

NC 45717

Proof	<u>W</u>
D.E.	<u>L</u>
Verify	<u>W</u>
Filmed	<u>Y</u>
Checked	<u>Y</u>
Fee \$	<u>52.50</u>

EASEMENT AGREEMENT

91-03948
 FILED SAPPY CO. NE.
 INSTRUMENT NUMBER
 91-03948
 91 MAR 27 PM 4:00

THIS EASEMENT GRANT, dated ~~February 18~~ March 22, 1991, is between JUNCTION CORNER, INC., A NEBRASKA CORPORATION ("Grantor") and McDONALD'S CORPORATION, a Delaware corporation ("Grantee"). The following statements are a material part of this Easement Agreement: *REGISTER OF DEEDS*

- A. Grantee is the purchaser of a tract of land described as Parcel 1 on Exhibit A, attached.
- B. Grantor is the owner of a tract of land described as Parcels 2 and 3 on Exhibit B and Parcel 4 on Exhibit C, all shown on the diagram attached as Exhibit D attached.
- C. Grantor wishes to grant, and Grantee wishes to receive, easements over, under and across Parcels 2, 3 and 4.

THEREFORE, in consideration of the covenants contained in this Easement Agreement and other good and valuable consideration, the receipt of which is acknowledged, the following grants, agreements, covenants and restrictions are made:

1. EASEMENT FOR PARKING AND INGRESS AND EGRESS

A. Grantor grants and conveys to Grantee a perpetual, non-exclusive easement for the purpose of vehicular and pedestrian ingress and egress to and from Parcels 1 and 3 over, upon and across the driveways and accessways, sidewalks and walkways and exits and entrances of Parcel 2, described on Exhibit B, attached.

B. Grantor grants and conveys to Grantee a perpetual, non-exclusive easement for the purpose of vehicular parking and vehicular and pedestrian ingress and egress, to and from Parcels 1 and 2, appurtenant to Parcel 1, over, upon and across the parking areas and spaces, driveways and access ways, sidewalks and walkways, exits and entrances, and other common areas* In the event that Parcel 3 can no longer be used for vehicular truck parking, then upon sixty (60) days prior written notice Grantor may relocate the Parcel 3 easement. The relocated area shall be located on Grantor's property adjacent to Parcel 1, as reasonably determined by Grantor, and shall contain a minimum of fifteen (15) parking spaces with a reasonably direct vehicular and pedestrian ingress and egress easement from Parcel 2.

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* as such areas now exist on Parcel 3, as shown on Exhibit "D".

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2. EASEMENTS FOR UTILITIES

Grantor also grants and conveys to Grantee perpetual, non-exclusive easements, appurtenant to Parcel 1, for the purpose of installing, operating, maintaining, repairing, replacing and renewing any and all utility lines and related facilities, including surface drainage rights, over, above, along, under, in and across Parcels 2 and 3 wherever these utility lines may be located. No trees, permanent buildings or other structures shall be placed in or allowed to encroach upon the easements, and no change of grade elevation or excavation shall be made upon the easement area without Grantee's prior written approval. Grantor grants Grantee, its successors and assigns, the right to use, coupled with its easement, the utilities and related facilities. *Grantor promises to maintain the utility lines and all related facilities located on Parcels 2 and 3 in good condition and repair.

3. EASEMENT FOR STORM SEWER LINE

Grantor also grants and conveys to Grantee a non-exclusive easement and license to tap into and use the storm sewer lines and related facilities located on Parcels 2, 3 and 4 for the purpose of surface draining any and all surface water runoff from the improvements which may, from time to time, be located on Parcel 1. In lieu of tapping into the storm sewer lines, Grantee may, at its option, surface drain its surface water runoff onto Parcels 2, 3 and 4.

4. MAINTENANCE

Grantor covenants and agrees to maintain in good condition and repair, or cause to be maintained and kept in repair, the parking, driveways and other common areas situated on Parcels 2, 3 and 4 respective properties. However, Grantee shall maintain that portion of Parcel 2 immediately adjoining Parcel 1. The obligation of Grantor and Grantee to maintain, repair and keep in repair the parking, driveways and other common areas shall, without limiting the generality thereof, include the following:

A. Maintaining the surfaces at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common areas and maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or of similar quality, use and durability; and

B. Removing all papers, debris, snow, ice, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep these areas in a neat, clean and orderly condition; and

7518J/15 * Except those utility lines that are maintained by the appropriate public entities,

C. Placing, keeping in repair, and replacing any necessary appropriate directional signs, striping markers and lines; and operating, keeping in repair and replacing, when necessary, artificial lighting facilities as shall be reasonably required; and

D. Maintaining any perimeter walls in good condition and state of repair; and

E. Maintaining all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping these areas at all times adequately weeded, fertilized and watered.

