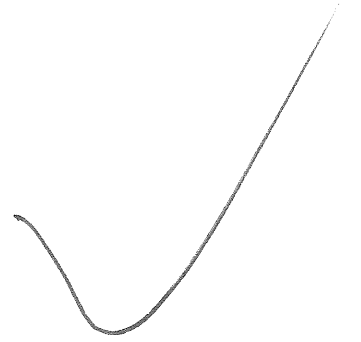


314-A-7

599 Warren Ave.

Dunkin Donuts

Kimco Realty



Safety

Safety data for the most recent available 3 year period (2001-03) was obtained from the Accident Records Section of MDOT for roadways in the vicinity of the site. Attached are the MDOT computer summaries of accidents on Riverside Street and Warren Avenue in the vicinity of the site.

MDOT guidelines for identification of a High Crash Location (HCL - indicating a potential safety deficiency) is that a location must experience both 8 or more accidents in a 3 year period and have a Critical Rate Factor of 1.00 or greater. Five of the locations satisfy the criteria and are highlighted on the MDOT computer summaries. Detailed accident collision diagrams were prepared from accident reports on file at MDOT. A summary of the analysis of the collision diagrams prepared for each HCL is as follows (collision diagrams attached):

Larrabee @ Riverside: Of the 46 accidents occurring at this location, 29 were rear-end collisions, with the majority on the Larrabee Road and Maine Turnpike approaches. The next most common accident types were left-turn (6) and angle collisions (5). The clear pattern of rear-end collisions suggests that signal clearance intervals should be re-evaluated, as well as signal visibility. Rear-end collisions on the Larrabee Road approach may be related to the "trap lane" created when the inside through lane becomes an exclusive left turn lane at the intersection with little warning. The recent opening of the Rand Road interchange should have reduced volumes somewhat at this intersection, but 2003 accidents totaled 20, an increase over 2001 and 2002 levels. Planned widening of Riverside Street in the vicinity may improve capacity and level of service and have a positive impact on safety at this location.

Warren Avenue/ Riverside to Saville: A total of 33 accidents occurred on this link, with 17 angle collisions, 9 left turn collisions, and 7 rear end collisions. Most of the accidents appear to be related to movements to/from adjacent land uses, with 5 accidents each clearly identified at Home Depot and BJ's. The development of a third lane to provide a two-way left-turn lane throughout most of this section of roadway might help reduce the frequency of accidents,

particularly rear-end and left-turn accidents on Warren Avenue. This lane would also provide a safety refuge for vehicles exiting driveways via a left turn to Warren.

Riverside Street/ Larrabee to Riverside Ct: Of the 26 accidents on this segment of roadway, one half (13) were left turn collisions, with the next most prevalent patterns being lane-change/sideswipe (4) and rear-end collisions (4). The majority of these accidents appear to be related to access movements to/from adjacent land uses along Riverside Street. Proposed improvements in the vicinity may help address the problem. There is a pattern of decreasing accidents over time – 14 accidents occurred in 2001, 8 in 2002 and 4 in 2003. This segment should be monitored to ensure that this pattern either continues or stabilizes.

Riverside Street/ Riverside Ct to RR Crossing: A total of 13 accidents of various types occurred on this segment, most also appearing to be related to access movements to/from adjacent land use. As was the case for the previous segment, the number of accidents is lessening over time – 8 in 2001, 4 in 2002 and 1 in 2003. Monitoring is recommended.

Riverside Street/ Warren to McAlester Farms: Of the 14 accidents on this segment 6 were rear-end collisions and 5 were lane-change/sideswipe collisions. 6 of these 11 accidents occurred on the northbound departure of Riverside Street where two through lanes merge to one lane within a substandard distance of the intersection (perhaps 150 feet of merge-weave distance). There are proposed improvements for the intersection of Riverside @ Warren which may both lengthen the weave-merge section and provide additional lanes to Warren eastbound, which could improve the LOS of this intersection and help improve safety.

CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM

AH. 7

Fire Copy

2004-0118
Application I. D. Number

Kimco Realty, LLC
Applicant
65 Gray Street, Falmouth, ME 04105
Applicant's Mailing Address

06/15/2004
Application Date
Dunkin Donuts
Project Name/Description

Consultant/Agent
Applicant Ph: (207) 797-7600 Applicant Fax: (207) 797-4300
Applicant or Agent Daytime Telephone, Fax

597 - 597 Warren Ave , Portland, Maine
Address of Proposed Site
314 A007001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify)

2,432 s.f. Proposed Building square Feet or # of Units
Acreeage of Site
B4 Zoning

Check Review Required:

- Site Plan (major/minor) Subdivision # of lots PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other

Fees Paid: Site Plan \$400.00 Subdivision Engineer Review Date 06/15/2004

Fire Approval Status:

Reviewer Lt. MacDougal

- Approved Approved w/Conditions See Attached Denied

Approval Date 06/16/2004 Approval Expiration 06/16/2005 Extension to Additional Sheets Attached

Condition Compliance Lt. MacDougal signature 06/16/2004 date

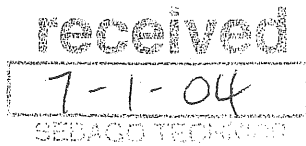
Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- Performance Guarantee Accepted
date amount expiration date
- Inspection Fee Paid
date amount
- Building Permit Issue
date
- Performance Guarantee Reduced
date remaining balance signature
- Temporary Certificate of Occupancy Conditions (See Attached)
date expiration date
- Final Inspection
date signature
- Certificate Of Occupancy
date
- Performance Guarantee Released
date signature
- Defect Guarantee Submitted
submitted date amount expiration date
- Defect Guarantee Released
date signature



Central Maine Power



Att. 8

June 30, 2004

Mr. Jeffrey R. Perry
C/O Sebago Technics
One Chabot Street
PO Box 1339
Westbrook, Maine 04098

RE: Proposed Dunkin Donuts, 597 Warren Avenue, Portland

Dear Mr. Perry,

This letter is to advise you that Central Maine Power has sufficient three phase electrical capacity in the area to serve the subject project.

Once the project is accepted by the City of Portland, the owner will need to call our Customer Service Center at 1-800-565-3181 to sign up for a New Account and a Work Request Order so we may start a cost estimate.

To complete the cost estimate I will need the information of what voltage is required, the size of the main disconnect and the kilowatt loads required for the new facility. This information should be provided to me from the electrician or electrical engineering firm.

If you have any questions please feel free to call me at 828-2882.

Sincerely,

Paul DuPerre
Technical Advisor

An equal opportunity employer

162 Canco Road | Portland, ME 04103
tel (800) 750-4000

www.cmpco.com

An Energy East Company

Att. 9

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

July 2, 2004

Jeffrey Perry
Project Manager
Sebago Technics
One Chabot Street
P.O. Box 1339
Westbrook, ME 04098-1339

RE: Dunkin' Donuts Building, 597 Warren Avenue
ID #2004-0118, CBL #314-A-007

Dear Mr. Perry:

After review of the Dunkin' Donuts site plan proposed at 597 Warren Avenue, the following comments have been generated:

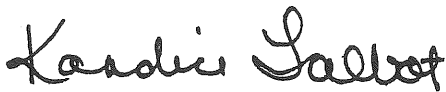
1. Based on the preliminary traffic study prepared by Eaton Traffic Engineering, a MDOT Traffic Movement Permit is necessary. The City of Portland has delegated review authority for a Traffic Movement Permit, which requires Planning Board review. Also, a Traffic Movement Permit requires an additional fee of \$1,000. The project is tentatively scheduled for a Planning Board workshop on August 24th.
2. A standard boundary survey, stamped by a registered surveyor, shall be submitted.
3. Capacity letters from the Portland Water District and the Portland Sewer Division shall be submitted.
4. There is an access easement that runs through the site. Please submit a copy of the easement language for review by Corporation Counsel.
5. The Traffic Engineer is currently reviewing the layout of the plan. Additional comments from the Traffic Engineer shall be forwarded to you.

9A

6. The Development Review Coordinator is currently reviewing stormwater management plan. Additional comments from the Development Review Coordinator shall be forwarded to you.
7. The City Arborist is currently reviewing the landscaping plan. Additional comments from the City Arborist shall be forwarded to you.
8. Lighting catalogue cuts and a lighting photometric plan shall be submitted to determine if the lighting meets the City's lighting standards.

If you have any questions, please do not hesitate to contact me at 874-8901.

Sincerely,



Kandice Talbot
Planner

CC: Sarah Hopkins, Development Review Services Manager



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

■ ROADWAY DESIGN
■ ENVIRONMENTAL ENGINEERING
■ TRAFFIC STUDIES AND MANAGEMENT
■ PERMITTING
■ AIRPORT ENGINEERING
■ SITE PLANNING
■ CONSTRUCTION ADMINISTRATION

Att. 10

MEMORANDUM

DATE: July 15, 2004
TO: Kandi Talbot, City of Portland Planning
FROM: Stephen R. Bushey, P.E.
SUBJECT: Dunkin Donuts
Warren Avenue

DeLuca-Hoffman Associates, Inc has reviewed the application materials dated June 14, 2004 for a proposed Dunkin Donuts off Warren Avenue. The materials received included only the Stormwater report and pre/postdevelopment watershed plans. We have not reviewed the site plans, grading or utility plans. We offer the following comments:

1. The stormwater management system for the new Dunkin Donuts includes a closed drainage system that will collect runoff from the developed area and convey it to a detention basin. An existing basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development.
2. The post development runoff modeling includes a watershed 40 containing the proposed detention basin. This watershed area must be routed through the pond within the computer model. Because of the increased area adjustments to the outlet control structure may be necessary as well as potential increases to the basin size.
3. The watershed plans contain no information on the pipe sizing and other drainage system measures, therefore no review was completed.
4. Does the Planning Staff want our review of the grading and utilities designs? If so, then plans should be forwarded to this office.
5. We assume that staff will review the queuing lengths for vehicles entering the facility and the circulation with the adjacent Wendy's restaurant.
6. Design plans for the detention basin including cross sections and details for the outlet control structure should be provided.
7. Erosion control measures and plans should be provided on the grading plans.

We trust these items can be satisfactorily worked out by the engineer and look forward to additional materials addressing these comments.

If you have any questions please call.

Steve Bushey, PE
Senior Engineer

Srb/jn1350.10/Dunkin Donuts07-15-04

John E. Baldacci
Governor



received
8-16-04
SEBAGO TECHNICS

Roland D. Martin
Commissioner

Att. 11

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Wildlife Division – Region A
358 Shaker Rd.
Gray, ME 04039
Phone: (207) – 657-2345 x 109
Fax: (207) – 657-2980

August 13, 2004

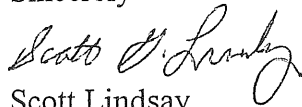
Jeffrey Perry
Sebago Technics
1 Chabot St.
P.O. Box 1339
Westbrook, ME 04098

Dear Mr. Perry,

You contacted this office requesting information on any wildlife habitats that may be impacted by a proposed Dunkin Donuts on Warren Avenue in Portland.

Based on a review of our most current data, I conclude there are no Essential or Significant Wildlife Habitats within or adjacent to this site, nor are there any documented occurrences of rare, threatened or endangered species at this site. Given the extensive development existing at this urban location, I do not believe this development will have any negative impact on wildlife habitats.

Sincerely


Scott Lindsay

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Ethan Boxer-Macomber" <EBM@portlandmaine.gov>
Date: 1/20/05 10:01:31 AM
Subject: Dunkin Donuts - Warren Avenue

Ethan-

I have reviewed the site plan and traffic study for the above project and generally find the project to be acceptable with the following requirements.

- * I continue to believe that the curb opening width for the entry drive to be excessive. A drawing was provided that illustrates truck turning movements and I believe the drawing supports some minor narrowing is possible.
- * Movements from the exit driveway from Dunkin Donuts and the Wendy's Circulation road should be controlled by a Stop Sign (movements from Dunkin Donuts should stop).
- * The traffic study concludes that poor traffic conditions will exist at the Warren Avenue/Riverside Street intersection after the project is complete. This analysis accounts for programmed improvements by MaineDOT. Implementation of these improvements are very important and should be incorporated as soon as possible. Developments in the area have contributed money to assist in funding the improvements. Accordingly, the applicant should make a monetary contribution to assist in mitigating traffic problems in the Warren Avenue/Riverside Street area. It is my recommendation that the applicant contribute \$30,000.00.

If you have any questions please contact me.

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

59 Middle Street

Portland, Maine 04043

(207) 871-1785 Phone

(207) 871-5825 Fax

TRAFFIC MOVEMENT PERMIT SCOPING MEETING

Permit Category: 100 - 200 PCEs 200 + PCEs
 New Modification

Attendance: Tom Erico / Lucie Cole / Randy Dunton, Jeff Perry Date: 9/22/04

Meeting Location: _____

Project Name: Dunkin Donuts

Address: _____

Applicant: _____

Address: _____

Project Engineer: _____

Address: _____

MDOT Traffic Engineer (reviewer): _____

Filings: Has the Applicant notified abutters via certified mail at least 7 days prior to this meeting?
Has the "Notice of Intent to File" been published in a local newspaper?

Section 1 - Site and Traffic Information

1A. Site Plan

Size of development parcel (acres): 59,242 sq. ft.
Size of development parcel to be left non-vegetated (acres): _____

1B. Existing and Proposed Site Uses

Type of development:

| <u>USE</u> | <u>SIZE</u> |
|-----------------------|----------------|
| <u>Dunkin' Donuts</u> | <u>2512 sq</u> |
| _____ | _____ |
| _____ | _____ |

Project Name:

1C. Site and Vicinity Boundaries

- Boundary or title survey signed and sealed by a professional land surveyor
- Vicinity map provided

1D. Proposed Uses in the Vicinity of Proposed Development

Other approved development(s): Evergreen, Maine Mall Motors,
Westbrook Crossings, Hannaford (Forest + Riverside)
Lowes

1E. Trip Generation

Summary tables for each land use code: PM ~~AM~~ traffic

| ITE (LUC) | Weekday | AM Peak | PM Peak | Saturday Peak |
|-------------|------------|---------|---------|---------------|
| <u>MDOT</u> | <u>380</u> | | | |
| | | | | |
| | | | | |
| | | | | |

Trip rates obtained from other sources:

Number of locations where driveway counts taken: _____

Dates & time periods when driveway counts taken: _____

Locations where driveway counts where taken: _____

1F. Trip Distribution

- Stick diagram for each major intersection on either side of the development driveway(s)?
- ITE trip generation handbook
- Actual survey done? Location? 5090
- Other. Explain. _____

Comments: _____

1G. Trip Assignment

- Stick diagram for each major intersection on either side of the development driveway(s)?
- Percent primary trips _____
- Percent passer-by trips _____
- Percent diverted trips _____

Stacking - 8 to menu board

access to radio station - do they have rights to

Project Name:

Basis for using above-listed percentages:

- Existing traffic patterns of adjacent street
- Zip code survey
- Gravity model
- Other. Explain. _____

Comments: _____

Section 2 - Traffic Crashes

See Traffic Study

- 01-03 Year(s) of MDOT crash records for study area
- _____ Number of high crash locations
- _____ Collision diagrams provided

Mitigation provided for each high crash location: _____

Other traffic problems: _____

Comments: _____

Section 3 - Development Entrances and Exits

3A. Entrance and Exit Locations

- 800 ft Distance to nearest intersecting road or town line (to the nearest hundredth of a mile)
- 2 Number, width and surface of each proposed entrance/exit
- existing conditions 40 ft.

3B. Plan View of Each Intersection Created

Names of intersecting road Warren
Posted speed limits 35

| Entrance/Exit Sight Distance: | Left | Right |
|-------------------------------|------------|------------|
| _____ | <u>916</u> | <u>800</u> |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Usage and location of all driveways and roads located adjacent to the development site:

Home Depot Service Drive

3C. Entrance/Exit Design

- Lighting - *will check*
- Driveway spacing and corner clearance (Access Management)
- Adequate sight distance for vehicles exiting development
- Entrance grade (see fact sheet)
- Entrance/exit widths less than 42 feet (12.8 meters)
- Left turn lane
- Right turn lane
- Signal warranted
- Lane encroachment - *will need to look at*
- Separation islands (see fact sheet)
- Drainage study using 50 year storm for culverts and to connect to MDOT system
- Capacity Analysis - *will do*
- Queuing Analysis - *will do*
- Study to be submitted to MDOT Division Engineer

Comments: _____

Section 4 - Title, Right or Interest

- Title, right or interest in project site
- Title, right or interest in entrance/exits
- Title, right or interest in drainage easement affecting MDOT

Section 5 - Public or Private Rights-of-Way

- Location and width of proposed streets, easements and other public or private rights-of-way
- No signs, structures or pavement connected to the entrance

Section 6 - Schedule

Project schedule: _____

Further study items required (\$500.00 additional fee): _____

Section 7 - Full Traffic Study

\$1,500.00 additional fee required

Build-out year (Phase 1): _____

Build-out year (Full Occupancy): 2005

FS 1. Time Period(s) for Traffic Engineering Analysis

- AM weekday peak hour of adjacent street.
- Noontime weekday peak hour of adjacent street
- PM weekday peak hour of adjacent street.
- Noontime Saturday peak hour of adjacent street.
- Other. Explain. _____

FS 2. Background Annual Traffic Growth Rate

Type of counts taken:

- Peak hour
- AADT
- Base counts less than 2 years old?

FS 3. Study Area to Include the Following Intersections

Side drives
Warnen
Riverside

Additional intersection(s) required if one hour volumes from development are:
 25 vehicles in left turn only lane
 35 vehicles in through, right turn lane or combined through and right turn
 35 vehicles (multiplying the left turn volume by 1.5) in a combined left turn and through lane, or a combined left turn, through and right turn lane

FS 4. Intersection Capacity Analysis

- Isolated
- Interconnected. Intersection(s) _____

Software package (isolated): Synchro
 Software package (interconnected): _____

FS 5. Analyze or Evaluate the Following

| | <u>Location</u> |
|---|-----------------|
| <input type="checkbox"/> Left turn lane warranted | _____ |
| <input type="checkbox"/> Right turn lane warranted | _____ |
| <input checked="" type="checkbox"/> Traffic signal warranted | _____ |
| <input type="checkbox"/> Sight distance evaluation | _____ |
| <input type="checkbox"/> Truck climbing lane warranted | _____ |
| <input checked="" type="checkbox"/> Truck/RV turning radii evaluation | _____ |
| <input type="checkbox"/> Investigation of HCL | _____ |

Project Name:

FS 6. Other Development Traffic To Be Included in Study

FS 7. List Location(s) and Date(s) of Completion of Other Projects and Their Traffic Engineer

Att 14

NORMAN, HANSON & DETROY, LLC

ATTORNEYS AT LAW
415 CONGRESS STREET
P.O. BOX 4600
PORTLAND, MAINE 04112-4600

AREA CODE 207
774-7000
FAX
775-0806

E-Mail
pdriscoll@nhdlaw.com

Website
www.nhdlaw.com

ROBERT F. HANSON
(1944 - 2004)

| | |
|------------------------|------------------------|
| PETER J. DETROY | RUSSELL B. PIERCE, JR. |
| STEPHEN HESSERT | ANNE M. CARNEY |
| RODERICK R. ROVZAR | DAVID L. HERZER, JR. |
| THEODORE H. KIRCHNER | THOMAS S. MARJERISON |
| MARK G. LAVOIE | ADRIAN P. KENDALL |
| STEPHEN W. MORIARTY | EMILY A. BLOCH |
| JAMES D. POLIQUIN | ANNE H. JORDAN |
| JOHN H. KING, JR. | AARON K. BALTES |
| PAUL F. DRISCOLL | JOHN R. VEILLEUX |
| WILLIAM O. LACASSE | LANCE E. WALKER |
| MARK E. DUNLAP | DORIS V. R. CHAMPAGNE |
| ROBERT W. BOWER, JR. | NOAH D. WUESTHOFF |
| JONATHAN W. BROGAN | C. LINDSEY MORRILL |
| CHRISTOPHER C. TAINTOR | JENNIFER A.W. RUSH |
| DAVID P. VERY | DANIEL J. EDWARDS |
| DANIEL L. CUMMINGS | |

OF COUNSEL
DAVID C. NORMAN

January 31, 2005

Sarah Hopkins, Assistant City Planner
City of Portland
Planning & Urban Development
389 Congress Street
Portland, ME 04101

Re: Application of Kimco Realty, LLC for Site
Plan Approval, Warren Avenue, Portland, Maine

Dear Sarah:

This will advise that I represent Casey & Paige, LLC and CP & S Associates, LLC, abutters of the proposed Dunkin' Donuts project of Kimco Realty, LLC, on Warren Avenue in Portland, Maine. Casey & Paige, LLC and CP & S Associates, LLC are opposed to the present project design submitted by Kimco Realty, LLC for several reasons and we hope to be able to work out an arrangement with it to address these concerns and will work to do so in the near future.

In general, the concerns of Casey & Paige, LLC and CP & S Associates, LLC relate to access to their adjacent properties on Warren Avenue and the proposed development of those properties in the future. The curb cut benefiting the Kimco Realty, LLC parcel, over which Casey & Paige, LLC enjoys deeded easement rights, is wholly inadequate for the intended development of the adjacent properties. We also have concerns based on our technical reports that the development of the Kimco Realty, LLC property as presently proposed will interfere with copper radial field easement Casey &

Sarah Hopkins, Assistant City Planner

January 31, 2005

Page 2

Paige, LLC enjoys over the Kimco Realty, LLC parcel.

In connection with the proposed development of the Kimco Realty, LLC, we request that the City of Portland either (a) grant Casey & Paige, LLC and CP & S Associates, LLC a curb cut onto Warren Avenue directly or (b) require Kimco Realty, LLC to provide adequate access over its property to allow for the development of the adjacent parcels. We are prepared to work with Kimco Realty, LLC in relocating its curb cut access for this purpose if city planners consider it appropriate that we coordinate our efforts at developing these properties.

In any event, we request that you provide us with notice of all public hearings at which the development of the Kimco Realty, LLC parcel will be considered. Thank you for your attention to this matter.

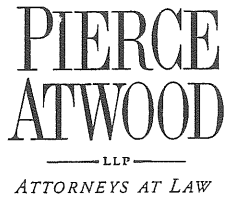
Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Mr. Peter R. Bouchard
Mr. Michael L. Dilworth
Eben Adams, Esq.



Att. 14

Eben Adams

One Monument Square
Portland, ME 04101

207-791-1175 voice
207-791-1350 fax
eadams@pierceatwood.com
pierceatwood.com

Admitted in: MA ME

VIA HAND DELIVERY

February 3, 2005

Sarah Hopkins, Assistant City Planner
Planning & Urban Development
City of Portland
City Hall – 289 Congress Street
Portland, Maine 04101

RE: Site Plan Application for Kimco Realty, LLC
597 Warren Avenue – Portland, ME

Dear Ms. Hopkins:

I represent Kimco Realty, LLC (“Kimco”) and I am writing in response to the letter you recently received from Attorney Paul Driscoll on behalf of his clients, Casey & Paige, LLC (“Casey & Paige”) and CP&S Associates, LLC (“CP&S”). A copy of Attorney Driscoll’s letter is attached as **Exhibit A**.

Attached as **Exhibit B** is a copy of the latest version of Kimco’s Site Plan Application that I have marked up for purposes of this letter. Casey & Paige owns the parcel to the northeast of Kimco’s Parcel (the “Casey & Paige Parcel”). The Casey & Paige Parcel includes a radio tower, a two-story office building, as well as paved parking. CP&S owns the parcel immediately to the east of the Kimco Parcel (the “CP&S Parcel”). The CP&S parcel is an unimproved parcel with frontage on Warren Avenue that was previously owned by the Maine Turnpike Authority.

First I will address Attorney Driscoll’s concerns that the proposed development on the Kimco Parcel will interfere with the copper radial field easement Casey & Paige enjoys over the Kimco Parcel. A copper radial field is a series of underground copper wires emanating from an AM radio tower, which aid in the performance of the tower. If you imagine that the radio tower is the axle of a wheel, the copper radials leave the radio tower in a circular pattern like spokes of the wheel. Because the copper radial field associated with the radio tower on the Casey & Paige Parcel extends onto the northeast corner of the Kimco Parcel, Casey & Paige’s predecessor obtained an easement from Kimco’s predecessor for the location of these copper radials on that portion of the Kimco Parcel. A copy of that easement is attached as **Exhibit C**, and I have marked the easement area on **Exhibit B**. The easement provides, in relevant part, that Kimco “retains the right to pave over and otherwise use the limits of said copper radial field provided [Kimco] does not interfere with its intended operation.”

As you can see from **Exhibit B**, Kimco proposes to pave portions of the copper radial field easement area, and use portions of it for storm water management. The proposed pavement is expressly permitted under the copper radial field easement. Being mindful of the restrictions in the easement, before submitting Kimco's site plan application, it engaged a radio frequency engineer to review the copper radial field and provide an analysis of whether or not Kimco's contemplated use would interfere with the intended operation of the copper radial field. It is the opinion of our expert engineer that the development proposed by Kimco will not interfere with the copper radial field. A copy of the expert's report is attached as **Exhibit D**. Based on the foregoing, Kimco challenges Attorney Driscoll's contention that Kimco's proposed site plan will interfere with the copper radial field.¹ Furthermore, to the extent that there is a dispute between Casey & Paige and Kimco regarding this issue, the Planning Board is not the proper forum to resolve that issue and therefore it should not be a factor in the Planning Board's consideration of Kimco's site plan application. Casey & Paige has other means to address this issue, should it choose to do so.

Next, I wish to address Attorney Driscoll's comment that the curb cut on the Kimco Parcel is "wholly inadequate for the intended development of the adjacent properties." In considering Attorney Driscoll's comment, it is important to remember that the Casey & Paige Parcel and the CP&S Parcel are distinct parcels with distinct property rights, despite the fact that the parcels are owned by related entities. Turning first to the Casey & Paige Parcel, Attorney Driscoll is correct in his statement that the Casey & Paige Parcel enjoys deeded access rights over the Kimco Parcel. As the Planning Board is well aware, Kimco's Site Plan Application adequately protects and preserves access to and from the Casey & Paige Parcel in accordance with those easement rights. Nothing in Kimco's Site Plan Application limits any future development or redevelopment of the Casey & Paige Parcel.

As to the CP&S Parcel, (which is what I presume Attorney Driscoll's clients are concerned about) it presently has no deeded access rights over the Kimco Parcel. Attorney Driscoll's proposal that the Planning Board force Kimco to grant such ingress and egress rights to the CP&S Parcel is inappropriate. I am unaware of any legal authority the Planning Board has to require Kimco to grant such access rights against its will.

As you know, Kimco and CP&S have been involved in discussions regarding the development of their respective parcels. One of the topics of discussion involved Kimco granting to CP&S ingress and egress rights over the Kimco Parcel for the benefit of the CP&S Parcel. Kimco and, I believe, the Planning Board Staff agree that such an arrangement would be beneficial. Among other things, it would allow for a consolidation of the curb cuts on Warren Avenue. Unfortunately, we have been unable to reach final terms with CP&S. No discussions

¹ Attorney Driscoll's position is further undermined by the fact that there already exists extensive paving over the balance of the copper radial field area on the Casey & Paige Parcel. Indeed, a significant portion of the office building on the Casey & Paige Parcel has been built on the copper radial field.

Sarah Hopkins, Assistant City Planner
February 3, 2005
Paige - 3 -

are currently on going. As a result, Kimco had no choice but to proceed with the current site plan application.

While not pertinent to Kimco's current application, Kimco remains willing to work with Attorney Driscoll's clients. As you can see, we have intentionally designed the site layout such that it would not be difficult to amend Kimco's site plan in the future to allow ingress and egress to the CP&S Parcel if the parties should come to an agreement. Accordingly, Kimco respectfully requests that the Planning Board consider the site plan application as is.

Finally, with respect to Attorney Driscoll's request that the Planning Board grant a curb cut on Warren Avenue to the CP&S Parcel, that is a matter wholly between the Planning Board and CP&S and is not relevant to Kimco's site plan application. The Planning Board should remember, however, that without a future access easement from Kimco to CP&S, any proposed development of the CP&S Parcel cannot provide for traffic from the CP&S Parcel to exit via the Kimco Parcel. The access easement benefiting the Casey & Paige Parcel cannot be used for the benefit of the CP&S parcel without Kimco's consent.

I want to reiterate that Kimco remains willing to work with Attorney Driscoll's clients on coordinated access. However, because there is no assurance that the parties will reach a mutually acceptable agreement and because this site plan application has been pending for so long, Kimco respectfully request that the Planning Board consider the application in its current form. If, at a later date, we are able to reach an agreement with CP&S, we understand that we may need to come back to the Planning Board to amend our site plan. We are disappointed that Attorney Driscoll's clients are seeking to draw the Planning Board into what is nothing more than a negotiation between two adjacent landowners.

Should you have any questions regarding any matters addressed in this letter, please do not hesitate to contact me. Obviously, we are prepared to address any questions the Planning Board may have at the next consideration of Kimco's site plan application.

Sincerely,



Eben Adams

EA/bkr

Enclosure

cc: Mr. Edward S. Wolak (w/o encl.)
Paul F. Driscoll, Esq. (w/encl.)

NORMAN, HANSON & DETROY, LLC
ATTORNEYS AT LAW
415 CONGRESS STREET
P.O. BOX 4600
PORTLAND, MAINE 04112-4600

| | |
|------------------------|------------------------|
| PETER J. DETROY | RUSSELL B. PIERCE, JR. |
| STEPHEN HESSERT | ANNE M. CARNEY |
| RODERICK R. ROVZAR | DAVID L. HERZER, JR. |
| THEODORE H. KIRCHNER | THOMAS S. MARJERISON |
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| CHRISTOPHER C. TAINTOR | JENNIFER A.W. RUSH |
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OF COUNSEL
DAVID C. NORMAN



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ROBERT F. HANSON
(1944 - 2004)

January 31, 2005

Sarah Hopkins, Assistant City Planner
City of Portland
Planning & Urban Development
389 Congress Street
Portland, ME 04101

Re: Application of Kimco Realty, LLC for Site
Plan Approval, Warren Avenue, Portland, Maine

Dear Sarah:

This will advise that I represent Casey & Paige, LLC and CP & S Associates, LLC, abutters of the proposed Dunkin' Donuts project of Kimco Realty, LLC, on Warren Avenue in Portland, Maine. Casey & Paige, LLC and CP & S Associates, LLC are opposed to the present project design submitted by Kimco Realty, LLC for several reasons and we hope to be able to work out an arrangement with it to address these concerns and will work to do so in the near future.

In general, the concerns of Casey & Paige, LLC and CP & S Associates, LLC relate to access to their adjacent properties on Warren Avenue and the proposed development of those properties in the future. The curb cut benefiting the Kimco Realty, LLC parcel, over which Casey & Paige, LLC enjoys deeded easement rights, is wholly inadequate for the intended development of the adjacent properties. We also have concerns based on our technical reports that the development of the Kimco Realty, LLC property as presently proposed will interfere with copper radial field easement Casey &

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FEB - 1 2005

Sarah Hopkins, Assistant City Planner

January 31, 2005

Page 2

Paige, LLC enjoys over the Kimco Realty, LLC parcel.

In connection with the proposed development of the Kimco Realty, LLC, we request that the City of Portland either (a) grant Casey & Paige, LLC and CP & S Associates, LLC a curb cut onto Warren Avenue directly or (b) require Kimco Realty, LLC to provide adequate access over its property to allow for the development of the adjacent parcels. We are prepared to work with Kimco Realty, LLC in relocating its curb cut access for this purpose if city planners consider it appropriate that we coordinate our efforts at developing these properties.

In any event, we request that you provide us with notice of all public hearings at which the development of the Kimco Realty, LLC parcel will be considered. Thank you for your attention to this matter.

Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Mr. Peter R. Bouchard
Mr. Michael L. Dilworth
Eben Adams, Esq.

CITY OF PORTLAND, MAINE

PLANNING BOARD

Lee Lowry III, Chair
Kevin Beal, Vice Chair
John Anton
Michael Patterson
David Silk
Janice E. Tevanian
Shalom Odokara

September 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Dunkin Donuts, 597 Warren Avenue
ID #2004-0118, CBL #314-A-007

Dear Sir:

On March 22, 2005, the Portland Planning Board voted 6-1 (Anton opposed) to approve the site plan for the Dunkin Donuts project located at 597 Warren Avenue. The approval was granted for the project with the following conditions:

- i. That the applicant revise the plans based on the Traffic Engineer's memo dated March 14, 2005 and that the applicant contribute \$30,000 prior to issuance of a building permit to the improvements at the Riverside Street/Warren Avenue. If the proposed MDOT/City improvements do not occur within 5 years from the contribution date, then the money shall be returned to the applicant.
- ii. That the City Arborist review and approve the landscaping plan prior to issuance of a building permit.
- iii. That a photometric plan be submitted for review and approval by staff, prior to issuance of a building permit.
- iv. That a revised site plan for the Wendy's property shall be submitted to staff for review and approval prior to issuance of a building permit.
- v. That the site plans be revised to reflect the crosswalks and caution sign, subject to the review and approval of the traffic engineer.
- vi. No building permit shall be issued until the applicant receives the required wetlands permit from DEP.

