

95-01885

Prepared by and After
Recording, Return To:

REGISTER OF DEEDS
AS OF FEBRUARY
95-01885
95 FEB 15 AM 11:05
[Signature]
REGISTER OF DEEDS

[Stamp with signature and number 3752]

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

COVENANT NOT TO COMPETE

Under Lease dated June 1, 1994, BRENTWOOD CROSSING ASSOCIATES, ("Landlord") whose address is 23123 S. State Road 7, Suite 255, Barnett Bank Building, Boca Raton, FL 33428, Attention: James N. Gordon and 1001 E. Cherry Street, Suite 308, Columbia, MO 65201, Attention: E. Stanley Kroenke leased to McDONALD'S CORPORATION, a Delaware corporation, whose address is One McDonald's Plaza, Oak Brook, Illinois 60521 ("Tenant") a parcel of land described on Exhibit A attached ("Demised Premises").

Landlord and Tenant wish to set forth their obligations regarding the Covenant Not To Compete.

THEREFORE, Landlord and Tenant covenant and agree as follows:

1. For so long as McDonald's is utilizing the premises as a McDonald's restaurant, and for so long as McDonald's has not defaulted under any of the terms and conditions of the lease, Landlord covenants and agrees that Lot 2, Lot 5, Lot 6, and Lot 7, each lot being an outlot within Brentwood Crossing, a subdivision in Sarpy County, Nebraska, as shown in Plat recorded December 26, 1990, as instrument No. 90-18556, shall, not, during the term of the lease and any extensions thereof, be leased, used, or occupied as a restaurant. Restaurant shall be defined as follows in paragraphs 2 and 3:

2. Throughout the lease term, the term Restaurant, as used in paragraph 1 shall mean any food service establishment selling:

hamburgers, or any other type ^{of ground beef} products, served in sandwich form.

[Signature] FEB 10 1995

Additionally, and not by way of example, throughout the lease term, the term Restaurant shall specifically include restaurants operating under the following listed trade names or the successors of these trade names: Burger Chef, Burger King, Carl's Jr., Hardee's, In and Out Burgers Rally's, Wendy's, and White Castle. In addition, Taco Bell shall be included within the term Restaurant (i.e. barred from the restricted outlots) for the first 48 months after Tenant initially opens for business.

3. Throughout the lease term, all restaurants which offer as a primary indoor method of service for all meal times offered, order taken by and served by a waiter or waitress at the customer's table or orders brought to the customer's table by a server, as well as the following types of restaurants or combinations thereof:

- delicatessens and/or bagel restaurants
- submarine sandwich restaurants
- gyros restaurants
- hot dog restaurants



oriental restaurants
 buffet (food bar) restaurants
 steakhouses
 barbecue restaurants
 Mexican restaurants
 restaurants operating under the following listed trade names or the successors of these trade names: Boston Chicken, Kenny Rogers Chicken, Miami Subs, Subway or Subway Sandwiches, Lone Star Steakhouse

are fully approved and not considered a violation of this restriction or covenant, and are not included in the term Restaurant. In addition, Taco Bell will be excluded from the term Restaurant (i.e. allowed on the restricted outlots) after 48 months have elapsed after Tenant initially opens for business.

4. OTHER EXCLUSIVES

Any violation of this paragraph shall immediately be a default under the Lease.

4A) McDonald's shall not violate any restrictions placed on the property in the Declaration of Restrictions, as amended, (the "Declaration"), which is recorded against the entire shopping center. Brentwood Crossing Associates may amend the Declaration at its discretion provided the changes do not physically affect the McDonald's parcel or place any additional restriction on the use thereof.

4B) McDonald's shall not violate the restriction granted to Summer Kitchen Cafe, a copy of which is attached hereto and made a part hereof, *Attached as Exhibit C*

4C) From time to time, Landlord, at its sole discretion, may grant restrictions in favor of other tenants in the shopping center, provided the restrictions granted by Landlord to the tenant other than McDonald's shall exempt McDonald's if McDonald's is already selling the item(s) at this location. These restrictions, as they are granted, shall apply to the McDonald's parcel, unless it is exempted as provided for above. If McDonald's decides to discontinue operating as a McDonald's restaurant, or if as a McDonald's restaurant, it discontinues the sale of hamburgers; or if McDonald's is allowed by Landlord to assign, sublet, or otherwise transfer its rights to use this parcel to another entity and does so, then McDonald's or such transferee shall not violate the use restrictions in the rest of the leases of the shopping center. McDonald's may assign this lease to a franchisee or a wholly owned subsidiary without Landlord's consent provided that McDonald's Corporation remains fully liable for satisfaction of the terms and conditions of this lease.

Landlord agrees to supply McDonald's or such transferee with a list of all of the exclusives granted to all the tenants of the center within fifteen (15) days after receiving a request to do so, and McDonald's acknowledges that this list of exclusives shall change over time, and therefore, any list sent to McDonald's or said transferee shall have a limited lifetime of not more than 90 days. McDonald's or said transferee shall not make more than two requests per calendar year.