5. BARRIERS

Grantee may erect curbs, fences and landscaping on Parcel 1 in order to define the premises to be conveyed and Parcel 2. Grantor shall not detract from the parking and access rights of Grantee or prevent, hinder or interfere in any way with the free flow and passage of vehicular and pedestrian traffic and parking over, to, from and between Parcel 1 and Parcels 2, 3 and 4.

6. COMPLIANCE WITH LAWS AND REGULATIONS - INDEMNIFICATION

Grantor and Grantee covenant and agree, with respect to their own properties, to comply with all laws, rules, regulations and requirements of all public authorities, and to indemnify, defend and hold each other harmless against all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and attorney's fees) arising out of, or in any way related to, Grantor's or Grantee's failure to maintain their respective properties in a safe condition. Grantor and Grantee shall give prompt and timely notice of any claim made, or suit or action commenced, against the other party which would in any way result in indemnification under this Easement Agreement.

7. DEFAULT

If there is a failure by either party to perform, fulfill or observe any agreement contained within this Easement Agreement, to be performed, fulfilled or observed by it, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration of Parcel 1, Parcel 2, Parcel 3 or Parcel 4 in each case after written notice, the other party may, at its election, cure such failure or breach on behalf of the defaulting party. Any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by either party to the other, shall be paid to the party to

whom due on demand, without contest, upon delivery of its invoice, together with interest at the lower of (1) the rate of ten percent (10%) per annum, or (2) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust.

8. COVENANTS RUNNING WITH LAND

The rights contained within this Easement Agreement shall run with the land and inure to, and be for the benefit of, Grantor and Grantee, their successors and assigns, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such parties.

9. COVENANTS OF TITLE AND QUIET ENJOYMENT

Grantor warrants that he has good and indefeasible fee simple title to Parcel 2, and Grantor warrants and will defend the title to the easement premises owned by Grantor and will indemnify Grantee against any damage and expense which Grantee may suffer by reason of any lien, encumbrance, restriction or defect in the title or description of the easement premises.

~~10. LOT LIGHTS~~

~~Grantor agrees that the lot lights located within 100 feet of Parcel 1 shall be lit during the morning and evening hours while the Grantee's business is open, as natural light availability dictates. Grantee shall have the right to approve any changes or alterations to the lot lights located within 100 feet of Parcel 1.~~

11. TERMINATION OF LIABILITY

Whenever a transfer of ownership of either parcel takes place, the transferor will not be liable for a breach of this agreement occurring after a transfer, except that Grantee shall remain liable if it transfers its interest to a licensee or subsidiary corporation.

12. CONSTRUCTION

The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out.

13. NOTICE

Grantor's address is Wallace J. Curd, 9509 S. 144th, Omaha, NE 68138 and Grantee's address is One McDonald's Plaza, Oak Brook, Illinois 60521, Attention: Director, Real Estate Legal Department. Either party may lodge written notice of a change of address with the other. All notices shall be sent by certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given when placed in the mail.

To indicate their consent to this agreement, Grantor and Grantee, or their authorized officers or representatives, have signed this document.

GRANTOR: JUNCTION CORNER, INC., A
NEBRASKA CORPORATION

GRANTEE: McDONALD'S CORPORATION, *jm*
A DELAWARE CORPORATION

By: Wallace J. Curd Pres
ITS

By: *[Signature]*
~~Director~~
Director

ATTEST:

By: _____
ITS

ATTEST:

By: *[Signature]*
Assistant Secretary



(ATTACH ACKNOWLEDGMENTS AND EXHIBITS A, B, C AND D)

Prepared by and Return to:

James D. Montgomery, Jr.
Real Estate Legal Department
McDONALD'S CORPORATION
One McDonald's Plaza
Oak Brook, Illinois 60521

7518J/18

MCDONALD'S
(ACKNOWLEDGMENT)

91-03948E

STATE OF ILLINOIS
COUNTY OF DuPage

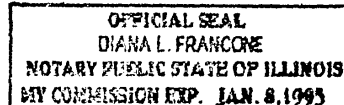
SS:

I, Diana L. Francone, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Joseph R. Thomas, Department Director of McDonald's Corporation, a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Department Director appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such Department Director and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 15th day of March, 1991.

Diana L. Francone
Notary Public

My commission expires 1/8/95.



(ACKNOWLEDGMENT - INDIVIDUAL)

STATE OF
COUNTY OF

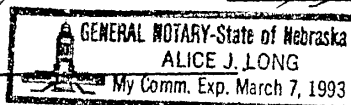
SS:

I, _____, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that _____ and _____ of _____ who (is)(are) personally known to me to be the same person(s) whose name(s) (is)(are) subscribed to the foregoing instrument appeared before me this day in person and acknowledged that (he)(they) signed, sealed and delivered the said instrument as (h)(their) free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 22 day of March, 1991.

