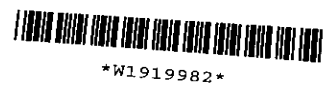


W44777



DECLARATION OF ACCESS EASEMENT AND COVENANTS

W44777

This Declaration of Access Easement and Covenants (hereinafter the "Declaration") is made and entered into on February 4, 2003, by and between INVESTMENT DECISION CORPORATION, a Utah corporation (hereinafter referred to as "Grantor"), whose mailing address is 64 East 6400 South, Suite 310, Murray, Utah 84107, Attention: Mr. David Anderson, and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation (hereinafter referred to as "Grantee"), whose mailing address is 4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio 43017, Attention: Legal Dept.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in North Ogden (Weber County), Utah, as more particularly described in Exhibit A which is attached hereto and made a part hereof (which real property is hereinafter referred to as "Grantor's Parcel"); and

WHEREAS, Grantee is the owner of that certain real property located in North Ogden (Weber County), Utah, as more particularly described in Exhibit B which is attached hereto and made a part hereof (which real property is hereinafter referred to as "Grantee's Parcel"); and

WHEREAS, Grantor's Parcel and Grantee's Parcel are both benefited and burdened by a Development Agreement dated October 12, 1987 by and between Grantor's predecessor in interest Boyer North Ogden Associates and Smith's Food King Properties, Inc., which Development Agreement was recorded on October 16, 1987 as Entry No. 1028018 in Book 1527, page 2805, Weber County, Utah Recorder's office; and

WHEREAS, Grantor and Grantee desire to establish certain easements and covenants in connection with the use of their respective parcels.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor and Grantee agree as follows:

- 1. Recital Incorporated. The Recitals portion of this Declaration is hereby incorporated by this reference as fully as though it were herein set forth and rewritten.

E# 1919982 BK2330 PG1115
DOUG CROFTS, WEBER COUNTY RECORDER
10-MAR-03 201 PM FEE \$33.00 DEP SGC
REC FOR: MOUNTAIN.VIEW.TITLE

2. Access Easement. Grantor hereby grants, conveys and delivers to Grantee, for the use and benefit of Grantee, its successors, assigns, licensees, suppliers, customers and employees, a non-exclusive, perpetual easement, appurtenant to Grantee's Parcel, for the purpose of vehicular and pedestrian ingress, egress and access to and from Grantee's Parcel and Washington Boulevard, over, upon, across and through that portion of Grantor's Parcel described and depicted on Exhibit C, attached hereto and made a part hereof. All improvements existing on the easement area on the date of this Declaration shall remain thereon and shall be used by Grantee in common with Grantor and the other parties entitled to use such area under and in accordance with the Development Agreement. Grantor covenants and agrees with Grantee not to change, alter, relocate or otherwise modify in any way the location, configuration or existing improvements in the easement area (including, without limitation, the driveways, curb cut or the location, size configuration or number of parking spaces located thereon) without first obtaining the written consent of Grantee, which consent may be given or withheld by Grantee in its sole discretion.

3. Maintenance of Easement. Grantor further covenants and agrees to continue to maintain the easement area in the condition required by the Development Agreement at its sole cost and expense, subject however to reimbursement for a portion of such maintenance costs by Grantee and by the parties entitled to use the easement area in accordance with the Development Agreement. In the event Grantor fails or refuses to maintain said easement area after receiving written notice from Grantee, in addition to its remedies at law or in equity, Grantee shall have the option, but not the obligation, of performing the necessary maintenance and billing the reasonable cost thereof to Grantor or deducting such amount from any sums due and payable by Grantee to Grantor hereunder or under any separate agreement between Grantor and Grantee until fully reimbursed therefor. This easement shall include the right of Grantee to enter upon such other portions of Grantor's Parcel as are necessary for the purpose of maintaining said easement area.

TO HAVE AND TO HOLD the easements and rights unto Grantee, its successors and assigns forever. Grantor, for Grantor and Grantor's heirs, successors and assigns, hereby warrants and covenants with Grantee, its successors and assigns, that Grantor is the true and lawful owner in fee simple of Grantor's Parcel and has the right and full power to grant and convey the easement and rights herein granted, and that Grantor will warrant and defend the easement and rights herein granted against all claims of all persons whomsoever.