Landlord and Tenant agree to abide by the previous covenants and obligations, and that Landlord's obligations shall run with the land and shall inure to the benefits of the Tenant so long as the Tenant is utilizing the premises as a McDonald's restaurant and McDonald's has not defaulted under any of the terms and conditions of the Lease Agreement and shall be binding upon Landlord's and Tenant's heirs, executors, successors and assigns.

mjs
 FEB 1 1995

95-01885B

Landlord and Tenant have executed this Covenant on this 2nd day of Feb., 1995

LANDLORD: BRENTWOOD CROSSING, ^{ASSOCIATES}

TENANT: McDONALD'S CORPORATION

[Signature]

WITNESS:

By: *[Signature]*
Michael J. Sise
Assistant Vice President



AFFIDAVIT OF OWNERSHIP BY LANDLORD

JAMES N. GORDON being first duly sworn on oath deposes and states that they are the Landlord's duly authorized officers and that they have title to the property described on Exhibit B attached.

IN WITNESS WHEREOF, the affiants have set their hands this 2nd day of Feb., 1995.

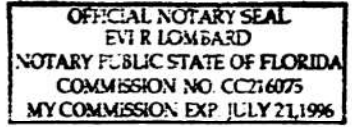
AFFIANTS

[Signature]

Subscribed and sworn to before me this 2nd day of Feb., 1995.

[Signature]

Notary Public



My commission expires July 21, 1996

PLEASE ATTACH PROPER ACKNOWLEDGMENT FOR STATE WHERE DOCUMENT IS TO BE RECORDED AND EXHIBIT A (LEGAL DESCRIPTION OF DEMISED PREMISES) AND EXHIBIT B (LEGAL DESCRIPTION OF LANDLORD'S OTHER PROPERTY)

95-01885C

ACKNOWLEDGMENT - McDONALD'S

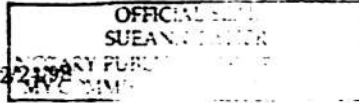
STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

I, Sueann Fisher, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Michael J. Sise, Assistant Vice President 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 Assistant Vice 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 Assistant Vice 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 5th day of January, 1995.

Sueann Fisher
Notary Public

My commission expires 02/21/96



ACKNOWLEDGMENT - INDIVIDUAL

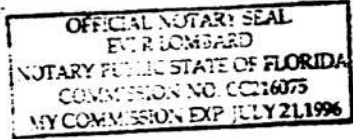
STATE OF FLORIDA
COUNTY OF PALM BEACH SS:

I, EVIL R. LOMBARD, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that N. GORDON 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/she/they~~ signed, sealed and delivered the said instrument as ~~his/hers/their~~ free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 2nd day of February, 1995.

E. R. Lombard
Notary Public

My commission expires July 21, 1996



ACKNOWLEDGMENT - CORPORATE

STATE OF _____)
) SS:
COUNTY OF _____)

I, _____, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that _____, President and _____, Secretary of _____, a(n) _____ 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 they signed, sealed and delivered the said instrument as their free and voluntary act as such President and Secretary respectively 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 _____ day of _____, 19____.

Notary Public

My commission expires _____.

95-01885 D

LEGAL DESCRIPTION

Lot 3. Brentwood Crossing, an addition to the City of LaVista, as surveyed, planned and recorded in Sarpy County, Nebraska.

EXHIBIT A

A handwritten signature or set of initials, possibly 'CP', written in black ink over the printed text 'EXHIBIT A'.

95-01885E

LEGAL DESCRIPTION

Lots 2, 5, 6, and 7 of Brentwood Crossing, an addition to the City of LaVista, as surveyed,
platted and recorded in Sarpy County, Nebraska.

EXHIBIT B

A handwritten signature or set of initials, possibly 'C' with a vertical line through it, located to the right of the 'EXHIBIT B' text.

95-01885F

EXHIBIT C

COVENANT NOT TO COMPETE

BRENTWOOD CROSSING ASSOCIATES
EXCLUSIVE GRANTED TO SUMMER KITCHEN
CAFE.

RESTRICTIVE COVENANT: So long as tenant is not in default of this lease, Landlord agrees that during the term of this lease, or until any change in use pursuant to this lease, or until termination of this lease, whichever shall first occur, Landlord will not lease, sublease, or otherwise operate or contract, by conveyance or otherwise in Brentwood Crossing, a subdivision in Sarpy County, Nebraska, as shown in Plat recorded December 26, 1990 as Instrument No. 90-18556, for a food service establishment, which is sit-down style in nature, over 2,500 square feet in total area, and which is in direct competition with tenant including Shoney's, Co-Co's, F.C.I. Fridays, Gallagher's, Bennigan's, Grandmother's, Appleby's, Moulihan's, Garden Cafe, Clark's Cafe, Courtyard Cafe, Village Inns, Perkins, and similar operations; provided, however, after the seven year anniversary date of rental commencement under this lease, food service establishments with a full service liquor license and separate full service bar area containing 30% or more of the total area of the establishment exclusive of kitchen space, which generate 20% or more of gross annual sales and receipts from alcoholic beverages, shall be permitted, whether mentioned on the previous list or not, within Lots 2, 3, 5, 6 and 7 of Brentwood Crossing. This covenant shall not be applicable to the space presently utilized by Wal-Mart or space into which Wal-Mart expands. This covenant shall not prohibit the following types of restaurants: theme, fast food (i.e., those specializing in the sales of hamburgers, and fries, chicken, roast beef, or turkey), donut, deli, ethnic, Mexican, Italian, steak houses, seafood, pizza, barbecue, cafeterias, sandwich, yogurt and ice cream. Landlord covenants that as of the date hereof, it is the owner of all of the property within Brentwood Crossing and that it has not leased, subleased, or contracted for the sale of any parcel contained therein in violation of this covenant. This covenant shall run with the land and shall be contained in a Memorandum of Lease filed of record with respect to all property in Brentwood Crossing.



JUL 29 1991

mz