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SEP 28 2004

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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 SEP 28 11:54 AM FEE 34.00 DEP MEC
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

NW 10 4A-1W
09-050-~~0062~~,0081 pt

MEMORANDUM OF LEASE

AND

RIGHT OF FIRST REFUSAL

After recording please return to:
First American Title Insurance Co.
3 Greenway Plaza, Suite 1100
Houston, TX 77046
ATTN: Sheila Sawyer NCS# 64852

THIS MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL (the "**Memorandum**") is a memorandum of an unrecorded Ground Lease (the "**Lease**") dated the 1st day of September 2004, by and between **WYNDOM SQUARE, LLC**, a Utah limited liability company, hereinafter called "**Lessor**", whose mailing address is 484 Hampton Court Lane, Fruit Heights, UT 84037, and **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, hereinafter referred to as "**Lessee**", whose mailing address is P. O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017, concerning that certain real property situated in the City of Layton, County of Davis and State of Utah, containing approximately 35,000 square feet of land, together with all rights, easements and appurtenances thereunto belonging or appertaining (collectively referred to herein as the "**Leased Premises**"), said Real Property depicted on **Exhibit A** and more fully described in **Exhibit A-1** attached hereto and made a part hereof by this reference.

For good and valuable consideration, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the above-described premises for the term and under the conditions in the Lease, said Lease being incorporated herein by this reference.

In particular, the Lease contains the following provisions:

1. **TERM.**

A. **Original Term**

The "**Original Term**" of the Lease shall be defined as the period commencing on the Commencement Date as defined in Section 2 below and ending on December 31 of the tenth (10th) full Lease Year (as hereinafter defined) following such

Commencement Date. "**Lease Year**" shall be defined as each successive period of twelve (12) consecutive calendar months commencing on the first day of January of each year during the term hereof and ending on December 31 of each year of the term hereof. If the Commencement Date is other than January 1 of any calendar year, the period between the Commencement Date and December 31 of that year shall be the "**First Partial Lease Year**". Lessee's obligation to pay rent shall commence on the Commencement Date.

B. Renewal Terms

Upon the expiration of the Original Term of this Lease, this Lease shall automatically renew for four (4) additional periods of five (5) years each (the "**Renewal Terms**"), except in the event Lessee gives Lessor a cancellation notice as hereinafter provided. In the event Lessee elects to cancel the renewal term of this Lease, such cancellation notice may be given by Lessee at any time but in any event must be given at least ninety (90) days prior to the expiration of the then ending term. In the event Lessee exercises its option to cancel the renewal term of this Lease, this Lease shall terminate upon the expiration of the then ending term.

Except in the event that Lessee cancels the renewal term of this Lease, this Lease shall be renewed at the rental set forth in Section 4 of the Lease, and upon the same other terms and conditions as are applicable to the Original Term, except that such subsequent renewal terms shall begin on the date of expiration of the previous term and shall continue for a period of five (5) years thereafter. The Original Term and any and all Renewal Terms which are not canceled are hereinafter collectively referred to as the "**Term**" of this Lease.

2. EFFECTIVE DATE AND COMMENCEMENT DATE.

The "**Effective Date**" of the Lease is May 10, 2004. The "**Commencement Date**" of the Lease shall be the earlier of the following: (a) Lessee's completion of the improvements to be constructed by Lessee and the opening to the public of Lessee's business on the Real Property, or (b) one hundred twenty (120) days after the date this Memorandum is recorded; provided, however, that said one hundred twenty (120) day period shall be extended by the amount of time attributable to any delays due to causes beyond Lessee's control, including but not limited to acts of God, strikes, lockouts or unavailability of materials.

3. COVENANTS, EASEMENTS AND RESTRICTIONS.

A. General Covenants

The Real Property is part of a larger tract of land known as the Wyndom Square Shopping Center and depicted on Exhibit B attached hereto and made a part hereof (hereinafter the "**Shopping Center**" or "**Lessor's Larger Tract**"). Lessor