The Portland Planning Board also voted 5-2 (Anton and Tevanian opposed) to approve the traffic movement permit subject to the following conditions of approval:

- i. That the Traffic Engineer review and approve the plans based on his March 14, 2005 memo and that the applicant contribute \$30,000 prior to issuance of a building permit as stated in condition i. under site plan approval conditions.
- ii. That the Traffic Engineer review the safety of the intersection regarding the fatal accident and any other records the City may have on accidents at this location. Based on this analysis, the Traffic Engineer shall determine if the intersection is safe at this time.

The approval is based on the submitted site plan and the findings related to site plan and subdivision review standards as contained in Planning Report #21-05, which is attached.

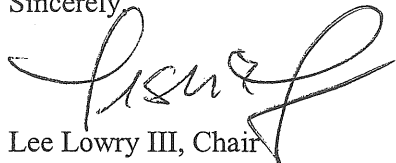
Please note the following provisions and requirements for all site plan approvals:

1. Where submission drawings are available in electronic form, the applicant shall submit any available electronic Autocad files (*.dwg), release 14 or greater, with seven (7) sets of the final plans.
2. 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.
3. 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.
4. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
5. Prior to construction, a pre-construction 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 pre-construction meeting.
6. 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.)

7. 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 Division 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,



Lee Lowry III, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Greg Cass, Fire Prevention
Assessor's Office
Approval Letter File



CITY OF PORTLAND, MAINE
Department of Building Inspections

_____ 20____

Received from _____

Location of Work _____

Cost of Construction \$ _____

Permit Fee \$ _____

Building (IL) ___ Plumbing (I5) ___ Electrical (I2) ___ Site Plan (U2) ___

Other _____

CBL: _____

Check #: _____ Total Collected \$ _____

THIS IS NOT A PERMIT

No work is to be started until PERMIT CARD is actually posted upon the premises. Acceptance of fee is no guarantee that permit will be granted. PRESERVE THIS RECEIPT. In case permit cannot be granted the amount of the fee will be refunded upon return of the receipt less \$10.00 or 10% whichever is greater.

WHITE - Applicant's Copy
YELLOW - Office Copy
PINK - Permit Copy



PORTLAND MAINE

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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Amendment to Dunkin' Donuts Site Plan, 597 Warren Avenue
ID #2005-0171, CBL #314-A-007

Dear Sir or Madam:

This letter is to confirm that on July 27, 2005 the revision to the approved Dunkin' Donuts Site Plan was approved. The approved revision is for an access drive to the abutting property with the following condition:

1. That the applicant shall submit executed easements allowing access from the abutting property to the Dunkin' Donuts and Wendy's sites.

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

O:\PLAN\DEVREVW\WARREN597-DUNKIN\REVISIONLETTER7-27-05.DOC

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Fire Prevention
Assessor's Office
Approval Letter File



PORTLAND MAINE

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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Amendment to Dur
ID #2005-0171, CB

597 Warren Ave

Dear Sir or Madam:

This letter is to confirm that on July 27, 2005 the revision to the approved Dunkin' Donuts Site Plan was approved. The approved revision is for an access drive to the abutting property with the following condition:

1. That the applicant shall submit executed easements allowing access from the abutting property to the Dunkin' Donuts and Wendy's sites.

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

O:\PLANDEVREVW\WARREN597-DUNKIN\REVISIONLETTER7-27-05.DOC

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
— Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Fire Prevention
Assessor's Office
Approval Letter File

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Engineering Copy**

2005-0171

Application I. D. Number

7/26/2005

Application Date

Amendment to Plan - Dunkin Donuts

Project Name/Description

Kimco Realty, LLC

Applicant

65 Gray Street, Falmouth, ME 04105

Applicant's Mailing Address

Consultant/Agent

Applicant Ph: (207) 797-7600 Applicant Fax: (207) 797-4300

Applicant or Agent Daytime Telephone, Fax

Warren Avenue, Portland, Maine

Address of Proposed Site

314 A007

Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) **Amendment to Plan**

1,840 s.f.

Proposed Building square Feet or # of Units

Acreage of Site

B4

Zoning

Check Review Required:

- | | | | |
|--|---|--|--|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input type="checkbox"/> Subdivision # of lots _____ | <input type="checkbox"/> PAD Review | <input type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB) | <input type="checkbox"/> Zoning Variance | | <input type="checkbox"/> Other _____ |

Fees Paid: Site Pla \$250.00 Subdivision _____ Engineer Review _____ Date 7/26/2005

Engineering Approval Status:

Reviewer

Eric Labelle-PW

- Approved Approved w/Conditions
See Attached Denied

Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets
Attached

Condition Compliance _____ signature _____ date _____

Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|---|----------------------------|--|-----------------------------|
| <input type="checkbox"/> Performance Guarantee Accepted | _____ date _____ | _____ amount _____ | _____ expiration date _____ |
| <input type="checkbox"/> Inspection Fee Paid | _____ date _____ | _____ amount _____ | |
| <input type="checkbox"/> Building Permit Issue | _____ date _____ | | |
| <input type="checkbox"/> Performance Guarantee Reduced | _____ date _____ | _____ remaining balance _____ | _____ signature _____ |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ date _____ | <input type="checkbox"/> Conditions (See Attached) | _____ expiration date _____ |
| <input type="checkbox"/> Final Inspection | _____ date _____ | _____ signature _____ | |
| <input type="checkbox"/> Certificate Of Occupancy | _____ date _____ | | |
| <input type="checkbox"/> Performance Guarantee Released | _____ date _____ | _____ signature _____ | |
| <input type="checkbox"/> Defect Guarantee Submitted | _____ submitted date _____ | _____ amount _____ | _____ expiration date _____ |
| <input type="checkbox"/> Defect Guarantee Released | _____ date _____ | _____ signature _____ | |

NORMAN, HANSON & DETROY, LLC

ATTORNEYS AT LAW
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P.O. BOX 4600
PORTLAND, MAINE 04112-4600

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ROBERT F. HANSON
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DANIEL L. CUMMINGS

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LANCE E. WALKER
DORIS V. R. CHAMPAGNE
NOAH D. WUESTHOFF
C. LINDSEY MORRILL
JENNIFER A.W. RUSH
DANIEL J. EDWARDS

OF COUNSEL
DAVID C. NORMAN

July 22, 2005

Kandi Talbot, Assistant Planner
Planning and Development Department
City of Portland
389 Congress Street
Portland, ME 04101

Re: Application for Amendment to
Site Plan Approval for Kimco
Realty, LLC's Warren Avenue Project

Dear Ms. Talbot:

Thank you for meeting with Dan Edwards of my office on Monday, July 18, 2005. This cover letter and the associated enclosures represent Kimco Realty, LLC's request for an administrative approval of a minor site plan amendment to the above-referenced project. A copy of the approved site plan is enclosed for your review as Exhibit A. We are making this application with the approval of Kimco Realty, LLC and its legal counsel, Dennis Keeler of Pierce Atwood, pursuant to the terms of an agreement between Kimco Realty, LLC, Casey & Paige, LLC and CP & S Associates, LLC. A copy of this agreement is attached as Exhibit B.

The enclosed materials represent changes consistent with those recommended by Tom Errico during a meeting including you, Mr. Errico, Peter Bouchard of CP&S and Dan Edwards earlier this summer. The pertinent changes, which are reflected on the enclosed Exhibit C (anticipated CP&S site plan) and Exhibit D (proposed Kimco Amended Site Plan), are as follows:

- Kimco Realty, LLC has agreed to grant CP&S Associates, LLC an ingress easement, which will permit direct access from the Kimco entrance into the

CP&S parcel in anticipation of the proposed development of a car wash on the CP&S parcel and to grant CP&S a rear access easement which will permit all traffic from both the CP&S and Casey & Paige LLC parcels to exit via the egress route shared by the existing Wendy's and the proposed Dunkin' Donuts; and

- CP&S and Kimco have agreed to revise the property line between their adjacent parcels to permit Kimco to add three additional parking spaces along the Kimco/CP&S property line. Pursuant to this agreement, CP&S will deed a small triangular parcel of its lot to Kimco.

The objective of these changes is to satisfy the City's desire to limit curbs cuts and points of egress onto Warren Avenue. At a later date, CP&S plans to submit a site plan application for its proposed car wash, which -- also consistent with Tom Errico's recommendations -- will include a right-turn-only entrance to the car wash parcel from Warren Avenue.

Because this approval is required to satisfy the terms of a time-sensitive agreement between Kimco Realty, LLC, CP&S Associates, LLC and Casey & Paige, LLC, we would very much appreciate your response as soon as possible.

Naturally, if there are any questions or comments, please feel free to contact me. Thank you very much for your time and assistance in this matter.

Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Daniel J. Edwards, Esq. (w/encl.)
Dennis C. Keeler, Esq. (w/encl.)
Mr. Peter R. Bouchard (w/encl.)

**MEMORANDUM OF
UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING, effective as of July 14, 2005, is by and among KIMCO REALTY, LLC, a Maine limited liability company located in Falmouth, Maine ("Kimco"), CASEY & PAIGE, LLC, a Maine limited liability company located in Portland, Maine ("Casey & Paige"), and CP&S ASSOCIATES, LLC, a Maine limited liability company located in Portland, Maine ("CP&S").

RECITALS:

A. Kimco owns a parcel of land on Warren Avenue being approximately 1.36 acres (the "Kimco Parcel") as shown on the plan entitled "Approved Kimco Site Plan" prepared by Sebago Technics, dated July 12, 2005, a copy of which is attached hereto as Exhibit A (the "Kimco Parcel"). Kimco owns a private sewer force main that runs under and along Warren Avenue and connects to the public sewer maintained by the City of Portland and/or the Portland Water District (the "Private Force Main"). Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's") owns the parcel adjacent to, and westerly of, the Kimco Parcel (the "Wendy's Parcel"). The Wendy's Parcel is shown on Exhibit A and labeled as "Existing Wendy's Site". In connection with the acquisition of the Kimco Parcel, Kimco received a right to assign an easement in gross benefiting the owners of the "CP&S Parcel" (defined below) allowing access over the Wendy's Parcel (the "Easement in Gross").

B. Casey & Paige owns a parcel of land adjacent to, and northeasterly of, the Kimco Parcel as partially shown on Exhibit B, being the land on which the building identified as "Pioneer Telephone" is located (the "Casey & Paige Parcel"). The Casey & Paige Parcel is benefited by an access easement over the Kimco Parcel and the Wendy's Parcel to Warren Avenue (the "Access Easement"). The Casey & Paige Parcel is also benefited by a copper radial field easement over a portion of the Kimco Parcel, as depicted on Exhibit C (the "Copper Radial Field Easement").

C. CP&S owns a parcel of land adjacent to, and easterly of the Kimco Parcel as shown on Exhibit B and labeled as land "N/F CP&S Associates, LLC" (the "CP&S Parcel"). The CP&S Parcel is adjacent to, and southerly of, the Casey & Paige Parcel.

D. Kimco has received site plan approval from the City of Portland to develop the Kimco Parcel as a Dunkin' Donuts store generally consistent with the site plan attached as Exhibit A (the "Approved Kimco Site Plan").

E. CP&S is in the process of obtaining required approvals from the City of Portland to construct a brushless car wash on the CP&S Parcel in accordance with the plan attached as Exhibit B (the "CP&S Site Plan").




F. In connection with the development of CP&S Parcel and the Casey & Paige Parcel, CP&S and Casey Paige have requested that Kimco accept a modification of the Approved Kimco Site Plan. Kimco is willing to accept certain modification to its Approved Kimco Site Plan, as depicted on the amended Site Plan attached hereto as **Exhibit C** (the "Proposed Kimco Amended Site Plan").

G. The parties desire to cooperate in the development of the Kimco Parcel, the continued use of the Casey & Paige Parcel and the development of the CP&S Parcel. Accordingly, the parties agree to exchange certain rights and easements, and to cooperate in the permitting and planning processes as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. Kimco agrees to provide CP&S Parcel with the right to connect to the Private Force Main (including the right to discharge no more than 2,000 gallons per day of sewerage into the Private Force Main), provided that CP&S will be solely responsible for the installation, maintenance and repair of any pipes, connections or other equipment serving only the CP&S Parcel, and CP&S will be responsible for its pro rata share of usage charges, maintenance and repair of the Private Force Main.

2. Kimco agrees to grant to CP&S an easement appurtenant to the CP&S Parcel for vehicular and pedestrian ingress, but not egress (the "CP&S Ingress Easement") together with an easement appurtenant to the CP&S Parcel for vehicular and pedestrian ingress and egress over the rear portion of the Kimco Parcel (the "CP&S Rear Access Easement"). Both the CP&S Ingress Easement and the CP&S Rear Access Easement will be located generally as shown on **Exhibit C**.

3. Kimco agrees to assign the Easement in Gross to CP&S so that vehicles may exit from the CP&S Parcel across the Wendy's Parcel, by way of the CP&S Rear Access Easement.

4. Casey & Paige and CP&S agree not to oppose Kimco's development of the Kimco Parcel as a Dunkin' Donuts store, provided that Casey & Paige and CP&S shall not be obligated to incur out of pocket expenses.

5. Kimco agrees not to oppose CP&S's development of the CP&S Parcel as a car wash in accordance with the CP&S Site Plan, provided that (a) Kimco shall not be obligated to incur out of pocket expenses; and (b) nothing herein shall prevent Kimco from opposing any portion of CP&S's application for approval – including, without limitation, facts shown on the CP&S Site Plan – that Kimco determines in its reasonable judgment, raise concerns regarding (i) safety, (ii) traffic or (iii) stormwater. Kimco agrees not to object to the right turn in only entrance onto the CP&S Parcel from Warren Avenue, as shown on the CP&S Site Plan; provided that Kimco reserves the right to object to design or layout issues with such entrance to the extent that Kimco reasonably determines that such design raises a risk of left turning traffic into the

A handwritten signature in black ink, consisting of the letters "PB" inside a circle, with a flourish underneath.

CP&S Parcel from Warren Avenue or if the incoming traffic is not channeled properly to avoid any interruption or impact on the cuing of traffic waiting for the car wash. Kimco will not object to the fact that the design provides for the flow of traffic to enter the CP&S Parcel from the common entranceway , as depicted on the Proposed Kimco Amended Site Plan to exit the CP&S Parcel to the rear of the Kimco Parcel and the Wendy's Parcel, again, subject to any safety or traffic concerns.

6. Casey & Paige hereby acknowledges and agrees that the traffic flow on the Kimco Parcel and the Wendy's Parcel, as shown on the Kimco Site Plan and the CP&S Site Plan, and the corresponding relocation and bifurcation of the Access Easement so as to provide ingress over the Kimco Parcel and egress over the Kimco Parcel and the Wendy's Parcel is permitted under the terms of the Access Easement and does not constitute an unreasonable interference with the Access Easement. Casey & Paige hereby consents to said relocation and bifurcation and use of the Access Easement, as depicted on both the Kimco Site Plan and the CP&S Site Plan..

7. Casey & Paige acknowledges and agrees that the proposed use of the Copper Radial Field Easement area on the Kimco Parcel for paved parking areas and storm water management as shown on Exhibit A is permitted under the terms of the Copper Radial Field Easement and Casey & Paige hereby consents to said use of the Copper Radial Field Easement Area. Casey & Paige agree that Kimco is hereby released of any obligation to restore any disruption to the Copper Radial Field Easement, or the copper radial field or any of the copper wiring, resulting from the installation and construction of the work shown on the Approved Kimco Site Plan or, if approved, the Proposed Kimco Amended Site Plan.

8. Casey & Paige and CP&S agree to allow Kimco to modify the existing pavement on the Casey & Paige Parcel and the CP&S Parcel as shown on Exhibit B near the northernmost corner of the CP&S Parcel.

9. The Casey & Paige Parcel and the CP&S Parcel shall be subject to the condition that neither parcel shall be used for a business that collects more than 15% of its gross sales from the sale of any one, or any combination of, the following items: coffee, bagels, donuts, baked goods, ice cream and beverages, e.g., shakes, frozen drinks or slushies, soda. Casey & Paige and CP&S agree to record deed restrictions on their respective parcels to memorialize the restrictions set forth in this paragraph.

10. The parties acknowledge that Casey & Paige and CP&S have requested Kimco to accept an amendment to the Kimco Site Plan to accommodate the changes reflected on the Proposed Kimco Amended Site Plan. Kimco is prepared to accept such changes on the following terms and conditions: (a) all such permits and approvals as may necessary to reflect such changes are obtained by CP&S or Casey & Paige, at no expense to Kimco; (b) no changes shall be permitted to the Proposed Kimco Amended Site Plan without the prior approval of Kimco and no conditions shall be imposed on the Proposed Kimco Amended Site Plan, or in connection with its approval, without the approval of Kimco; (c) CP&S shall grant to Kimco fee title to that portion of the CP&S Parcel as is necessary to accommodate all of the twelve parking spaces on the easterly side of the Kimco Parcel as reflected on the Proposed Kimco Amended



Site Plan and satisfy the permitting requirements of the City of Portland, and any approval of the Proposed Kimco Amended Site Plan shall be conditioned upon such transfer taking place within 10 days of approval;; and (d) all such permits and approvals have been obtained in compliance with this Paragraph no later than July 29, 2005. If the permits and approvals for such site plan modification have not been obtained by July 29, 2005 in accordance with the requirements of this Section, Kimco shall have the right to proceed to develop the Kimco Parcel in accordance with the Approved Kimco Site Plan attached hereto as **Exhibit A** and shall be relieved of any obligation to accept any changes thereto. In such event, the balance of the agreements set forth in this Memorandum of Understanding shall remain in full force and effect.

11. The parties acknowledge and agree to execute and record, as necessary, all such deeds, easements, agreements, consents or any other documents necessary to effectuate the agreements contained herein.

12. This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

13. The Exhibits attached are hereby incorporated herein by reference.

14. This Memorandum of Understanding shall be governed by and interpreted in accordance with the laws of the State of Maine.

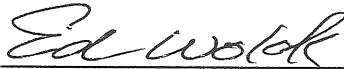
[Balance of Page is Intentionally Blank]

Handwritten initials "PB" inside a circle, with the word "See" written below it and a horizontal line underneath.

IN WITNESS WHEREOF, the undersigned have each caused this Memorandum of Understanding to be executed by its respective duly authorized representative, as of the date set forth across from their respective signature, to be effective for all purposes as of the date set forth in the introductory paragraph above.

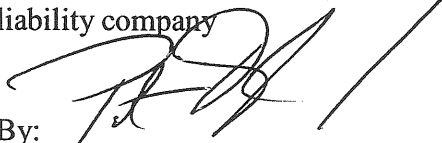
KIMCO REALTY, LLC, a Maine limited liability company

Date: July 15, 2005

By: 
Its: MEM.
Name: ED WOLAK

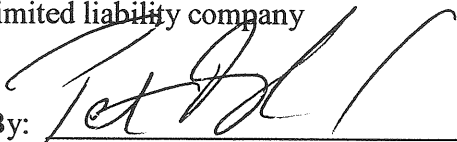
CASEY & PAIGE, LLC, a Maine limited liability company

Date: July 14, 2005

By: 
Its: Peter R. Bouchard
Name: MEMBER

CP&S ASSOCIATES, LLC, a Maine limited liability company

Date: July 14, 2005

By: 
Its: Peter R. Bouchard
Name: MEMBER



City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

| | | |
|--|---|--|
| Address of Proposed Development: | | Zone: |
| Total Square Footage of Proposed Structure: 1,840 | Square Footage of Lot: 58,465 | |
| Tax Assessor's Chart, Block & Lot: Chart# 314 Block# A Lot# 7 | Property owner's mailing address: 65 Gray Road Falmouth, ME 04105 | Telephone #: (207) 797-7600 |
| Consultant/Agent, mailing address, phone # & contact person: Dennis C. Keeler, Esq. Pierce Atwood, LLP One Monument Square Portland, ME 04101 Paul F. Driscoll, Esq. Norman, Hanson & DeTroy, LLC P.O. Box 4600 Portland, ME 04112-4600 | Applicant's name, mailing address, telephone #/Fax#/Pager#: Kimco Realty, LLC 65 Gray Road Falmouth, ME 04105 Attn: Ed Wolak | Project name: Minor Amendment to Warren Avenue Dunkin' Donuts Site Plan |
| <p>Proposed Development (check all that apply)</p> <p> <input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input type="checkbox"/> Retail <input type="checkbox"/> Manufacturing <input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot <input type="checkbox"/> Subdivision (\$500.00) + amount of lots _____ (\$25.00 per lot) \$ _____ <input type="checkbox"/> Site Location of Development (\$3,000.00) (except for residential projects which shall be \$200.00 per lot _____) <input type="checkbox"/> Traffic Movement (\$1,000.00) <input type="checkbox"/> Stormwater Quality (\$250.00) <input type="checkbox"/> Section 14-403 Review (\$400.00 + \$25.00 per lot) <input type="checkbox"/> Other _____ </p> <p>Major Development (more than 10,000 sq. ft.)</p> <p> <input type="checkbox"/> Under 50,000 sq. ft. (\$500.00) <input type="checkbox"/> 50,000 - 100,000 sq. ft. (\$1,000.00) <input type="checkbox"/> Parking Lots over 100 spaces (\$1,000.00) <input type="checkbox"/> 100,000 - 200,000 sq. ft. (\$2,000.00) <input type="checkbox"/> 200,000 - 300,000 sq. ft. (\$3,000.00) <input type="checkbox"/> Over 300,000 sq. ft. (\$5,000.00) <input type="checkbox"/> After-the-fact Review (\$1,000.00 + applicable application fee) </p> <p>Minor Site Plan Review</p> <p> <input type="checkbox"/> Less than 10,000 sq. ft. (\$400.00) <input type="checkbox"/> After-the-fact Review (\$1,000.00 + applicable application fee) </p> <p>Plan Amendments</p> <p> <input checked="" type="checkbox"/> Planning Staff Review (\$250.00) <input type="checkbox"/> Planning Board Review (\$500.00) </p> | | |
| - Please see next page - | | |

Who billing will be sent to: (Company, Contact Person, Address, Phone #)

Paul F Driscoll, Esq.

Norman, Hanson & DeTroy, LLC, P. O. Box 4600, Portland, ME 04112-4600

Submittals shall include (9) separate folded packets of the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans check list

Amendment to Plans: Amendment applications should include 6 separate packets of the above (a, b, & c)

ALL PLANS MUST BE FOLDED NEATLY AND IN PACKET FORM

Section 14-522 of the Zoning Ordinance outlines the process; copies are available at the counter at .50 per page (8.5 x11) you may also visit the web site: ci.portland.me.us chapter 14

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Kimco Realty, LLC

Signature of applicant: By:

Date:

7/20/05

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construction.

Development in Portland

The City of Portland has instituted the following fees to recover the costs of reviewing development proposals under the Site Plan and Subdivision ordinances: application fee; engineering fee; and inspection fee. Performance and defect guarantees are also required by ordinance to cover all site work proposed.

The **Application Fee** covers general planning and administrative processing costs, and is paid at the time of application.

The Planning Division is required to send notices to neighbors upon receipt of an application and prior to public meetings. The applicant will be billed for mailing and advertisement costs. Applicants for development will be charged an **Engineering Review Fee**. This fee is charged by the Planning Division for review of on-site improvements of a civil engineering nature, such as storm water management as well as the engineering analysis of related improvements within the public right-of-way, such as public streets and utility connections, as assessed by the Department of Public Works. The Engineering Review fee must be paid before a building permit can be issued. Monthly invoices are sent out by the Planning Division on a monthly basis to cover engineering costs.

A **Performance Guarantee** will be required following approval of development plans. This guarantee covers all required improvements within the public right-of-way, plus certain site improvements such as landscaping, paving, and drainage improvements. The Planning Division will provide a cost estimate form for figuring the amount of the performance guarantee, as well as sample form letters to be filled out by a financial institution.

An **Inspection Fee** must also be submitted to cover inspections to ensure that sites are developed in accordance with the approved plan. The inspection fee is 2.0% of the performance guarantee amount, or as assessed by the planning or public works engineer. The minimum inspection fee is \$300 for development, unless no site improvements are proposed. Public Works inspects work within the City right-of-way and Planning inspects work within the site including pipe-laying and connections. (The contractor must work with inspectors to coordinate timely inspections, and should provide adequate notice before inspections, especially in the case of final inspection.)

Upon completion of a development project, the performance guarantee is released, and a **Defect Guarantee** in the amount of 10% of the performance guarantee must be provided. The Defect Guarantee will be released after a year.

Other reimbursements to the City include actual or apportioned costs for advertising and mailed notices. All fees shall be paid prior to the issuance of any building permit.

For more information on the fees or review process, please call the Planning Division at 874-8719 or 874-8721.



City Of Portland Site Plan Checklist

Project Name, Address of Project

Application Number

| Submitted () & Date | Item | Required Information | Section 14-525 (b,c) |
|---------------------|------|---|----------------------|
| _____ | (1) | Standard boundary survey (stamped by a registered surveyor, at a scale of not less than 1 inch to 100 feet and including: | 1 |
| _____ | (2) | Name and address of applicant and name of proposed development | a |
| _____ | (3) | Scale and north points | b |
| _____ | (4) | Boundaries of the site | c |
| _____ | (5) | Total land area of site | d |
| _____ | (6) | Topography - existing and proposed (2 feet intervals or less) | e |
| _____ | (7) | Plans based on the boundary survey including: | 2 |
| _____ | (8) | Existing soil conditions | a |
| _____ | (9) | Location of water courses, marshes, rock outcroppings and wooded areas | b |
| _____ | (10) | Location, ground floor area and grade elevations of building and other structures existing and proposed, elevation drawings of exterior facades, and materials to be used | c |
| _____ | (11) | Approx location of buildings or other structures on parcels abutting the site | d |
| _____ | (12) | Location of on-site waste receptacles | e |
| _____ | (13) | Public utilities | e |
| _____ | (14) | Water and sewer mains | e |
| _____ | (15) | Culverts, drains, existing and proposed, showing size and directions of flows | e |
| _____ | (16) | Location and dimensions, and ownership of easements, public or private rights-of-way, both existing and proposed | f |
| _____ | (17) | Location and dimensions of on-site pedestrian and vehicular access ways | |
| _____ | (18) | Parking areas | g |
| _____ | (19) | Loading facilities | g |
| _____ | (20) | Design of ingress and egress of vehicles to and from the site onto public streets | g |
| _____ | (21) | Curb and sidewalks | g |
| _____ | (22) | Landscape plan showing: | h |
| _____ | (23) | Location of existing proposed vegetation | h |
| _____ | (24) | Type of vegetation | h |
| _____ | (25) | Quantity of plantings | h |
| _____ | (26) | Size of proposed landscaping | h |
| _____ | (27) | Existing areas to be preserved | h |
| _____ | (28) | Preservation measures to be employed | h |
| _____ | (29) | Details of planting and preservation specifications | h |
| _____ | (30) | Location and dimensions of all fencing and screening | i |
| _____ | (31) | Location and intensity of outdoor lighting system | j |
| _____ | (32) | Location of fire hydrants, existing and proposed | k |
| _____ | (33) | Written statement | c |
| _____ | (34) | Description of proposed uses to be located on site | l |
| _____ | (35) | Quantity and type of residential, if any | l |
| _____ | (36) | Total land area of the site | b2 |
| _____ | (37) | Total floor area and ground coverage of each proposed building and structure | b2 |
| _____ | (38) | General summary of existing and proposed easements or other burdens | c3 |
| _____ | (39) | Method of handling solid waste disposal | 4 |
| _____ | (40) | Applicant's evaluation of availability of off-site public facilities, including sewer, water and streets | 5 |
| _____ | (41) | Description of any problems of drainage or topography, or a representation that there are none | 6 |
| _____ | (42) | An estimate of the time period required for completion of the development | |

| | | | |
|-------|------|--|----|
| _____ | (43) | A list of all state and federal regulatory approvals to which the development may be subject to | 8 |
| _____ | (44) | The status of any pending applications | 8 |
| _____ | (45) | Anticipated timeframe for obtaining such permits | h8 |
| _____ | (46) | A letter of non jurisdiction | h8 |
| _____ | (47) | Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that is has reviewed the planned development and would seriously consider financing it when approved. | |

Note: Depending on the size and scope of the proposed development, the Planning Board or Planning Authority may request additional information, including (but not limited to):

- | | |
|--|--|
| - drainage patterns and facilities; | - an environmental impact study; |
| - erosion and sedimentation controls to be used during construction; | - a sun shadow study; |
| - a parking and/or traffic study; | - a study of particulates and any other noxious emissions; |
| and | |
| - a noise study; | - a wind impact analysis. |

Other comments:

Staff approval shall be conditioned upon the following taking place within 10 days
of such approval: CP&S Associates, LLC conveying to Kimco Realty, LLC the area
necessary to accommodate the "Revised Property Line," as reflected on the Proposed
Amended Site Plan for Kimco Realty, LLC.

Neighborhood Meetings

In May of 2001, the Planning Board's review procedures were revised to improve neighborhood notification and encourage communication between applicants for development and neighborhood residents.

Neighborhood meetings, organized and hosted by the applicant, are now required for zone change proposals, subdivisions of 5 or more units/lots, and for any major site plan proposals only. Notification of the neighborhood meeting must be mailed to property owners within 500 ft. of the development parcel.

Scheduling of Neighborhood Meeting:

The neighborhood meeting must be held after the first Planning Board workshop but not less than seven (7) days prior to the Planning Board public hearing.

The meeting should be held in the evening, during the week, at a location in the neighborhood.

Upon request, the Planning Division will provide to the applicant mailing labels for the neighborhood meeting invitation. We require 48 hours notice to generate the mailing labels. A charge of \$1.00 per sheet of labels will be payable upon receipt of the labels.

Notice:

The applicant shall send notices to property owners within 500 ft. of the development site at least 7 days prior to the neighborhood meeting. Notice shall contain a brief description of the project, date, time and location of the neighborhood meeting.

Sign-up Sheets and Meeting Minutes:

At the meeting, the applicant shall circulate a sign-up sheet for those in attendance. The applicant shall also keep minutes of the meeting.

After holding the neighborhood meeting, the applicant shall submit the sign-up sheet and meeting minutes to the Planning Division. The meeting minutes and sign-up sheet will be attached to the Planning Board report. A public hearing will not be scheduled until the meeting minutes and sign-up sheet are submitted to the Planning Authority.

Please call the Planning Office (874-8719) if you have any questions.

Kandi Talbot - Dunkin Donuts - Warren Avenue

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Kandi Talbot" <KCOTE@portlandmaine.gov>
Date: 06/27/2005 2:57 PM
Subject: Dunkin Donuts - Warren Avenue
CC: "Katherine Earley" <KAS@portlandmaine.gov>, "Jeffrey Perry" <jperry@sebagotechnics.com>

Kandi—

I have reviewed the driveway entrance plan provided by Sebago Technics dated April 11, 2005 and find the layout to be acceptable. Please let me know if you have any questions or need additional input.

