

Recorded at the Request of Metro National Title
File Number 99023932
MAIL WHEN RECORDED TO
WENDY'S OLD FASHIONED HAMBURGERS
4288 West Dublin-Granville Road
Dublin, Ohio 43017

7574836
02/14/2000 02:37 PM 29.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
METRO NATIONAL TITLE
BY: ADB, DEPUTY - WI 9 P.

7574836

DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS

This Declaration of Restrictions, Easements and Covenants (hereinafter the "**Declaration**") is made and entered into this 14th day of February, 2000, by and between DANSIE FAMILY PARTNERSHIP, DANSIE FAMILY TRUST DATED NOVEMBER 15, 1979 and GRANT WILLARD DANSIE (hereinafter referred to as "**Grantor**"), whose mailing address is 3200 West 13400 South Riverton, Utah 84065, 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.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real estate located in the State of Utah, County of Salt Lake and City of Riverton, as more particularly described in **Exhibit A** which is attached hereto and made a part hereof (which real estate is hereinafter referred to as "**Grantor's Parcel**"); and

WHEREAS, Grantee is the owner of that certain real estate located in the State of Utah, County of Salt Lake and City of Riverton, as more particularly described in **Exhibit B** which is attached hereto and made a part hereof (which real estate is hereinafter referred to as "**Grantee's Parcel**"); and

WHEREAS, Grantor and Grantee desire to establish certain restrictions, 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:

BK8342PG1347

1. Use Restriction. Grantor hereby covenants and agrees that Grantor's Parcel shall not be used for a restaurant use with a drive through window, the primary business of which is the sale of hamburgers, hamburger products, hot dogs or chicken sandwiches (or any combination thereof). For the purpose of this restriction, a restaurant has the aforesaid products as its primary business if fifteen percent (15%) or more of its gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers, hamburger products, hot dogs or chicken sandwiches (or any combination thereof). This restriction shall burden and run with Grantor's Parcel for a period of twenty (20) years from the date of recording of this Declaration or so long as a Wendy's Old Fashioned Hamburgers restaurant is operated on Grantee's Parcel, whichever is greater, and shall benefit Grantee's Parcel, and the owners, successors and assigns thereof.

2. Grantor's Access Easement. Grantee hereby grants, conveys and delivers to Grantor, for the use and benefit of Grantor, its successors, assigns, licensees, suppliers, customers and employees, a non-exclusive, perpetual easement, appurtenant to Grantor's Parcel, for the purpose of vehicular and pedestrian ingress, egress and access to and from Grantor's Parcel and Doreen Drive, over, upon, across and through that portion of Grantee's Parcel legally described on Exhibit C (the "**Access Easement**"), attached hereto and made a part hereof. Grantee covenants and agrees to construct and adequately maintain and repair the Access Easement area in a level, evenly-paved condition.

3. Shopping Center 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 driveway, vehicular and pedestrian ingress/egress and parking purposes over the common driveway, walkway and parking areas as they may exist from time to time within Grantor's Parcel. No buildings, fences, curbs or other obstructions prohibiting access between Grantee's Parcel and Grantor's Parcel shall be constructed without the express written consent of Grantee.

4. Reimbursement to Grantee for a Portion of Construction Costs. At such time that Grantor leases or sells a portion of Grantee's Parcel, such future lessee or purchaser, as the case may be (hereinafter referred to as a "**Responsible Party**" whether a lessee or a purchaser), shall reimburse Grantee for a portion of the costs incurred by Grantee in contribution towards (i) the construction of Doreen Drive and (ii) the installation of the traffic light located (or to be located, as the case may be) at the intersection of 12600 South, Riverton, Utah and Doreen Drive. The portion of such costs that each Responsible Party shall be obligated to reimburse Grantee shall be determined by multiplying Grantee's total contribution toward the construction cost of Doreen Drive and towards the cost of installation of such traffic light by a fraction (i) with a numerator equal to the total square footage of Grantor's Parcel purchased or leased by the Responsible Party and (ii) with a denominator equal to the total square footage of Grantor's Parcel plus the total square footage of Grantee's Parcel. Such reimbursement shall be made by the Responsible Party to Grantee within thirty (30) days after the

Responsible Party is deeded a portion of Grantor's Parcel in the case of a sale or thirty (30) days after the date the Responsible Party signs a lease with Grantor in the case of a lease. Payment not made as contemplated herein shall bear interest at the rate of fifteen percent (15%) per annum beginning the day following the date such payment is due and continuing until paid in full by the Responsible Party. Grantee shall provide the Responsible Party with reasonable evidence of all amounts expended by Grantee in contribution towards the construction cost of Doreen Drive and towards the cost of installation of the traffic light.

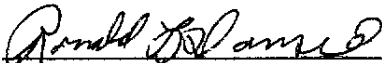
TO HAVE AND TO HOLD the easements and rights unto Grantee and Grantor, and their respective successors and assigns forever. Grantor, for Grantor and Grantor's heirs, successors and assigns, hereby warrants and covenants with Grantee, its successors and assigns, that Grantor is the true and lawful owner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


The above-described easements, restrictions and covenants shall be for the use and benefit of Grantee's Parcel and Grantor's Parcel as applicable 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. 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 and Grantor is carried out.