covenants and agrees that (i) no fences or other obstructions prohibiting access to and from the Real Property and the Shopping Center shall be constructed during the Term; (ii) there are sufficient parking spaces on the Shopping Center including the Real Property to meet the requirements of any laws, ordinances and regulations; (iii) Lessee, its employees, customers and invitees shall have the non-exclusive rights of ingress and egress in, on and over the Shopping Center to and from all streets, alleys and across ways adjacent to the Shopping Center; and (iv) no buildings, signs, or other improvements shall be constructed upon the Shopping Center which will reduce the visibility of Lessee's signs or of the Real Property from any access streets. Lessor hereby grants and conveys to Lessee, its employees, customers and invitees a non-exclusive right and easement for access, ingress/egress and parking purposes over the common driveway and parking areas that may exist from time to time within the Shopping Center. Lessor hereby grants and conveys to Lessee a non-exclusive right and easement for the installation, operation, maintenance, repair, and replacement of water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve the Real Property; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Shopping Center. Lessor at its expense agrees to keep the Shopping Center (excepting the Real Property) in good maintenance and repair and in a safe, clean and sanitary condition. Lessor shall provide Lessee with a legal description of the Shopping Center within fifteen (15) days following the Effective Date of the Lease. Lessor shall have the right to change the boundaries and size of the Shopping Center and the number and configuration of improvements in the Shopping Center in which case the term "Shopping Center" shall refer to said land and improvements so modified; notwithstanding the foregoing, none of such changes shall adversely or materially affect Lessee's access, use or occupancy of the Leased Premises.

B. Access Easement

Lessor grants and conveys to Lessee, for the use and benefit of Lessee, its successors, assigns, licensees, employees, suppliers, customers and invitees, a non-exclusive easement appurtenant to the Real Property for the Term and any period of holding over for the purpose of vehicular and pedestrian ingress, egress and access to and from the Real Property, over, upon, across and through that portion of the Shopping Center which is depicted on the attached Exhibit B as the "Access Easement". Lessor shall be obligated to adequately maintain the Access Easement in a level, evenly paved condition and relatively free and clear of snow, ice and debris. In the event Lessor fails or refuses to adequately maintain the Access Easement area after receiving reasonable notice thereof from Lessee, Lessee shall have the right, but not the obligation, of performing the necessary maintenance of the Access Easement area and billing the reasonable cost thereof to Lessor. This easement shall also include the right to enter upon such other portions of the Shopping Center as may be reasonably necessary for the

purpose of maintaining the Access Easement. Without limiting the application of the other provisions of the Lease insofar as they are applicable to the Access Easement, the title to the Access Easement area shall be good and marketable, subject only to the exceptions to title referred to in Section 8.F. of the Lease, and such other exceptions as Lessee may waive in writing. The Access Easement shall be included in the title insurance commitment and policy, and the Survey. Lessor agrees to obtain any non-disturbance agreements, consents, waivers, and any other agreements from the lienholders, mortgagees, tenants or any other party with superior rights in the Access Easement area should Lessee or the Title Insurance Company require any of the same to insure Lessee's easement rights granted herein. Lessor and Lessee agree that upon completion of the Survey, the legal description of the Access Easement from said survey shall be deemed to be the legal description of the Access Easement area for the purposes of the Lease.

C. Use Restriction

As a material inducement for Lessee to enter into the Lease, Lessor warrants, covenants and agrees that Lessor will not sell, lease or develop, nor permit the sale, lease or development of any part of Lessor's Larger Tract as depicted on the attached **Exhibit B** (excepting the Real Property) for a restaurant use the primary business of which is the advertising, preparation and/or sale of hamburgers, hamburger products, or chicken sandwiches (or any combination thereof) (the "**Restricted Parcels**"). For purposes of this restriction a restaurant has as its primary business the advertising, preparation and/or sale of hamburgers or hamburger products, (or any combination thereof) if fifteen percent (15%) or more of its gross sales exclusive of tax, beverage and dairy product sales, consist of sales of hamburgers or hamburger products, (or any combination thereof). For purposes of this restriction a restaurant has as its primary business the advertising, preparation and/or sale of chicken sandwiches if forty percent (40%) or more of its gross sales exclusive of tax, beverage, and dairy product sales, consist of sales of chicken sandwiches and/or the business is a Chick-Fil-A or other similar business. For purposes of this Section, Lessor shall include, but shall not be limited to, any other person, corporation, partnership, or legal entity in which Lessor has, or subsequently acquires, an interest. Lessor covenants and agrees that all deeds, leases or other legal documents which shall be given or made by Lessor for the Restricted Parcels shall contain appropriate restrictions prohibiting the use of said lands or buildings located thereon for the purposes set forth above. This restriction shall attach to and run with the Restricted Parcels for a period commensurate with the Term of the Lease and shall be binding upon Lessor's heirs, personal representatives, tenants, successors and assigns. This restriction shall not apply to uses on the Shopping Center in existence on the Effective Date which have been disclosed to Lessee in writing prior to the Effective Date and shall not include a tenant in the Shopping Center occupying 40,000 or more square feet of space, such as a Wal-Mart.

