-four (24) feet wide running in a generally east-west direction, parallel with the northerly boundary of Parcel A, to provide full ingress and egress to and from the easterly portions of Parcel B via that certain 50.88-foot wide right of way described and reserved in a deed from Michael Scarcks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47. Grantor, its successors, and assigns, shall have the right to use, in common with Grantee, any stormwater detention and/or drainage facilities installed by Grantee in connection with the foregoing easement and shall also have the right to modify or enlarge the same, at Grantor's sole expense, to accommodate additional drainage, detention, and/or treatment of stormwater from Parcel B, provided that such use, modification, or enlargement does not adversely impact the use of the same for the stormwater from Parcel A. By acceptance of this deed, Grantee agrees that Grantee, its successors, and assigns shall be responsible, at Grantee's sole expense, for maintaining and repairing the stormwater detention and drainage facilities to keep the same in good order, condition, and repair and in compliance with applicable laws, until such time, if any, as Grantor, its successors or assigns, develop Parcel B and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B. If Grantor develops Parcel B and makes use of the stormwater detention and drainage facilities installed by Grantee on Parcel B, either party shall have the right to maintain and repair the same, but the costs of maintenance and repair shall be shared equally by the parties, except to the extent such is done at the request of Grantor to modify or enlarge such facilities to accommodate additional drainage, detention and/or treatment of stormwater from Parcel B, in which event such costs shall be paid solely by Grantor.

IN WITNESS WHEREOF, WARGATE ASSOCIATES has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this ____ day of _____, 2002.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WARGATE ASSOCIATES

Witness

By: _____
Printed Name:
Its General Partner

STATE OF MAINE
County of Cumberland, SS.

_____, 2002

Then personally appeared the above-named _____,
General Partner of Wargate Associates, and acknowledged the foregoing instrument to be his

alc

free act and deed in his said capacity, and the free act and deed of said Wargate Associates.

Before me,

Notary Public/Maine Attorney-at-Law
Printed Name: _____

BK: 15434 PG 234

STATE OF MAINE
County of Cumberland, SS

March 24, 2000

Personally appeared before me the above-named Leah F. Bauls
general partner of Wargate Associates, and acknowledged the foregoing instrument to be his free
act and deed in his said capacity and the free act and deed of said Wargate Associates.

Before me,

SEAL

LYNDA S. HARJULA
Notary Public, Maine
My Commission Expires March 8, 2000

Lynda S. Harjula
Notary Public
Printed Name: LYNDA S. HARJULA

STATE OF Nevada
County of Clark, SS

March 28th, 2000

Personally appeared the above-named Stuart Stanek in
his/her capacity as VP of Citadel Broadcasting Company and
acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity
and the free act and deed of said Citadel Broadcasting Company.

Before me,

Ginger Lee Ludwig
Notary Public
Printed Name: Ginger Lee Ludwig



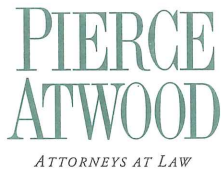
RECEIVED
RECORDED REGISTRY OF DEEDS:

2000 APR 26 AM 9:37

CUMBERLAND COUNTY

John B. Cramer

OCT 18 2002



Thomas R. Doyle

One Monument Square
Portland, ME 04101

207-791-1214 voice
207-791-1350 fax
tdoyle@pierceatwood.com
pierceatwood.com

October 17, 2002

Penny Littell, Esq.
Associate Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04104

RE: Wendy's – Warren Avenue

Dear Penny:

Per your request, attached are copies of the following documents related to the Dilworth appeal:

- Notice of Relocation of Easement dated September 24, 2002 filed by Older Brother LLC and Younger Brother LLC (the grantees from Wargate Associates).
- Easement Amendment Agreement (corrective) dated March 24, 2000 which was recorded in Book 15434, Page 232, of the Cumberland County Registry of Deeds.

It is my understanding that the Notice of Relocation of Easement was both recorded in the Registry of Deeds and forwarded by Older Brother LLC and Younger Brother LLC to the Dilworth & Son, LLC.

Please don't hesitate to call if you have any questions.

Very truly yours,

A handwritten signature in blue ink that appears to read "Tom".

Thomas R. Doyle

TRD:pmp
Enclosures

cc: Bruce Hepler, Esq., (Older Brother LLC and Younger Brother LLC)

**Traffic Impact Study
for Proposed
Wendy's Restaurant
Portland, Maine**

**Prepared for:
Wendy's International
234 Littleton Road, Suite 1-F
Westford, Massachusetts 01886**

January 2002

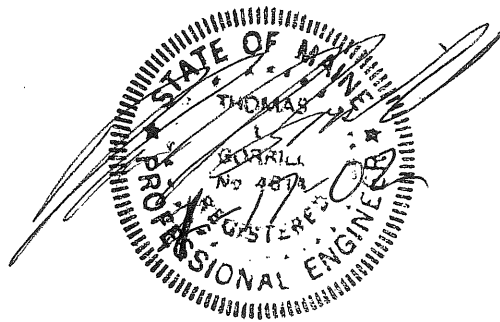
Prepared by:

GP Gorrill-Palmer Consulting Engineers, Inc.

