

Centerville Market place

SW 72 N R

02-026-0067

DECLARATION OF CROSS ACCESS EASEMENT

02-161-001 This Declaration of Cross Access Easement (hereinafter the "Declaration") is made and entered into this 22 day of March, 1999, by and between LARRY W. MILLER ("Miller") whose mailing address 1050 West Second North, Logan, UT 84321, and WENDY'S OLD FASHIONED HAMBURGERS INC., an Ohio corporation ("Wendy's"), whose mailing address is 4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio 43017.

E 2512377 3 2496 P 1397  
SHERRY L. WHITE, DAVIS CNTY RECORDER  
1999 MAY 10 12:29 PM FEE 24.00 DEP CY  
REC'D FOR METRO NATIONAL TITLE

WITNESSETH:

WHEREAS, Miller is the owner of that certain real estate located in the State of Utah, County of Davis and City of Centerville, as more particularly described in Exhibit A which is attached hereto and made a part hereof ("Miller's Parcel"); and

WHEREAS, Wendy's is the owner of that certain real estate located in the State of Utah, County of Davis and City of Centerville, as more particularly described in Exhibit B which is attached hereto and made a part hereof ("Wendy's Parcel"); and

WHEREAS, Miller and Wendy's desire to establish a cross access easement 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 the parties, the parties hereto agree as follows:

1. Access Easement. Miller hereby grants, conveys and delivers to Wendy's, for the use and benefit of Wendy's, its successors, assigns, licensees, suppliers, customers and employees, a non-exclusive, perpetual easement, appurtenant to Wendy's Parcel, for the purpose of vehicular and pedestrian ingress, egress and access to and from Wendy's Parcel and the I-15 Frontage Road, over, upon, across and through that portion of Miller's Parcel contained within the Access Easement described on Exhibit C, attached hereto and made a part hereof (the "Access Easement"). Wendy's hereby grants, conveys and delivers to Miller, for the use and benefit of Miller, its successors and assigns, a non-exclusive perpetual easement, appurtenant to Miller's Parcel, for the purpose of vehicular and pedestrian ingress, egress and access to and from Miller's Parcel and the I-15 Frontage Road, over, upon, across and through that portion of Wendy's Parcel contained within the Access Easement. Miller and Wendy's acknowledge that the aforesaid easement areas are located partially on Miller's Parcel and partially on Wendy's Parcel.

Wendy's covenants and agrees to construct and adequately maintain said easement area in a level, evenly-paved condition, relatively free and clear of snow, ice and debris. Wendy's shall construct said driveway and other improvements necessary for the Access Easement in connection with the construction of the restaurant which

Wendy's intends to construct on Wendy's Parcel. Miller will reimburse Wendy's for Miller's pro-rata share of the cost of constructing, maintaining, repairing and replacing the driveway and other improvements located in the Access Easement. Miller's Parcel's pro rata share shall be determined by dividing the total square footage of Miller's Parcel by the total square footage of Miller's Parcel and Wendy's Parcel combined. Miller shall reimburse Wendy's for said costs within thirty (30) days after receipt of an invoice therefor. This easement shall include the right of Wendy's to enter upon such other portions of Miller's Parcel as are necessary for the purpose of constructing and maintaining said Access Easement. In the event Wendy's fails or refuses to adequately maintain said Access Easement area after receiving reasonable notice from Miller, then Miller shall have the option, but not the obligation, of performing the necessary maintenance and billing Wendy's for its pro rata share of the reasonable cost thereof.

TO HAVE AND TO HOLD the easements and rights unto Wendy's and Miller, their respective successors and assigns forever. Wendy's and Miller, their respective heirs, successors and assigns, hereby warrant and covenant with one another, their successors and assigns, that each of the parties is the true and lawful owner in fee simple of its respective parcel and has the right and full power to grant and convey the easements and rights herein granted, and that each of the parties will warrant and defend the easements 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 each of the parcels as stated above 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 Wendy's and Miller. 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 the parties is carried out.

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

Witnesses:

Joanne B. Krimm  
 (Print Name) JOANNE B. KRIMM

Beth Amber  
 (Print Name) Beth Amber

Joanne B. Krimm  
 (Print Name) JOANNE B. KRIMM

Beth Amber  
 (Print Name) Beth Amber

Wendy's Old Fashioned Hamburgers of New York, Inc.

George Condos  
 (Signature) GEORGE CONDOS  
 Executive Vice President

By:

Frederick R. Reed  
 (Signature) FREDERICK R. REED  
 Chief Financial Officer  
 Secretary

Its:

Frederick R. Reed  
 (Signature) FREDERICK R. REED  
 Chief Financial Officer  
 Secretary

Its:

Legal Dept. MWD

Law Dept.

Witnesses:

Bryan D. SissonBRYAN D. SISSON

(Print Name)

Mark ChristensenMark Christensen

(Print Name)

Larry W. Miller

Larry W. Miller

Larry W. Miller

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 25<sup>th</sup> day of March, 1999 before me personally appeared

GEORGE VANDOS and FREDERICK R. REED, the  
Executive Vice President and Corporate Officer  
Secretary

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.



