

FILED & RECORDED 9-30-87 AT 4:30 P.M. IN BOOK 60 page 46.00  
3200 Payoff Building REGISTER OF DEEDS, SARPY COUNTY, NE 25 traps. 60-3000

### ACCESS, SEWER AND SLOPE EASEMENT AGREEMENT

This Easement Agreement ("Easement Agreement"), made this 22 day of September, 1987 by and between RICHARD D. WHITTED, SR. and MARTHA T. WHITTED, husband and wife, WALTER A. DIMMITT, WALTER L. DIMMITT, and CHERYL ABUSHERRY, jointly and severally, having an address of c/o 2405 Capehart Road, Route 71, Omaha, Nebraska (collectively referred to hereinafter as "Grantor") and HARDEE'S FOOD SYSTEMS, INC., a North Carolina corporation having an address of 1233 North Church Street (27804), P.O. Box 1619 (27802-1619) Rocky Mount, NC ATTN: Legal Dept. (referred to hereinafter as "Grantee").

WHEREAS, Grantor is the fee owner of the various parcels of real property more specifically set forth in Exhibit A attached hereto and incorporated herein by reference (such parcels collectively referred to as the "Burdened Property", but individually referred to by their specific easement purposes as set forth below); and

WHEREAS, Grantee is the fee owner of the property more specifically set forth in Exhibit B attached hereto and incorporated herein by reference ("Benefited Property"); and

WHEREAS, Grantor has agreed to grant easements over, under, on, and through the Burdened Property to the Grantee for the purposes stated herein.

NOW THEREFORE, in consideration of Grantee's purchase of the Benefited Property from Grantor pursuant to an Option Contract dated March 17, 1987, as amended, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee agree as follows:

1. Grantor hereby grants, sells, bargains, and conveys to Grantee a perpetual non-exclusive easement ("Access Easement") over, upon, and across the Burdened Property, for the purpose of ingress, egress, and access to and from the Benefited Property, Capehart Road, 25th Street, and 23rd Street, as they may exist from time to time. The legal description of the Access Easement is marked as such in Exhibit A.

This grant of the Access Easement shall be subject to the following terms and conditions:

A. Grantor and Grantee acknowledge that the Access Easement consists, as of the time of the execution of this Easement Agreement, of an asphalt roadway.

B. Grantee's use of the Access Easement shall be at no cost or expense to Grantee.

C. Grantor shall be responsible for the maintenance and repair of the improvements to the Access Easement.

D. Grantee shall have the right, but not the obligation, to perform the maintenance, repair, and replacement of the improvements (i.e., paving, curbing, and striping) to the Access Easement as is reasonably deemed necessary by Grantee. In the event that Grantee performs any such work, Grantor shall promptly reimburse Grantee for the reasonable costs thereof, provided that Grantee supplies Grantor with a reasonably detailed invoice for the work done.

E. The grant of the Access Easement shall run with the land and be binding upon, and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, and administrators.

2. Grantor hereby grants, sells, bargains, and conveys to Grantee a perpetual exclusive easement ("Sewer Easement") over, upon, across, and under the Burdened Property for the purposes of the use, installation, maintenance, repair, and replacement of a sanitary sewer line, originating on and under the Benefited Property and connecting with the public sewer system. Additionally, during the exercise of its rights as granted herein, Grantee shall have the right of ingress, egress, access and occupancy of those other portions of the Burdened Property reasonably necessary to facilitate the Grantee's exercise of its rights. The legal description of the Sewer Easement is marked as such in Exhibit A.

This grant of the Sewer Easement shall be subject to the following terms and conditions:

A. The Grantee's exercise of its rights and obligations herein shall be at the sole cost and expense of Grantee, and Grantee will be responsible for any use charges assessed against it by the relevant public utility.

B. During the installation, maintenance, repair, or replacement of the sanitary sewer line, Grantee shall take reasonable precautions to minimize the interference with Grantor's use of the Burdened Property.

C. After any and all exercises of its rights herein, Grantee shall repair any damage caused by it to the surface of the Sewer Easement and those other portions of the Burdened Property used in the exercise of the rights granted herein.