Traffic and Civil Engineering Services

PO Box 1237
26 Main Street
Gray, ME 04039

(207) 657-6910
Fax: (207) 657-6912
E-mail: gpcei@maine.rr.com



**Traffic Impact Study
Proposed Wendy's Restaurant
Portland, Maine**

Index

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Appendix A

Site Location Map
Turning Movement Diagrams

Appendix B

Capacity and Queuing Analyses Results

Appendix C

Collision Diagrams

Executive Summary

The following Executive Summary is prepared for the reader's convenience, but is not intended to be a substitute for reading the full report.

Gorrill-Palmer Consulting Engineers, Inc. was retained by Wendy's International to examine the affects of traffic associated with a proposed 3,200 s.f. Wendy's restaurant. The development would consist of the restaurant, a drive through, and associated parking and landscaping. Two driveways along Warren Avenue would service the site. The eastern driveway would allow for full access, while the western driveway would be an exit only.

1. The proposed development is forecast to generate 108 trip ends in the weekday PM peak hour and 188 trips in the Saturday peak hour. This level of trip generation requires a traffic permit from the Maine Department of Transportation (MDOT).
2. The level of service analyses shows that the level of service for each approach at the study area intersections should not be affected by site-generated traffic. In addition, movements at the site driveways are anticipated to operate at a level of service 'C' or better.
3. Gorrill-Palmer Consulting Engineers, Inc. investigated three locations for crash history. It is the opinion of our office that traffic generated by the proposed facility will not exacerbate crash patterns at these locations, as it will generate little new traffic to the area and will not noticeably contribute to turning movements at existing driveways.
4. The sight lines at the proposed driveways exceed MDOT requirements. Gorrill-Palmer Consulting Engineers, Inc. recommends that all plantings, which will be located within the right-of-way, not exceed 3 feet in height and be maintained at or below that height. Signage should not interfere with sight lines. In addition, we recommend that during construction, when heavy equipment is entering and exiting into the site, that appropriate measures, such as signage and flag persons, be utilized in accordance with the Manual on Uniform Traffic Control Devices.

Based on these findings, it is the opinion of Gorrill-Palmer Consulting Engineers, Inc. that the existing street system can accommodate the traffic generated by the site.

I. *Existing Conditions*

Site: Wendy's International, Inc. is planning a Wendy's fast food restaurant along Warren Avenue in Portland. The site will consist of a 3,200 s.f. building and associated drive-through, parking and landscaping. The project is anticipated to be completed in the year 2002. Two driveways are planned for the site, the western driveway having full access and the eastern driveway providing access for exiting vehicles only. The project location is shown on Figure 1 of Appendix A.

II. *Background Traffic Conditions*

Gorrill-Palmer Consulting Engineers, Inc. based the study on the following information:

- A site plan prepared by Keach-Nordstrom Associates, Inc. dated January 2002.
- A site survey plan prepared by Keach-Nordstrom Associates, Inc. dated January 2002.
- Crash data for 1998-2000 provided by the Maine Department of Transportation.
- Turning movement volumes collected by Gorrill-Palmer Consulting Engineers, Inc. from 3:00 PM to 6:00 PM on Wednesday, December 12, 2001 and again from 11:00 AM to 2:00 PM on Saturday, December 29, 2001 at the following locations:
 - BJ's Driveway at Warren Avenue
 - Warren Avenue at Riverside Street

Predevelopment Traffic Volumes

Seasonal Adjustment

The MDOT utilizes highway classifications of I, II, or III for state and local roadways. Type I roadways are defined as urban roadways, or those roads that typically see commuter traffic and experience little fluctuation from week to week throughout the year. Type II roadways, or arterial roadways are those that see a combination of commuter and recreational traffic and therefore experience moderate fluctuations during the year. Type III roadways, or recreational roadways are typically used for recreational purposes and experience significant seasonal fluctuation.

Both Warren Avenue and Riverside Street, are designated as urban, or Type I, roadways. Typically, volumes are adjusted to reflect the 30th highest hour of traffic volumes, in accordance with MDOT guidelines. Therefore, volumes have been increased fifteen percent to estimate the 30th highest hour of the year.

Annual Growth

The proposed development is anticipated to be fully operational by 2002. The 2001 roadway volumes were increased by three percent per year to reflect traffic increases in the area.