4. RIGHT OF FIRST REFUSAL TO PURCHASE.

From and after the Effective Date and during the Term of the Lease, Lessee shall have the right of first refusal and Lessor shall not sell, transfer or otherwise dispose of all or part of Lessor's interest in the Real Property until and unless Lessor shall have (A) obtained a bona fide offer therefore; (B) given written notice to Lessee, which notice shall contain (i) the name of the offeror, (ii) the address of the offeror, (iii) all of the terms and conditions of such bona fide offer, and (iv) a true and accurate copy of the actual bona fide offer; and (C) offered to sell, transfer or otherwise dispose of such interest to Lessee at the same price and, except as hereinafter provided, upon the same terms and conditions contained in said bona fide offer. If Lessee shall either give notice of rejection of said offer to it or fail to give notice of acceptance of the same within thirty (30) days after the date of receipt of Lessor's notice, Lessor's interest in the Real Property may, during the ninety (90) days thereafter, be sold, transferred or otherwise disposed of to the original offeror at the same price and upon the same terms and conditions contained in said bona fide offer as disclosed in writing to Lessee. In the event Lessee rejects said offer or fails to accept the same, the Lease and all of its terms and conditions (including this right of first refusal and including the right of first refusal to lease set forth in the Lease) shall nevertheless remain in full force and effect and Lessor and any purchaser or purchasers of the Real Property shall be bound thereby. Failure of Lessee to exercise this right of first refusal on one or more occasions shall not affect Lessee's right to exercise it on any subsequent occasion. Any sale or transfer of the Real Property, or any part thereof other than in strict compliance with the terms of this section shall be absolutely null and void and of no effect as to Lessee, and Lessee shall be entitled to purchase the Real Property from the purchaser upon the same terms and conditions and at the same price specified in said bona fide offer, provided Lessee notifies Lessor of its election within thirty (30) days after receipt of written notice which complies with the requirements hereof. Payment of rental to such purchaser or otherwise treating such purchaser as the Lessor shall not be deemed to be a waiver of any right of first refusal or any other right or privilege of Lessee and shall not create an estoppel with respect thereto. Any sale or transfer of Lessor's interest in the Real Property, or any part thereof, shall be expressly made subject to all of the terms, covenants and conditions of the Lease. Notwithstanding anything contained herein to the contrary, if said offer provides for the sale and purchase of the entire Shopping Center, then this right of first refusal shall not apply.

5. RIGHT OF FIRST REFUSAL TO LEASE.

If at any time during the Term of the Lease, Lessor receives a bona fide offer to lease the Real Property for a term beginning after the expiration of the Lease, which offer Lessor desires to accept, Lessor shall give Lessee written notice thereof, which notice shall specify in detail the name and address of a prospective tenant and the term, rent, and other covenants and conditions of the proposed lease, accompanied by Lessor's affidavit that such proposed lease is in good faith and that all terms and conditions affecting the proposed lease have been accurately disclosed to Lessee. Lessee shall thereupon have the prior option to lease the Real Property for the term of the

proposed lease, at the rent, and upon the other covenants and conditions specified in said notice, which option Lessee may exercise by giving notice to Lessor within thirty (30) days after receipt of the written notice from Lessor. Promptly upon Lessee's submission to Lessor of a written lease containing such term, rent and other covenants and conditions of the proposed lease, Lessor shall execute, acknowledge and deliver to Lessee such written lease in duplicate, and shall be entitled to receive one of such duplicates executed by Lessee. Lessee's failure, at any time, to exercise its option under this Section shall not affect the Lease or any of Lessee's rights or options under this Section or any other Section of the Lease.