D. Grantor shall not erect or permit to be erected any permanent structure, buildings, or obstructions upon, over, through, or under the Sewer Easement, if such structures will in any way interfere with Grantee's exercise of the rights granted herein.

E. The grant of the Sewer Easement shall run with the land and be binding upon, and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, and administrators.

3. Grantor hereby grants, sells, bargains, and conveys to Grantee a perpetual exclusive easement ("Slope Easement") over, upon, across, and under the Burdened Property for the purposes of controlling the surface water drainage from the Benefited Property, providing adequate lateral support for the Benefited Property, and improving the overall physical appearance of the Benefited Property. The legal description of the Slope Easement is marked as such in Exhibit A.

This grant of the Slope Easement shall be subject to the following terms and conditions:

A. Grantor's reservation of the right to make improvements on the Slope Easement that do not materially impair or interfere with Grantee's rights as set forth in the preceding paragraph.

B. The grant of the Slope Easement shall run with the land and be binding upon, and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, and administrators.

This Easement Agreement contains all of the agreements and conditions made between the parties with respect to the easements granted herein, and no statements, promises, representations, or inducements relating hereto which is not contained herein shall be valid or binding; and this contract may be modified or amended only by a writing signed by all parties hereto.

IN WITNESS WHEREOF, as of the date first set forth above, the parties hereto have caused this Easement Agreement to be executed and their seals applied for all purposes herein.

Grantor, jointly and severally:

BY:

Richard D. Whitted, Sr.  
Richard D. Whitted, Sr.

BY:

Martha T. Whitted  
Martha T. Whitted

BY:

Walter A. Dimmitt  
Walter A. Dimmitt

BY:

Walter L. Dimmitt  
Walter L. Dimmitt

BY:

Mary Jane Dimmitt  
Mary Jane Dimmitt

Grantee:

HARDEE'S FOOD SYSTEMS, INC.

By:

J. Schmitz  
Its: Vice President

Attest:

Ethan M. Poirer  
Its: Assistant Secretary

BY:

Cheryl M. Abusheery  
Cheryl M. Abusheery

BY:

John Abusheery  
John Abusheery

60-3000 C

Witnesses (as necessary to record this document):

Witness: \_\_\_\_\_  
AS TO: \_\_\_\_\_

Witness: \_\_\_\_\_  
AS TO: \_\_\_\_\_

Witness: \_\_\_\_\_  
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Witness: \_\_\_\_\_  
AS TO: \_\_\_\_\_

ACKNOWLEDGMENT - Whitteds

STATE OF

SS:

COUNTY OF

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments personally appeared to me Richard D. Whitted, Sr and Martha T. Whitted well known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that X-40 executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at \_\_\_\_\_ said County and State, this 22 day of September, 191987.

Notary Public B. J. JUSTICE  
My Comm. Exp. Dec. 20, 1990

My Commission Expires: 12/20/1990

ACKNOWLEDGMENT - Dimmitts

STATE OF

SS:

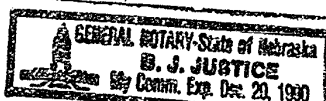
COUNTY OF

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments personally appeared to me Walter A. Dimmitt, Walter L. Dimmitt well known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that X-40 executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at \_\_\_\_\_ said County and State, this 22 day of September, 191987.

Notary Public, State of \_\_\_\_\_

My Commission Expires: 12/20/1990



## ACKNOWLEDGMENT - Abusherry

STATE OF MASSACHUSETTS

SS:

COUNTY OF PLYMOUTH

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments personally appeared to me CHERYL ABUSHEERY AND JOHN ABUSHEERY well known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that THEY executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at HANOVER said County and State, this 23 day of SEPT, 1987.

Thomas Litch  
Notary Public, State of \_\_\_\_\_

My Commission Expires: JAN 26, 1989

## ACKNOWLEDGMENT - Hardee's

STATE OF NORTH CAROLINA

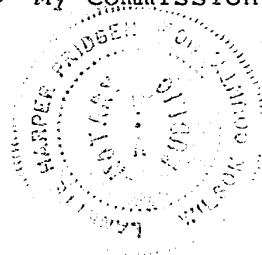
SS:

COUNTY OF NASH

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared John F. Schmidt and Ethan M. Pousner to me known and known to be the persons described in and who executed the foregoing instrument as the (Vice) President and (Asst.) Secretary respectively of Hardee's Food Systems, Inc., a corporation, and they severally acknowledged before me that they executed the same as such officer, that they were authorized so to do, and that such is the act and deed of said corporation.