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

Witnesses:

DANSIE FAMILY PARTNERSHIP



By: 

Print Name: _____

Print Name: _____

[Signatures continued on page 4]

**DANSIE FAMILY TRUST
DATED NOVEMBER 15, 1979**

Print Name: _____

By: Ronald L. Dansie
Ronald L. Dansie, Trustee

Print Name: _____

By: Elizabeth A. Dansie
Elizabeth A. Dansie, Trustee

Print Name: _____

Grant Willard Dansie
GRANT WILLARD DANSIE

Print Name: _____

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

Erica E. Armentrout
Print Name: **ERICA E. ARMENTROUT**

By: George Condos
Title: **GEORGE CONDOS
Executive Vice President**

Print Name: _____

Erica E. Armentrout
Print Name: **ERICA E. ARMENTROUT**

By: W. Stephen Wirt
Title: **W. STEPHEN WIRT
Vice President**

Print Name: _____

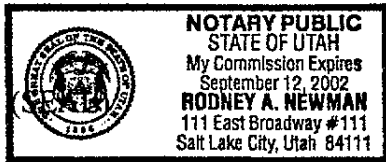
Law Dept. W

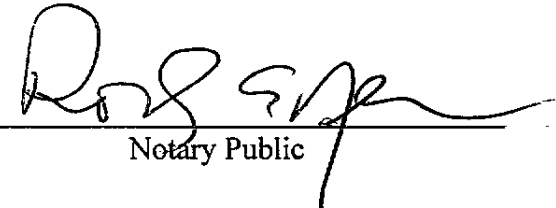
[Acknowledgments contained on Pages 5 and 6]

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 14th day of Feb, 2000, before me personally appeared Grant W. Densie, a partner of **DANSIE FAMILY PARTNERSHIP**, a Utah General Partnership, who was known to me as the person and partner described in and who executed the foregoing instrument on behalf of said partnership, and who acknowledged that he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership 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.

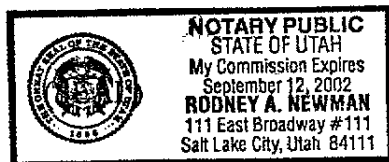


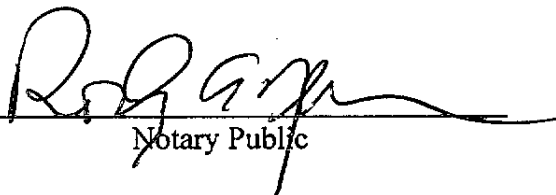

Notary Public

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 14 day of Feb, 2000, before me personally appeared Ronald L & Elizabeth A Densie the Trustees of **DANSIE FAMILY TRUST DATED NOVEMBER 15, 1979**, a trust, who was known to me as the person and officer described in and who executed the foregoing instrument on behalf of said trust, 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 trust by proper authority, and the instrument was the act of the trust 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.

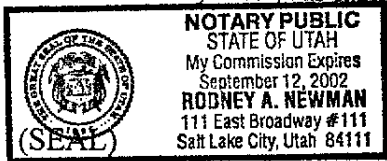


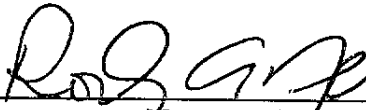

Notary Public

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 14 day of Feb, 2000, before me personally appeared **GRANT WILLARD DANSIE**, who was known to me that he was the person described in and who executed the foregoing instrument, and who acknowledged that he executed the foregoing instrument 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.





Notary Public

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 9th day of February, 2000, before me personally appeared GEORGE CONNOR and W. STEPHEN WIRT, the Executive Vice President and Vice President, respectively, of **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledge that they held the positions or titles set forth in the instrument and certificate, that they signed the instrument on behalf of the corporation by proper authority, and that the instrument was the act of the corporation for the purposes therein stated.

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



ERICA ELAINE ARMENTROUT
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT. 30, 2001



Notary Public

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

EXHIBIT A

GRANTOR'S PARCEL

DANSIE PROPERTY AS SURVEYED

Commencing at a point located West along the section line 1028.00 feet and North 33.00 feet from the South 1/4 corner of Section 27, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 623.00 feet; thence West 349.25 feet; thence South 623.00 feet; thence East 349.25 feet to the point of beginning.

Area = 4.995 acres.

Excepting the following:

BEGINNING AT A POINT BEING WEST ALONG THE SECTION LINE 1377.30 FEET AND NORTH 0°05'58" EAST 33.00 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 0°05'58" EAST 269.00 FEET; THENCE EAST 195.00 FEET; THENCE SOUTH 0°05'58" WEST 269.00 FEET; THENCE WEST 195.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 52,455 SQ. FT. OR 1.204 ACRES

POOR COPY.
CO. RECORDER

BK 8342 PG 1353

EXHIBIT B

GRANTEE'S PARCEL

BEGINNING AT A POINT BEING WEST ALONG THE SECTION LINE 1377.30 FEET AND NORTH 0°05'58" EAST 33.00 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 0°05'58" EAST 269.00 FEET; THENCE EAST 195.00 FEET; THENCE SOUTH 0°05'58" WEST 269.00 FEET; THENCE WEST 195.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 52,455 SQ. FT. OR 1.204 ACRES

**-POOR COPY-
CO. RECORDER**

BK 6342 PG 1354

EXHIBIT C

GRANTOR'S ACCESS EASEMENT

BEGINNING AT A POINT WEST ALONG THE SECTION LINE 1377.30 FEET AND NORTH 0°05'58" EAST 302.00 FEET AND EAST 195.00 FEET AND SOUTH 0°05'58" WEST 26.50 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 0°05'58" WEST 25.00 FEET; THENCE SOUTH 89°59'56" WEST 112.69 FEET; THENCE SOUTH 38.03 FEET; THENCE SOUTH 89°59'56" WEST 82.38 FEET; THENCE NORTH 0°05'58" EAST 25.00 FEET; THENCE NORTH 89°59'56" EAST 57.33 FEET; THENCE NORTH 38.03 FEET; THENCE NORTH 89°59'56" EAST 137.73 FEET TO THE POINT OF BEGINNING.

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CO. RECORDER

BK 834 2 PG 1355