The above-described easements and covenants shall be for the use and benefit of Grantee's Parcel and the owners from time to time of all or any part thereof. All provisions of this Declaration, including the covenants, benefits and burdens, shall run with the land and be binding upon and inure to the heirs, executors, administrators,

personal and/or legal representatives, successors, assigns and tenants of Grantee and Grantor.

This Declaration is not intended to restate, replace, amend, modify or supercede the Development Agreement in any respect, but is intended only to evidence the agreements between Grantor and Grantee with respect to the subject matter herein which shall be in addition to and not in contravention of the rights, benefits, burdens and obligations of the parties with respect to the easement area under the Development Agreement. The rule of strict construction shall not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on Grantee is carried out.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first above written.

Witnesses:

INVESTMENT DECISION CORPORATION

Print Name: _____

By: David W. Anderson

Print Name: _____

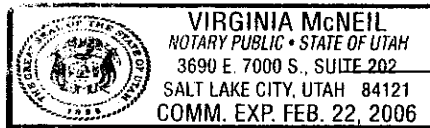
Its: PRESIDENT

STATE OF UTAH
COUNTY OF SALT LAKE, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 3rd day of FEBRUARY, 2003, before me personally appeared DAVID W. ANDERSON, the PRESIDENT of **INVESTMENT DECISION CORPORATION**, a Utah corporation, who was known to me as the person and officer described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledged that he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.

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

(SEAL)



Virginia McNeil
Notary Public

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

Darcy B. Mihal
Print Name: DARCY B. MIHAL

Erica E. Warren
Print Name: ERICA E. WARREN

Darcy B. Mihal
Print Name: DARCY B. MIHAL

Erica E. Warren
Print Name: ERICA E. WARREN

By: *Ronald E. Musick E.V.P.*
RONALD E. MUSICK
Executive Vice President

Title: _____

By: *George Condos*
GEORGE CONDOS
Executive Vice President

Title: _____

Law Dept. *BMD*

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 4th day of February, 2003, before me personally appeared RONALD E. MUSICK and GEORGE CONDOS, the Executive Vice President and Executive Vice President, the

respectively, of WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledge that they held the positions or titles set forth in the instrument and certificate, that they signed the instrument on behalf of the corporation by proper authority, and that the instrument was the act of the corporation for the purposes therein stated.

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



DARCY B. MIHAL
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES AUGUST 23, 2005

Darcy B. Mihal
Notary Public

This instrument prepared by:
Beth L. Dreitler, Attorney at Law
Wendy's International, Inc.
4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio 43017

EXHIBIT A



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors
P.O. Box 9707
Ogden, Utah
Zip Code 84409

3505 Grant Avenue
Ogden (801) 394-4919
Salt Lake (801) 521-8970

January 16, 1986
Revised January 20, 1986

BOYER'S
SHOPS PARCEL

DESCRIPTION

Part of Lots 9, 10, 11, and 12, PLAT "B", NORTH OGDEN SURVEY, Weber County, Utah:

Beginning at a point on the West line of said Lot 10, 298.52 feet South 0°15' West along the centerline of Washington Boulevard, and 66.00 feet South 89°45' East from existing Monument No. 13 at the centerline intersection of Washington Boulevard and 2600 North Street; running thence South 89°45' East 125.00 feet; thence North 0°15' East 133.55 feet parallel to Washington Boulevard; thence West 16.98 feet; thence North 0°15' East parallel to Washington Boulevard 139 feet more or less (132.81 feet) to the South line of 2600 North Street; thence East *along* said South line of Street 265.95 feet; thence South 0°15' West 359.80 feet along a driveway parallel to Washington Boulevard to the North line of proposed Smith's Building; thence North 89°45' West 166.35 feet along the North line of the proposed Smith's Store to the center of a driveway; thence North 0°15' East 28.80 feet along said driveway; thence North 89°45' West 207.51 feet along a driveway to the East line of Washington Boulevard; thence North 0°15' East along said East line of Washington Boulevard 63.52 feet to the point of beginning.