Best Regards,

Thomas A. Errico, P.E.
Senior Transportation Engineer
Wilbur Smith Associates
59 Middle Street
Portland, Maine 04101
(207) 871-1785 Phone
(207) 871-5825 Fax

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
DRC Copy**

2004-0118
Application I. D. Number

Kimco Realty, LLC
Applicant
65 Gray Street, Falmouth, ME 04105
Applicant's Mailing Address

06/15/2004
Application Date
Dunkin Donuts
Project Name/Description

Consultant/Agent
Applicant Ph: (207) 797-7600 **Applicant Fax: (207) 797-4300**
Applicant or Agent Daytime Telephone, Fax

597 - 597 Warren Ave , Portland, Maine
Address of Proposed Site
314 A007001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify)

2,432 s.f. **B4**
Proposed Building square Feet or # of Units Acreage of Site Zoning

Check Review Required:

- | | | | |
|--|---|--|--|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input type="checkbox"/> Subdivision # of lots | <input type="checkbox"/> PAD Review | <input type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB) | <input type="checkbox"/> Zoning Variance | | <input type="checkbox"/> Other |

Fees Paid: Site Plan \$1,650.00 Subdivision Engineer Review \$3,796.00 Date

DRC Approval Status:

Reviewer **Chris Earle/Steve Bushey**

- Approved **Approved w/Conditions**
See Attached Denied

Approval Date **03/22/2005** Approval Expiration **03/22/2006** Extension to Additional Sheets
Attached

Condition Compliance **Kandi Talbot** **09/23/2005**
signature date

Performance Guarantee **Required*** **Not Required**

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|--|---------------------------|--|--------------------------------------|
| <input checked="" type="checkbox"/> Performance Guarantee Accepted | 09/14/2005 date | \$222,981.00 amount | 08/01/2006 expiration date |
| <input checked="" type="checkbox"/> Inspection Fee Paid | 09/20/2005 date | \$4,400.00 amount | |
| <input type="checkbox"/> Building Permit Issue | date | | |
| <input type="checkbox"/> Performance Guarantee Reduced | date | remaining balance | signature |
| <input type="checkbox"/> Temporary Certificate of Occupancy | date | <input type="checkbox"/> Conditions (See Attached) | expiration date |
| <input type="checkbox"/> Final Inspection | date | signature | |
| <input type="checkbox"/> Certificate Of Occupancy | date | | |
| <input type="checkbox"/> Performance Guarantee Released | date | signature | |
| <input type="checkbox"/> Defect Guarantee Submitted | submitted date | amount | expiration date |
| <input type="checkbox"/> Defect Guarantee Released | date | signature | |

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
ADDENDUM**

2004-0118
Application I. D. Number

Kimco Realty, LLC
Applicant
65 Gray Street, Falmouth, ME 04105
Applicant's Mailing Address

06/15/2004
Application Date

Dunkin Donuts
Project Name/Description

Consultant/Agent
Applicant Ph: (207) 797-7600 Applicant Fax: 2077974300
Applicant or Agent Daytime Telephone, Fax

597 - 597 Warren Ave , Portland, Maine
Address of Proposed Site
314 A007001
Assessor's Reference: Chart-Block-Lot

Approval Conditions of Planning

- 1 i. That the applicant revise the plans based on the Traffic Engineer's memo dated March 14, 2005 and that the applicant contribute \$30,000 prior to issuance of a building permit to the improvements at the Riverside Street/Warren Avenue intersection. If the proposed MDOT/City improvements do not occur within 5 years from the contribution date, then the money shall be returned to the applicant.
- 2 ii. That the City Arborist review and approve the landscaping plan prior to issuance of a building permit.
- 3 iii. That a photometric plan be submitted for review and approval by staff, prior to issuance of a building permit.
- 4 iv. That a revised site plan for the Wendy's property shall be submitted to staff for review and approval prior to issuance of a building permit.
- 5 v. That the site plans be revised to reflect the crosswalks and caution sign, subject to the review and approval of the Traffic Engineer.
- 6 vi. No building permit shall be issued until the applicant receives the required wetlands permit from DEP.
- 7 vii. That the Traffic Engineer review and approve the plans based on his March 14, 2005 memo and that the applicant contribute \$30,000 prior to issuance of a building permit as stated in condition 1.
- 8 viii. That the Traffic Engineer review the safety of the intersection regarding the fatal accident and any other records that the City may have on accidents at this location. Based on this analysis, the Traffic Engineer shall determine if the intersection is safe at this time.

Approval Conditions of DRC

- 1 see planning conditions

From: "Jeffrey Perry" <jperry@sebagotechnics.com>
To: "Kandi Talbot (E-mail)" <KCOTE@portlandmaine.gov>
Date: 12/01/2005 1:06:04 PM
Subject: Dunkin Donuts De Minimis Change

Kandi, the owner has requested that the proposed lighting pole fixtures for Dunkin Donuts match the existing light poles at Wendy's next door. Attached is the cut sheet from the Wendy's plan that show the Greenbriar Flat Lens Fixture.

We propose to substitute (at the same wattages and locations) the Greenbriar fixture for the Washington fixture specified on Dunkin's approved plans.

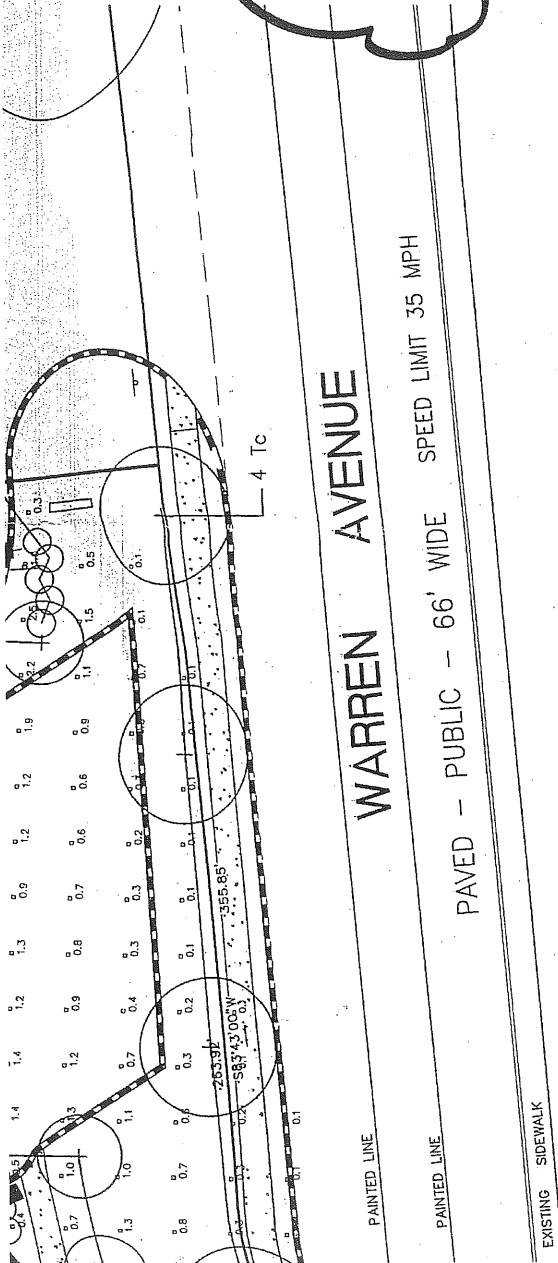
After your review, please call to discuss.

Jeffrey R. Perry
Senior Project Manager
Sebago Technics
1 Chabot Street
Westbrook, Maine 04098
ph 207.856.0277
fx 207.856.2206
jperry@sebagotechnics.com

CC: "Ed Wolak (E-mail)" <Ewolak@aol.com>, <rrtserv@peoplepc.com>

ATTACH TO TREE @ 1/2" -
HEIGHT OF TREE ABOVE GR
ANCHOR WITH 2" x 3" HARD
STAKE BURIED BELOW GRA
CLEAR OF ROOT BALL.

CUT
1/3
FRO



GREENBRIAR FLAT LENS

MAINTAINED FOOTCANDLE VALUES AT GRADE,
USING A .72 MAINTENANCE FACTOR.

NOTE: ALL 18' POLES TO BE MOUNTED ON CONCRETE PEDESTALS
2' ABOVE GRADE, FOR A TOTAL MOUNTING HEIGHT OF 20'.

LANDSCAPE NOTES:

1. HYDROSEEDING OPERATIONS SHALL BE A ONE PART PROCESS WITH
2. SEEDING FOR PERMANENT COVER SHALL OCCUR BETWEEN APRIL 15
SHALL BE MULCHED WITH HAY, STRAW OR OTHER ACCEPTABLE MATERI,
3. ALL PLANT MATERIALS USED SHALL BE NURSERY STOCK AND SHALL
MATERIAL WHICH DIES OR DOES NOT SHOW HEALTHY APPEARANCE W
REQUIREMENTS AS THE ORIGINAL WARRANTIES TYPICALLY DO NOT COV
4. IF THE SOIL CONDITIONS ARE EXTREMELY SANDY, ALL TREES SHALL
MOISTURE RETENTION LAYER. THE PLANT PIT SIDEWALLS SHALL BE OVE
TOPSOIL MIXTURE SHALL BE USED TO BACKFILL. THE HOLE AS FOLLOE
GRANULAR HYDROGEL TO ABSORB AND RETAIN WATER.
5. PLANTING BEDS AND SAUCERS SHALL RECEIVE A 4" MINIMUM THICKI
6. PAVEMENT AND ROAD BASE MATERIAL ENCOUNTERED IN ANY LAWN
AMENDED SOIL INSTALLED AS SPECIFIED ABOVE.

Statistical Area Summary
Project: Project_1

| Label | Avg | Max | Min | Avg/Min | Max/Min |
|---------------------|------|-----|-----|---------|---------|
| SUMMARY INSIDE CURB | 1.21 | 2.8 | 0.2 | 6.05 | 14.00 |

| Luminaire Schedule | | Project: Project_1 | | Total Wgts | |
|--------------------|-----|--------------------|-------------|------------|---|
| Symbol | Qty | Label | Arrangement | Lumens LFL | Description |
| ■ | 5 | A | SINGLE | 14000 | 0.720 GB-PP-17S-MH-F-MT-BRZ-HSS / 45080-S11G-18-S-BRZ-4BC |
| ■ | 5 | B | SINGLE | 8500 | 0.720 GB-5-100-MH-F-MT-BRZ / 45080-S11G-18-PT-BRZ-4BC |
| | | | | | 215 |
| | | | | | 129 |

LANDSCAPE PLAN PREPARED FOR:

WENDY'S INTERNATIONAL, INC.
MAP 314; LOT 3-A, PORTLAND, MAINE

OWNER:

WARGATE ASSOCIATES
TWO CITY CENTER
PORTLAND, MAINE

KELL, INC.
LAND, ME 04101
D SURVEYORS
-0424

**Planning and Development Department
SUBDIVISION/SITE DEVELOPMENT**

COST ESTIMATE OF IMPROVEMENTS TO BE COVERED BY PERFORMANCE GUARANTEE

Date: July 11, 2005

Name of Project: **Dunkin' Donuts**

Address/Location: **597 Warren Avenue**

Developer: **Kimco Realty LLC**

Form of Performance Guarantee: **Letter of Credit**

Type of Development: Subdivision _____ Site Plan (Major/Minor) **Major**

TO BE FILLED OUT BY THE APPLICANT:

| Item | PUBLIC | | | PRIVATE | | |
|----------------------------|----------|-----------|----------|-----------|-----------|------------|
| | Quantity | Unit Cost | Subtotal | Quantity | Unit Cost | Subtotal |
| 1. STREET/SIDEWALK | | | | | | |
| Road/Parking Areas | — | | | 29,530 SF | | \$ 52,000 |
| Curbing | 80 LF | 25/LF | 2000 | 1550 LF | \$12/LF | 18,140 |
| Sidewalks | 2054 | 20 LF | 400 | 9354 | \$23/LF | 2,600 |
| Esplanades | — | | | — | | |
| Monuments | — | | | — | | |
| Street Lighting | — | | | — | | |
| Street Opening Repairs | — | | | — | | |
| Other | — | | | — | | |
| 2. EARTH WORK | | | | | | |
| Cut | — | | | 1.4 AC | 2300/AC | 3,700 |
| Fill | — | | | | | |
| 3. SANITARY SEWER | | | | | | |
| Manholes | — | | | — | | |
| Piping | — | | | 87 LF | 30/LF | 1700 (AVG) |
| Connections | — | | | 1 | 500 | 500 |
| Main Line Piping | — | | | — | | |
| House Sewer Service Piping | — | | | — | | |
| Pump Stations | — | | | 1 | 25,000 | 25,000 |
| Other | — | | | — | | |
| 4. WATER MAINS | | | | | | |
| 5. STORM DRAINAGE | | | | | | |
| Manholes | — | | | — | | |
| Catchbasins | — | | | 4 | 26,000/ea | 10,400 |
| Piping | — | | | 352 | \$41/LF | 14,290 |
| Detention Basin | — | | | 1 | 35,000/ea | 35,000 |
| Stormwater Quality Units | — | | | 1 | 20,000/ea | 20,000 |
| Other | — | | | — | | |

| | | | | | | |
|---|---------------|-------|-------|----------------|---------|---------|
| 6. SITE LIGHTING | _____ | _____ | _____ | 10 | 1200e | 12,000 |
| 7. EROSION CONTROL | _____ | _____ | _____ | _____ | _____ | _____ |
| Silt Fence | _____ | _____ | _____ | 540LF | \$5/LF | 2700 |
| Check Dams | _____ | _____ | _____ | _____ | _____ | _____ |
| Pipe Inlet/Outlet Protection | _____ | _____ | _____ | 856F | \$35/SF | 2975 |
| Level Lip Spreader | _____ | _____ | _____ | _____ | _____ | _____ |
| Slope Stabilization | _____ | _____ | _____ | 9404Y | \$9/6Y | 8460 |
| Geotextile | _____ | _____ | _____ | _____ | _____ | _____ |
| Hay Bale Barriers | _____ | _____ | _____ | _____ | _____ | _____ |
| Catch Basin Inlet Protection | _____ | _____ | _____ | 4 | \$70e | 80 |
| 8. RECREATION AND OPEN SPACE AMENITIES | _____ | _____ | _____ | _____ | _____ | _____ |
| 9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs) | _____ | _____ | _____ | SEE ATTACHED | | \$12036 |
| 10. MISCELLANEOUS | _____ | _____ | _____ | _____ | _____ | _____ |
| TOTAL: | _____ | _____ | _____ | _____ | _____ | _____ |
| GRAND TOTAL: | <u>\$2400</u> | | | <u>220,581</u> | | |

INSPECTION FEE (to be filled out by the City)

| | <u>PUBLIC</u> | <u>PRIVATE</u> | <u>TOTAL</u> |
|----------------------------|---------------|----------------|--------------|
| A: 2.0% of totals: | _____ | _____ | _____ |
| <u>or</u> | | | |
| B: Alternative Assessment: | _____ | _____ | _____ |
| Assessed by: | _____ | _____ | _____ |
| | (name) | (name) | |

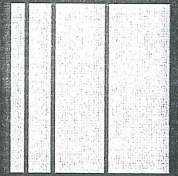
Landscaping Cost Estimate

Dunkin' Donuts

Warren Avenue

| SMB | Common Name | QTY | Size | Unit Cost Installed | Subtotal |
|--------------|----------------------|-----|---------|------------------------|-----------------|
| AR | Red Maple | 4 | 2" cal | \$660 | \$2,640 |
| FP | Cimmaron Ash | 2 | 6'-8' | \$160 | \$320 |
| SP | Tree Lilac | 3 | 5'-6' | \$108 | \$324 |
| FC | Forsythia | 9 | #3 | \$54 | \$486 |
| HC | Daylily | 85 | 4" pot | \$10 | \$850 |
| IVJ/S | Winterberry | 27 | 2'-3' | \$56 | \$1,512 |
| JS | Wichita Blue Juniper | 6 | #7 | \$210 | \$1,260 |
| JSH | Holger Juniper | 6 | #3 | \$54 | \$324 |
| PA | Dwarf Spruce | 24 | 18"-24" | \$120 | \$2,880 |
| TF | Arborvitae | 10 | 18"-24" | \$74 | \$740 |
| TM | Taunton Yew | 7 | 18"-24" | \$100 | \$700 |
| Total | | | | | \$12,036 |

Prepared July 2005, Plan Revision D 3/4/05



May 18, 2005
03461

Ms. Marge Schmuckal, Zoning Administrator
Planning and Development Department
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dunkin' Donuts, Warren Avenue, Sign Application

Dear Marge:

Attached is a sign application for the recently approved Dunkin' Donuts on Warren Avenue. As you are aware, we are proposing to co-locate the Dunkin' Donuts sign on the existing Wendy's pylon sign. We believe this arrangement will result in less visual clutter and help to unify the entrance. The two property owners have agreed to this, please see attached easement, I have also discussed this matter with Deb Andrews, who is familiar with the project and supports co-locating the signs.

After your review of the enclosed information, please contact me with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.



Jeffrey R. Perry
Senior Project Manager

JRP:jrp/dlf

Enclosures

cc Ed Wolak, Kimco Realty, LLC
Eben Adams, Pierce Atwood
Kandi Talbot, Planner


Signage/Awning Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

| | | |
|---|---|---|
| Location/Address of Construction: 601 WARREN AVE | | |
| Total Square Footage of Proposed Structure 64.75 | Square Footage of Lot 1.36 AC (59241.6 SF) | |
| Tax Assessor's Chart, Block & Lot Chart# 314 Block# A Lot# 7 | Owner: KIMCO REALTY LLC | Telephone: 797-7600 |
| Lessee/Buyer's Name (If Applicable) N/A | Applicant name, address & telephone: KIMCO REALTY LLC 65 GRAY RD BOX 4 FALMOUTH, ME 04105 | Total s.f. of signage x \$2.00 per s.f. plus \$30.00/\$65.00 for H.D. signage = Total Fee: \$ <u>159.50</u> Awning Fee = Cost Of Work: \$ _____ Total Fee: \$ _____ |
| Current use: <u>VACANT</u> | | |
| If the location is currently vacant, what was prior use: <u>ACCESS TO ADJACENT RADIO STN.</u> | | |
| Approximately how long has it been vacant: <u>OVER 10 YEARS.</u> | | |
| Proposed use: <u>DUNKIN' DONUTS RESTAURANT</u> | | |
| Project description: <u>1800 SF BLDG w/ DRIVE-THRU & PARKING FOR 29 VEHICLES.</u> | | |
| Contractor's name, address & telephone: | | |
| Whom should we contact when the permit is ready: <u>DAVID HUNTS</u> | | |
| Mailing address: <u>654 COUNTY RD ACTON, ME 04601 (207) 471-2956</u> | | |
| We will contact you by phone when the permit is ready. You must come in and pick up the permit and review the requirements before starting any work, with a Plan Reviewer. A STOP WORK ORDER will be issued and a \$100.00 fee if any work starts before the permit is picked up. PHONE: | | |

IF THE REQUIRED INFORMATION IS NOT INCLUDED IN THE SUBMISSIONS THE PERMIT WILL BE AUTOMATICALLY DENIED AT THE DISCRETION OF THE BUILDING/PLANNING DEPARTMENT. WE MAY REQUIRE ADDITIONAL INFORMATION IN ORDER TO APPROVE THIS PERMIT.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

| | | |
|---|---|----------------------|
| Signature of applicant:  | JEFFREY R. PERRY ALBERT NEHALO TECHNICS | Date: <u>5/13/15</u> |
|---|---|----------------------|

This is NOT a permit, you may not commence ANY work until the permit is issued.

SIGNAGE/AWNING PRE-APPLICATION QUESTIONNAIRE

PLEASE COMPLETE ALL INFORMATION

ADDRESS: 601 WARDEN AVENUE ZONE: B4

CBL: 314 A 7

SINGLE TENANT LOT? YES NO MULTI TENANT LOT? YES NO

MORE THAN ONE SIGN TOTAL WITH PROPOSED SIGN? YES NO

TENANT/ALLOCATED BUILDING SPACE FRONTAGE (FEET):

Length: 30' Height: 17'-6"

INFORMATION ON PROPOSED SIGN(S):

FREESTANDING (e.g., pole) SIGN? YES NO DIMENSIONS PROPOSED: 9'-3" x 7'

BLDG. WALL SIGN? (attached to bldg) YES NO DIMENSIONS PROPOSED: _____

INFORMATION ON ALREADY EXISTING AND PERMITTED SIGN(S):

FREESTANDING (e.g., pole) SIGN? YES NO DIMENSIONS: 9' x 10'-6"

BLDG. WALL SIGN(attached to bldg) ? YES NO DIMENSIONS: _____

AWNING? YES NO DIMENSIONS: _____

LOT FRONTAGE (FEET): _____

AWNING YES NO IS AWNING BACKLIT? YES NO

HEIGHT OF AWNING: _____ LENGTH OF AWNING: _____ DEPTH: _____

IS THERE ANY COMMUNICATION, MESSAGE, TRADEMARK OR SYMBOL ON IT? YES NO

IF YES, TOTAL S.F. OF PANELS WITH COMMUNICATIONS/MESSAGE/TRADEMARK/SYMBOL? _____ s.f.

A SITE SKETCH AND BUILDING SKETCH SHOWING EXACTLY WHERE EXISTING AND NEW SIGNAGE IS LOCATED MUST BE PROVIDED. SKETCHES AND/OR PICTURES OF PROPOSED SIGNAGE ARE ALSO REQUIRED.

SIGNATURE OF APPLICANT: [Signature] AGENT DATE: 5/13/15

***** FOR OFFICE USE ONLY *****

CHECKLIST FOR SIGN/AWNING APPLICATION

Applicants for a sign or awning permit are required to submit the following information to the Code Enforcement Office at the time of application:

- _____ Certificate of Liability listing the City as additional insured if any portion of the sign abuts or encroaches on any public right of way, or can fall into any public right of way. Amount must equal \$400,000.00.
- N/A _____ Letter of permission from the owner indicating the permissions granted and the tenant/space building frontage.
- ✓ _____ A sketch plan of lot, indicating location of buildings, driveways, and any abutting streets or rights of way, lengths of building frontages, street frontages, and all existing setbacks. **Indicate on the plan all existing and proposed signs with their dimensions and specific locations. Be sure to include distance from the ground and building facade dimensions for any signage attached to a building.**
- ✓ _____ A sketch or photo of any proposed sign(s) indicating *content, dimensions, materials, source of illumination, and construction method, as well as specifics of installation/attachment.*
- N/A _____ Certificate of Flammability required for awning or canopy at time of application.
- ✓ _____ UL# required for lighted signs at the time of Final Inspection. Failure to provide this information will invalidate the Sign Permit.
- ✓ _____ Pre-Application Questionnaire completed and attached. Photos of existing signage attached.

**Permit Fee for signage or awning-with-signage:
\$30.00 plus \$2.00 per square foot of sign.**

**Permit Fee for awning-without-signage is based on cost of work:
\$30.00 for the first \$1,000.00, plus \$9.00 for each additional \$1,000.00.**

Base Application Fee for any Historic District signage is \$65.00 instead of \$30.00

Att. 19

From: Marge Schmuckal
To: Kandi Talbot
Date: 03/16/2005 4:28:56 PM
Subject: 597 Warren Ave - Dunkin' Donuts

Kandi,

I've reviewed the most recent plans submitted for final review. All B-4 zoning requirements are being met for the structure.

You also dropped off plans for signage on 3/16/05. They are not meeting the signage requirements. Currently they are showing an off premise pole sign. They are apparently proposing to share a sign with Wendy's. The City of Portland does not allow off premise signs. The proposed signage on that shared sign is just over the maximum of 65 square feet.

The B-4 zone only allows one sign per street frontage plus one extra or two signs. The building plans are showing three signs which is one sign over the allowable under the sign ordinance.

Marge

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/23/2005

PRODUCER (207)774-6257 FAX (207)774-2994
Clark Associates
2385 Congress Street
P O Box 3543
Portland, ME 04104

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED KIMCO Realty, LLC
65 West Gray Road-Unit 4
W. Falmouth, ME 04105

INSURER A: Peerless Ins Co

24198

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR ADD'L LTR INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|----------------------|--|---------------|----------------------------------|-----------------------------------|--|
| A | GENERAL LIABILITY | CBP9910356 | 12/16/2004 | 12/16/2005 | EACH OCCURRENCE \$ 1,000,000 |
| | <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 |
| | <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR | | | | MED EXP (Any one person) \$ 1,000 |
| | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | GENERAL AGGREGATE \$ 1,000,000 |
| | | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | | | | | GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |
| | AUTOMOBILE LIABILITY | | | | COMBINED SINGLE LIMIT (Ea accident) \$ |
| | <input type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) \$ |
| | <input type="checkbox"/> SCHEDULED AUTOS | | | | PROPERTY DAMAGE (Per accident) \$ |
| | <input type="checkbox"/> HIRED AUTOS | | | | |
| | <input type="checkbox"/> NON-OWNED AUTOS | | | | |
| | GARAGE LIABILITY | | | | AUTO ONLY - EA ACCIDENT \$ |
| | <input type="checkbox"/> ANY AUTO | | | | OTHER THAN EA ACC \$ |
| | | | | | AUTO ONLY: AGG \$ |
| | EXCESS/UMBRELLA LIABILITY | | | | EACH OCCURRENCE \$ |
| | <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE | | | | AGGREGATE \$ |
| | | | | | \$ |
| | <input type="checkbox"/> DEDUCTIBLE | | | | \$ |
| | <input type="checkbox"/> RETENTION \$ | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | WC STATU-TORY LIMITS OTH-ER |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | | | | E.L. EACH ACCIDENT \$ |
| | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | OTHER | | | | E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Certificate holder is named as additional insured, but only for claims arising out of the negligence of the named insured.

CERTIFICATE HOLDER

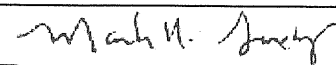
CANCELLATION

City of Portland
389 Congress St.
Portland, ME 04104

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Mark Saxby/BLM



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

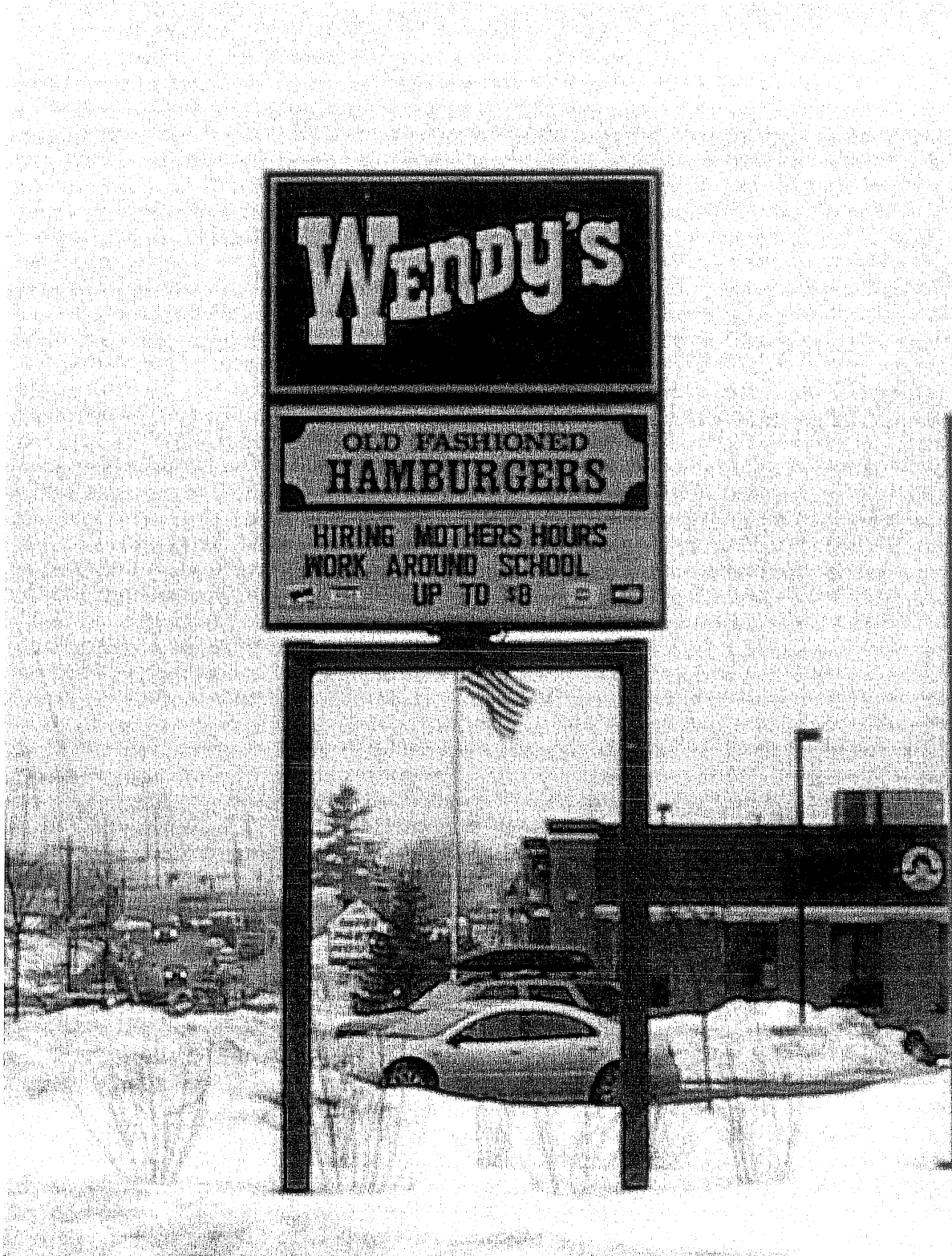
Additional Coverages and Factors

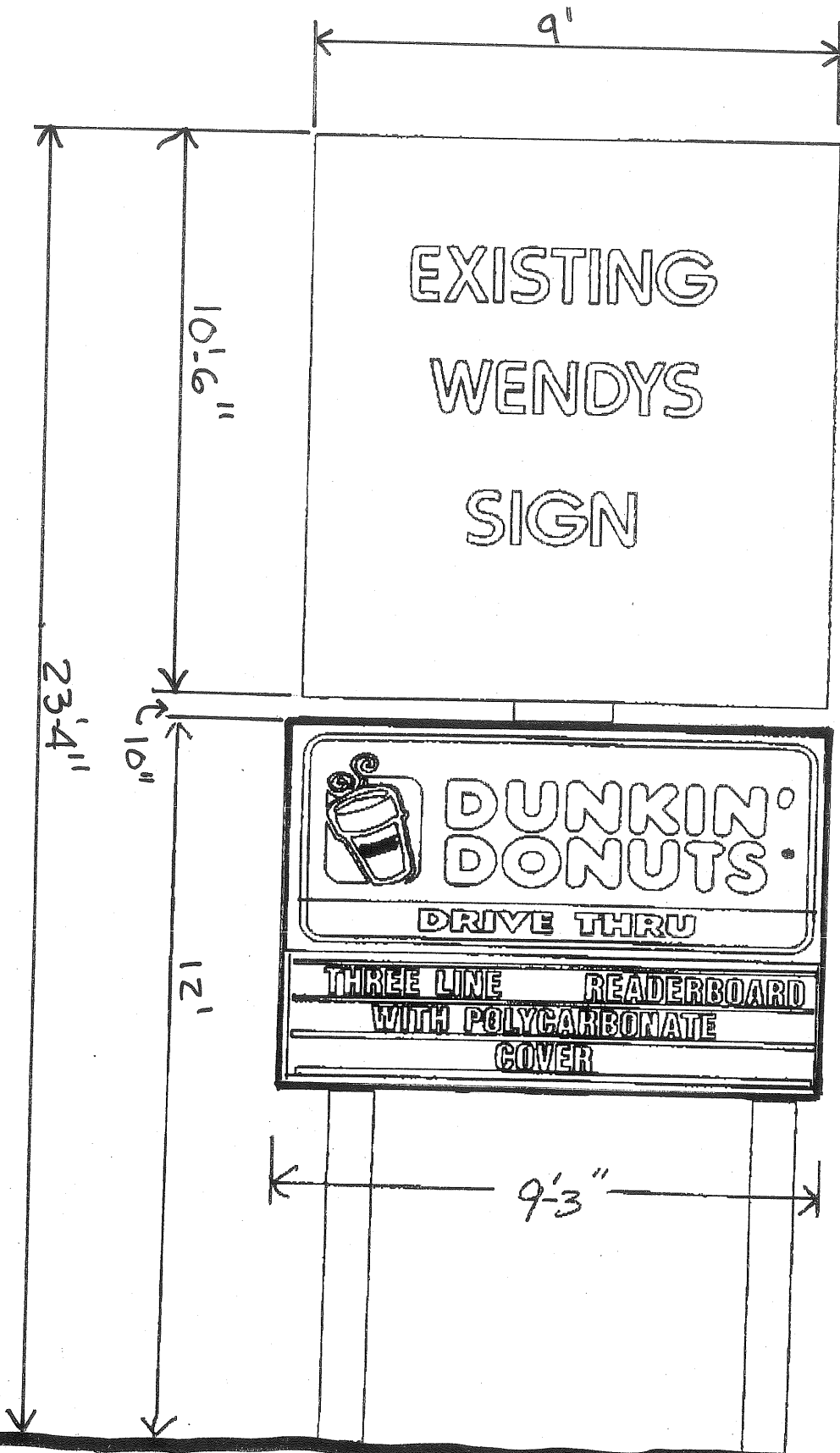
01/06/2005

Line of Business Coverages for General Liability

| Coverage | Limits | Ded/Ded Type | Rate | Premium | Factor |
|-------------------------------------|-----------|--------------|------|---------|--------|
| General Aggregate | 1,000,000 | | | | |
| Products/Completed Ops Aggregate | 2,000,000 | | | | |
| Personal & Advertising Injury | 1,000,000 | | | | |
| Each Occurrence | 1,000,000 | | | | |
| Fire Damage | 50,000 | | | | |
| Medical Expense | 1,000 | | | | |

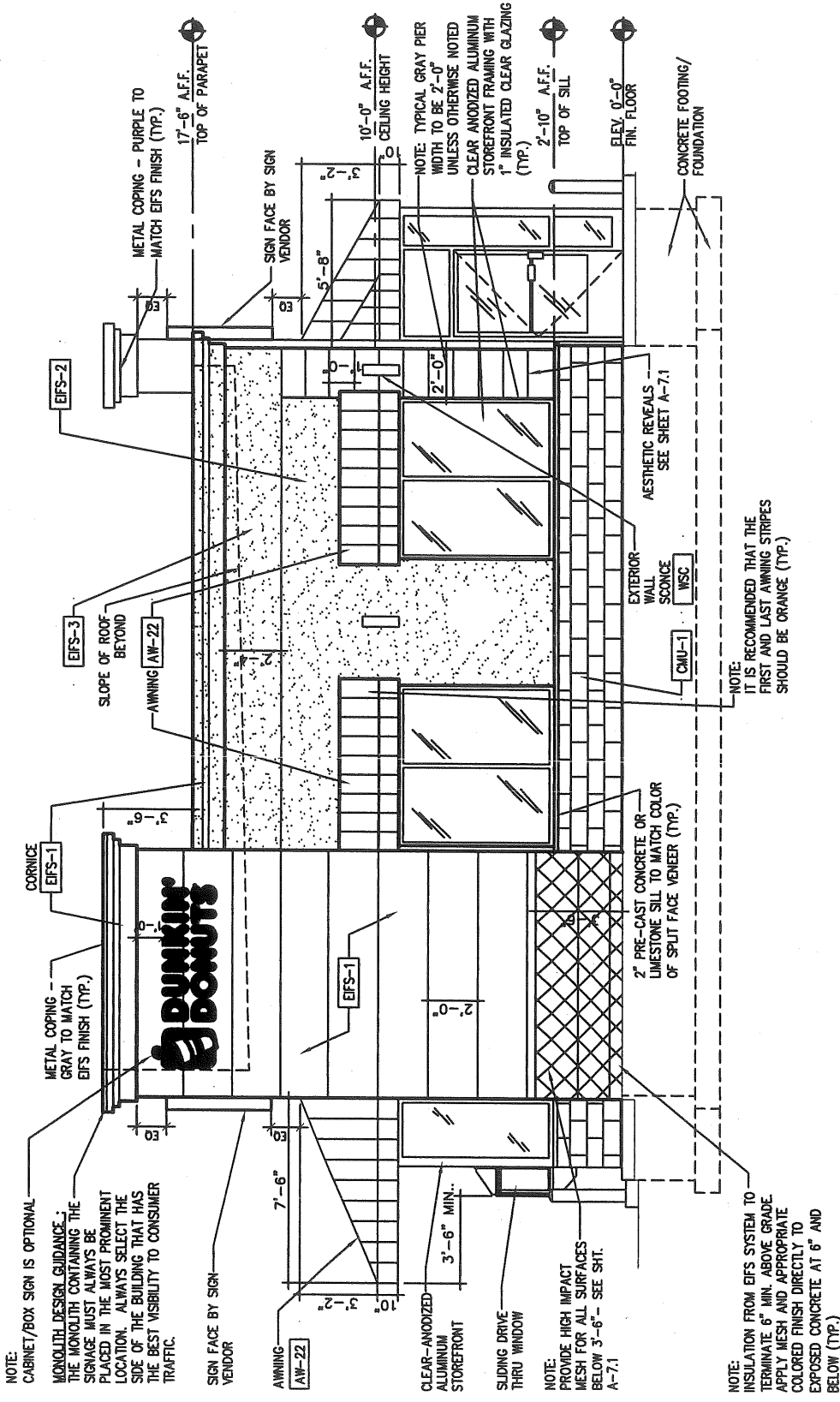
EXISTING SIGN





Proposed
Sign Area
= 64.75 SF

DASCO SIGNS
654 County Road
Acton, ME 04001
(207) 477-2958



NOTE:
 CABINET/BOX SIGN IS OPTIONAL
 MONOLITH DESIGN GUIDANCE:
 THE MONOLITH CONTAINING THE
 SIGNAGE MUST ALWAYS BE
 PLACED IN THE MOST PROMINENT
 LOCATION. ALWAYS SELECT THE
 SIDE OF THE BUILDING THAT HAS
 THE BEST VISIBILITY TO CONSUMER
 TRAFFIC.