6. SERVICE OF NOTICE.

Notices hereunder shall be in writing signed by the party serving the same and shall be sent to the following addresses:

A. If intended for Lessor:

Wyndom Square, LLC
484 Hampton Court Lane
Fruit Heights, UT 84037
Facsimile number: (801) 775-9150

B. If intended for Lessee:

Wendy's Old Fashioned Hamburgers of New York, Inc.
ATTENTION: Real Estate Department
4288 West Dublin-Granville Road
P. O. Box 256
Dublin, Ohio 43017
Facsimile number: (614) 764-6737

with a copy addressed and sent to:

Wendy's Old Fashioned Hamburgers of New York, Inc.
ATTENTION: Legal Department
4288 West Dublin-Granville Road
P. O. Box 256
Dublin, Ohio 43017
Facsimile number: (614) 764-3243.

All notices, demands and requests by either party to the other shall be deemed effective upon the earlier of (A) personal delivery, or (B) three (3) days after deposit in United States registered or certified mail, postage prepaid, return receipt requested, or (C) one

(1) day after deposit with an overnight courier service for next day delivery, with postage prepaid, or (D) actual delivery if transmitted by facsimile during normal business hours (8:00 a.m.-5:00 p.m.) for the recipient, provided, however, that the same notice is also deposited on the same day with an overnight courier service in compliance with (C) above, all addressed to the other party at its address set forth above, or at such other place as it may from time to time designate in a written notice to the other party.

7. ESTATE IN LAND.

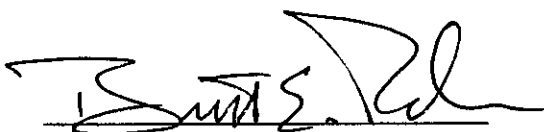
It is the intention of Lessor to create, in favor of Lessee, a leasehold estate in land, which estate shall be vested in Lessee from the date of execution hereof and shall continue for the full Term of the Lease. Said estate in land shall be subject to divestment only by reason of Lessee's election not to exercise its right of renewal or by reason of the earlier termination of the Lease by one of the parties hereto in accordance with the provisions of the Lease.

This Memorandum is not a complete summary of the Lease. In the event of conflict of interpretation between this Memorandum and the Lease, the Lease would prevail. Originally executed counterparts of the Lease are in the possession of the Lessor and Lessee at the addresses set forth above.

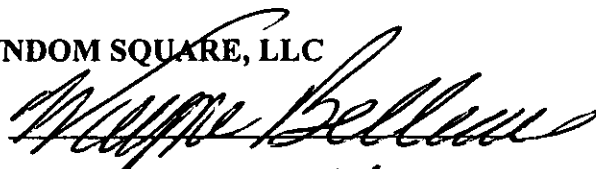
Signed by Lessor this 3rd day
of September, 2004.


WITNESSES:

LESSOR:

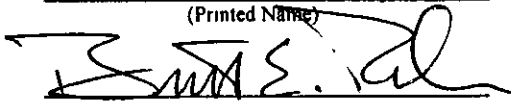


BRETT E. PALMER
(Printed Name)

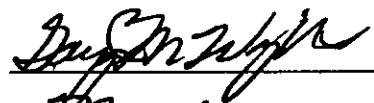
WYNDOM SQUARE, LLC
By: 
Title: member

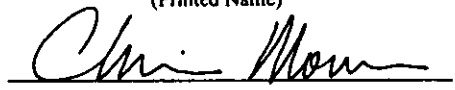


CHRIS MONSON
(Printed Name)



BRETT E. PALMER
(Printed Name)

By: 
Title: member



CHRIS MONSON
(Printed Name)

{Signatures continued on next page}

Signed by Lessee this 8th day
of September, 2004.

WITNESSES {AS TO BOTH}:

LESSEE:

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

Francine Stevenson

FRANCINE STEVENSON

(Printed Name)

Angela L. Buchtel

ANGELA L. BUCHEL

(Printed Name)

By: [Signature]

RONALD E. WALLACE

Title: Vice President

By: [Signature]

RAYMOND W. BAKER

Title: Vice President

Legal Dept. GAH

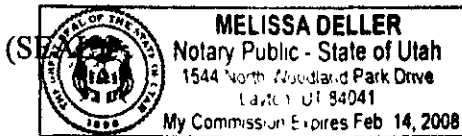
{Acknowledgments on next page}

ACKNOWLEDGMENTS

STATE OF Utah
COUNTY OF Davis, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 3rd day of September, 2004, before me personally appeared Gary M. Wright and Wayne Belleau, as Members of **WYNDOM SQUARE, LLC**, a Utah limited liability company, who were known to me as the persons and members described in and who executed the foregoing instrument on behalf of said company, and who acknowledged that they held the position or title set forth in the instrument and certificate, they signed the instrument on behalf of the company by proper authority, and the instrument was the act of the company 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.