Contains 2.232 Acres

18-047-0001

BOYER'S
PAD "B"

DESCRIPTION

Part of Lot 9, PLAT "B", NORTH OGDEN SURVEY, ~~Wasatch~~ Weber County, Utah:
Beginning at a point on the West line of said Lot 9, being 708.51 feet
South 0°15' West along the centerline of Washington Boulevard, and 66.00
feet South 89°45' East from existing Monument No. 13 at the centerline
intersection of Washington Boulevard and 2600 North Street; running thence
South 89°45' East 168.00 feet; thence South 0°15' West parallel to
Washington Boulevard 100.00 feet; thence North 89°45' West 168.00 feet to the East
line of Washington Boulevard at a point 576.64 feet North (580.17 feet
North 0°15' East) along said East line from the Southwest corner of said
Lot 9; thence North 0°15' East along said East line of Washington Boulevard
100.00 feet to the point of beginning.

Contains 0.386 Acre

18-046-0014

E# 1919982 BK2330 PG1120

EXHIBIT A

EXHIBIT B

PART OF LOTS 10 AND 11, PLAT "B", NORTH OGDEN SURVEY, WEBER COUNTY, UTAH; BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 11, 66.00 FEET NORTH (66.40 FEET NORTH 0 DEG 15 MIN EAST) OF THE SOUTHWEST CORNER OF SAID LOT, SAID POINT OF BEGINNING BEING 165.52 FEET SOUTH 0 DEG 15 MIN WEST ALONG THE CENTERLINE OF WASHINGTON BOULEVARD AND 66.00 FEET SOUTH 89 DEG 45 MIN EAST FROM EXISTING MONUMENT NO. 13 AT THE CENTERLINE INTERSECTION OF WASHINGTON BOULEVARD AND 2600 NORTH STREET. RUNNING THENCE EAST 125.00 FEET, THENCE SOUTH 0 DEG 15 MIN WEST PARALLEL TO WASHINGTON BOULEVARD 133.55 FEET, THENCE NORTH 89 DEG 45 MIN WEST 125 FEET TO THE EAST LINE OF WASHINGTON BOULEVARD THENCE NORTH 0 DEG 15 MIN EAST ALONG SAID EAST LINE OF WASHINGTON BOULEVARD 133.00 FEET TO THE POINT OF BEGINNING.

18-047-0016

EXHIBIT C

ACCESS EASEMENT LEGAL DESCRIPTION:

18

18 047-0001

BEGINNING AT A POINT ON THE EAST LINE OF WASHINGTON BOULEVARD, SAID POINT BEING SOUTH 00°15'00" WEST ALONG SAID EAST LINE 125.74 FEET FROM THE SOUTHWEST CORNER OF LOT 11, PLAT "B", NORTH OGDEN SURVEY, WEBER COUNTY, UTAH, SAID POINT OF BEGINNING ALSO BEING SOUTH 00°15'00" WEST ALONG THE CENTERLINE OF WASHINGTON BOULEVARD 359.10 FEET AND EAST 66.00 FEET FROM MONUMENT NO. 13 AT THE CENTERLINE INTERSECTION OF WASHINGTON BOULEVARD AND 2600 NORTH STREET, RUNNING THENCE SOUTH 89°45'00" EAST 39.40 FEET; THENCE NORTH 00°15'00" EAST 15.17 FEET; THENCE NORTH 62°50'21" WEST 22.45 FEET; THENCE NORTH 00°15'00" EAST 33.80 FEET; THENCE SOUTH 89°45'00" EAST 105.62 FEET; THENCE SOUTH 00°15'00" WEST 95.10 FEET; THENCE NORTH 89°45'00" WEST 125.00 FEET TO THE SAID EAST LINE OF WASHINGTON BOULEVARD; THENCE NORTH 00°15'00" EAST ALONG SAID EAST LINE OF WASHINGTON BOULEVARD 35.97 FEET TO THE POINT OF BEGINNING.