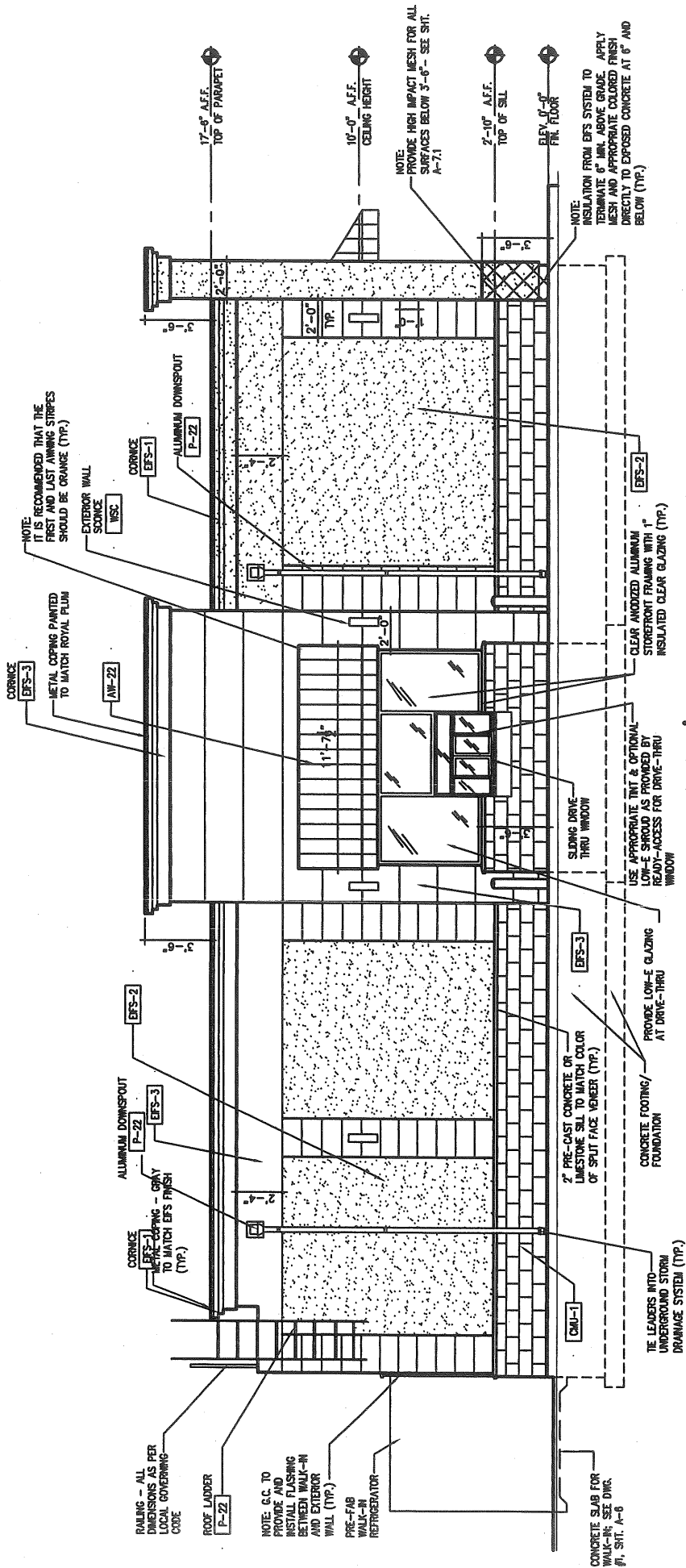
NOTE:
 PROVIDE HIGH IMPACT
 MESH FOR ALL SURFACES
 BELOW 3'-6"- SEE SHT.
 A-7.1

NOTE:
 INSULATION FROM EFS SYSTEM TO
 TERMINATE 6" MIN. ABOVE GRADE.
 APPLY MESH AND APPROPRIATE
 COLORED FINISH DIRECTLY TO
 EXPOSED CONCRETE AT 6" AND
 BELOW (TYP.)

NOTE:
 IT IS RECOMMENDED THAT THE
 FIRST AND LAST AWNING STRIPES
 SHOULD BE ORANGE (TYP.)

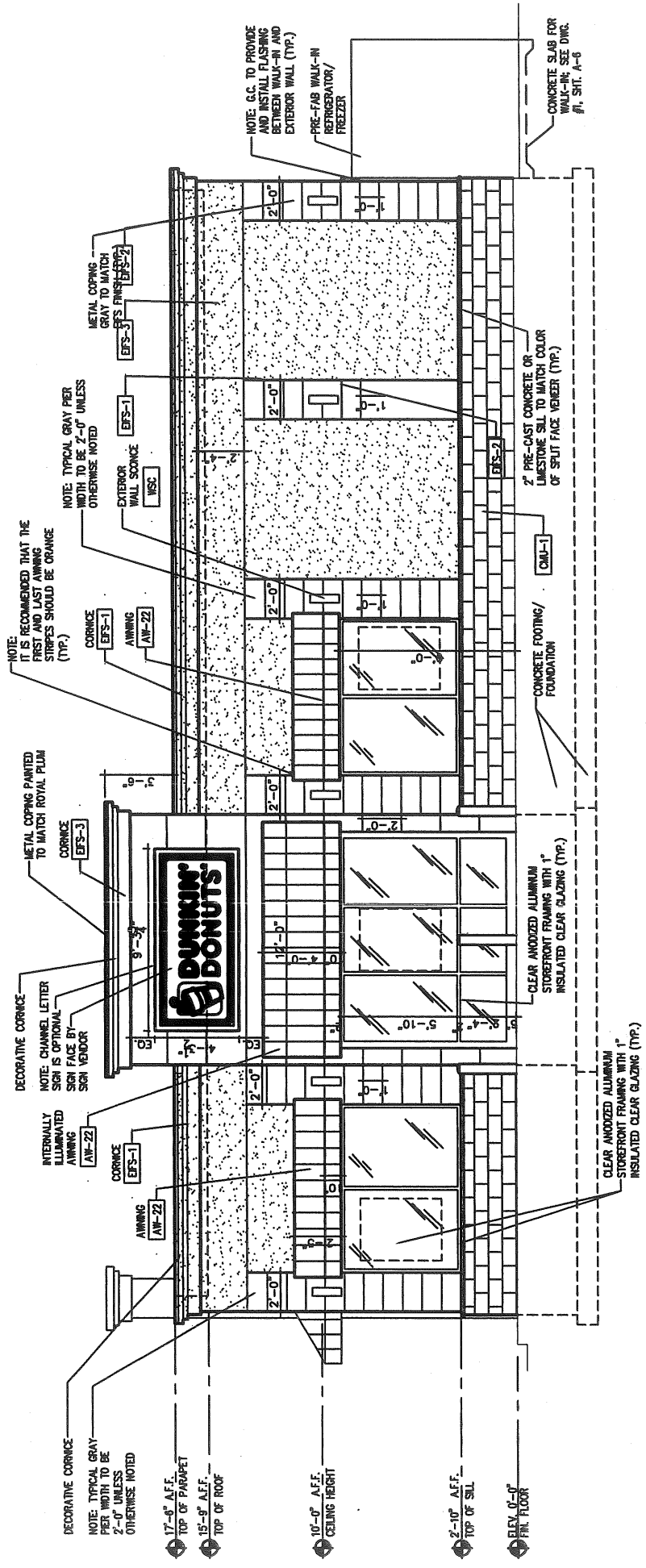
WARREN ELEVATION

N.T.S.



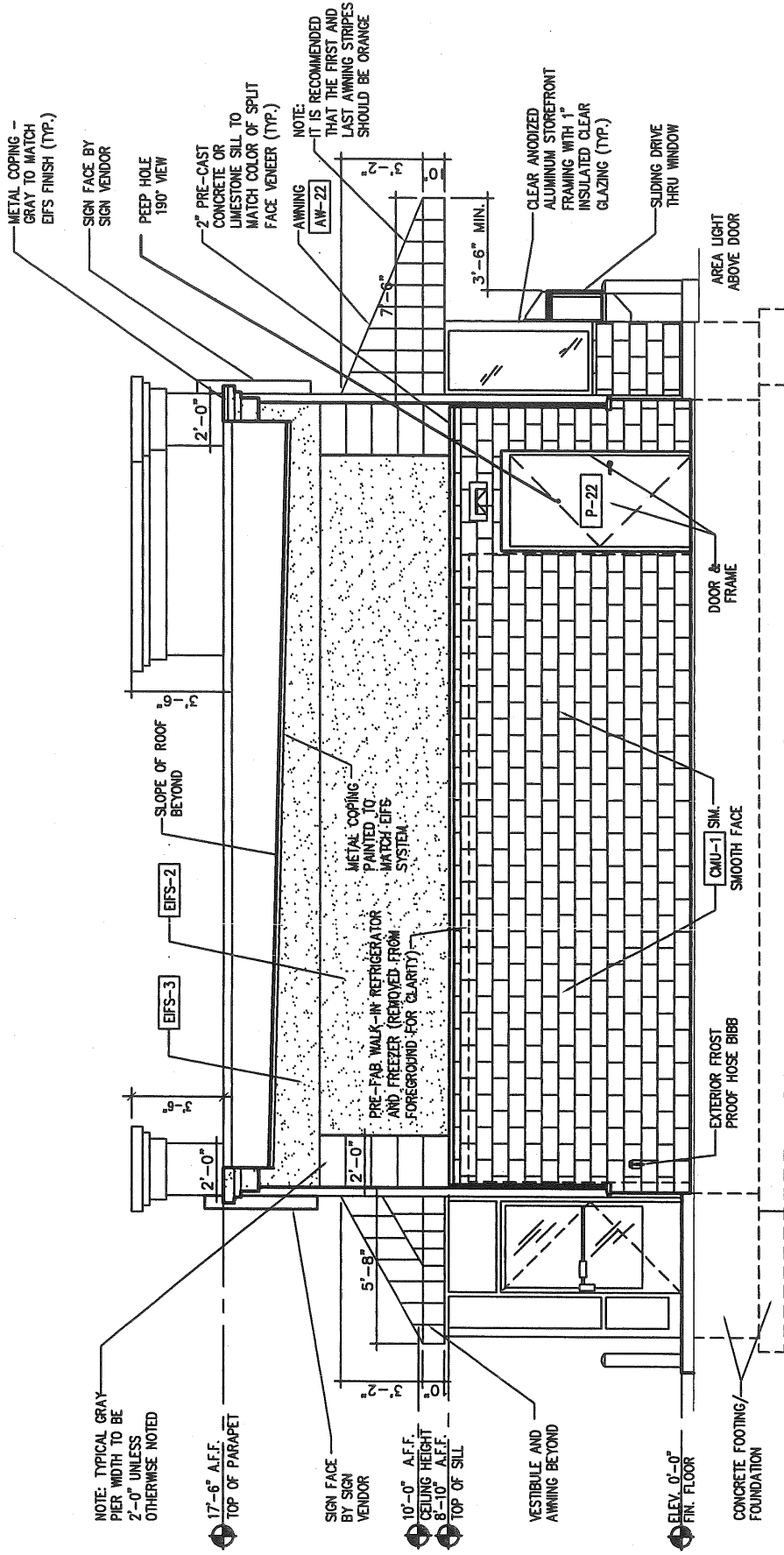
WENDY'S ELEVATION

N.T.S.



MAINE TURNPIKE ELEVATION

N.T.S.



REAR ELEVATION

N.T.S

18956-1

CORRECTIVE QUITCLAIM DEED
(Maine Statutory Short Form)

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 by and between Grantor and Grantee, dated September 24, 2002, and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road Construction, Maintenance and Easement Agreement between Grantor and Grantee of even or near date and 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 October 30, 2001, and revised through December 2, 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 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 September 24, 2002, 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 by and between Grantor and Grantee, dated September 24, 2002, and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road Construction, Maintenance and Easement Agreement between Grantor and Grantee of even or near date and 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 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.

The purpose of this corrective deed is as follows: There were erroneous City of Portland tax map and lot references contained in the labeling of easement areas set forth 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, as revised through September 12, 2002. The opening paragraphs of Exhibits C, D, and E to that certain deed from Grantor to Grantee dated September 24, 2002 and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 171, described various easement areas by reference to said plan and thereby perpetuated the erroneous tax map and lot references contained in the labeling of the easement areas on said plan. Said ALTA/ACSM Land Title Survey has been amended by revision dated December 2, 2002, to correct the tax map and lot references contained in the labeling of the easement areas and the City of Portland has requested that the

Grantor execute this corrective deed so that the Exhibits hereto will conform to said revised plan.

IN WITNESS WHEREOF, each Grantor has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this 27 day of February 2003.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]

OLDER BROTHER LLC

By: [Signature]
Joseph F. Boulos
Its Manager

[Signature]

YOUNGER BROTHER LLC

By: [Signature]
Gregory W. Boulos
Its Manager

STATE OF MAINE
County of Cumberland, SS.

February 27, 2003

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,

[Signature]
Notary Public/Maine Attorney-at-Law
Printed Name: Janna A. Merritt

SEAL

STATE OF MAINE
County of Cumberland, SS.

February 24, 2003

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,

[Signature]
Notary Public/Maine Attorney-at-Law
Printed Name: PAUL D. PIETROPAOLI

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 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.

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.

Received
Recorded Register of Deeds
Mar 03 2003 01:58:59P
Cumberland County
John B. D Erien



STATE OF MAINE
17 State House Station
Augusta, ME 04333

IN THE MATTER OF

KIMCO REALTY LLC
Portland, Cumberland County
DUNKIN DONUTS
L-22274-TB-A-N (approval)

) NATURAL RESOURCES PROTECTION ACT
) FRESHWATER WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Project Description: The applicant proposes to alter 5,390 square feet of scrub-shrub wetland to support development of a donut shop to be constructed at 597 Warren Avenue in the City of Portland. The project site is a 1.37 acre parcel consisting of an undeveloped grassed field with wetland areas along the northern property line. The project site abuts an existing Wendy's restaurant to the west. Construction of the existing stormwater detention serving the Wendy's restaurant impacted 3,745 square feet of wetland. The applicant proposes to enlarge this detention basin to provide detention storage for stormwater generated by both the existing restaurant and the proposed donut shop. Cumulative wetland impacts for the sites will total 9,135 square feet. The project is shown on a set of plans entitled, "Dunkin' Donuts - Warren Avenue", drawn by Sebago Technics, dated July 14, 2004 as last revised March 4, 2005.

| | |
|----------------------|--|
| Permit for: | <input checked="" type="checkbox"/> Tier 1 |
| DEP Decision: | <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied (see attached letter) |
| CORPS Action: | <input checked="" type="checkbox"/> The Corps has been notified of your application. The following are subject to Federal screening: (1) projects with previously authorized or unauthorized work, in combination with a Tier 1 permit for a single and complete project, which total more than 15,000 square feet of altered area; (2) projects with multiple state permits and/or state exemptions which apply to a single and complete project that total more than 15,000 square feet of altered area; and (3) projects that may impact a vernal pool, as determined by the State of Maine or the Corps. If your activity is listed above, <i>Corps approval is required for your project.</i> For information regarding the status of your application contact the Corps' Maine Project Office at 623-8367. |

Standard Conditions:

- 1) If construction or operation of the activity is not begun within two (2) years from the date signed, this permit shall lapse and the applicant shall reapply to the Department for a new permit. This permit is transferable only with prior approval from the Department. If the activity is associated with a larger project, starting any aspect of that project constitutes start of construction.
- 2) The project shall be completed according to the plans in the application. Any change in the project plans must be reviewed and approved by the Department.
- 3) Properly installed erosion control measures shall be installed prior to beginning the project, and all disturbed soil should be stabilized immediately upon project completion.
- 4) A copy of this approval will be sent to the City of Portland. Department approval of your activity does not supersede or substitute the need for any necessary local approvals.

Please note the attached sheet for guidance on appeal procedures.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.


DAWN R. GALLAGHER, COMMISSIONER

4/13/05 DATE

Date of initial application March 14, 2005
Date application accepted for processing March 28, 2005
Date filed with Board of Environmental Protection
WB/ATS#/54429/L222274AN

received
4-20-05
SEBAGO TECHNICS

FILED
APR 19 2005
BOARD OF ENVIRONMENTAL PROT.
STATE OF MAINE

NATURAL RESOURCE PROTECTION ACT (NRPA)
STANDARD CONDITIONS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Revised (4/92)

DEP LW0428



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error*. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge*. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought*. This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

Memorandum
Department of Planning and Development
Planning Division

*Need to amend Wendy's site plan.
- detention pond,
Need better signage
square footage #s -
inconsistent
trips regarding*



- wetland - nonjurisdiction of site

To: Chair Delogu and Members of the Portland Planning Board
From: Sarah Hopkins, Development Review Services Manager
Date: January 21, 2005
Re: January 25, 2005 Planning Board Workshop
Dunkin Donuts, 597 Warren Avenue
Kimco Realty, LLC, Applicant

*Robert
Harris
- potential for
accidents w/
naking customers
go thru plug lot 2x*

Introduction

We have scheduled a workshop for the Dunkin Donuts project on Warren Avenue in order to update the Planning Board on progress and amendments made since the last workshop in August of last year.

Kimco Realty, LLC has requested site plan approval for a 2,480 sq. ft. Dunkin Donuts building with drive-through, to be located on the northern side of Warren Avenue, adjacent to Wendy's and to the west of the Maine Turnpike. The site is 1.36 acres and zoned B-4.

This development is a minor site plan, however because of the number of traffic trips, the Board will be reviewing this project under local delegated review authority for a MDOT Traffic Movement Permit.

Access/Circulation

The applicant has revised the circulation pattern based on comments received from the Planning Board and City Traffic Engineer. Also, negotiations with an abutter to the north have ceased, requiring some changes to the plan as well.

Access to the site will be from Warren Avenue, where a curb cut currently exists. To the north of this property, is property owned by Fuller-Jeffrey Radio of Maine, Inc. The radio property has an access easement over the Dunkin Donuts property. As part of the Wendy's project, which abuts this site, an easement was granted over the Wendy's property to allow traffic to exit through their drive to the west of this site.

Vehicles for Dunkin Donuts, Wendy's, and the Radio property will access through one curb cut on Warren Avenue. Dunkin Donuts and the radio property patrons will drive through the Dunkin Donuts parking lot.

To exit the site, Dunkin Donuts customers who parked, Dunkin Donuts customers who used the driveway, and the radio property patrons will exit through a proposed lane, which will be located to the north of Wendy's drive-through lane, and exit out Wendy's drive to the west of the site. The previous plan had provided an option for vehicles to also exit directly on to Warren Avenue from the main entrance.

The Traffic Engineer has reviewed the amended circulation plan and found the design to be acceptable.

As indicated previously, the Board will be reviewing this project under local delegated review authority for a MDOT Traffic Movement Permit. This development qualifies for MDOT review because the projected site traffic demand exceeds 100 passenger car equivalents at peak hours. The proposed development is forecast to generate 330 AM and 90 PM peak hour trips.

Since the last workshop, the applicant has held a scoping meeting with the City Traffic Engineer and has submitted a traffic study based on the scope prescribed.

Three points that Mr. Errico has made in reviewing the plan and traffic study are:

- There appears to be the potential to narrow the curb opening width for the entry drive;
- Dunkin Donuts customers should come to a full stop before entering the Wendy's exit lane (This change has been made to the plan.);
- The applicant will be required to make a contribution of \$30,000 to assist in mitigation of problems at the Warren/Riverside intersection.

Mr. Errico's memo is included as Attachment 12.

The applicant is proposing 28 parking spaces for the development. The Zoning Administrator is currently reviewing the site plan.

Utilities

The applicant proposes to tie into existing utility lines in Warren Avenue. These utilities include municipal water, sanitary sewer, underground electric, and gas. Capacity letters shall be submitted to staff prior to public hearing.

The applicant proposes a sanitary force main connection into the existing system in Warren Avenue. However, the existing sanitary sewer in Warren Avenue is a "private" force main system. Therefore, the applicant will need to provide an agreement with the owner of the force main system to make a connection into this sanitary sewer system.

Drainage

The proposed development consists of the construction of a 2,480 sq. ft. drive-through donut shop building and associated parking, traffic circulation, and landscaping improvements. An existing detention basin is located at the northwest corner of the site. This detention basin was constructed as part of the Wendy's restaurant development and is located within an easement of the Dunkin Donuts project site. A stormwater management plan has been submitted and is included as Attachment 2.

The stormwater management system for the new building includes a closed drainage system that will collect runoff from the developed area and convey it to the existing detention basin. The existing detention basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development.

The Development Review Coordinator has reviewed the stormwater management plan and has concerns regarding the potential increases to the basin size; design plans for the detention basin and erosion control measures. The Development Review Coordinator's memo is included as Attachment 10.

The applicant is proposing a downstream defender treatment tank to treat the stormwater prior to entering the detention basin.

Lighting

Lighting proposed for the site are eight (8) 175-watt metal halide pole fixtures mounted at a 20 ft. height. The applicant is also proposing wall-mounted fixtures on the proposed building. Catalogue cuts of the lighting and a photometric plan shall be submitted to determine if the City's lighting standards will be met.

Landscaping

The applicant is proposing eight (8) trees around the site. The trees will include Kwanzan Cherry and Greenspire Littleleaf Linden. The applicant is also proposing a number of shrubs along the front of the building elevation facing Warren Avenue and along the easterly property line.

The City Arborist has reviewed the plans and is recommending that the applicant change some of the Cherry trees and Linden trees to "Karpick" Red Maple, Ash, Hawthorne and Lilac. The City Arborist is also recommending that two Austrian Pine or Serbian Spruce be installed at the ends of the northerly parking spaces.

Building Design

The applicant is proposing a 2,480 sq. ft. drive-through donut shop building. The proposed facades will consist of EIFS and Block Veneer. The easterly and westerly elevations are proposed with a large amount of blank space. The applicant should explore the possibility of adding additional fenestration or detail to break up the blank space. Elevations are included as Attachment 15.

Fire

The Fire Department has reviewed and approved the proposed plans.

Easements

There are a number of existing easement across the property, including:

1. A drainage easement for the construction of a detention basin serving the Wendy's site.
2. A 20 ft. wide Portland Water District easement.
3. Access easements with abutters Fuller-Jeffrey Radio of Maine Inc. and Wendy's.
4. Radial Field easement to abutters Fuller-Jeffrey Radio of Maine Inc.

Wetlands

The applicant is proposing some filling of wetlands on the site, however it will be less than 4,300 sq. ft. of wetlands, which is the threshold for permitting.

Items To Be Resolved Prior to Public Hearing

1. resolution of stormwater concerns
2. Traffic Engineer's comments: curbcut width and \$30,000 contribution
3. utility capacity letters
4. lighting catalog cuts and photometric
6. landscaping amendments
7. building design improvements
8. neighborhood meeting
9. submission of easement language

10. signage plan

11. amended Wendy's plan

12. \$30,000 need formula. —

13. wetland nonjurisdiction

14. crosswalks

cost of improvement broken down, assessed for various projects

Attachments

1. Applicant's Submittal Letter dated June 14, 2004
2. Stormwater Management Report
3. Financial Capability Letter
4. Technical Capability Letter
5. Right, Title and Interest
6. Traffic Study (new)
7. Fire Department Approval dated June 16, 2004
8. CMP Capacity Letter
9. Letter to Applicant from Planning Staff dated July 2, 2004
10. DRC's Memo dated July 15, 2004
11. Wildlife Habitats Assessment
12. Traffic Engineer's Memo dated January 20, 2005 (new)
13. Scoping Meeting Notes
14. Revised Site Plan (new)
15. Elevations

June 14, 2004
03461

Ms. Sarah Hopkins
Development Review Services Coordinator
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

Minor Site Plan Application
Dunkin' Donuts, 597 Warren Avenue

Dear Sarah:

On behalf of Kimco Realty, LLC, Sebago Technics has prepared the attached minor site plan application for the proposed development of a Dunkin' Donuts restaurant at 597 Warren Avenue. A sketch plan was submitted for the project for preliminary review in April of this year. The attached plans reflect revisions made to address preliminary comments from your sketch plan review. The proposed project involves the development of the property shown on the City of Portland Tax Map 314, Block A as Lot 7 and is located in the B-4 Zone. The property is under contract from the record property owner, Older Brother LLC and Younger Brother LLC (c/o CB Richard Ellis-Boulos Property Management) to the applicant. The total estimated cost of the proposed development is \$1,000,000.00.

The following narrative is provided to address the requirements for site plan applications outlined in the City Site Plan Review Ordinance. Appropriate exhibits are attached as indicated.

1. Existing Conditions and Proposed Uses

The site is currently vacant. When the adjacent Wendy's was developed, a curb cut to Warren Avenue was created to serve both their lot as well as the subject property. A paved drive over the site provides access to the adjacent property (N/F Fuller-Jeffrey Radio of Maine). Topography is generally level with the majority of the site draining to the rear. Vegetation is a mix of low scrub and grasses. The property is serviced by electricity, gas, water and sewer.

The site is currently under contract for development of a Dunkin' Donuts restaurant franchise. The building will seat 24 and have a drive-up window. Other site improvements will include paved parking, sidewalks, landscaping, lighting and stormwater management.

Granite curbing is shown at the existing access from Warren Avenue. Curbing will transition to bituminous on site. A bituminous sidewalk is proposed across the front of the site as well as connecting to the building.

Our review of the performance standards for restaurants (one parking space per 150 square feet of floor area not used for bulk storage or food preparation: 914 SF/150) indicates that seven parking spaces are required. Twenty seven (27) spaces and a drive-up queue of seven vehicles are proposed.

2. **Land Areas**

The total land area of the parcel is 1.36 acres.

3. **Easements**

Existing easements across the property include:

- A drainage easement for the construction of a detention basin servicing the Wendy's site.
- 20' wide Portland Water District easement.
- Access easements with abutters Fuller-Jeffrey Radio of Maine Inc. and Wendy's.
- Radial Field easement to abutters (N/F Fuller-Jeffrey Radio of Maine, Inc.).

There are no new easements proposed.

4. **Solid Waste**

The proposed use of the property is a Dunkin' Donuts restaurant franchise. It is anticipated that the site will generate solid waste typical of a retail franchise. Solid waste disposal will be handled by a dumpster. Solid waste disposal will be contracted with a private hauler.

5. **Availability of Off-Site Facilities**

The proposed building will have access to municipal water, sanitary sewer, overhead electric utility, and gas.

Utility capacity letters are pending.

The project site has frontage on Warren Avenue where an existing curb cut was constructed when the Wendy's site was developed. Vehicles will enter the site from this curb cut and will exit via Wendy's existing exit lane.

6. **Stormwater Management**

Stormwater will be directed to a detention basin at the rear of the site. When the Wendy's site was developed, a detention basin was constructed to service their development. We are proposing to modify the basin and outfall to service both properties. Please refer to the attached Stormwater Narrative Report.

An erosion and sediment control plan has been prepared for the project for implementation during construction. This plan has been placed directly on the design drawings.

7. **Construction Plan**

The erosion and sediment control plan included on the project design plans includes a proposed schedule of construction for the project.

8. **Regulatory Approvals**

The project is forecast to generate over 100 peak hour trips and, as such, a Traffic Movement Permit from MDOT will be required. We anticipate less than 4,300 square feet of wetlands (the threshold for permitting) will be impacted by this development; therefore, no freshwater wetland alteration permit will be required.

9. **Financial and Technical Capability**

A letter from the applicant's lender is attached providing evidence of the applicant's financial capacity to complete the project.

The applicant has contracted with Sebago Technics, Inc. to provide site and landscaping design and permitting services. This firm has worked extensively in the City of Portland designing similar projects. Architectural services are provided by New England Design of Barnstable, Massachusetts.

10. **Right, Title and Interest**

A copy of the Purchase and Sale Agreement is attached providing evidence of right, title and interest in the property.

11. **Unusual Natural Areas, Wildlife and Fisheries Habitats, and Archeological Sites**

There are no known or reported, unusual natural areas of wildlife, fisheries habitats or archaeological sites on or adjacent to the site.

Requests for determinations concerning the above have been sent to the Department of Inland Fisheries and the Maine Historic Preservation Commission. Upon receipt, these determination letters will be forwarded to the City.

Ms. Hopkins

-4-

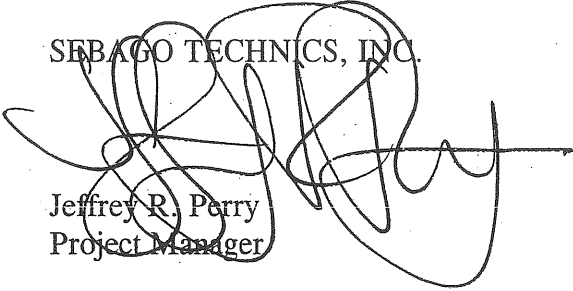
June 14, 2004

10

We appreciate your input on our previous sketch plan submittal and look forward to presenting this material in greater detail in Workshop with the Planning Board. After your review of the enclosed information, please call me if you have questions or require additional information.

Sincerely,

SEBAGO TECHNICS, INC.