WITNESS my hand and official seal at Rocky Mount said County and State, this 29<sup>th</sup> day of September, 1987.

Lorette Harper Bridger  
Notary Public, State of North Carolina

My Commission Expires: 10/9/89

## EXHIBIT A, Page 1

## "Access Easement"

A permanent easement for ingress and egress over that part of Tax Lots 9A and 9B in the Northwest Quarter of Section 10, Township 13 North, Range 13 East of the 6th P.M., Sarpy County, described as follows:

Commencing at the northwest corner of the said Northwest 1/4 of Section 10; Thence South 00° 00' 00" West (assumed bearings) for 33.01 feet along the west line of the said Northwest 1/4 of Section 10; thence North 88° 57' 10" East for 268.04 feet along the south right of way line of Capehart Road to the TRUE POINT OF BEGINNING; thence North 88° 57' 10" East for 185.20 feet along said ROW line; thence South 85° 30' 32" East for 129.95 feet along said ROW line; thence South 04° 29' 28" West for 33.00 feet; thence North 85° 30' 32" West for 127.56 feet parallel with and 33.00 feet southerly of the said south ROW line to Capehart Road; thence South 88° 57' 10" West for 184.39 feet along said parallel line; thence North 00° 00' 00" East for 33.00 feet to the Point of Beginning. Contains 0.24 acres.

## EXHIBIT A, Page 2

**"Sewer Easement"**

A permanent easement for construction and maintenance of a sanitary sewer over that part of Tax Lot 9A in the Northwest 1/4 of Section 10, Township 13 North, Range 13 East of the 6th P.M. in Sarpy County, Nebraska described as follows:

Commencing at the northwest corner of said Northwest 1/4 of Section 10;

Thence SOUTH (assumed bearings) for 384.97 feet along the west line of said Northwest 1/4 of Section 10;

Thence EAST for 60.00 feet to the TRUE POINT OF BEGINNING;

Thence SOUTH for 200.17 feet parallel with and 60.00 feet east of the west line of the said Northwest 1/4 of Section 10 to the north line of an existing permanent sanitary sewer easement;

Thence SOUTH 87°17'45" East for 20.02 feet along said north line of the existing sanitary sewer easement;

Thence NORTH for 201.48 feet parallel with and 80.00 feet east of the west line of the Northwest 1/4 of Section 10;

Thence SOUTH 88°57'01" West for 20.00 feet to the Point of Beginning.

Contains 9.09 acres.

## EXHIBIT A, Page 3

## "Slope Easement"

A permanent easement for the construction and maintenance of an earth slope on that part of Tax Lot 9A in the Northwest quarter of Section 10, Township 13 North, Range 13 East of the Sixth Principal Meridian, Sarpy County, Nebraska, described as follows:  
Commencing at the Northwest corner of the Northwest quarter of said Section 10; thence South (assumed bearings) for 33.01 feet along the West line of the Northwest quarter of said Section 10; thence North 88°57'01" East for 268.04 feet parallel with and 33.00 feet South of the North line of the Northwest quarter of said Section 10 to the TRUE POINT OF BEGINNING; thence continuing North 88°57'01" East for 45.01 feet; thence South 0°00'00" West for 398.07 feet; thence South 88°57'01" West for 253.04 feet to the East right-of-way line of 25th Street; thence North 0°00'00" East for 45.01 feet parallel with and 60.00 feet East of the West line of the Northwest quarter of said Section 10; thence North 88°57'01" East for 208.03 feet; thence North 0°00'00" East for 353.06 feet to the TRUE POINT OF BEGINNING.



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EXHIBIT B

HARDEE'S  
LOT 1 BEING A PLATTING OF PART OF TAX LOTS 8 and 9A IN  
THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 13 NORTH,  
RANGE 13 EAST OF THE 6TH PRINCIPAL MERIDIAN IN SARPY  
COUNTY, NEBRASKA