[Signature]
Notary Public

{Acknowledgments continued on next page}

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 8th day of September 2004, before me personally appeared RONALD E. WALLACE and RAYMOND W. BAKER, the Vice President and 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.

Carolyn A. Loeffler
Notary Public

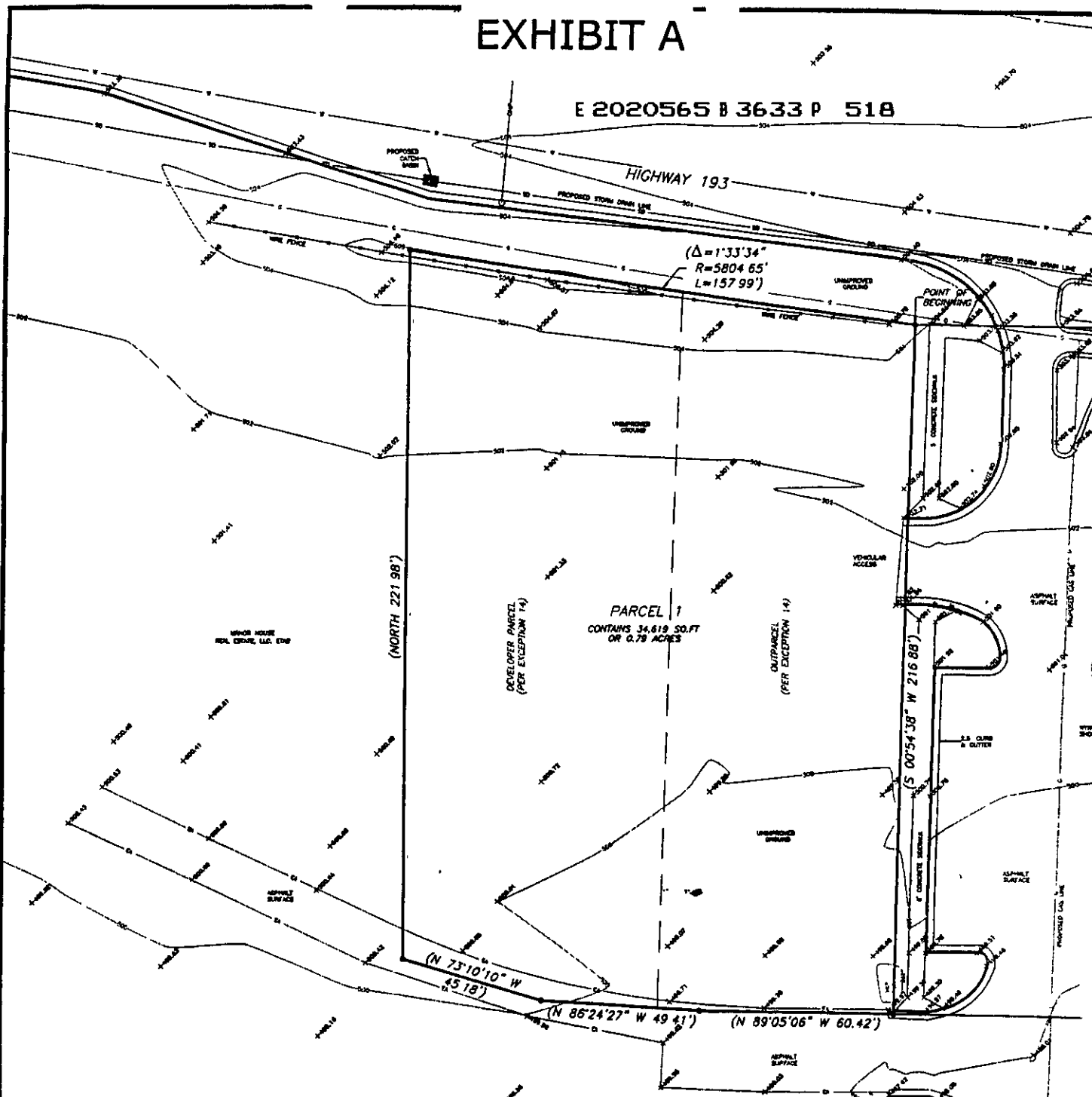


CAROLYN A. LOEFFLER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCTOBER 16, 2006

This instrument prepared by:
Greg A. Hadley, Attorney at Law
Wendy's Old Fashioned Hamburgers of New York, Inc.
4288 West Dublin-Granville Road
Dublin, Ohio 43017

EXHIBIT A

E 2020565 B 3633 P 518



GENERAL NOTES.