Jeffrey R. Perry
Project Manager

JRP:jrp/jc
Enc.

cc: Ed Wolak, Kimco Realty LLC
Eben Adams, Pierce Atwood

STORMWATER MANAGEMENT REPORT

OCT 11 2004

Dunkin' Donuts
597 Warren Avenue
Portland, Maine

General

This stormwater management report has been prepared to present the results of an evaluation of the stormwater drainage and erosion control for the proposed Dunkin' Donuts development at 597 Warren Avenue in Portland. The project site is located on the north side of Warren Avenue, approximately 1,000 feet east of the Riverside Street intersection. The majority of the property is currently an undeveloped grass field. Frontage for the proposed project is located entirely on existing paved public roadways. There is an existing paved driveway entrance at the southern end of the site, that provides access the abutting Wendy's Restaurant site to the west, and a paved drive along the eastern property line, providing access a neighboring office building to the east. An existing detention basin is located at the northwest corner of the site. This detention basin was constructed as part of the Wendy's Restaurant development and is located within an easement of the Dunkin' Donuts project site.

The proposed development consists of the construction of a 2,480 s.f. drive through donut shop building and associated parking, traffic circulation and landscaping improvements. The existing detention basin will be enlarged to provide detention storage for stormwater runoff generated from both the existing Wendy's site and the proposed Dunkin' Donuts project sites.

The site is located within the Presumpscot River Watershed, which is not listed as a watershed most at risk from new development by the Maine Department of Environmental Protection. The proposed development will create approximately 0.58 acres of new impervious surface, comprised of rooftop and parking lot pavement. Based on the site location and limited amount of proposed impervious area, the site does not require a Maine Department of Environmental Protection Stormwater Permit.

Site Characteristics

The project site occupies an area of approximately 1.37 acres and is currently an undeveloped grass field with wetland areas along the northern property line. Abutters include Wendy's to the west, commercial office space to the east, Warren Avenue to the south, and undeveloped wetland to the north. The site is gently sloped (1%-2%), towards the rear (northerly) property line. Existing ground cover consists of a mixture of meadow grass and weeds with small areas of wetlands and pavement.

Runoff from the site drains north to the existing wetlands, which ultimately drain west to the Presumpscot River. Runoff from the neighboring Wendy's site currently drains north to the existing detention basin before being discharged to the abutting wetlands. The existing detention basin is located within an easement on the Dunkin' Donuts project site. The runoff

from the existing Wendy's development is included as an existing condition in both the pre-development and post-development stormwater models.

Runoff from approximately 0.6 acres to the east of the project site, including a portion of the parking lot and lawn for the abutting property and a section of the Maine Turnpike, flows west and enters the project site across its eastern property line. This runoff was included in the stormwater analysis for the site by treating it as an existing condition in both the pre-development and post-development models.

The enclosed pre-development watershed maps and USGS topographic map (Exhibit 1) depict the general drainage patterns at the project site.

Soils

Soil classifications within the project area were referenced from the Cumberland County Medium Intensity Soil Survey. A copy of this map (Exhibit 2), delineating the project site, is included with this report.

The southern portion of the site is comprised of Suffield silt loam, and the northern portion of the site is comprised of Scantic silt loam. The Scantic series consists of deep, poorly drained, medium textured soils that are underlain by fine-textured material. The Suffield soil series consists of deep, well drained, medium-textured soils. The Scantic series is classified by the Soil Conservation Service as a Group D hydrologic soil, and Suffield is classified as a Group C soil.

Wetlands

The proposed project will impact approximately 7,985 square feet of wetland area, 3,745 square feet of which was created by the construction of the existing detention pond in 2002. Therefore, the proposed project will impact a total of approximately 4,240 square feet of wetland, which is under the threshold requiring a Tier 1 NRPA Wetland Permit.

Stormwater Management

In order to evaluate drainage characteristics in pre and post-development conditions, a quantitative analysis was performed to determine peak rates of runoff for the 2, 10 and 25-year storm events. Runoff calculations were performed following the methodology outlined in the USDA Soil Conservation Service's "Urban Hydrology for Small Watersheds, Technical Release #55" and HydroCAD Stormwater Modeling System software.

The 24-hour rainfall values used in the hydrologic model are as follows.

| Storm Frequency Precipitation (in./24 hr) | |
|---|-----|
| 2-year | 3.0 |
| 10-year | 4.7 |
| 25-year | 5.5 |

Three study points were analyzed in pre-development and post-development conditions. The study points correspond to offsite discharge points along the project's northerly and westerly property lines, where runoff enters the abutting wetlands.

Times of concentration (Tc) for each watershed were determined based on existing and proposed land cover and topography. In cases where a calculated Tc is less than 5.0 minutes, a direct entry was made in the model such that the minimum Tc for any watershed is 5.0 minutes. This assumption of a 5 minute minimum TC is consistent with the underlying assumptions of the USDA TR-55/TR-20 hydrologic model.

Study Point SP-1 represents the point of discharge from the existing detention basin which provides stormwater control for the existing Wendy's site, as well as runoff of sheet flow from contributory undeveloped areas at the north end of the site. In the post development model this study point corresponds to the modified detention basin outlet.

Study Point SP-2 represents the point where runoff exits the property at its northeast corner via sheet and shallow concentrated flow.

Study Point SP-3 represents the point where runoff exits the property at the northwest corner of the site via sheet and shallow concentrated flow.

Runoff at the front of the site, abutting Warren Avenue, drains across an existing paved apron that comprises the existing entrance to the Wendy's restaurant site. The design grades and runoff patterns at this location remain unchanged in the post development condition.

On site drainage patterns will generally follow the existing topography of the land in the post-development condition. The majority of the runoff from the Dunkin' Donuts site is conveyed by sheet flow to catch basins in the proposed parking areas. Runoff collected in the closed drainage system is routed through a proposed Downstream Defender stormwater treatment unit prior to discharge to the stormwater detention pond. The Downstream Defender unit has been sized in accordance with MDEP criteria to provide 60% total suspended solids removal efficiency.

The following table summarizes the results of the analysis. Computer generated data sheets and hydrographs are provided in the subsequent sections of this report.

| Study Point | Total Watershed Area (Ac) | | Average Weighted Curve No. (cn) | | Peak Rates of Runoff (cfs) | | | | | |
|-------------|---------------------------|------|---------------------------------|------|----------------------------|-------|---------|-------|---------|-------|
| | Pre | Post | Pre | Post | 2-Year | | 10-Year | | 25-Year | |
| | | | | | Pre | Post | Pre | Post | Pre | Post |
| SP-1 | 1.61 | 2.00 | 84 | 87 | 2.2 | 2.0 | 4.2 | 4.1 | 5.2 | 5.2 |
| SP-2 | 1.86 | 1.51 | 80 | 82 | 1.7 | 1.7 | 3.7 | 3.4 | 4.7 | 4.3 |
| SP-3 | 0.05 | 0.01 | 73 | 73 | < 0.1 | < 0.1 | 0.1 | < 0.1 | 0.1 | < 0.1 |

The analysis summarized in Table 1 indicates that the proposed modifications to the existing stormwater detention pond control runoff such that there is no increase in peak runoff rates in any of the design storms analyzed. Runoff is controlled by an expanded detention pond and new outlet control structure.


The supporting calculations for the detention pond are included in the attached HydroCAD output, and design details are shown on the project plans.

An Erosion and Sedimentation Control Plan has been developed for the project site placing emphasis on the installation of sedimentation barriers and revegetation to minimize erosion potential from development activities during and after construction. The Erosion Control Plan has been placed directly on the design plans to include locations of erosion control provisions (i.e., silt fence, inlet protection and construction entrances), along with a narrative and construction details for reference by the contractor during construction.

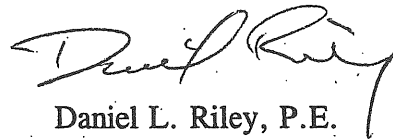
The incorporation of these measures and drainage provisions meets the standard for stormwater runoff for the proposed site development such that no downstream properties will be adversely impacted by the development.

Prepared by:

SEBAGO TECHNICS, INC.



Michael Tadema-Wielandt
Project Engineer



Daniel L. Riley, P.E.
Senior Project Manager

MTW/DLR:met/df
October 8, 2004

Enc.



AH. 3

June 14, 2004

Edward S. Wolak
Kimco Realty, LLC
65 Gray Road
West Falmouth, ME 04105

Dear Ed:

This commitment letter replaces and supercedes the commitment letter dated June 17, 2003, which is now null and void.

We have approved your request for a loan and this letter, when accepted and properly signed, will constitute an agreement between Androscoggin Bank ("Bank"), who agrees to lend, and Kimco Realty, LLC ("Borrower") who agrees to borrow, in accordance with the following terms and conditions:

- A. **BORROWER:** Kimco Realty, LLC
- B. **AMOUNT:** \$950,000.00 Term Loan
- C. **PURPOSE OF LOAN AND USE OF FUNDS:** Finance the construction of a new Dunkin Donuts facility at 599 Warren Avenue in Portland.
- D. **RATE:**

 Option 1. A variable interest rate equal to the Prime Rate in effect on the date of closing, as the "Prime Rate" is reported in The Wall Street Journal in the column entitled "Money Rates." Plus three-quarters percent (0.75%) per annum will be charged. The Bank will adjust the interest rate monthly on the first day of the month following a change in the Prime Rate.

 Option 2. An interest rate equal to the three (3) year Federal Home Loan Bank Board advance rate plus two and three quarters percent (2.75%) fixed for three (3) years and adjusted in three (3) year intervals.

 X **Option 3.** An interest rate equal to the five (5) year Federal Home Loan Bank Board advance rate plus three percent (3.00%) fixed for five (5) years and adjusted in five (5) year intervals.

respects to Bank on the property at 599 Warren Avenue, Portland, Maine and 593 Main Street, Gorham, Maine. 3B

Bank shall be designated as Mortgagee under standard Mortgagee Clause and be provided with a Lenders Loss Payable Endorsement, with ten (10) day Notice of Cancellation Clause given to Bank on the property at 599 Warren Avenue, Portland, Maine, and 593 Main Street, Gorham, Maine.

- O. ENVIRONMENTAL COMPLIANCE ANALYSIS:** The loan is subject to the completion of an Environmental Risk Assessment Questionnaire and such other follow-up analysis that may be determined to be necessary, including but not necessarily limited to an environmental site assessment of any real estate pledged to secure the loan, or an environmental audit of Borrower's operations. All assessments, audits or other analyses shall be at Borrower's expense and shall be performed by a qualified environmental consulting firm. If the results of any site assessment reveal that environmental problems exist, or if the results of any environmental audit reveal compliance problems by Borrower with relevant environmental laws and regulations, Bank reserves the right to terminate its commitment hereunder.

If any further environmental analyses are required, Borrower authorizes Bank or its agents to directly discuss with any consultants retained by Borrower the results of those analyses. Borrower acknowledges that Bank's inquiries and required environmental analyses are for Bank's credit risk assessment purposes only. The decision by Bank to lend after review of Borrower's environmental consultant's report should not be construed as Bank's determination or implicit representation that Borrower's real property or mode of operation is free of actual or potential environmental problems.

Borrower will remove, in accordance with applicable law, or will otherwise comply with orders or directives of environmental regulatory agencies relating to use or removal of underground storage tank(s) and will provide evidence, through reports of qualified environmental consultants that no unacceptable environmental problems resulted from prior use of those tanks.

Borrower will provide evidence; in the form of reports from a qualified environmental consulting firm, that there are no leaks in any underground storage tanks that exist on real property the Borrower is pledging to secure this loan.

P. CONDITIONS:

1. Borrower will pay all out-of-pocket costs and expenses incurred by Bank in connection with the proposed loan and incurred by Bank in connection with the proposed loan and financing arrangement. This will include, but will not be limited to, attorney's fees, lien search fees, filing fees, environmental audit fees and appraisal costs. These fees will be paid by Borrower whether or not the transaction contemplated herein is closed. Borrower agrees to pay any out-of-pocket costs and expenses incurred by the Bank after the closing and during the life of the loan, including but not limited to subsequent appraisal costs, environmental audit fees and/or title and lien search fees which may be required by the Bank.

2. Borrower shall execute such further documents to secure the loan transaction contemplated hereunder as counsel for Bank shall determine necessary or advisable in the interest of Bank. 3C
3. A default in any outstanding loan by Borrower to Bank or to any other person or institution whose priority is superior to Bank will be considered as a default in all loans.
4. Any business conducted by Borrower shall have all licenses, permits and approvals to operate, including appropriate environmental approvals.
5. All collateral shall be kept in good repair, and all taxes and assessments thereon shall be paid when due.
6. Borrower shall not cause or permit to exist any environmental problems from their business activities and shall, at all times, maintain compliance with all applicable federal, state and local environmental and land use laws and regulations including, but not limited to, those provisions relating to fuel and chemical storage tanks.
7. Borrower shall promptly notify Bank of any change in environmental status from that previously supplied to Bank. Further, Borrower shall promptly notify Bank of the commencement of state, federal or private environmental or land use investigation or enforcement proceeding or threat thereof.
8. Borrower and Guarantor agree to indemnify and hold Bank harmless from all liability or loss arising out of violations of all applicable environmental laws or regulations except insofar as the violation was a direct and intentional result or independent action taken by Bank.
9. No loan commitment given by Bank to Borrower shall be assignable by Borrower.
10. This commitment to lend is subject to the receipt of credit reports, appraisals and title opinions satisfactory to the Bank.
11. Borrower shall confirm by satisfactory documentation supplied to Bank, the existence of all leases, insurance or other collateral reserved or taken by Bank.
12. No liens, attachments or other encumbrances, whether or not superior to the lien of Bank, shall be placed or arise upon the collateral other than those previously approved by Bank.
13. Borrower and/or Guarantor shall certify to Bank prior to closing the status of any actions, suits, proceedings or investigations, now pending or to the knowledge of Borrower threatened against or affecting Borrower or Guarantor.
14. Borrower hereby submits to the jurisdiction of the state and federal courts located within the State of Maine in connection with any suits or proceedings arising from, under or in connection with any loan document, and agree that this Commitment Letter and the

loan documents governing the loan transaction shall be construed in all respects in accordance with and shall be governed by the laws of the State of Maine. Borrower hereby waives any rights that Borrower may have to a trial by jury of any dispute arising under or relating to this loan or any of the other documents executed in conjunction with this loan (including commitment letter, notes, mortgages, pledge agreements, security agreements, financing statements, guaranties and other documents related to this loan) and agrees that any such dispute shall be tried before a judge sitting without a jury. 3D

15. The Bank shall be given as security a first mortgage, which shall create a valid lien on real estate, pledged with good and merchantable title. Title insurance shall be provided to Bank by a title company approved by Bank.

16. The loan is subject to an appraisal on the property located at 599 Warren Avenue, Portland, Maine, by an appraiser acceptable to Bank. The combined loan to value, including the Gorham property, shall not exceed 80%.

17. Satisfactory organizational documents authorizing the Borrower to borrow from the Bank and the Corporate Guarantor to guaranty the loan shall be made available to the Bank prior to closing.

18. Borrower and Corporate Guarantor shall provide an opinion of counsel, if applicable, to the Bank stating a legal opinion of such attorney as to such matters as we may request, including but not limited to the following:

- a. Corporate existence;
- b. Corporate authority;
- c. No litigation or proceedings pending against Borrower; and
- d. Land use.

Construction Loan Requirements:

At least fifteen (15) days prior to loan closing, Borrowers will provide the following to Lender for its review and approval:

A detailed budget for the cost of constructing the project together with copies of executed bids and contracts with any contractors or suppliers, which must be approved by Lender.

Two (2) complete sets of the final plans and specifications for the construction of the project, by a qualified architect. The final plans and specifications must be prepared in accordance with good architectural and engineering practices and comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations, including but not limited to those relating to zoning, building, fire prevention, health safety, handicap access, historic preservation, wetlands and flood control.

Evidence satisfactory to Lender and Lender's counsel that all permits, licenses and approvals required for the construction and use of the project under applicable laws, ordinances, codes, rules and regulations and under the terms of any restriction, easement or covenant affecting the land have been obtained.

3E

Insurance:

Borrower will obtain and maintain at all times during the construction of the Project such insurance as may be reasonably required by Lender, including, without limitation, commercial general liability insurance, contractor's liability insurance, comprehensive automobile liability insurance, all-risk contractor's equipment floater insurance, employer liability insurance, workmen's compensation insurance and builder's risk insurance.

Cost Overruns/Change Orders:

In addition, if Lender at any time determines, in its sole discretion, that the remaining undisbursed portion of the Loan is or will be insufficient to pay for all Project costs, Borrower will, within five (5) days after written notice of such determination by Lender, deposit with Lender such funds as Lender may require, in an amount sufficient to remedy the condition described in such notice, and until so deposited Lender shall have no obligation to make any further advances of the Loan.

Any change orders over \$5,000 shall require the written consent of the Lender.

Handicap Access:

Borrower shall provide evidence satisfactory to Lender that the proposed construction or renovation to be financed with the proceeds of the Loan will comply with all applicable provisions of the Americans with Disabilities Act of 1990 and the Maine Human Rights Act, including any rules and regulations promulgated thereunder, as well as any other laws or ordinances relating to equal access to public accommodations. Upon the completion of such construction or renovation, Borrower will provide evidence satisfactory to Lender that such construction or renovation does so comply.

Inspection Fees:

Lender shall retain, at Borrower's cost and expense, an outside consulting architect, engineer or inspector to (i) advise Lender as to the accuracy of the budget for the construction of the Project, (ii) advise Lender as to whether the final plans and specifications for the Project are satisfactory for the intended purposes, (iii) make periodic inspections of the construction on the project and to approve requisitions, (iv) advise Lender as to any requested change orders, and (v) review any construction contracts related to the Project. Lender, or any of its officers or employees, or any inspector retained by Lender will not assume any obligations to Borrower or any other party concerning the quality of the construction of the Project as a result of any such inspection activities.

Such architect or inspector shall furnish periodic reports to Lender on the progress of the work and in connection with request for advances; he shall certify to Lender that the work is proceeding satisfactorily and that the undisbursed amount of the Loan will be sufficient to complete the work. In addition to the foregoing, all requests for disbursements shall be accompanied by the following documents and any others, which Lender may require:

- (a) Invoices on the Project and completed requisition forms.
(AIA Documents B141 and G702)
- (b) Mechanic's lien waivers executed by contractor, subcontractors, suppliers, and suppliers of subcontractors for services and material already provided.

- (c) An updated construction budget and requisition form.

3F

On completion of the work such architect or inspector shall certify to Lender that all of the work was performed to his satisfaction, in accordance with the approved plans and specifications, and in compliance with all applicable codes, ordinances, rules and regulations relating to the construction of the Project. A Construction Loan Agreement shall also require updating of cost breakdowns, surveys and title insurance policies without further exceptions as conditions of each advance and shall contain such other terms and conditions, including commencement and completion dates as Lender may reasonably require.

Construction Loan Agreement:

The loan proceeds shall be advanced under a Construction Loan Agreement to finance the construction of the Project in accordance with plans and specifications and assignable contracts, which shall be subject to Lender's approval. Lender will make disbursements on account of the Loan not more often than once monthly after receipt of (i) written certification by an architect or inspector approved by Lender that the work covered thereby was completed to his satisfaction and in accordance with the approved plans and specifications, such disbursements to be made not more than ninety percent (90%) of the cost of each stage and (ii) title insurance disbursement endorsement by an attorney satisfactory to Lender showing that there are no mechanic's or other liens prior to Lender's mortgage.

Under Maine law, no promise, contract or agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt for more than \$250,000 may be enforced in court against the Bank unless the promise, contract or agreement is in writing and signed by the Bank. Accordingly, the Borrower cannot enforce any oral promise unless it is contained in a loan document signed by the Bank, nor can any change forbearance, or other accommodation relating to the loan, this agreement or any other loan document be enforced, unless it is in writing signed by the Bank. Borrower also understands that all future promises, contracts or agreements of the Bank relating to any other transaction between Borrower and Bank cannot be enforced in court unless they are in writing signed by the Bank. Borrower further agrees that the requirement of a writing described in this paragraph shall apply to this commitment, the loans or credit described herein, any extension, modification, renewal, forbearance or other accommodation relating to the transactions contemplated by this commitment, and to any other credit relationship between Borrower and Bank, (whether existing now or created in the future) whether or not the amount involved exceeds \$250,000.

Any additions, deletions, substitutions or other changes in this Agreement must be documented in writing to become effective.

This commitment was approved upon the basis of information and financial data furnished by Borrower and Guarantor and is extended subject to and conditioned upon there being no material change in the information provided or financial condition of Borrower or Guarantor. In the event of such material change, in the opinion of Bank, the right is reserved to terminate the commitment. Further, at any time after the date herof the Bank deems itself insecure, it may require additional collateral or alter the terms of this commitment.

To the extent that the terms and conditions as stated herein are not incorporated into the loan documents, this letter will survive the loan closing and will govern our relationship while the loan detailed herein, together with interest and fees, remains outstanding.

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The Bank's obligation to make loans or advances hereunder is hereby expressly conditioned upon receipt by the Bank of any reports, instruments or documentation as required herein and which are satisfactory to the bank. If the terms and conditions as herein stated are satisfactory, please sign this letter signifying your acceptance and return a signed and accepted copy by June 21, 2004 as your authorization for us to proceed. If we do not receive your written acceptance as requested, this commitment will expire at that time. Whether or not the aforesaid conditions are met, the loan must close by September 30, 2004 or this commitment will expire. Any extension of this commitment must be in writing and signed by both parties.

Sincerely,

ANDROSCOGGIN BANK

By: Pamela J. Settle
Pamela J. Settle
Its: Vice President

The undersigned acknowledges receipt and acceptance of this commitment letter, the terms and conditions of which shall survive until the loan made hereunder is paid in full unless modified in writing and signed by Borrower, Guarantor and the Bank.

BORROWER:

KIMCO REALTY, LLC

By: _____
Edward S. Wolak
Its: Member

GUARANTORS:

GORHAM DISTRIBUTION CENTER, INC.

By: _____
Edward S. Wolak
Its:

AH.4

June 14, 2004

Kimco Realty, LLC
Dunkin Donuts Plaza
65 Gray Road, Box 4
Falmouth, Maine 04105

City of Portland
Planning Division
Portland City Hall
389 Congress Street
Portland, ME 04101

RE: Technical Capacity of Kimco Realty, LLC with respect to its Site Plan application
for Warren Avenue

Dear Sir or Madam:

I am the principal of Kimco Realty, LLC. I have developed in excess of 25 Dunkin' Donuts restaurants throughout Maine, New Hampshire and New York, including locations within the City of Portland. I have extensive experience with the implementation of and compliance with land use rules and regulations.

With regard to this proposed project on Warren Avenue in Portland, Kimco Realty, LLC has engaged Sebago Technics, Inc., a full service engineering firm located in Westbrook, Maine. Sebago Technics, Inc. will assist Kimco Realty, LLC in all aspects of the permitting for this project.

Between the extensive development experience of the principal of Kimco Realty, LLC, and the expertise of Sebago Technics, Inc., Kimco Realty, LLC has sufficient technical capacity to develop the proposed site on Warren Avenue.

Sincerely,



Edward S. Wolak
President

PURCHASE AND SALE AGREEMENT

This Agreement (the "Agreement") is entered into as of this 19th day of August, 2003, by and between **Older Brother LLC**, a Maine limited liability company, and **Younger Brother LLC**, a Maine limited liability company, both with a mailing address of c/o CB Richard Ellis-Boulos Property Management, One Canal Plaza, Portland, Maine 04101 (collectively, "Seller") and **Kimco Realty, LLC**, a Maine limited liability company with a mailing address of 65 Gray Road-Box 4, Falmouth, ME 04105 ("Buyer").

1. Purchase and Sale; Description. Seller agrees to sell, and Buyer agrees to buy, upon the terms set forth herein, certain real property, together with any improvements thereon, located at Warren Avenue in Portland, Maine, comprised of approximately 1.36 acres of land, and generally depicted in cross-hatching on Schedule A, attached hereto and made a part hereof (the "Land"), together with all right, title, and interest of Seller in and to all rights, privileges, easements, rights of way and appurtenances thereto, including without limitation, Seller's right, title and interest in and all air rights and any easements, rights-of-way or other interests in, on, under or to any land, highway, alley, street or right-of-way abutting or adjoining said parcel, but expressly excepting and reserving to Seller all in gross easements held by Seller (the "Premises").

2. Additional Property. Also included in the sale is all right, title, and interest of Seller in and to the private sewer line located in Warren Avenue and connecting to the City of Portland sewer system, as described in a certain Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 211, as affected by Transfer Instrument from Wargate Associates and Bridgeside Associates to Seller, dated September 20, 2002, a copy of which is attached hereto as Schedule B (the "Private Sewer Line").

3. Purchase Price. Subject to any adjustment and pro-rations described in this Agreement, the purchase price for the Premises is [REDACTED] the "Purchase Price"), payable as follows:

(a) [REDACTED] which shall be paid to Escrow Agent (as defined herein) as an initial deposit (the "Initial Deposit") within one (1) business day of the date hereof, and shall be credited against the Purchase Price; and

(b) [REDACTED], which shall be paid to Escrow Agent as a second additional deposit (the "Additional Deposit") within two (2) business days after the expiration of the Due Diligence Period (as defined herein); and

(c) [REDACTED], which, subject to adjustments and pro-rations provided for herein, is to be paid at the time of delivery of the Deed (as defined herein) by certified, cashier's or treasurer's check or checks, or by electronic wire transfer in accordance with wiring instructions provided by Seller within a reasonable time prior to the time of Closing.

The Initial Deposit and the Additional Deposit are collectively referred to herein as the "Deposit". The interest on the Deposit shall be returned to Buyer at the Closing; provided, however, that if the Closing does not occur, such interest shall be payable to the party entitled to receive the Deposit as provided herein.

4. Deed; Title. (a) The Premises are to be conveyed by a good and sufficient quitclaim deed with covenant (the "Deed"), and such Deed shall convey Seller's title to the Premises, subject to (i) those encumbrances listed on Schedule C attached hereto; (ii) all other items waived or deemed waived pursuant to the terms of this Agreement; and (iii) the Reserved Easements (as that term is defined herein).

(b) Without limiting the generality of the requirements of Section 4(a) above, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless the following conditions are either satisfied or waived (or deemed waived) pursuant to Section 4(c) below;

(i) All improvements shall be wholly within the lot lines of the Land and shall not encroach upon or under any property not within such lot lines;

(ii) no building, structures, improvement, parking area, driveway, or property of any kind shall encroach on to the Land without easements therefor;

(iii) title to the Premises shall be insurable, for the benefit of Buyer, at customary rates, in the ALTA form currently in use, subject only to those matters that Buyer has waived or is deemed to have waived, as provided in subsection (c) below.

(c) Buyer shall have forty-five (45) days from the date of this Agreement (the "Title Review Period"), within which to give Seller written notice of (i) any alleged title defects in the Premises; (ii) any encumbrances or matters listed on Schedule C that are unacceptable to Buyer; and (iii) Buyer's dissatisfaction with any item set forth in Sub-section 4(b) (items (i), (ii) and (iii) being collectively referred to herein as "Unacceptable Encumbrances"). Buyer's failure to give such notice within the Title Review Period shall be deemed a waiver of Buyer's right to object to any matters listed on Schedule C, any matter that affects the title to the Premises and appears of record in the Cumberland County Registry of Deeds as of the date of this Agreement, and any matter set forth in Sub-section 4(b). If Buyer does give such written notice in a timely manner, Seller shall then have ten (10) days from the date it receives Buyer's notice within which to elect whether it will attempt to cure such Unacceptable Encumbrance(s) or to notify Buyer of its election not to attempt to cure such Unacceptable Encumbrance(s). In the event Seller elects to attempt to cure the Unacceptable Encumbrance(s), Seller shall have a period of forty-five (45) days within which to do so. In the event that Seller elects to, but fails to cure any Unacceptable Encumbrance(s) within said 45-day period, Seller shall give written notice thereof to Buyer at the expiration of said 45-day period. In the event Seller elects not to cure, or having elected to attempt to cure fails to cure, the Unacceptable Encumbrance(s), Buyer shall elect, within a period of ten (10) days after its receipt of notice thereof from Seller to either (i) terminate this Agreement; or (ii) waive such Unacceptable Encumbrance(s) and accept conveyance of the Premises subject to the Unacceptable Encumbrance(s) without deduction from the Purchase Price. If Buyer elects to terminate this Agreement, Seller shall direct Escrow Agent to return the Deposit to Buyer, and neither party shall have any further obligation under this Agreement, other than those obligations that are expressly stated herein to survive the termination of this Agreement. In the event Buyer fails to make such election within said ten (10) day period, then Buyer shall be deemed to have made an election to waive the Unacceptable Encumbrance(s) and accept conveyance of the Premises subject to the Unacceptable Encumbrance(s) without deduction from the Purchase Price. Notwithstanding anything in this sub-section to the contrary, Seller shall be obligated to procure at or prior to Closing the discharge or release of all mortgages and consensual liens created by Seller and affecting the Premises. In all events, Seller shall be required to remove at or prior to Closing (i) all mortgages and consensual liens affecting the Premises which secure Seller's obligation to pay a

monetary amount; and (ii) any, non-consensual liens affecting the Premises that arose out of Seller's failure to pay a monetary obligation of Seller, provided the total amount secured by such non-consensual liens, if any, does not exceed [REDACTED] in the aggregate and provided further that Seller shall be entitled to extend the Closing for up to forty-five days to enable Seller to bond-off or otherwise remove any non-consensual lien described in this clause (ii).

(d) Seller shall be entitled to reserve an assignable easement in gross for ingress, egress and installation of utilities (the "Access Easement") in connection with the development and use of land abutting the easterly portion of the premises and now or formerly owned by the Maine Turnpike Authority (the "Maine Turnpike Authority Parcel"). In addition, Seller shall be entitled to reserve an assignable easement in gross (the "Sewer Easement") to connect to and use the Private Sewer Line (including the discharge to the Private Sewer Line of no more than 5,000 gallons per day) in connection with the development and use of the Maine Turnpike Parcel. The Access Easement and Sewer Easement are collectively referred to as the "Reserved Easements". It is a condition to the parties' obligations hereunder that the location and terms of the Reserved Easements shall be agreed upon by the parties within the Due Diligence Period. The Sewer Easement shall terminate unless the Maine Turnpike Authority Parcel is acquired by Seller or its assign within ten (10) years after the date of Closing. Such Reserved Easements shall also be subject to the provisions of Section 21 below.

(e) To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the Deed.

5. Closing.

(a) The Deed is to be delivered and the consideration paid on January 30, 2004, at the offices of Seller's counsel unless otherwise mutually agreed (the "Closing"), subject to extension as provided in Sub-section 7(b) below.

(b) At the Closing, Seller shall:

(i) execute, acknowledge and deliver the Deed as provided herein, together with a Maine Real Estate Transfer Tax Declaration of Value;

(ii) execute, acknowledge and deliver an instrument transferring to Buyer all of Seller's right, title, and interest in and to the Private Sewer Line, excepting and reserving, however, the Sewer Easement relating thereto;

(iii) execute and deliver an underground oil storage tank notice informing Buyer whether, to the best of Seller's knowledge, any underground oil storage facilities exist at the Premises, and if so, such information as reasonably requested with respect to registration and/or abandonment of such tanks (the "UST Notice");

(iv) execute and deliver an affidavit of Maine residency pursuant to 36

M.R.S.A. § 5250-A;

(v) execute and deliver a non-foreign person affidavit pursuant to 26 U.S.C. § 1445;

(vi) execute and deliver a Closing Statement setting forth the Purchase Price and any credits and debits to each of Seller's and Buyer's transaction on account of items to be prorated pursuant to the terms of this Agreement and setting forth the disbursements to be made at closing (the "Closing Statement"); and

(vii) execute and deliver such other documents as are reasonably required to consummate the transaction contemplated by this Agreement.

(c) At the Closing, Buyer shall:

(i) execute and deliver the Maine Real Estate Transfer Tax Declaration of Value;

(ii) execute, acknowledge and deliver an acceptance of the instrument transferring to Buyer all of Seller's right, title and interest in and to the Private Sewer Line, including an assumption of all agreements relating to the use and/or maintenance of the Private Sewer Line, as listed on Schedule D, attached hereto (the "Third Party Sewer Agreements");

(iii) execute and deliver its acknowledgment of receipt of the UST Notice;

(iv) execute and deliver its acknowledgment of receipt of the Notification to Buyer of Withholding Tax Requirement pursuant to 36 M.R.S.A. § 5250-A;

(v) execute and deliver the Closing Statement; and

(vi) execute and deliver such other documents as are reasonably required to consummate the transaction contemplated by this Agreement.

(d) The acceptance by Buyer of the Deed and other documents identified herein to be executed and delivered at Closing shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of the Deed or which are expressly stated to survive the Closing.

6. Inspection of Premises.

(a) Buyer shall have the right to access the Premises at reasonable times provided Buyer gives Seller reasonable advance notice thereof, in order to conduct any inspections and non-invasive investigations and studies (including, without limitation, phase I environmental site assessments) as are reasonably necessary with respect to Buyer's satisfaction of its contingencies set forth in Section 7(a) in connection with the Buyer's proposed acquisition of the Premises. Buyer agrees to provide copies of all such surveys, inspections, tests and studies to Seller and agrees that it shall not disclose the results thereof to any third party other than prospective lenders, or as otherwise required by applicable law. Buyer agrees to promptly repair any damage to any property that may result from Buyer's exercise of its rights pursuant to this Section.