JOANNE B. KRIMM  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 23, 2001

Notary Public

STATE OF UTAH *Cache*  
COUNTY OF BREVARD, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 22<sup>nd</sup> day of March, 1999, before me personally appeared LARRY W. MILLER, who was known to me that he was the person described in and

E 1512377 3 2496 P 1400

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.



Michelle T. Ainscough  
Notary Public

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

## INDIVIDUAL ACKNOWLEDGMENT

State of Utah }  
 County of Cache } ss.

On this the 22 day of April, 99,  
 Day Month Year  
 before me, Michelle T. Ainscough,  
 Name of Notary Public

the undersigned Notary Public, personally appeared

Harry W. Miller  
 Name of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed  
 to the within instrument, and acknowledged that  
 he/she/they executed it.

WITNESS my hand and official seal.

Michelle T. Ainscough  
 Signature of Notary Public

## OPTIONAL

Though the information in this section is not required by law, it may prove valuable  
 to persons relying on the document and could prevent fraudulent removal  
 and reattachment of this form to another document.

## Description of Attached Document

Title or Type of Document: Declaration of Cross  
Access easement  
 Document Date: April 22, 1999 Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMPRINT  
 OF SIGNER #1  
 Top of thumb here

RIGHT THUMPRINT  
 OF SIGNER #2  
 Top of thumb here

E 1512377 S 2498 P 1402

**LARSEN & MALMQUIST, INC.  
CONSULTING ENGINEERS & LAND SURVEYORS**

1574 West 1700 South, Suite 2D • Salt Lake City, Utah 84104-3469 • (801) 972-2634

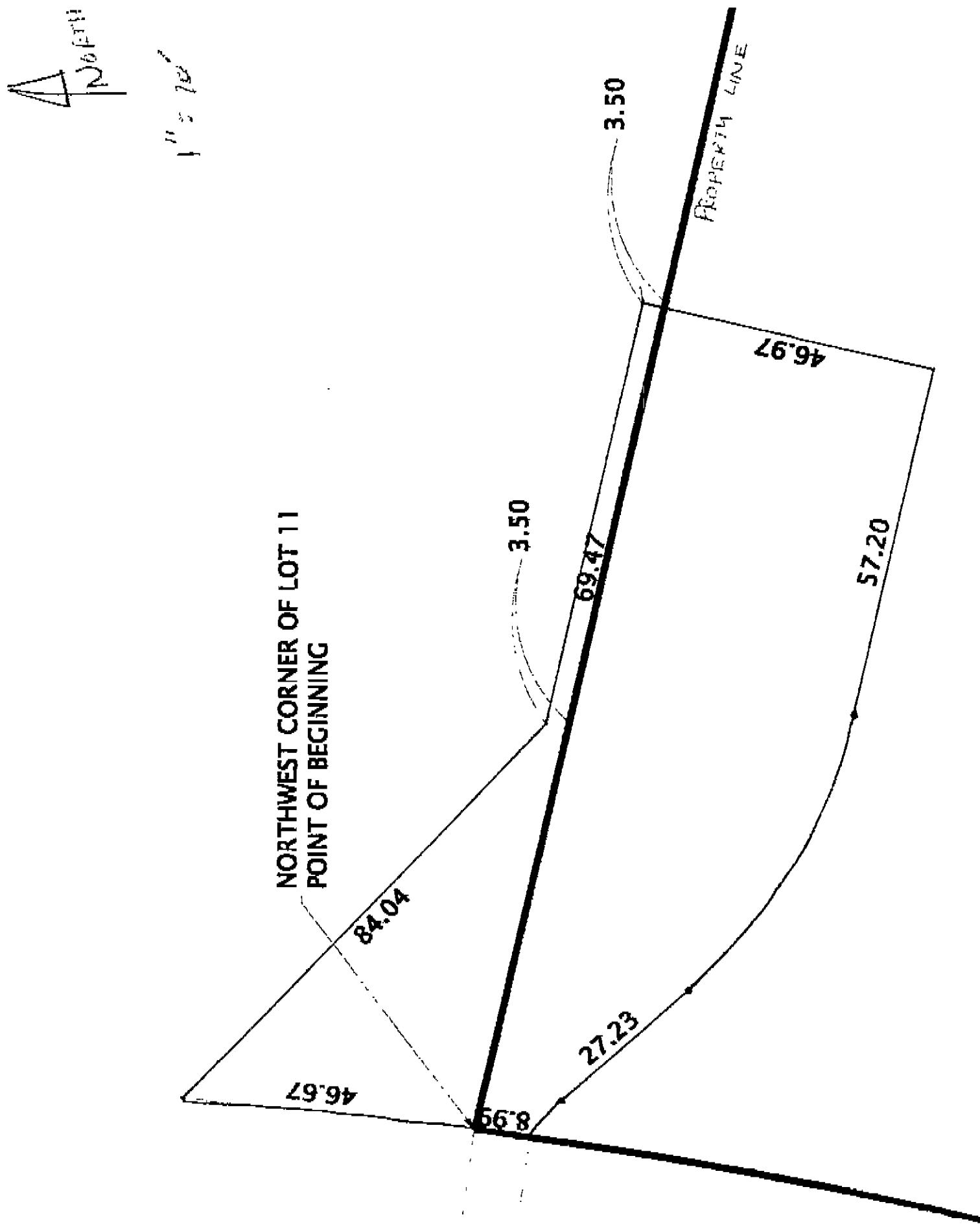
**Cross- Easement Parcel**

Beginning at the Northwest Corner of Lot 11, Centerville Marketplace Subdivision, a Subdivision being a part of the Southwest Quarter of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and as filed in Book 1837 of Plats at page 32 of Davis County Records, State of Utah, said point being on the arc of a 858.51 foot radius curve to the left the radius point of which bears North 82° 40' 43" West; thence Northerly along the arc of said curve 46.67 feet through a central angle of 3° 06'52"; thence South 46°48'01" East 84.04 feet; thence South 77° 26' 24" East 69.47 feet; thence South 12° 33' 36" West 46.97 feet; thence North 77° 38' 13" West 57.20 feet to the point of an 85.00 foot radius curve to the right, the radius point of which bears North 12° 21' 47" East; thence Northwesterly along the arc of said curve 52.37 feet through a central angle of 35° 17' 58"; thence North 42° 20' 15" West 27.23 feet to the point of a 30.00 foot radius