Alice J. Long
Notary Public

My commission expires _____



(ACKNOWLEDGMENT - CORPORATE)

STATE OF NEBRASKA
COUNTY OF DOUGLAS

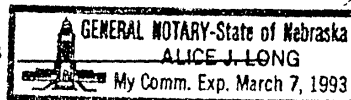
SS:

I, Alice J. Long, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Wallace J. Curd, President of Junction Corner, Inc., a(n) Nebraska corporation, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such President and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 22 day of March, 1991.

Alice J. Long
Notary Public

My commission expires _____



Parcel 1

LEGAL DESCRIPTION

That part of Lot 8, The Meadows II, Replat I, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, described as follows: Commencing at the SW corner of said Lot 8; thence $N00^{\circ}31'23''W$ (assumed bearing) 28.83 feet on the West line of said Lot 8 to the point of beginning; thence continuing $N00^{\circ}31'23''W$ 221.24 feet on the West line of said Lot 8; thence $N89^{\circ}28'10''E$ 160.00 feet on a line 57.98 feet South of and parallel to the North line of said Lot 8; thence $S00^{\circ}31'23''E$ 250.00 feet on a line 160.00 feet East of and parallel to the West line of said Lot 8 to the South line of said Lot 8; thence $S89^{\circ}26'43''W$ 124.80 feet on the South line of said Lot 8 to a point 35.20 feet East of the SW corner of said Lot 8; thence $N51^{\circ}13'24''W$ 45.49 to the point of beginning.

Containing 39,498 square feet or 0.91 acres more or less

Now known as Lot 8A of Lot Split of Lot 8, The Meadows II, Replat I a Subdivision, as surveyed, platted and recorded, in Sarpy County, Nebraska.

Legal description of the access easement Parcel No. 2

The north 57.98 feet of the Lots 7 and 8, The Meadows II, Replat I, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, all more particularly described as follows: Beginning at the NW corner of said Lot 8; Thence N89°28'10"E (assumed bearing) 417.20 feet on the North line of said Lots 7 and 8; Thence S00°29'40"E 57.98 feet on the East line of said Lot 7; Thence S89°28'10"W 417.17 feet on a line 57.98 feet South of and parallel to the North line of said Lots 7 and 8 to the west line of said Lot 8; Thence N00°31'23"W 57.98 feet on the West line of said Lot 8 to the point of beginning.

+ Lot 8B Lot split of Lot 8
The Meadows II
Replat I

Containing 24,189 square feet or 0.56 acres more or less.

Legal description of the parking easement Parcel No. 3

That part of Lots 5 and 6, the Meadows II, Replat I, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, described as follows: Beginning at NW corner of said Lot 6; Thence N89°28'10"E (assumed bearing) 407.59 feet on the North line of said Lot 5 on a 364.31 foot radius curve to the right, chora bearing S35°34'19"W, chord distance 178.03 feet, an arc distance of 179.85 feet to a point of tangency; Thence S49°42'55"W 192.33 feet on the Southeasterly line of said Lots 5 and 6, to a point on the Easterly extension of the South line of the North 57.98 feet of Lots 7 and 8 of said the Meadows II, Replat I; Thence S89°28'10"W 155.00 feet on the Easterly extension of the North 57.98 feet of Lots 7 and 8 of said The Meadows II, Replat I, to the West line of said Lot 6; Thence N00°29'40"W 266.83 feet on the West line of said Lot 6 to the point of beginning.

Containing 80,557 square feet or 1.85 acres more or less.

91-03948H

LEGAL DESCRIPTION

+ Lot 8B, NOT SPLIT OF LOT 8.
THE MEADOWS II, REPLAT I

That part of Lots 6, 7 and 8, The Meadows II, Replat I, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, described as follows: Commencing at the SW corner of said Lot 8; thence N89°26'43"E (assumed bearing) 160.00 feet on the South line of said Lot 8 to the point of beginning; thence continuing N89°26'43"E 22.55 feet on the South line of said Lot 8 to a point of curve; thence Northeasterly on the Southerly line of said Lots 7 and 8 on a 246.78 foot radius curve to the left, chord bearing N69°34'49"E, chord distance 167.71 feet, an arc distance of 171.12 feet to a point of tangency; thence N49°42'55"E 301.70 feet on the Southerly line of said Lots 6 and 7; thence S89°28'10"W 412.17 feet on a line 57.98 feet South of and parallel to the North line of said Lots 7 and 8 and their Easterly extension; thence S00°31'23"E 250.00 feet on a line 160.00 feet East of and parallel to the West line of said Lot 8 to the point of beginning.

MCDONALDS CORPORATION
March 15, 1991

T02 FILE NO. 200-176-22

Exhibit C

UNPLATTED

PARKING EASEMENT
PARCEL NO. 3

LOT 5

LOT 6

ACCESS EASEMENT
PARCEL NO. 2

LOT 8

LOT 7 NO. 4

PARCEL NO. 1

142ND STREET

LOT 9

Exhibit D

SANITARY SEWER MANHOLE