(b) Buyer agrees to indemnify and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including

reasonable attorney fees) that may be incurred by or threatened against Seller and that arise, directly or indirectly, out of the activities of Buyer, its agents, contractors, or employees on or near the Premises. The foregoing agreement to indemnify and hold Seller harmless applies to claims asserted by Buyer's employees without regard to any immunity that Buyer may have under workers compensation laws. The foregoing agreement to indemnify and hold Seller harmless shall survive the Closing and any termination of this Agreement.

7. Contingencies. The obligations of Buyer under this Agreement are subject to the following contingencies:

(a) Buyer shall have the right, for a period of ninety (90) days from the date that substantially all of the documents to be delivered by Seller to Buyer pursuant to Section 17 below are actually delivered to Buyer (the "Due Diligence Period") to conduct such inspections, tests and studies relating to the Premises and the Private Sewer Line (including the Third Party Sewer Agreements and the capacity of the Private Sewer Line to serve all parties using or entitled to use the Private Sewer Line) and the suitability thereof for Buyer's proposed use and development thereof as Buyer shall deem reasonably necessary, and a review of the threatened litigation described in Section 9 below, the results of all of which must be satisfactory to Buyer in Buyer's sole discretion. All inspections, tests, and studies will be performed by inspectors or consultants chosen and paid for by Buyer. Buyer acknowledges that Buyer is relying completely upon Buyer's own opinion or the opinion of Buyer's inspectors and/or consultants as to the condition of the Premises and the Private Sewer Line and the suitability thereof for Buyer's proposed use.

(b) Buyer shall have obtained within one hundred fifty (150) days from the date of this Agreement all final non-appealable permits and approvals necessary to construct a building and related improvements on the Premises to house a Dunkin' Donuts style restaurant, to include a drive-through window and such signage as Buyer shall require, such permits and approvals to contain only such conditions as are acceptable to Buyer. Notwithstanding the foregoing, if Buyer makes application for all permits and approvals deemed necessary by Buyer within ninety (90) days of the date of this Agreement and has been diligently pursuing such permits and approvals at all times thereafter, Buyer shall have the right to extend the period for obtaining such final non-appealable permits and approvals for an additional 90-day period if, on or before the expiration of the initial 150-day period, Buyer gives Seller written notice of such extension. In the event Buyer extends such period as set forth in this sub-section 7(b), the Closing shall be extended to the tenth (10th) business day after such extended permitting contingency period.

(c) Buyer shall have obtained, prior to the expiration of the Due Diligence Period, the approval of the Buyer's franchisor, Allied Domecq, approving the Premises for development as a Dunkin' Donuts site.

(d) Buyer shall have obtained within thirty (30) days from the date of this Agreement a written commitment, from a lending institution acceptable to Buyer, for a mortgage loan upon terms acceptable to Buyer.

In the event that any contingency is not satisfied, Buyer shall be entitled to terminate this Agreement by giving Seller and Escrow Agent written notice of Buyer's intention to do so prior to the expiration of the time period set forth for such contingency, in which event Seller shall direct Escrow Agent to return to Buyer the Deposit, the parties shall be relieved of all further obligations under this Agreement other than those that are expressly stated herein to survive such termination, and neither party shall be in default under this Agreement. In the event Buyer does not so notify

Seller within the time period applicable to any contingency, the Buyer shall be deemed to have waived its right to terminate this Agreement on account of the failure of such contingency.

8. Possession and Condition of Premises. Full possession of the Premises, free of all tenants and occupants except those persons in possession pursuant to the easements and agreements listed on the Schedules attached hereto or as otherwise herein provided, is to be delivered at the Closing, the Premises to be then in the same condition as they now are, reasonable use and wear thereof and damage caused by Buyer or persons acting by, through, or under Buyer excepted.

9. Disclosure of Pending or Threatened Litigation. Seller hereby discloses to Buyer that, pursuant to a Complaint for Declaratory Judgment dated October 8, 2002, each Seller, along with Wendy's Old Fashioned Hamburgers of New York, Inc., the owner of property abutting the Premises, has been named as a defendant in a civil action commenced by Dilworth & Son, LLC (the "Complaint"). A copy of the Complaint is attached hereto as Schedule E.

10. Adjustments; Closing Costs. Real estate taxes, assessments, common area maintenance charges, utilities, sewer charges, if any, and similar items that are commonly the subject of pro-ration between buyers and sellers of real estate in the Portland, Maine area shall be pro-rated as of the Closing. Each party shall pay its share of the real estate transfer tax incurred in connection with the conveyance of the Premises.

11. Brokerage. Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants other than CB Richard Ellis-The Boulos Company have been employed with respect to this transaction by either of them, and Seller and Buyer agree to indemnify and hold the other harmless from any claim by any other broker or agent claiming compensation in respect of this transaction, alleging an agreement with Seller or Buyer, as the case may be. Seller shall be responsible for the commission payable to CB Richard Ellis-The Boulos Company.

12. Deposit; Escrow Agent. The Deposit shall be held by Buyer's counsel, Pierce Atwood (the "Escrow Agent"), in an interest-bearing account, subject to the terms of this Agreement and shall be held and disposed of in accordance with the terms of this Agreement. By executing this Agreement, Escrow Agent agrees to hold the Deposit in an interest-bearing account and to disburse the same in accordance with the terms hereof. For purposes of this Agreement, the term "Deposit" shall include any interest accrued on amounts deposited in connection herewith. Seller acknowledges that Pierce Atwood is counsel to Buyer and consents to the continued representation by Pierce Atwood of the Buyer, notwithstanding its role as Escrow Agent hereunder. In the event of a dispute with respect to the Deposit, Pierce Atwood shall have the right to implead the Deposit with a court of competent jurisdiction, whereupon Pierce Atwood shall be relieved of any further obligations as Escrow Agent hereunder.

13. Default.

(a) If Buyer defaults in any obligations hereunder, Seller shall have the right to retain the Deposit as liquidated damages. The foregoing shall not limit Seller's remedies with respect to any indemnification or confidentiality obligation of Buyer under this Agreement.

(b) If Seller defaults in any obligation hereunder, Buyer's remedies shall be to either (i) seek specific performance; or (ii) terminate this Agreement and recover from Seller the actual and verifiable damages suffered by Buyer as a result of such default; provided, however, that

in no event shall any such damages, in the aggregate, exceed, and in no event shall Seller be liable for any damages in excess of, the total amount of the Deposit.

14. "AS IS" Condition; Disclaimers. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL OR PHYSICAL CONDITION THEREOF, OR THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, RULES, OR REGULATIONS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS, RULES OR REGULATIONS, OR THE SUITABILITY OF THE PREMISES FOR ITS CURRENT USE OR BUYER'S PROPOSED USE. BUYER EXPRESSLY AGREES THAT THE PREMISES ARE BEING SOLD "AS IS, WHERE IS", WITH ALL FAULTS, AND THAT BUYER IS RELYING SOLELY ON ITS OWN OPINIONS AND THE OPINIONS OF BUYER'S AGENTS, INSPECTORS AND CONSULTANTS AS TO THE CONDITION OF THE PREMISES, THE COMPLIANCE OF THE PREMISES WITH ANY AND ALL LAWS, RULES AND REGULATIONS, INCLUDING WITHOUT LIMITATION ENVIRONMENTAL LAWS, RULES AND REGULATIONS, AND THE SUITABILITY OF THE PREMISES FOR THEIR CURRENT USE AND BUYER'S PROPOSED USE. BUYER DOES HEREBY FOREVER RELEASE SELLER OF AND FROM ANY AND ALL LIABILITIES, CLAIMS, CAUSES OF ACTION, LIABILITY FOR CONTRIBUTION, AND ALL OTHER LIABILITIES ARISING OUT OF THE CONDITION OF THE PREMISES. BUYER SHALL BE RESPONSIBLE FOR SECURING ALL NECESSARY PERMITS, APPROVALS, AND LICENSES NECESSARY FOR ITS DEVELOPMENT, USE, AND OPERATION OF THE PREMISES.

15. Notices. Any notice relating in any way to this Agreement shall be in writing and shall be hand delivered or faxed or sent by registered or certified mail, return receipt requested, or by recognized overnight courier service which provides evidence of delivery (such as Federal Express) addressed to Buyer or Seller at the addresses listed in the first paragraph of this Agreement or by telecopy or facsimile and such notice shall be deemed delivered when so delivered by hand, when so posted with the United States Postal Services with all postage prepaid, or when deposited with such overnight courier or upon receipt of such telecopy or facsimile copy. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed in the first paragraph of this Agreement.

16. 1031 Exchange. Buyer agrees to cooperate with each Seller to qualify this transaction as part of a series of transactions intended to qualify as a like-kind exchange of property described in Section 1031 of the Internal Revenue Code of 1986, as amended, and Buyer further agrees to consent to the Seller's assignment of this contract to a "Qualified Intermediary" and take such other actions necessary for said like-kind exchange, provided that there shall be no cost or liability imposed on Buyer.

17. Items to be Delivered to Buyer from Seller. No later than the fifth (5th) business day after the date this Agreement is fully executed, Seller shall deliver to Buyer at Seller's expense, such of the following items relating to the Premises as are within the possession and control of Seller:

- (a) Copies of all documents pertaining to the Private Sewer Line, including without limitation any agreements regarding connection fees, sharing of expenses, use restrictions, capacity issues and the like;

(b) Copies of (i) the most recent title insurance policy for the Premises; (ii) the most recent survey of the Premises or property including the Premises; (iii) copies of all environmental reports, assessments or other information pertaining to the environmental condition of the Land, but all of the foregoing shall be provided without representation or warranty of any kind, including accuracy or completeness, and any reliance thereon by Buyer shall be at Buyer's sole risk.

18. Representations and Warranties.

(a) Seller represents and warrants to Buyer that the following are true and correct as of the date of this Agreement and will be true and correct as of the Closing:

(i) Each Seller is a limited liability company, duly organized and validly existing under the laws of the State of Maine, each has the right, power and authority to enter into this Agreement or to perform its obligations hereunder and each has duly authorized the entering into this Agreement and the performance of its obligations hereunder;

(ii) There is no action, suit, legal proceeding or other proceeding pending or, to the best of Seller's knowledge, threatened (or, to the best of Seller's knowledge, any basis therefor) against Seller or affecting any portion of the Premises in any court or before any arbitrator of any kind or before any governmental body that may materially or adversely affect the transactions contemplated by this Agreement or which may affect any portion of the Premises, except as disclosed in Section 9 above;

(iii) Seller has not knowingly released or disposed of any "Hazardous Substance" (as defined below) on, in, under or from the Real Property other than in compliance with applicable laws and, other than as may be indicated in any materials furnished by Seller to Buyer pursuant to Section 17, Seller is, to the best of its knowledge, not aware of the release or disposal of any Hazardous Substance on, in, under or from the Real Property at any time by anyone else other than in compliance with applicable laws. The term "Hazardous Substance" as used herein means any material, the generation, storage, handling, release, transportation or disposal of which is regulated by any federal, state or local environmental law or regulation;

(iv) Seller has no knowledge of any pending or threatened actions or proceeding regarding condemnation of the Premises or any part thereof;

(v) To the best of Seller's knowledge, after due inquiry, Schedule F attached hereto is a complete list of all parties that have connected to the Private Sewer Line and a complete list of all parties (or designation of property) that have a right to connect into such line. Seller has no knowledge of any defects or failures with respect to such Private Sewer Line other than as set forth below and is not aware of any other condition with respect to such Private Sewer Line that would require maintenance or corrective action. Seller hereby discloses a recent failure of two (2) "Fernco"-style couplings in the Private Sewer Line, both of which have been replaced with rigid PVC couplings. The term "due inquiry" does not include any inspections of the Private Sewer Line to determine whether any party has connected to the Private Sewer Line without permission from Seller, but Seller is not aware of any such connections.

(b) Buyer represents and warrants to Seller that the following are true as of the Contract Date and will be true as of the Closing;

(i) Buyer is a limited liability company, duly organized and validly existing under the laws of the State of Maine, has the right, power and authority to enter into this Agreement or to perform its obligations hereunder and has duly authorized the entering into this Agreement and the performance of its obligations hereunder.

(c) The representations and warranties set forth in this Section shall survive the Closing provided that any claim alleging breach of a representation and warranty must be made in writing within twelve (12) months after the Closing. All claims for breach of representations and warranties, other than those for which a timely claim has been made, shall be deemed waived.

19. Covenants and Agreements of Seller. Seller covenants and agrees with Buyer that between the date of this Agreement and the Closing:

(a) it shall not dispose of any interest in the Premises; shall not mortgage, pledge or voluntarily subject to lien and other encumbrances any interest in the Premises that will not be discharged at or prior to Closing; shall not enter into any other agreement relating to the Premises that would affect the sale or survive the Closing or enter into any new leases or use arrangements affecting the Premises or grant any rights or enter into any agreements with respect to the Private Sewer Line without Buyer's prior consent; and shall maintain its general liability insurance in effect consistent with its normal conduct of business; and

(b) it shall not knowingly take any action or knowingly fail to take any action that would cause any defect in title, cause the Premises not to conform with the provisions of this Agreement, would cause any statements set forth in Section 7(a) to be untrue or would otherwise cause Seller to be unable to perform its obligations under this Agreement.

20. Conditions Precedent to Buyer's Performance.

(a) Buyer's obligations hereunder, including the obligation to purchase and pay for the Premises, are subject to the satisfaction of the following conditions, any of which may be waived by Buyer, but only in a writing signed by Buyer;

(i) all of Seller's representations and warranties being true as of the Closing Date;

(ii) no material adverse changes in the physical condition of the Land shall have occurred and the Premises shall be in the same condition at the Closing as of the date of this Agreement, normal wear and tear excepted;

(iii) no portion of the Land shall have been condemned or sold in lieu thereof or be the subject of any pending or threatening condemnation proceeding or subject to any pending or threatening legislation, regulation, rezoning or zoning amendment, moratorium or referendum;

(b) If any of the conditions set forth above are, in Buyer's sole discretion, not satisfied, Buyer, by written notice delivered to Seller on or before the Closing Date may elect to (i) waive such condition and proceed with the Closing, or (ii) terminate this Agreement and have the Deposit returned to it and the parties shall be relieved of any rights or obligations hereunder, except for those obligations that expressly survive the termination of this Agreement. If Buyer does not

elect in writing to terminate on or before the Closing Date, Buyer shall be deemed to have elected to waive such condition and proceed with the Closing.

21. Reserved Easements. The following provisions shall apply to the Reserved Easements:

(a) Seller acknowledges that a portion of the Access Easement is a shared common entranceway onto Warren Avenue and will be used not only by Seller and Buyer, but other third parties as well. Commencing upon Seller's commencement of construction of improvements on the MTA Parcel and use of the Access Easement for purposes of accessing the MTA Parcel, Seller shall pay a pro-rata share of the repair and maintenance of the common entranceway, including snow plowing, and shall be solely responsible for the cost of repairing and maintaining in good condition that portion of the Access Easement used exclusively for access to the MTA Parcel. Seller shall maintain any utility lines servicing the MTA Parcel in good condition and repair. Notwithstanding the foregoing, if any repair to the common entranceway is due to the actions of either Seller or Buyer, such repair shall be paid for solely by the party whose actions necessitated such repair.

(b) If Seller, or their successors or assigns, conducts any work on the Land in connection with the exercise of the rights with respect to the Reserved Easements, Seller shall (i) provide written notice of such work to the owner of the Land at least fifteen (15) business days prior to commencing such work, excepting emergencies, and in the event of emergency work, shall provide written notice within twenty-four (24) hours of commencing such work; (ii) promptly and without delay restore the surface of the affected premises other than the road bed wherever disturbed and any improvements thereon to substantially the same condition of such surface and improvements as existed before being disturbed, including the restoration of any landscaping and trees; (iii) undertake such work at its sole cost and expense and without the imposition of any liens on the Land and in such a manner so as to minimize any disruption and disturbance to the use and enjoyment of the Land or the operation of the business conducted thereon by the owner of said Land and any tenants or occupants thereof; (iv) exercise its easement rights at its sole risk and (v) by the acceptance of the easements, agree to indemnify, release and hold harmless the owner of the Land and any mortgagees and tenants thereof, from and against any and all losses, costs, claims, expenses and liabilities (including the cost of defending the same or enforcing this indemnity, including reasonable attorneys' fees) incurred or suffered by such owner, mortgagee and tenants, on account of any injury to persons (including death) or damage to property arising out of the use of the Reserved Easements or the exercise of any of the easement rights described herein except to the extent the same arise out of the negligence of any such indemnified parties.

(c) The Sewer Easement shall provide that in the event Seller acquires the MTA Parcel and desires to utilize the Private Sewer Line to serve the MTA Parcel, Seller shall, prior to connecting to the Private Sewer Line, if desired by Buyer, accept responsibility for performing the maintenance and repair of the Private Sewer Line, and in such event (i) ownership of the Private Sewer Line shall be transferred from Buyer to Seller, together with an assignment of all then-existing Third Party Sewer Agreements; (ii) all sums paid by third parties in connection with their use of the Private Sewer Line pertaining to periods after the date of such transfer (including user fees, if any, and pro rata shares of maintenance and repair costs paid by such third parties) shall be paid to Seller; and (iii) Buyer shall continue to have the right to utilize the Private Sewer Line in connection with the Premises, and Buyer shall thereafter pay to Seller a pro rata share of the maintenance and repair costs incurred by Seller in connection with the Private Sewer Line. Buyer's pro rata share shall be a fraction, the numerator of which is the number of gallons of water used

5K

Barbara Johansen

BUYER:
KIMCO REALTY, LLC

By: Edward S. Wolak
Edward S. Wolak
Its Managing Member

ESCROW AGENT:
Pierce Atwood

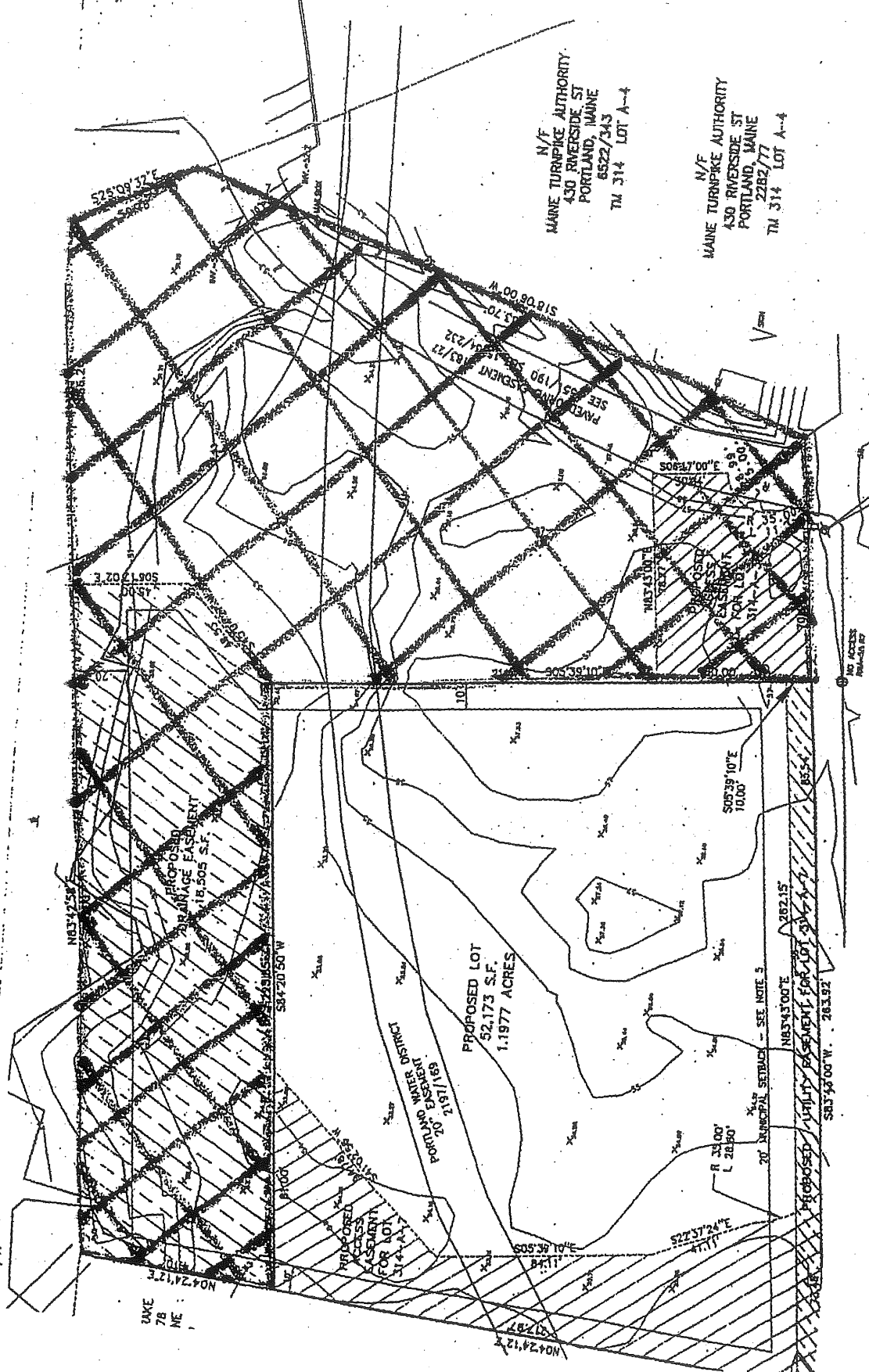
By: [Signature]
Printed Name: DENNIS C. KEELER
Its: _____

List of Schedules

| | |
|------------|--|
| Schedule A | Plan Depicting the Premises |
| Schedule B | Transfer Instrument (Private Sewer Line) |
| Schedule C | Encumbrances |
| Schedule D | Third Party Sewer Agreements |
| Schedule E | Complaint |
| Schedule F | Holders of Rights with respect to Private Sewer Line |

5M

Schedule A
(Plan Depicting Premises)



N/F
 MAINE TURNPIKE AUTHORITY
 430 RIVERSIDE ST
 PORTLAND, MAINE
 6522/343
 TM 314 LOT A-4

N/F
 MAINE TURNPIKE AUTHORITY
 430 RIVERSIDE ST
 PORTLAND, MAINE
 2282/77
 TM 314 LOT A-4

SCHEDULE A

AVE
 78
 NE

10 ACRES
 100-4117

20 MUNICIPAL SETBACK - SEE NOTE 5
 183° 56' 00" W - 283.92'

PROPOSED LOT
 52,173 S.F.
 1.1977 ACRES

PACIFIC WATER DISTRICT
 20' EASEMENT
 2197/169

PROPOSED
 UTILITY EASEMENT
 18,505 S.F.

528° 09' 32" E
 518.00' W

PACIFIC WATER DISTRICT
 SEE 65/190 5845/232
 518.00' W
 11.00' S

3.00' E
 18.00' S

S 68° 39' 10" E
 10.00'

S 22° 37' 24" E
 11.11'

S 68° 39' 10" E
 11.18'

S 68° 39' 10" E
 18.00'

N 83° 42' 55" E
 100.00'

N 04° 24' 12" E
 104.74'

N 04° 24' 12" E
 104.74'

N 83° 42' 55" E
 262.15'

S 83° 56' 00" W - 283.92'

R 32° 00' L 28° 30'

S 22° 37' 24" E
 11.11'

N 04° 24' 12" E
 104.74'

Schedule B
(Transfer Instrument-Private Sewer Line)

TRANSFER INSTRUMENT

KNOW ALL BY THESE PRESENTS, THAT WARGATE ASSOCIATES, a Maine general partnership, and BRIDGESIDE ASSOCIATES, a Maine general partnership (collectively, "Grantor"), for good and sufficient consideration, the receipt whereof is hereby acknowledged, hereby RELEASE to OLDER BROTHER LLC, a Maine limited liability company, and YOUNGER BROTHER LLC, a Maine limited liability company, their successors, and assigns (collectively "Grantee"), all of Grantor's right, title, and interest in and to the following property:

The "Sanitary Sewer System" more particularly described in a certain Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 212.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as a sealed instrument by its duly authorized undersigned officer, on this 20th day of September, 2002

Dick Deed
Witness

GRANTOR:
WARGATE ASSOCIATES
By: [Signature]
Gregory W. Boulos
Its General Partner

Dick Deed
Witness

BRIDGESIDE ASSOCIATES
By: [Signature]
Gregory W. Boulos
Its General Partner

STATE OF MAINE
County of Cumberland, SS.

September 20, 2002

Then personally appeared the above-named GREGORY W. BOULOS, 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 Attorney-at-Law
Printed Name: LYNDA S. HARJULA
Commission Expires: _____

SCHEDULE B

LYNDA S. HARJULA
Notary Public, Maine
My Commission Expires March 9, 2006

Schedule C
(Encumbrances)

1. Taxes which are not yet due and payable on the date of delivery of the Deed;
2. Pole line easement from George Wilson to Central Maine Power Company, dated March 29, 1954, and recorded in the Cumberland County Registry of Deeds in Book 2176, Page 301;
3. Twenty foot wide pipe line easement to Portland Water District, dated October 4, 1954, and recorded in said Registry of Deeds in Book 2197, Page 169;
4. Easement to Greater Portland Radio, Inc., dated May 10, 1974, and recorded in said Registry of Deeds in Book 3551, Page 190, and easements to Porter Communications Systems, Inc., dated May 21, 1986, and recorded in said Registry of Deeds in Book 7183, Pages 127 and 128, as affected by Easement Amendment Agreement by and between Wargate Associates and Citadel Broadcasting Company dated March 24, 2000, and recorded in said Registry of Deeds in Book 15434, Page 232, and as affected by Notice of Relocation of Easement dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 168;
5. Plan of property as approved by the Planning Board of the City of Portland recorded in Plan Book 170, Page 38, as affected by Partial Vacation of Approved Subdivision Plat as recorded on February 14, 1989 in said Registry of Deeds in Book 8657, Page 27;
6. Indenture by and between Portland Water District and Bridgeside Associates dated April 27, 1988, and recorded in said Registry of Deeds in Book 8265, Page 75;
7. Affidavit of Gregory W. Boulos dated April 29, 1988, and recorded in said Registry of Deeds in Book 8272, Page 211;
8. Easements, restrictions, terms and conditions, set forth in a Quitclaim Deed With Covenant from Older Brother LLC and Younger Brother LLC to Wendy's Old Fashioned Hamburgers of New York, Inc., dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 171, as affected by Corrective Quitclaim Deed dated February 27, 2003, and recorded in said Registry of Deeds in Book 18656, Page 1;
9. Terms and conditions set forth in a Road Construction, Maintenance and Easement Agreement by and between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road Construction, Maintenance and Easement Agreement dated February 27, 2003, and recorded in said Registry of Deeds in Book 18656, Page 12.
10. Terms and conditions of a Sewer Joint Use Agreement between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds.

5R

11. Complaint dated October 8, 2002 filed by Dilworth & Son, LLC against Older Brother LLC, Younger Brother LLC and Wendy's Old Fashioned Hamburgers of New York, Inc., a copy of which is attached to this Purchase and Sale Agreement as Schedule E.

Schedule D
(Third Party Sewer Agreements)

1. Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 211, as affected by Transfer Instrument from Wargate Associates and Bridgeside Associates to Seller, dated September 20, 2002 (including rights of the owner of Lot 1 on a plan recorded in the Cumberland County Registry of Deeds, in Plan Book 170, Page 38, as referenced in Section 3 of said Affidavit);
2. Agreement with Northern General Services, as evidenced by letter from Boulos Property Management to Northern General Services dated June 11, 1992, letter from Northern General Services to Boulos Property Management dated September 8, 1992, letter from October 29, 1992, from Northern General Services to Boulos Property Management, and related correspondence referred to in the foregoing letters;
3. Letter from Boulos Property Management to the City of Portland dated June 12, 2002; and
4. Sewer Joint Use Agreement between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds. ✓

22 March 2005

Mr. Jeffrey R. Perry,
Landscape Architect,
Sebago Technics,
P.O. Box 1339,
Westbrook, Maine 04098-1339

**RE: The Capacity to Handle the Anticipated Wastewater Flows,
from a Proposed "Dunkin' Donuts" Restaurant, at 597 Warren Avenue.**

Dear Mr. Perry:

The existing twelve-inch diameter asbestos concrete sanitary sewer pipe, located in Warren Avenue, has adequate capacity to **transport**, while The Portland Water District sewage treatment facilities, located off Marginal Way, have adequate capacity to **treat** the anticipated wastewater flows of **1,440 G.P.D.**, from the proposed drive-in restaurant.

Anticipated Wastewater Flows from the Proposed Development:

| | |
|---|--------------------|
| 6 Proposed Employees, @ 15 G.P.D./Employee | = 90 GPD |
| 27 Proposed Parking Spaces, @ 50 G.P.D./Parking Space. | = <u>1,350 GPD</u> |
| Total Proposed Increase in Wastewater Flows for this Project | = 1,440 GPD |

The City combined sewer overflow (C.S.O.) abatement consent agreement, with the U.S.E.P.A. and with the Maine D.E.P., requires C.S.O. abatement, as well as storm water mitigation, from all projects, in order to offset any increase in sanitary flows.

If The City can be of further assistance, please call 874-8832.

Sincerely,
CITY OF PORTLAND

Frank J Brancely, B.A., and M.A.
Senior Engineering Technician

FJB

cc: Alexander Q. Jaegerman, Director, Department of Planning, and Urban Development, City of Portland
Kandice S. Talbot, Planner, Department of Planning, and Urban Development, City of Portland
Eric Labelle, P.E., City Engineer, City of Portland
Bradley A. Roland, P.E., Environmental Projects Engineer, City of Portland
Stephen K. Harris, Assistant Engineer, City of Portland
Jane Ward, Administrative Assistant, City of Portland
Desk file

From: "Tom Errico" <terrigo@wilbursmith.com>
To: "Kandi Talbot" <kcote@portlandmaine.gov>
Date: 3/14/2005 10:31:46 AM
Subject: Dunkin Donuts - Warren Avenue

Kandi-

I have reviewed the most recent site plan prepared by Sebago Technics dated March 4, 2005 and offer the following comments.

* I find the revised driveway entrance to be an improvement. It appears that the width can be reduced further. I would suggest that a 30 foot entrance be provided. Additionally, the entrance design should be checked to ensure Wendy's truck deliveries can be accommodated (An explanation should be provided on Wendy's delivery truck routing).

* The width of the one-way entrance lane prior to the drive-through exit seems too wide (It scales about 25 feet). Based upon a review of truck turning paths and the desire to discourage drive-through vehicles from exiting the site from the entrance, I would suggest that the width be reduced.

* Painted end islands are illustrated on the plan. I would suggest that these islands be raised and landscaped if possible.

* I continue to suggest that a connection from the Dunkin Donuts circulation road into Wendy's be considered. This will minimize re-circulating traffic onto Warren Avenue, or illegal on-site maneuvers.

* As previously noted a monetary contribution of \$30,000 is requested for the upgrade of the Warren Avenue/Riverside Street intersection, which currently is both operationally and safety deficient.

If you have any questions, or need additional information, please call me.