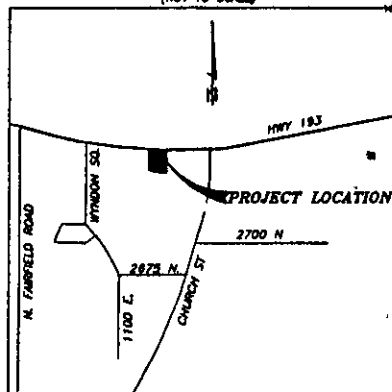
1. THE BASIS OF BEARING FOR THIS SURVEY WAS ESTABLISHED BETWEEN THE WITNESS CORNER FOR THE CENTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RADAR AS SHOWN ON THIS SURVEY PLAT
2. ALL COURSES SHOWN IN PARENTHESIS ARE RECORD INFORMATION TAKEN FROM DEED DESCRIPTIONS OR OFFICIAL MAPS OR PLATS OF RECORD ALL OTHER COURSES ARE THE RESULT OF ACTUAL FIELD MEASUREMENTS.
3. ALL UTILITIES SHOWN ON THIS PLAT ARE APPROXIMATE SIZE AND LOCATION ONLY AND SHOULD BE FIELD VERIFIED PRIOR TO ANY CONSTRUCTION
4. THE SUBJECT PROPERTY IS LOCATED WITHIN THE CP-1 ZONE OF THE LAYTON CITY ZONING ORDINANCE, THE FOLLOWING APPLY:

FRONT YARD SETBACK NONE, EXCEPT A 20 FOOT LANDSCAPE BUFFER
 REAR YARD SETBACK NONE
 SIDE YARD SETBACK NONE
 BUILDING HEIGHT RESTRICTION 40'

5. UTILITY CONTACT INFORMATION:

UTAH POWER & LIGHT COMPANY (POWER) (800) 662-4111
 QUESTAR GAS COMPANY (GAS) (801) 324-3970
 LAYTON CITY ENGINEER (801) 546-7800
 (WATER, SEWER & STORM DRAIN)

LAYTON CITY
 VENTURER
 (NOT TO SCALE)



DATE	12/31/03	SCALE
DESIGNED BY		DRAWN
REV	DATE	REVISION
1	01/21/04	ADDED EXCEPTION 14

EXHIBIT A-1

E 2020565 B 3633 P 519

PARCEL 1.

BEGINNING AT THE NORTHWEST CORNER OF THE "FINAL PLAT OF WYNDOM SQUARE SHOPPING CENTER" LOCATED IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH WHICH POINT IS ALSO ON THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 193 AND RUNNING THENCE SOUTH 0°54'38" WEST 216.88 FEET ALONG THE WEST BOUNDARY OF SAID SUBDIVISION, SUBDIVISION RECORD BEARING IS SOUTH 01°15'12" WEST; THENCE NORTH 89°05'06" WEST 60.42 FEET; THENCE NORTH 86°24'27" WEST 49.41 FEET; THENCE NORTH 73°10'10" WEST 45.18 FEET; THENCE DUE NORTH 221.98 FEET TO A POINT ON A NON-TANGENT 5804.65 FOOT RADIUS CURVE TO THE LEFT, WHICH POINT IS ALSO ON THE SOUTH RIGHT OF WAY OF SAID HIGHWAY 193 AND RUNNING ALONG SAID RIGHT OF WAY 157.99 FEET ALONG THE ARC (CENTRAL ANGLE = 01°33'34", CHORD BEARING AND DISTANCE = SOUTH 81°53'52" EAST 157.99 FEET, TO THE POINT OF BEGINNING.

PARCEL 2:

SUBJECT TO AND TOGETHER WITH ALL RIGHTS DISCLOSED BY THAT CERTAIN EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") RECORDED JUNE 24, 2003 AS ENTRY NO. 1881919 IN BOOK 3318 AT PAGE 1906 OF OFFICIAL RECORDS.