curve to the left, the radius point of which bears South 47° 39' 45" West; thence Northwesterly along the arc of said curve 7.75 feet through a central angle of 14° 47' 59" to a point on an 858.51 foot radius curve to the left the radius point of which bears North 82° 04' 42" West, said point also being on the West Line of said Lot 11; thence Northerly along the arc of said curve 8.99 feet through a central angle of 0° 36' 01" to the point of Beginning.

Prepared for: Wendy's International, Inc.  
12244 South Business Park Drive      Suite 100  
Draper, Utah 84020  
Attn.: Russ Smith

Prepared By: Larsen & Malmquist, Inc.  
14 April 1999  
Job No. 03799-98  
RDS

R 1512377 S 2496 E 1403



Computer Closure Tape

PROJECT: 03799-98

Figure Name: CROSS-EASEMENT PARCEL

Arc Length: 46.67	Radius: 858.51	Delta: -3-06-52
Course: S 46-48-01 E	Distance: 84.04	
Course: S 77-26-24 E	Distance: 69.47	
Course: S 12-33-36 W	Distance: 46.97	
Course: N 77-38-13 W	Distance: 57.20	
Arc Length: 52.37	Radius: 85.00	Delta: 35-17-58
Course: N 42-20-15 W	Distance: 27.23	
Arc Length: 7.75	Radius: 30.00	Delta: -14-47-59
Arc Length: 8.99	Radius: 858.51	Delta: -0-36-01
Perimeter: 400.69		
Area: 6834.23 0.16 acres		
Error of Closure: 0.011	Course: S 37-51-20 E	
Precision 1: 37308.63		

Figure Name: CROSS-EASEMENT PARCEL

BC North: 5139.8019	East: 4703.7562	
Arc Length: 46.66	Radius: 858.51	Delta: -3-06-52
Tangent: 23.34	Chord: 46.66	Chord Course: N 05-45-51 E
Course In: N 82-40-43 W	Out: S 85-47-35 E	
Center North: 5249.2049	East: 3852.2455	
End North: 5186.2246	East: 4708.4423	
Course: S 46-48-01 E	Distance: 84.04	
North: 5128.6945	East: 4769.7063	
Course: S 77-26-24 E	Distance: 69.47	
North: 5113.5868	East: 4837.5164	
Course: S 12-33-36 W	Distance: 46.97	
North: 5067.7381	East: 4827.3016	
Course: N 77-38-13 W	Distance: 57.20	
North: 5079.9846	East: 4771.4298	
Arc Length: 52.37	Radius: 85.00	Delta: 35-17-58
Tangent: 27.04	Chord: 51.54	Ch Course: N 59-59-14 W
Course In: N 12-21-47 E	Out: S 47-39-45 W	
Center North: 5163.0135	East: 4789.6288	
End North: 5105.7664	East: 4726.7976	
Course: N 42-20-15 W	Distance: 27.23	
North: 5125.8925	East: 4708.4601	
Arc Length: 7.75	Radius: 30.00	Delta: -14-47-59
Tangent: 3.90	Chord: 7.73	Ch Course: N 49-44-14 W
Course In: S 47-39-45 W	Out: N 32-51-46 E	
Center North: 5105.6877	East: 4686.2844	
End North: 5130.6868	East: 4702.5633	
Arc Length: 8.99	Radius: 858.51	Delta: -0-36-01
Tangent: 4.50	Chord: 8.99	Ch Course: N 07-37-17 E
Course In: N 82-04-42 W	Out: S 82-40-43 E	
Center North: 5249.2049	East: 3852.2455	
End North: 5139.8019	East: 4703.7562	
Perimeter: 400.69		
Area: 6834.23 0.16 acres		
Error of Closure: 0.000	Course: S 90-00-00 E	
Precision 1: 400688529.82		