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

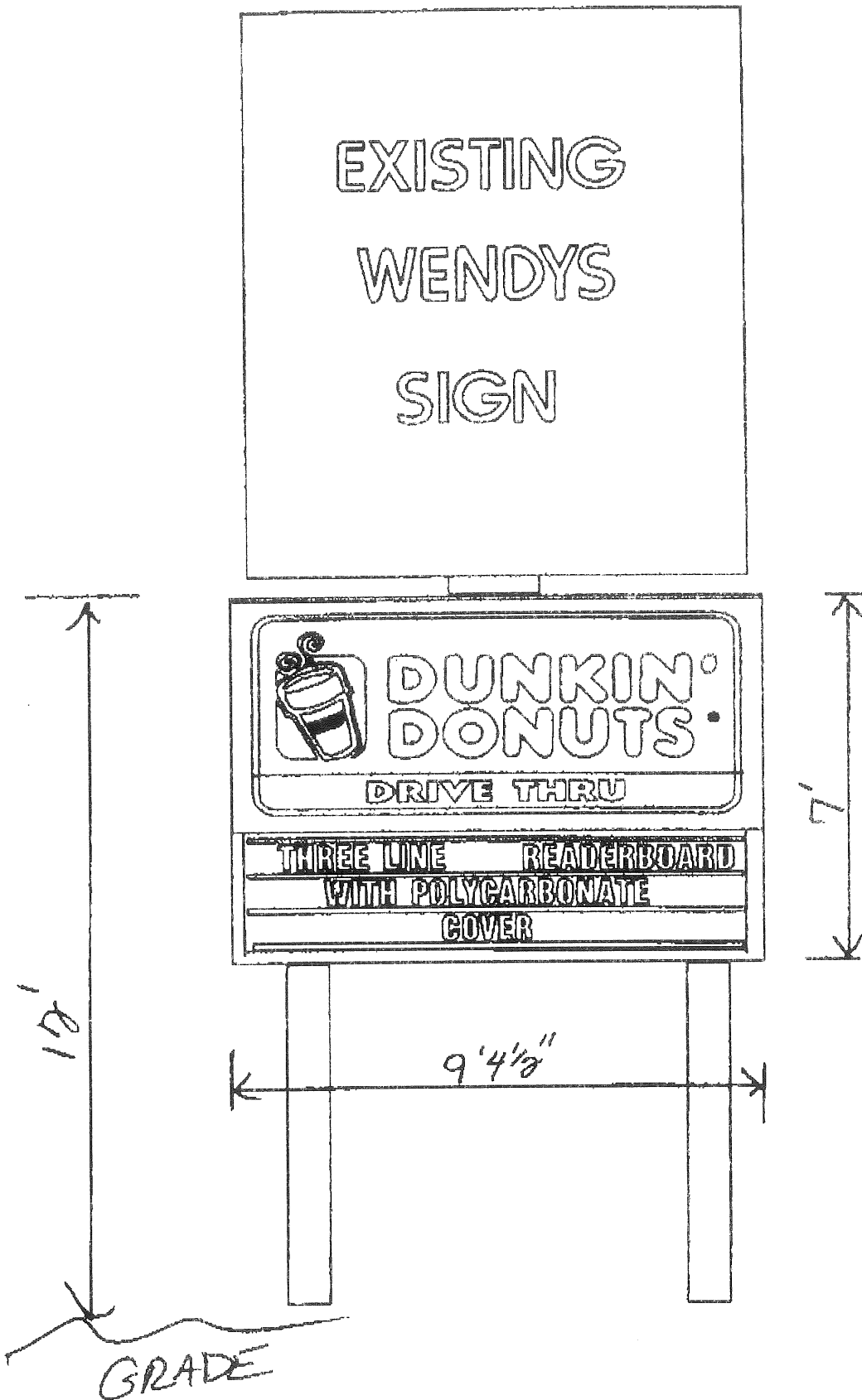
59 Middle Street

Portland, Maine 04043

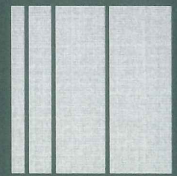
(207) 871-1785 Phone

(207) 871-5825 Fax

CC: "Katherine Earley" <KAS@portlandmaine.gov>,
"Jeffrey Perry" <jperry@sebagotechnics.com>



DASCO SIGNS
654 County Road
Acton, ME 04001
(207) 477-2956



March 8, 2005
03461

Ms. Kandi Talbot
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Dunkin' Donuts, Final Site Plan Review

Dear Kandi:

On behalf of Kimco Realty, LLC, we are pleased to submit 7 copies of the enclosed final site plan application for the above referenced project. The proposed layout has been modified since the January 2005 workshop in the following ways:

- A smaller building is proposed (2,512 SF to 1,840 SF)
- The driveway connection to the adjacent parcel, near Warren Avenue has been removed. Ingress/egress is still provided (where it currently exists) near the rear of the subject parcel.
- The width of the driveway curb-cut onto Warren Avenue has been reduced from 64' to 35' at the request of Tom Errico, traffic peer review.

In addition to the above changes, we have responded to the outstanding issues itemized in the January 21, 2005 Planning Department Memo:

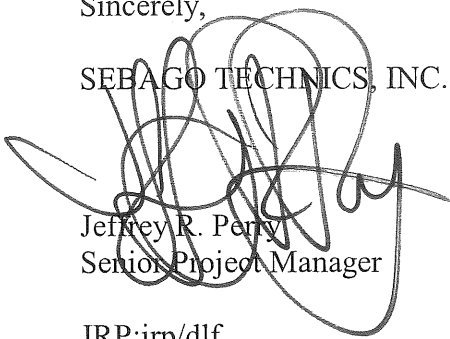
- The stormwater management has been revised to reflect the changes to the layout. A complete stormwater management plan is attached.
- Utility capacity letters (electric, water and gas) are attached. A sewer capacity letter was solicited from Public Works; a response has not been received as of the date of this submittal.
- Lighting catalogue cut-sheets of the proposed fixtures (full cut-off) and photometric plan are attached.
- Recommended plant substitutions have been made to the Landscape Plan as requested.
- The neighborhood meeting is not a requirement of a minor site plan, therefore, at your direction, one was not held.

- A signage plan is now shown on the Site Plan. The applicant will collocate their sign on the existing pylon sign for Wendy's, a sign detail is attached herein. In addition, there will be three directional signs on the site: 1. At the entrance to direct patrons to Wendy's, Dunkin' Donuts and Pioneer Telephone. 2. After the Dunkin' drive-up window, patrons will be directed to a "Left Turn Only" to exit the site, and 3. Where Dunkin' and Pioneer traffic merge with Wendy's to exit the site, a Stop-Sign is shown.
- The revised Grading and Utility Plan shows that 9,135 SF of wetlands will be impacted. Approximately 3,745 SF is associated with the existing stormwater pond, which will be reconfigured to manage both the subject parcel as well as Wendy's. A Wetland Alteration Permit has been submitted to the Maine DEP for this proposed activity.
- Amended Wendy's Site Plan: Under separate cover.
- An additional crosswalk has been added to the plans.

We look forward to presenting this information to the Board at the March 22, 2005 Public Hearing/Final Approval. After your review of the enclosed information, please call with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.



Jeffrey R. Perry
Senior Project Manager

JRP:jrp/df

Enclosures

cc: Ed Wolak, Kimco Realty
Eben Adams, Pierce Atwood

Utility Letters

Lighting Cut-Sheets

Pylon Sign Detail



Portland Water District

FROM SEBAGO LAKE TO CASCO BAY

February 22, 2005

Mr. Jeffrey R. Perry
Sebago Technics, Inc.
One Chabot Street
Westbrook, Maine 04098-1339

Re: Dunkin' Donuts, Portland

Dear Jeffrey:

The Portland Water District has a 20" water main in a RW crossing your property off Warren Avenue, Portland. There is no water main in Warren Avenue. A test on a nearby hydrant produced the following results: static pressure 80psi; pito pressure 64 psi; with a flow of 1342 gpm. With these results in mind, the District feels we have sufficient capacity available to serve this proposed project and meet all normal fire protection and domestic water service demands. This test hydrant is at a higher elevation than your project, so I expect a higher static pressure at your site. **Please notify your plumber of these results so that they can design your system to best fit the available pressure.**

With certification by the developer that all required permits and easement indentures have been received, we look forward to serving this project.

Sincerely,

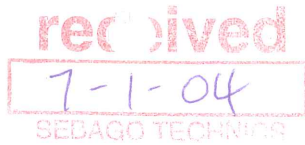
PORTLAND WATER DISTRICT

David W. Coffin, PLS
Engineering Supervisor





Central Maine Power



#103461

June 30, 2004

Mr. Jeffrey R. Perry
C/O Sebago Technics
One Chabot Street
PO Box 1339
Westbrook, Maine 04098

RE: Proposed Dunkin Donuts, 597 Warren Avenue, Portland

Dear Mr. Perry,

This letter is to advise you that Central Maine Power has sufficient three phase electrical capacity in the area to serve the subject project.

Once the project is accepted by the City of Portland, the owner will need to call our Customer Service Center at 1-800-565-3181 to sign up for a New Account and a Work Request Order so we may start a cost estimate.

To complete the cost estimate I will need the information of what voltage is required, the size of the main disconnect and the kilowatt loads required for the new facility. This information should be provided to me from the electrician or electrical engineering firm.

If you have any questions please feel free to call me at 828-2882.

Sincerely,

Paul DuPerre
Technical Advisor

An equal opportunity employer

162 Canco Road | Portland, ME 04103

tel (800) 750-4000

www.cmpco.com

An Energy East Company

Jeffrey Perry

From: pseigny@nisource.com
Sent: Wednesday, February 23, 2005 8:20 AM
To: jperry@sebagotech.com
Subject: Re: Proposed Dunkin' Donuts, Warren Ave. Portland, Maine



Commercial Request
for Gas Ser...

Jeffrey,

Based on my research it appears that we have a six inch plastic main running past this location. The main appears to be located on the even side

of the street close to the curb. This would require us to do a long side crossing to reach the site in question. I could not tell from the records

as to whether the existing main is operating at low or intermediate pressure but we can add the load at this location either way.

The next step is to put a package of information together (see attached example) and mail it to the sales department. It will be assigned to one of

the reps who will initiate a cost to serve analysis and report the results

to the owner. After the owner signs the contract the rep. will forward a package to our construction department who will coordinate installation with the on-site GC.

Please let me know if you any questions or need further information.

(See attached file: Commercial Request for Gas Service.doc)

Regards,
Phil Sevigny, R.C.G.C.
Commercial Sales Representative
BSG/NU
603-436-0310 X 5368

Jeffrey Perry

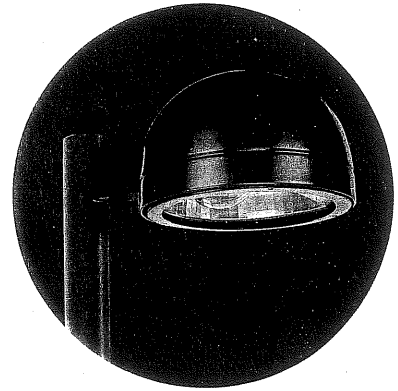
<jperry@sebagotech To: Philip
Sevigny/BSG/Enterprise@NiSource

WASHINGTON

SMALL/MEDIUM/LARGE

Features

- Spun aluminum, round dome-top housing, with narrow decorative reveal. Optional color vinyl trim stripe available.
- Formed aluminum door with clear, flat tempered glass lens, fully gasketed to housing. Hinged door secured with captive screws.
- Specular, anodized aluminum reflectors for horizontal lamp, provide Type II, III, IV or V square light patterns, and for vertical lamp provide Type IV or V square light patterns. Horizontal Type II and Type III reflectors with WN1 and WN2, and vertical Type V5 reflector feature unique, multi-faceted designs - patent pending. Segmented horizontal Type III, vertical Type III, and vertical Type V4 reflectors with WN3.
- IESNA Full Cutoff lighting classification achieved with vertical lamp.
- Extruded aluminum arm for pole mount. Cast aluminum wall bracket available.
- Pole top luminaire has four aluminum tube arms and cast slipfitter for 2 3/8" OD tenon.
- Mogul porcelain socket, pulse rated, with spring loaded, nickel plated center contact and reinforced lamp grip screw shell. Medium base for ED-17 lamp.
- CWA type ballast, HPF, starting rated at -20°F (-40°F for HPS).



Ordering Information Example: WN3 - A - H1K - H3 - F - Q - DB - F4

| Series | Mount | Lamp/Watts | Orient./Dist. | Lens | Volts | Color | Options |
|--------------------------------------|-----------------------------|--|---------------|------|-------|-------|---------|
| Series | | | | | | | |
| WN1 | | 100-175W (H2, H3, H4, H5, or V5) | | | | | |
| WN2 | | 150-400W (H2, H3, H4, H5) or 150-200W (V4, V5) | | | | | |
| WN3 | | 1000W (H3, H4, H5) or 250-400W (V3, V4, V5) | | | | | |
| Mounting | | | | | | | |
| A | Arm Mount | | | | | | |
| WWB | Wall Bracket | | | | | | |
| ST | Spider Mount (2 3/8" tenon) | | | | | | |
| Lamp Type/Wattage | | | | | | | |
| Metal Halide | | | | | | | |
| H17 | | 175W (ED-28) ² | | | | | |
| H25 | | 250W (ED-28) | | | | | |
| H40 | | 400W (ED-28) | | | | | |
| H1K | | 1000W (BT-56) | | | | | |
| Super Metal Halide | | | | | | | |
| MS17 | | 175W (ED-28) ² | | | | | |
| MS25 | | 250W (ED-28) | | | | | |
| MS40 | | 400W (ED-28) | | | | | |
| MS1K | | 1000W (BT-56) | | | | | |
| Pulse Start Metal Halide | | | | | | | |
| P10 | | 100W (ED-17) | | | | | |
| P12 | | 125W (ED-17) | | | | | |
| P15 | | 150W (ED-28) ² | | | | | |
| P17 | | 175W (ED-17) ³ | | | | | |
| P20 | | 200W (ED-28) ² | | | | | |
| P25 | | 250W (ED-28) | | | | | |
| P32 | | 320W (ED-28) | | | | | |
| P35 | | 350W (ED-28) | | | | | |
| P40 | | 400W (ED-28) | | | | | |
| High Pressure Sodium | | | | | | | |
| S10 | | 100W (ED-23 1/2) ² | | | | | |
| S15 | | 150W (ED-23 1/2) ² | | | | | |
| S25 | | 250W (ED-18) | | | | | |
| S40 | | 400W (ED-18) | | | | | |
| S1K | | 1000W (E-25) | | | | | |
| Lamp Orientation/Distribution | | | | | | | |
| H2 | | Horiz. II | | | | | |
| H3 | | Horiz. III | | | | | |
| H4 | | Horiz. IV | | | | | |
| H5 | | Horiz. V (square) | | | | | |
| V3 | | Vert. III | | | | | |
| V4 | | Vert. IV | | | | | |
| V5 | | Vert. V (square) | | | | | |
| Lens | | | | | | | |
| F | | Flat | | | | | |
| Voltage | | | | | | | |
| Q | | Quad Tap@ (120, 208, 240, 277V) | | | | | |
| S | | 480V ¹ | | | | | |
| T | | 120/277/347V CSA | | | | | |
| Color | | | | | | | |
| DB | | Dark Bronze | | | | | |
| BL | | Black | | | | | |
| WH | | White | | | | | |
| GR | | Gray | | | | | |
| PS | | Platinum Silver | | | | | |
| RD | | Red (Premium Color) | | | | | |
| DG | | Dark Gray (Premium Color) | | | | | |
| FG | | Forest Green (Premium Color) | | | | | |
| CC | | Custom Color (Consult Factory) | | | | | |
| Options | | | | | | | |
| F1 | | Fusing - 120V | | | | | |
| F2 | | Fusing - 208V | | | | | |
| F3 | | Fusing - 240V | | | | | |
| F4 | | Fusing - 277V | | | | | |
| F5 | | Fusing - 480V | | | | | |
| F6 | | Fusing - 347V | | | | | |
| P1 | | Photo Button - 120V | | | | | |
| P2 | | Photo Button - 208V | | | | | |
| P3 | | Photo Button - 240V | | | | | |
| P4 | | Photo Button - 277V | | | | | |
| P6 | | Photo Button - 347V | | | | | |
| QZ | | Quartz RS with lamp | | | | | |
| HS | | Internal House Side Shield | | | | | |
| VG | | Polycarbonate Vandal Guard | | | | | |
| RXX | | Reveal (specify color) | | | | | |
| L | | Lamp | | | | | |

Arm Logic - Order Separately

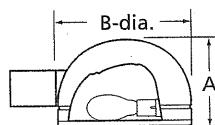
| | |
|------------------------|--|
| Series | ARM Rigid Arm |
| Luminaire Shape | W Washington |
| Arm Length | 6 6" Arm (EPA: 1.0 ft ² , 0.1m ² , 40 lbs, 20 kg) |
| Pole Shape | S Square |
| R4 | Round Straight (4-4.5") |
| R5 | Round Straight (5") |
| R6 | Round Straight (6") |
| T2 | Round Tapered (2.5") |
| T3 | Round Tapered (3") |
| T35 | Round Tapered (3.5") |
| T4 | Round Tapered (4") |
| Color | DB Dark Bronze |
| BL | Black |
| WH | White |
| GR | Gray |
| PS | Platinum Silver |
| RD | Red (Premium Color) |
| FG | Forest Green (Premium Color) |

- 1 Not available with 100W Pulse Start MH lamp.
- 2 Must use medium base ED-17 lamp in vertical units.
- 3 Vertical lamp only.

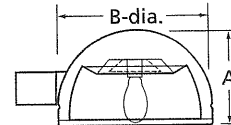
Dimensions

| | A | B | C |
|-------|---------|---------|---------|
| WNI | 11 1/2" | 18" | 23 1/2" |
| | 292 mm | 457 mm | 597 mm |
| WNII | 14" | 22 1/2" | 27 1/4" |
| | 356 mm | 572 mm | 692 mm |
| WNIII | 17 1/2" | 26" | 29 3/4" |
| | 445 mm | 660 mm | 756 mm |

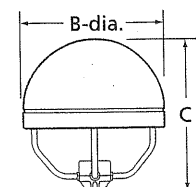
Note Spider mount adds: Large - 0.5 EPA (5 lbs), Medium - 0.3 EPA (3 lbs), Small - 0.2 EPA (2 lbs)



Arm Mount (PM)



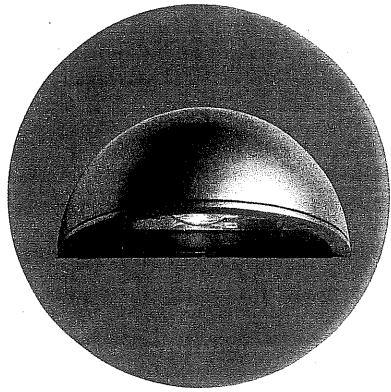
Arm Mount (PM)



Spider Mount (SM-SF)

BWD/BWU SERIES

Features



- Tempered glass lens, sealed to cast aluminum door and secured to housing with stainless steel allenhead screws. BWD has opal glass for soft distribution with lamp image shielding. BWU has clear lens for maximum uplight.
- Heavy wall, cast aluminum housing. Mounts over recessed j-boxes with galvanized steel wall flange. Stays put! No exposed mounting hardware.
- Soft uniform Type V distribution from BWD opal lens. Slight asymmetric distribution from clear lens uplight version. Specular reflector increases lumen output.
- Available in 50, 70, 100 watt Metal halide and HPS, 2PLC26 fluorescent and 100watt max. incandescent.
- Standard finishes include dark bronze, black, white and platinum.

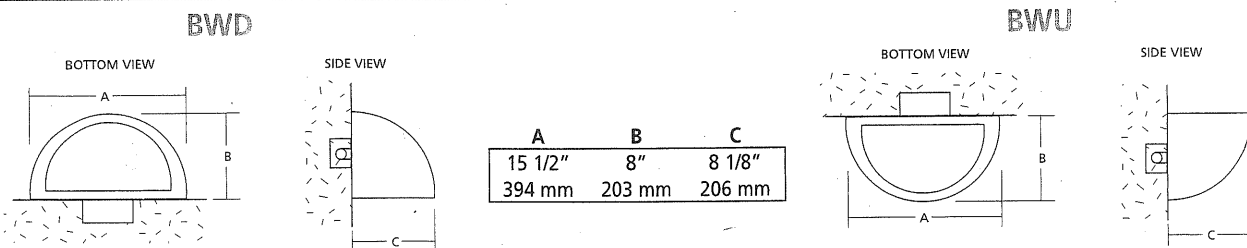
Ordering Information Example: BWD15 - 50HPS - 120 - DBZ - XX

| Series | Watts/Source | Volts | Finish | Options | |
|-----------------------|--------------|------------------------------|-------------|----------------|----------------|
| Series | | | | | |
| BWD15 | Downlight | 120 | | | |
| BWU15 | Uplight | 277 | | | |
| Wattage/Source | | | | | |
| 50HPS | Medium Base | MT | | | |
| 70HPS | Medium Base | 347 | | | |
| 100HPS | Medium Base | Multi-Tap (120/208/240/277V) | | | |
| 50MH | Medium Base | Finish | | | |
| 70MH | Medium Base | DBZ | Dark Bronze | | |
| 100MH | Medium Base | BLK | Black | | |
| 100INC | Medium Base | WHT | White | | |
| 2PLC26 | G24d-3 Base | SAL | Platinum | | |
| | | | | Options | |
| | | | | F | Fusing |
| | | | | LP | Lamp included. |

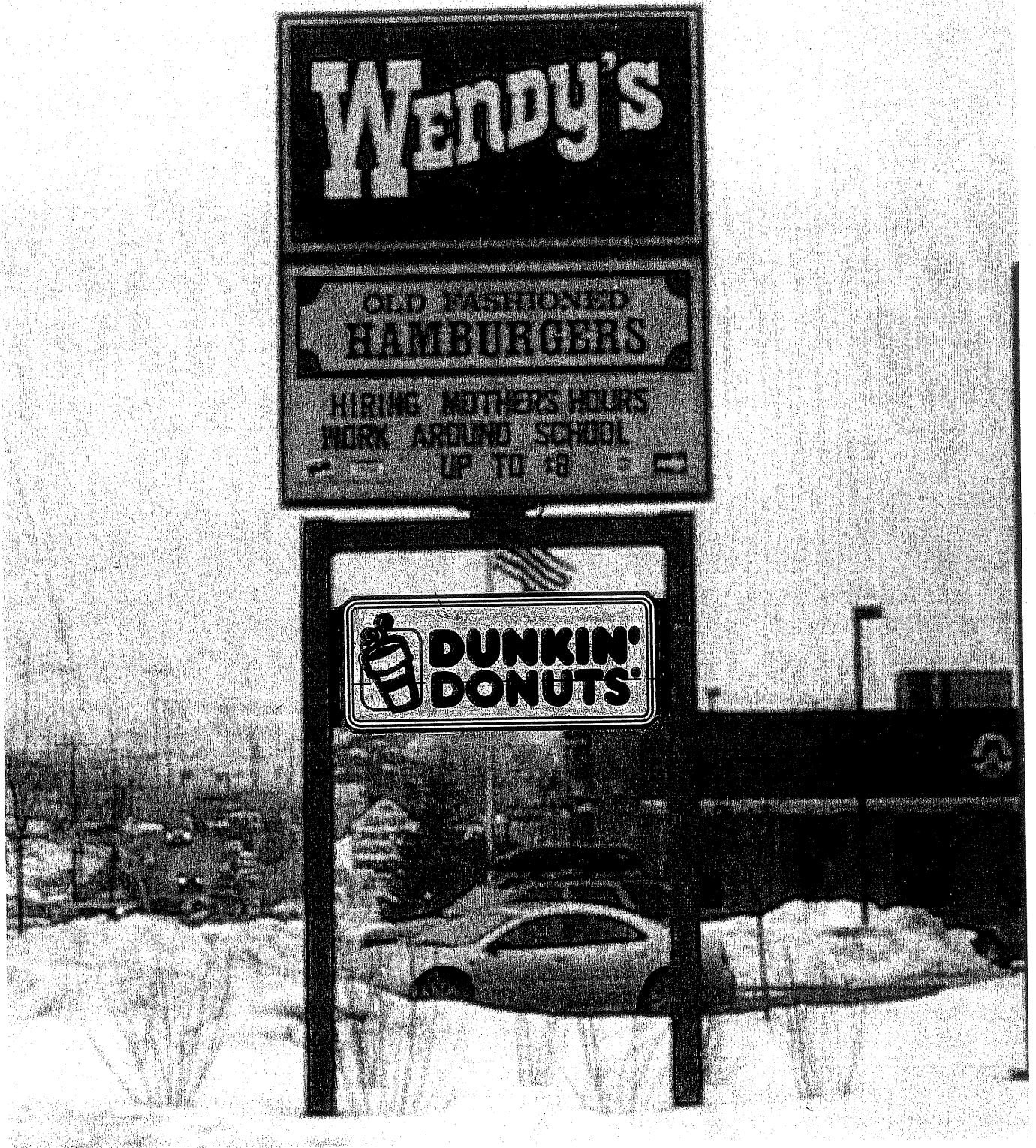
WALL MOUNTS

**DEVINE™
DESIGN**

Dimensions



Hubbell Lighting



Existing Wendy's sign with proposed Dunkin' Donuts addition.

5T

Schedule E
(Complaint)

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
Civil Action
Docket No:

Dilworth & Son, LLC,)
a Maine Limited Liability Company)
with a place of business in the City)
of Portland, County of Cumberland)
and State of Maine)

Plaintiff,)

v)

Older Brother LLC,)
a Limited Liability Company with a)
place of business in the City of)
Portland, County of Cumberland)
and State of Maine)

Younger Brother LLC,)
a Limited Liability Company with a)
place of business in the City of)
Portland, County of Cumberland)
and State of Maine)

and)

Wendy's Old Fashioned Hamburgers)
of New York, Inc., an Ohio)
Corporation with a place of business)
in the City of Portland, County of)
Cumberland and State of Maine)

Defendants)

COPY

COMPLAINT FOR
DECLARATORY JUDGMENT

NOW COMES THE PLAINTIFF, Dilworth & Son, LLC, acting by and through its attorney, and complains against the Defendants as follows:

1. Plaintiff, Dilworth & Son, LLC, is a Maine Limited Liability Company which owns real estate off of Warren Ave., in the City of Portland, County of Cumberland and State of Maine.

2. Defendant, Older Brother LLC, is a Maine Limited Liability Company which owns real estate off of Warren Ave., in the City of Portland, County of Cumberland and State of Maine. (hereinafter referred to as Older Brother).

3. Defendant, Younger Brother LLC, is a Maine Limited Liability Company which owns real estate off of Warren Ave. in the City of Portland, County of Cumberland and State of Maine. (hereinafter referred to as Younger Brother).

4. Defendant, Wendy's Old Fashioned Hamburgers of New York, Inc., is an Ohio Corporation which owns real estate off of Warren Ave. in the City of Portland, County of Cumberland and State of Maine. (hereinafter referred to as Wendy's).

5. The Plaintiff has an easement across land owned by the Defendants. An aerial photograph depicting the easement is attached hereto as Exhibit A.

6. On September 24, 2002 Older Brother and Younger Brother sold and/or transferred a parcel of real estate to Wendy's. This transfer of real estate by the Defendants granted an easement to Wendy's. A copy of the Deed is attached hereto as Exhibit B.

7. On or about September 24, 2002, Older Brother and Younger Brother notified Dilworth & Son LLC that Older Brother and Younger Brother were relocating the easement as outlined in Exhibit B above. A copy of the Notice of Relocation of Easement is attached hereto as Exhibit C.

8. At the time of the transfer of the real estate described in Exhibit B, Older Brother and Younger Brother and Wendy's knew that the Plaintiff did not agree with the relocation of the easement.

9. The relocation of the easement is not the same width.

10. The relocation of the easement is not the same type.

11. The relocation of the easement is not an access road.

12. The relocation of the easement is not in a manner which least interferes with the Grantee's use of said easement.

13. The Plaintiff objects to the relocation of the easement and wishes to retain the same type of access that is the same width and least interferes with its use of the easement it was granted in Exhibit A.

WHEREFORE, Plaintiff requests that this Court:

1. Void the transfer of the easement from Older Brother and Younger Brother to Wendy's;
2. Order Older Brother and Younger Brother to restore the easement back to the same type and width as previously existed;
3. Order Defendants to pay Plaintiff's costs associated with bringing the present action; and
4. Grant such other and further relief to Plaintiff as the Court may find appropriate under the circumstances.

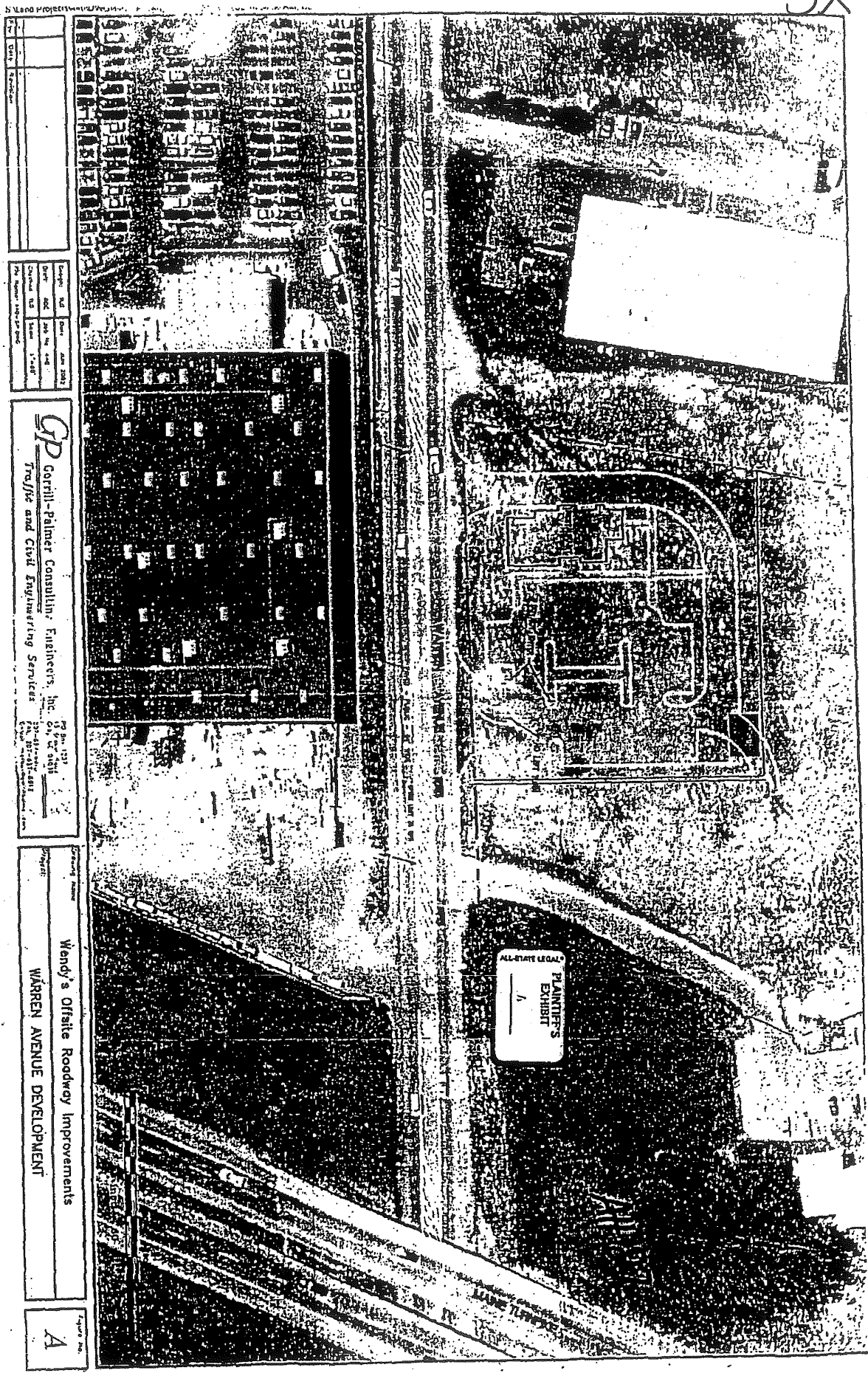
Dated at Norway, Maine this 8th day of October, 2002.

DOW'S LAW OFFICE, P.A.

Edward L. Dilworth, III
Bar No. 7644
Attorney for Plaintiff

266 Main Street
P.O. Box 349
Norway, Maine 04268
(207) 743-6351

5X



| | |
|-------------|--|
| Project No. | |
| Date | |

| | | | |
|---------------------------|----------|---------|-----------|
| Design No. | 100 | Date | June 1958 |
| Drawn By | J. H. C. | Job No. | 100 |
| Checked By | J. H. C. | Scale | 1"=40' |
| For Approval: [Signature] | | | |

GP
Gerrill-Palmer Consulting Engineers, Inc.
Traffic and Civil Engineering Services
1200 Park 15th St.
Cincinnati, Ohio 45219
Tel. 521-1111

Project Name: **Wendy's Offsite Roadway Improvements**
Project: **WARREN AVENUE DEVELOPMENT**

Sheet No. **A**

ALL-STATE LEGAL
PLANTER'S
EXHIBIT
A

| | |
|---------|----------|
| Phone # | 774-0317 |
| Fax # | 871-8026 |

0021374

PKT5634PG232

EASEMENT AMENDMENT AGREEMENT
(Corrective)

This Easement Amendment Agreement made this 24 day of March, 2000, by and between Wargis Associates, a Maine general partnership with a mailing address of c/o Boulton Property Management, One Canal Plaza, 5th Floor, Portland, ME 04101 ("Grantor"), and Citadel 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 400 ("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 3531, Page 190 and Book 7183, Page 127, respectively (the "Easement");

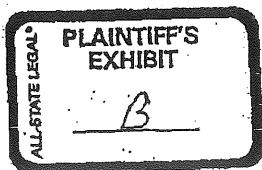
WHEREAS, an unpaved access road has been located on the Grantor's Land pursuant to the terms of the Easement and Grantee desires permission to pave the said access road in the location as it exists on the date hereof (the "Access Road") and as the same may be relocated from time to time by Grantor;

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 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

*1" - 2" amendments
C is this S/S
drive way allowed
11/22/00/TS*

*cc: [unclear]
citadel*



52

NO. 56E

05/16/02 11:25

DRUMMOND & DRUMMOND LLP → +207 871 8026

OK 15434 PG 233

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, 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

[Signature]
Witness

[Signature]
Witness

GRANTOR:
WARDATE ASSOCIATES
By: [Signature]
Printed Name: JOSEPH F. BOULAS
is General Partner

GRANTEE:
CITADEL BROADCASTING COMPANY
By: [Signature]
Printed Name: STUART STANLEY
is G.P.