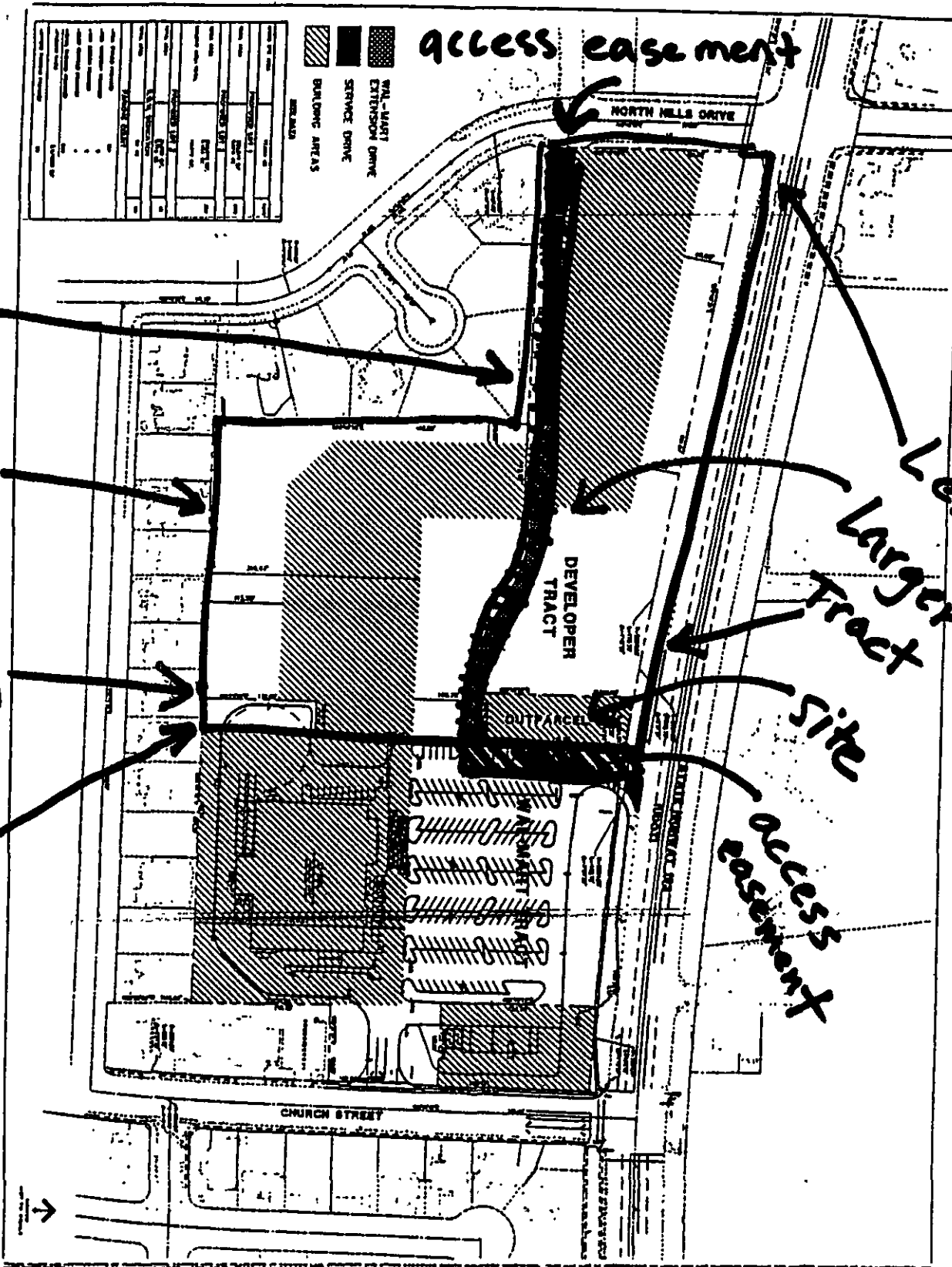
EXHIBIT B

E 2020565 | 3633 P 520

E 1881719 | 3318 P 1921

181-D-88888888

BRANDON



Lessor's Larger Tract

access easement

Lessor's Target Tract
Site Access easement