5AA

05/16/02 11:26 DRUMMOND & DRUMMOND LLP → +207 871 8026

NO. 56E

BK15434 PG 234

STATE OF MAINE
County of Cumberland, SS

March 24, 2000

Personally appeared before me the above-named Joseph F. Boudos
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. HAGURA
Notary Public, Maine
My Commission Expires March 8, 2002

Lynnda S. Hagura
Notary Public
Printed Name: LYNDA S. HAGURA

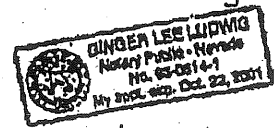
STATE OF Nevada
County of Clark, SS

March 28th, 2000

Personally appeared the above-named Stuart Stanek in
his capacity as VF 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



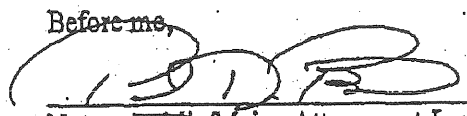
RECEIVED
RECORDED REGISTRY OF DEEDS
2000 APR 26 AM 9:37
CUMBERLAND COUNTY
John B. Abner

5AB

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.

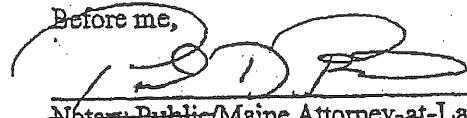
Before me,


Notary Public/Maine Attorney-at-Law
Printed Name: Paul D. Pietroski

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. Pietroski

5AD

Schedule F

(Holders of Rights to Private Sewer Line)

1. Wendy's Old Fashioned Hamburgers of New York Corporation.
2. Francis Drake, his successors or assigns, as owner of certain land adjacent to the Premises, as described in that certain Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 211.
3. Value Mall LLC, as successor to or assignee of Turner Barker Associates, as successor to or assignee of Northern General Services, Inc.

Application for MDOT Permit
for the
Proposed Warren Avenue Dunkin' Donut
601 Warren Avenue - Portland, Maine

Prepared for:
Kimco Realty LLC
Falmouth, Maine
207/ 797-7600

Prepared by:
Eaton Traffic Engineering
2 Miranda Street
Brunswick, ME 04011-7348
207/ 725-9805

and

Sebago Technics
One Chabot Street
Westbrook, ME 04098-1339
207/ 856-0277

Department of Transportation
Traffic Engineering Division
16 State House Station
Augusta, Maine 04333
Telephone: 207-287-3775

FOR MDOT USE 1/2000
ID #

Total Fees:
Date: Received

**PERMIT APPLICATION - TRAFFIC
TRAFFIC MOVEMENT PERMIT, 23 M.R.S.A. § 704 - A**

Please type or print:

This application is for:

Traffic 100-200 PCE's _____

Traffic 200+ PCE's X

Name of Applicant: Kimco Realty LLC

Address: 65 Gray Rd. Box 4, Falmouth, Maine 04105 Telephone: 207-797-7600

Name of local contact or agent: William C. Eaton

Address: 2 Miranda St., Brunswick, ME 04011 Telephone: 207-725-9505

Name and type of development: Proposed Dunkin' Donuts Restaurant

Location of development including road, street, or nearest route number: 601 Warren Avenue

City/Town/Plantation: Portland , County: Cumberland , Tax Map # 314 , Lot # A 7

Do you want a consolidated review with DEP pursuant to 23 M.R.S.A. § 704-A (7)?

Yes _____ No X

Was this development started prior to obtaining a traffic permit? No

Is the project located in an area designated as a growth area (as defined in M.R.S.A. title 30 - A, chapter 187)?

Yes X No _____

Is this project located within a compact area of an urban compact municipality? Yes X No _____

Is this development or any portion of the site currently subject to state or municipal enforcement action?

No

Existing DEP or MDOT permit number (if applicable):

NA

Name(s) of DOT staff person(s) contacted concerning this application:

Tom Errico, Acting Portland Traffic Engineer- Delegated Review Authority

Name(s) of DOT staff person(s) present at the scoping meeting for 200+ applications: _____

Section 1

Site and Traffic Information

1.0 Overview

Sebago Technics and Eaton Traffic Engineering have been retained to prepare plans and permit applications for a proposed Dunkin' Donut shop and office building to be located on Warren Avenue in Eliot, Maine. The development would include the construction of a 1,840 square foot Dunkin' Donut located behind the existing Wendy's restaurant on the northerly side of Warren Avenue across from Home Depot. The proposed Dunkin' Donut will utilize the existing access driveways to/from Wendy's. Wendy's has two driveways – a one-way exit on the westerly side of the site, and a two-way driveway on the easterly side. Wendy's traffic essentially follows a one-way flow on the site, with traffic entering at the east driveway and exiting at the west. The only two-way usage of the east driveway appears to be for employees and visitors to Pioneer Telephone, located just east of Wendy's on Warren Avenue.

1.1 Site Description

The project site is behind a site occupied by a Wendy's restaurant and is relatively level and cleared.

1.2 Existing and Proposed Uses

The proposed use is a 1,840 square foot Dunkin' Donut shop with a drive-through window.

1.3 Site and Vicinity Boundaries

Figure 1, following this page, shows the project location. The Applicant is not aware of any other currently proposed development sites in the immediate vicinity of the proposed facility other than Evergreen Credit Union, located on Riverside Street just south of Home Depot. The credit union is not expected to be operational (other than an ATM) during the PM peak hour.

1.4 Proposed Uses in Vicinity of the Proposed Development

The Applicant is unaware of any proposed development that is highly likely to occur in the vicinity of the proposed retail development other than that noted in 1.3 above.

1.5 Trip Generation

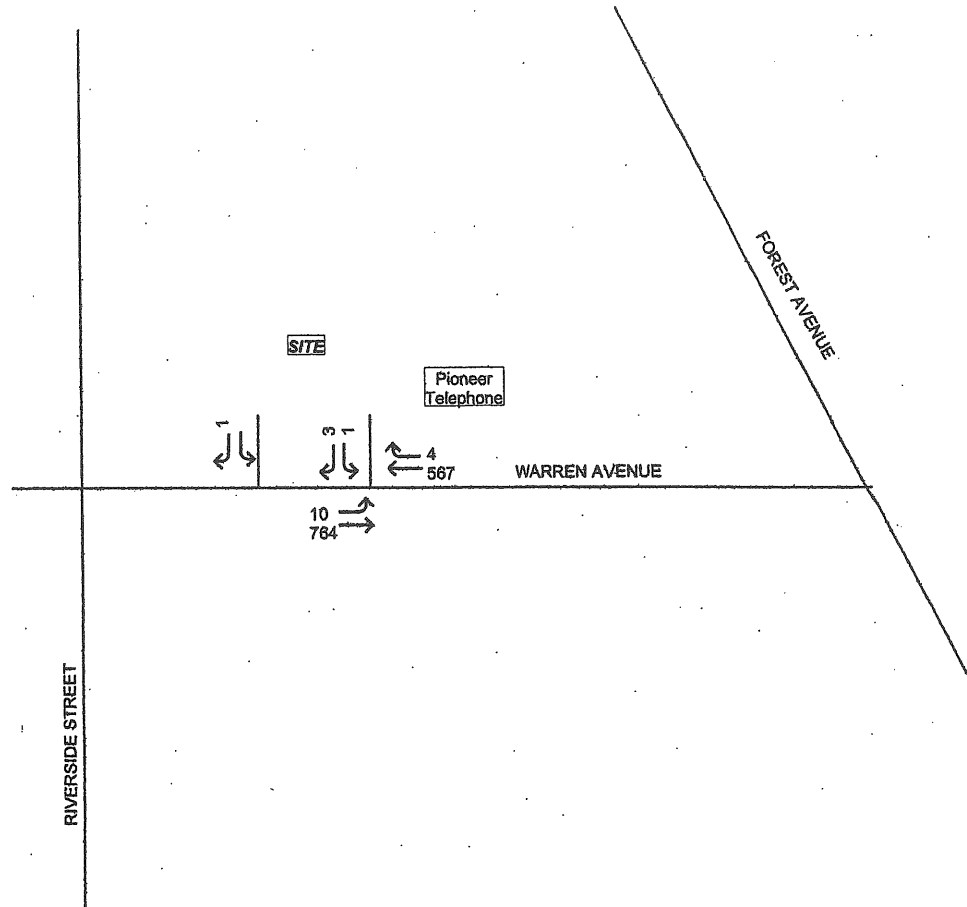
See Attachment by Eaton Traffic Engineering.

1.6 Trip Distribution and Assignment

See Attachment by Eaton Traffic Engineering.

Trip Generation/ Distribution/ Assignment

The proposed development consists of a 1,840 square foot Dunkin' Donut shop with seating for 22 persons. For the proposed Dunkin' Donut shop, MDOT has a "standard" AM peak hour trip generation estimate of 330 peak hour trips, with 90 trips in the PM peak hour. Accordingly it appears that the AM peak hour is the appropriate time period for analysis. Based upon ITE data (Table 5.8 of Trip Generation Handbook), it is estimated that approximately 50 percent of the Dunkin' Donut trips (164) are pass-by trips, and the remainder (166) are primary trips. From a manual turning movement count of Warren Avenue @ Wendy's Restaurant (see Figure 2 attached) directional distribution in the AM peak hour is 57 percent eastbound and 43 percent westbound on Warren Avenue. Pass-by trips were distributed and assigned on this basis. Primary trips were distributed and assigned on the basis of the distribution used for the traffic study for the Wendy's Restaurant (Gorrill-Palmer, January 2002), which was 75 percent to/from the west and 25 percent to/from the east. Figure 3 presents the assignment of site generated AM peak hour trips.



NOT TO SCALE



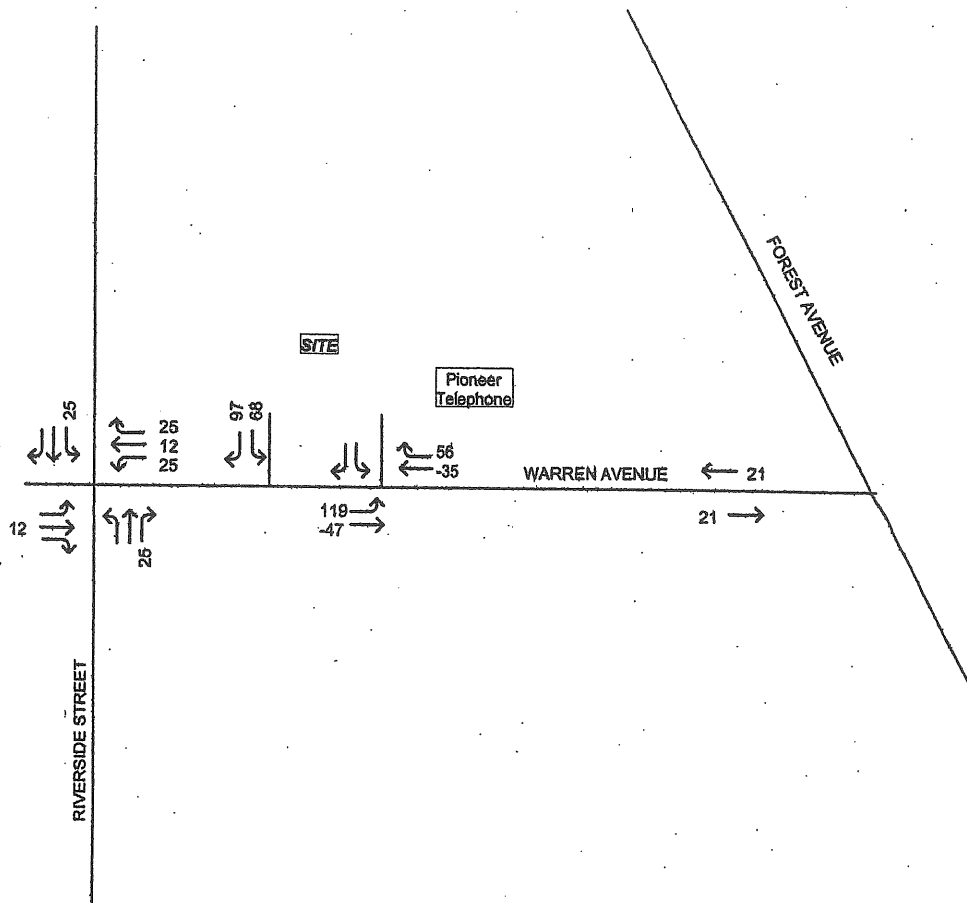
EATON
TRAFFIC
ENGINEERING

2 Miranda St. - Brunswick, Maine
(207) 725-9805 Fax (207) 725-0847

Figure 2

ESTIMATED 2005 AM PEAK HOUR TRAFFIC - PRE-DEVELOPMENT

PROPOSED WARREN AVENUE DUNKIN' DONUT / PORTLAND, MAINE



NOT TO SCALE

ete EATON
TRAFFIC
ENGINEERING
2 Miranda St. - Brunswick, Maine
(207) 725-8805 Fax (207) 725-0847

Figure 3
SITE GENERATED WEEKDAY AM PEAK HOUR TRAFFIC
PROPOSED WARREN AVENUE DUNKIN' DONUT / PORTLAND, MAINE

Safety

Safety data for the most recent available 3 year period (2001-03) was obtained from the Accident Records Section of MDOT for roadways in the vicinity of the site. Attached are the MDOT computer summaries of accidents on Riverside Street and Warren Avenue in the vicinity of the site.

MDOT guidelines for identification of a High Crash Location (HCL - indicating a potential safety deficiency) is that a location must experience both 8 or more accidents in a 3 year period and have a Critical Rate Factor of 1.00 or greater. Five of the locations satisfy the criteria and are highlighted on the MDOT computer summaries. Detailed accident collision diagrams were prepared from accident reports on file at MDOT. A summary of the analysis of the collision diagrams prepared for each HCL is as follows (collision diagrams attached):

Larrabee @ Riverside: Of the 46 accidents occurring at this location, 29 were rear-end collisions, with the majority on the Larrabee Road and Maine Turnpike approaches. The next most common accident types were left-turn (6) and angle collisions (5). The clear pattern of rear-end collisions suggests that signal clearance intervals should be re-evaluated, as well as signal visibility. Rear-end collisions on the Larrabee Road approach may be related to the "trap lane" created when the inside through lane becomes an exclusive left turn lane at the intersection with little warning. The recent opening of the Rand Road interchange should have reduced volumes somewhat at this intersection, but 2003 accidents totaled 20, an increase over 2001 and 2002 levels. Planned widening of Riverside Street in the vicinity may improve capacity and level of service and have a positive impact on safety at this location.

Warren Avenue/ Riverside to Saville: A total of 33 accidents occurred on this link, with 17 angle collisions, 9 left turn collisions, and 7 rear end collisions. Most of the accidents appear to be related to movements to/from adjacent land uses, with 5 accidents each clearly identified at Home Depot and BJ's. The development of a third lane to provide a two-way left-turn lane throughout most of this section of roadway might help reduce the frequency of accidents,

particularly rear-end and left-turn accidents on Warren Avenue. This lane would also provide a safety refuge for vehicles exiting driveways via a left turn to Warren.

Riverside Street/ Larrabee to Riverside Ct: Of the 26 accidents on this segment of roadway, one half (13) were left turn collisions, with the next most prevalent patterns being lane-change/sideswipe (4) and rear-end collisions (4). The majority of these accidents appear to be related to access movements to/from adjacent land uses along Riverside Street. Proposed improvements in the vicinity may help address the problem. There is a pattern of decreasing accidents over time – 14 accidents occurred in 2001, 8 in 2002 and 4 in 2003. This segment should be monitored to ensure that this pattern either continues or stabilizes.

Riverside Street/ Riverside Ct to RR Crossing: A total of 13 accidents of various types occurred on this segment, most also appearing to be related to access movements to/from adjacent land use. As was the case for the previous segment, the number of accidents is lessening over time – 8 in 2001, 4 in 2002 and 1 in 2003. Monitoring is recommended.

Riverside Street/ Warren to McAlester Farms: Of the 14 accidents on this segment 6 were rear-end collisions and 5 were lane-change/sideswipe collisions. 6 of these 11 accidents occurred on the northbound departure of Riverside Street where two through lanes merge to one lane within a substandard distance of the intersection (perhaps 150 feet of merge-weave distance). There are proposed improvements for the intersection of Riverside @ Warren which may both lengthen the weave-merge section and provide additional lanes to Warren eastbound, which could improve the LOS of this intersection and help improve safety.

CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Fire Copy

Att. 7

2004-0118
Application I. D. Number

Kimco Realty, LLC
Applicant
65 Gray Street, Falmouth, ME 04105
Applicant's Mailing Address

06/15/2004
Application Date
Dunkin Donuts
Project Name/Description

Consultant/Agent
Applicant Ph: (207) 797-7600 Applicant Fax: (207) 797-4300
Applicant or Agent Daytime Telephone, Fax

597 - 597 Warren Ave , Portland, Maine
Address of Proposed Site
314 A007001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify)

2,432 s.f. Proposed Building square Feet or # of Units
Acreage of Site
B4 Zoning

Check Review Required:

- Site Plan (major/minor) Subdivision # of lots PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other

Fees Paid: Site Plan \$400.00 Subdivision Engineer Review Date 06/15/2004

Fire Approval Status:

Reviewer Lt. MacDougal

- Approved Approved w/Conditions See Attached Denied

Approval Date 06/16/2004 Approval Expiration 06/16/2005 Extension to Additional Sheets Attached

Condition Compliance Lt. MacDougal signature 06/16/2004 date

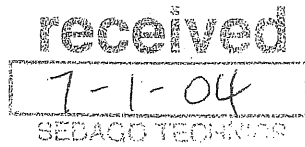
Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- Performance Guarantee Accepted
date amount expiration date
- Inspection Fee Paid
date amount
- Building Permit Issue
date
- Performance Guarantee Reduced
date remaining balance signature
- Temporary Certificate of Occupancy Conditions (See Attached)
date expiration date
- Final Inspection
date signature
- Certificate Of Occupancy
date
- Performance Guarantee Released
date signature
- Defect Guarantee Submitted
submitted date amount expiration date
- Defect Guarantee Released
date signature



Central Maine Power



Att. 8

June 30, 2004

Mr. Jeffrey R. Perry
C/O Sebago Technics
One Chabot Street
PO Box 1339
Westbrook, Maine 04098

RE: Proposed Dunkin Donuts, 597 Warren Avenue, Portland

Dear Mr. Perry,

This letter is to advise you that Central Maine Power has sufficient three phase electrical capacity in the area to serve the subject project.

Once the project is accepted by the City of Portland, the owner will need to call our Customer Service Center at 1-800-565-3181 to sign up for a New Account and a Work Request Order so we may start a cost estimate.

To complete the cost estimate I will need the information of what voltage is required, the size of the main disconnect and the kilowatt loads required for the new facility. This information should be provided to me from the electrician or electrical engineering firm.

If you have any questions please feel free to call me at 828-2882.

Sincerely,

Paul DuPerre
Technical Advisor

An equal opportunity employer

162 Canco Road | Portland, ME 04103
tel (800) 750-4000

www.cmpco.com

An Energy East Company

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

AH. 9

Division Directors
Mark B. Adelson
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

July 2, 2004

Jeffrey Perry
Project Manager
Sebago Technics
One Chabot Street
P.O. Box 1339
Westbrook, ME 04098-1339

RE: Dunkin' Donuts Building, 597 Warren Avenue
ID #2004-0118, CBL #314-A-007

Dear Mr. Perry:

After review of the Dunkin' Donuts site plan proposed at 597 Warren Avenue, the following comments have been generated:

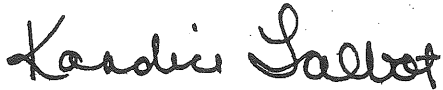
1. Based on the preliminary traffic study prepared by Eaton Traffic Engineering, a MDOT Traffic Movement Permit is necessary. The City of Portland has delegated review authority for a Traffic Movement Permit, which requires Planning Board review. Also, a Traffic Movement Permit requires an additional fee of \$1,000. The project is tentatively scheduled for a Planning Board workshop on August 24th.
2. A standard boundary survey, stamped by a registered surveyor, shall be submitted.
3. Capacity letters from the Portland Water District and the Portland Sewer Division shall be submitted.
4. There is an access easement that runs through the site. Please submit a copy of the easement language for review by Corporation Counsel.
5. The Traffic Engineer is currently reviewing the layout of the plan. Additional comments from the Traffic Engineer shall be forwarded to you.

9A

6. The Development Review Coordinator is currently reviewing stormwater management plan. Additional comments from the Development Review Coordinator shall be forwarded to you.
7. The City Arborist is currently reviewing the landscaping plan. Additional comments from the City Arborist shall be forwarded to you.
8. Lighting catalogue cuts and a lighting photometric plan shall be submitted to determine if the lighting meets the City's lighting standards.

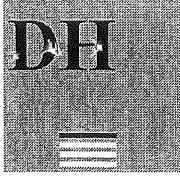
If you have any questions, please do not hesitate to contact me at 874-8901.

Sincerely,



Kandice Talbot
Planner

CC: Sarah Hopkins, Development Review Services Manager



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

■ ROADWAY DESIGN
■ ENVIRONMENTAL ENGINEERING
■ TRAFFIC STUDIES AND MANAGEMENT
■ PERMITTING
■ AIRPORT ENGINEERING
■ SITE PLANNING
■ CONSTRUCTION ADMINISTRATION

Att. 10

MEMORANDUM

DATE: July 15, 2004
TO: Kandi Talbot, City of Portland Planning
FROM: Stephen R. Bushey, P.E.
SUBJECT: Dunkin Donuts
Warren Avenue

DeLuca-Hoffman Associates, Inc has reviewed the application materials dated June 14, 2004 for a proposed Dunkin Donuts off Warren Avenue. The materials received included only the Stormwater report and pre/postdevelopment watershed plans. We have not reviewed the site plans, grading or utility plans. We offer the following comments:

1. The stormwater management system for the new Dunkin Donuts includes a closed drainage system that will collect runoff from the developed area and convey it to a detention basin. An existing basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development.
2. The post development runoff modeling includes a watershed 40 containing the proposed detention basin. This watershed area must be routed through the pond within the computer model. Because of the increased area adjustments to the outlet control structure may be necessary as well as potential increases to the basin size.
3. The watershed plans contain no information on the pipe sizing and other drainage system measures, therefore no review was completed.
4. Does the Planning Staff want our review of the grading and utilities designs? If so, then plans should be forwarded to this office.
5. We assume that staff will review the queuing lengths for vehicles entering the facility and the circulation with the adjacent Wendy's restaurant.
6. Design plans for the detention basin including cross sections and details for the outlet control structure should be provided.
7. Erosion control measures and plans should be provided on the grading plans.

We trust these items can be satisfactorily worked out by the engineer and look forward to additional materials addressing these comments.

If you have any questions please call.

Steve Bushey, PE
Senior Engineer

Srb/jn1350.10/Dunkin Donuts07-15-04

John E. Baldacci
Governor



received
8-16-04
SEBAGO TECHNICS
Roland D. Martin
Commissioner

Att. 11

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Wildlife Division – Region A
358 Shaker Rd.
Gray, ME 04039
Phone: (207) – 657-2345 x 109
Fax: (207) – 657-2980

August 13, 2004

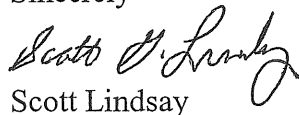
Jeffrey Perry
Sebago Technics
1 Chabot St.
P.O. Box 1339
Westbrook, ME 04098

Dear Mr. Perry,

You contacted this office requesting information on any wildlife habitats that may be impacted by a proposed Dunkin Donuts on Warren Avenue in Portland.

Based on a review of our most current data, I conclude there are no Essential or Significant Wildlife Habitats within or adjacent to this site, nor are there any documented occurrences of rare, threatened or endangered species at this site. Given the extensive development existing at this urban location, I do not believe this development will have any negative impact on wildlife habitats.

Sincerely


Scott Lindsay

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Ethan Boxer-Macomber" <EBM@portlandmaine.gov>
Date: 1/20/05 10:01:31 AM
Subject: Dunkin Donuts - Warren Avenue

Ethan-

I have reviewed the site plan and traffic study for the above project and generally find the project to be acceptable with the following requirements.

- * I continue to believe that the curb opening width for the entry drive to be excessive. A drawing was provided that illustrates truck turning movements and I believe the drawing supports some minor narrowing is possible.
- * Movements from the exit driveway from Dunkin Donuts and the Wendy's Circulation road should be controlled by a Stop Sign (movements from Dunkin Donuts should stop).
- * The traffic study concludes that poor traffic conditions will exist at the Warren Avenue/Riverside Street intersection after the project is complete. This analysis accounts for programmed improvements by MaineDOT. Implementation of these improvements are very important and should be incorporated as soon as possible. Developments in the area have contributed money to assist in funding the improvements. Accordingly, the applicant should make a monetary contribution to assist in mitigating traffic problems in the Warren Avenue/Riverside Street area. It is my recommendation that the applicant contribute \$30,000.00.

If you have any questions please contact me.

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

59 Middle Street

Portland, Maine 04043

(207) 871-1785 Phone

(207) 871-5825 Fax

TRAFFIC MOVEMENT PERMIT SCOPING MEETING

Permit Category:

100 - 200 PCEs
 New

200 + PCEs
 Modification

Attendance:

Date:

Tom Curcio / Lucie Cole / Randy Dunton, Jeff Perry
9/22/04

Meeting Location:

Project Name:

Dunkin Donuts

Address:

Applicant:

Address:

Project Engineer:

Address:

MDOT Traffic Engineer (reviewer):

Filings: Has the Applicant notified abutters via certified mail at least 7 days prior to this meeting?

Has the "Notice of Intent to File" been published in a local newspaper?

Section 1 - Site and Traffic Information

1A. Site Plan

Size of development parcel (acres):

59,242 sq. ft.

Size of development parcel to be left non-vegetated (acres):

1B. Existing and Proposed Site Uses

Type of development:

USE

SIZE

Dunkin' Donuts

2512 sq

1C. Site and Vicinity Boundaries

- Boundary or title survey signed and sealed by a professional land surveyor
- Vicinity map provided

1D. Proposed Uses in the Vicinity of Proposed Development

Other approved development(s): Evergreen, Maine Mall Motors,
Westbrook Crossings, Hannaford (Forest + Riverside)
Lowes

1E. Trip Generation

Summary tables for each land use code: PM ~~AM~~ traffic

| ITE (LUC) | Weekday | AM Peak | PM Peak | Saturday Peak |
|-------------|------------|---------|---------|---------------|
| <u>MDOT</u> | <u>380</u> | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

Trip rates obtained from other sources:
Number of locations where driveway counts taken: _____
Dates & time periods when driveway counts taken: _____
Locations where driveway counts were taken: _____

1F. Trip Distribution

- _____ Stick diagram for each major intersection on either side of the development driveway(s)?
- _____ ITE trip generation handbook
- _____ Actual survey done? Location? 5090
- _____ Other. Explain. _____

Comments: _____

1G. Trip Assignment

- _____ Stick diagram for each major intersection on either side of the development driveway(s)?
- Percent primary trips _____
- Percent passer-by trips _____
- Percent diverted trips _____

stacking - 8 to menu board
access to radio station - do they have

Object Name:

Basis for using above-listed percentages:

- Existing traffic patterns of adjacent street
- Zip code survey
- Gravity model
- Other. Explain. _____

Comments: _____

Section 2 - Traffic Crashes

See Traffic Study

- 01-03 Year(s) of MDOT crash records for study area
- _____ Number of high crash locations
- _____ Collision diagrams provided

Mitigation provided for each high crash location: _____

Other traffic problems: _____

Comments: _____

Section 3 - Development Entrances and Exits

3A. Entrance and Exit Locations

800 ft Distance to nearest intersecting road or town line (to the nearest hundredth of a mile)
2 to Riverside St.

2 Number, width and surface of each proposed entrance/exit
existing conditions 40 ft.

3B. Plan View of Each Intersection Created

Names of intersecting road Warren
Posted speed limits 35

| Entrance/Exit Sight Distance: | Left | Right |
|-------------------------------|------------|------------|
| _____ | <u>916</u> | <u>800</u> |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Usage and location of all driveways and roads located adjacent to the development site:
Home Depot Service Drive

3C. Entrance/Exit Design

- Lighting - *will check*
- Driveway spacing and corner clearance (Access Management)
- Adequate sight distance for vehicles exiting development
- Entrance grade (see fact sheet)
- Entrance/exit widths less than 42 feet (12.8 meters)
- Left turn lane
- Right turn lane
- Signal warranted
- Lane encroachment - *will need to look at*
- Separation islands (see fact sheet)
- Drainage study using 50 year storm for culverts and to connect to MDOT system
- Capacity Analysis - *will do*
- Queuing Analysis - *will do*
- Study to be submitted to MDOT Division Engineer

Comments: _____

Section 4 - Title, Right or Interest

- Title, right or interest in project site
- Title, right or interest in entrance/exits
- Title, right or interest in drainage easement affecting MDOT

Section 5 - Public or Private Rights-of-Way

- Location and width of proposed streets, easements and other public or private rights-of-way
- No signs, structures or pavement connected to the entrance

Section 6 - Schedule

Project schedule: _____

Further study items required (\$500.00 additional fee): _____

Section 7 - Full Traffic Study

_____ \$1,500.00 additional fee required

Build-out year (Phase 1): _____
Build-out year (Full Occupancy): 2005

FS 1. Time Period(s) for Traffic Engineering Analysis

- AM weekday peak hour of adjacent street.
- Noontime weekday peak hour of adjacent street
- PM weekday peak hour of adjacent street.
- Noontime Saturday peak hour of adjacent street.
- Other. Explain. _____

FS 2. Background Annual Traffic Growth Rate

- Type of counts taken:
- Peak hour
 - AADT
 - Base counts less than 2 years old?

FS 3. Study Area to Include the Following Intersections

side drives
Warnen
Riverside

Additional intersection(s) required if one hour volumes from development are:
 25 vehicles in left turn only lane
 35 vehicles in through, right turn lane or combined through and right turn
 35 vehicles (multiplying the left turn volume by 1.5) in a combined left turn and through lane, or a combined left turn, through and right turn lane

FS 4. Intersection Capacity Analysis

- Isolated
- Interconnected. Intersection(s) _____

Software package (isolated): synchro
Software package (interconnected): _____

FS 5. Analyze or Evaluate the Following

| | <u>Location</u> |
|---|-----------------|
| <input type="checkbox"/> Left turn lane warranted | _____ |
| <input type="checkbox"/> Right turn lane warranted | _____ |
| <input checked="" type="checkbox"/> Traffic signal warranted | _____ |
| <input type="checkbox"/> Sight distance evaluation | _____ |
| <input type="checkbox"/> Truck climbing lane warranted | _____ |
| <input checked="" type="checkbox"/> Truck/RV turning radii evaluation | _____ |
| <input type="checkbox"/> Investigation of HCL | _____ |

Movement Permit Scoping Meeting
Project Name:

FS 6. Other Development Traffic To Be Included in Study

FS 7. List Location(s) and Date(s) of Completion of Other Projects and Their Traffic Engineer

Section 1

Site and Traffic Information

1.0 Overview

Sebago Technics and Eaton Traffic Engineering have been retained to prepare plans and permit applications for a proposed Dunkin' Donut shop and office building to be located on Warren Avenue in Eliot, Maine. The development would include the construction of a 1,840 square foot Dunkin' Donut located behind the existing Wendy's restaurant on the northerly side of Warren Avenue across from Home Depot. The proposed Dunkin' Donut will utilize the existing access driveways to/from Wendy's. Wendy's has two driveways – a one-way exit on the westerly side of the site, and a two-way driveway on the easterly side. Wendy's traffic essentially follows a one-way flow on the site, with traffic entering at the east driveway and exiting at the west. The only two-way usage of the east driveway appears to be for employees and visitors to Pioneer Telephone, located just east of Wendy's on Warren Avenue.

1.1 Site Description

The project site is behind a site occupied by a Wendy's restaurant and is relatively level and cleared.

1.2 Existing and Proposed Uses

The proposed use is a 1,840 square foot Dunkin' Donut shop with a drive-through window.

1.3 Site and Vicinity Boundaries

Figure 1, following this page, shows the project location. The Applicant is not aware of any other currently proposed development sites in the immediate vicinity of the proposed facility other than Evergreen Credit Union, located on Riverside Street just south of Home Depot. The credit union is not expected to be operational (other than an ATM) during the PM peak hour.

1.4 Proposed Uses in Vicinity of the Proposed Development

The Applicant is unaware of any proposed development that is highly likely to occur in the vicinity of the proposed retail development other than that noted in 1.3 above.

1.5 Trip Generation

See Attachment by Eaton Traffic Engineering.

1.6 Trip Distribution and Assignment

See Attachment by Eaton Traffic Engineering.