

South Jordan, Utah
104th & Redwood
L/C: 043-0115

8011680
09/25/2001 04:05 PM 27.00
Book - 8503 Pg - 5916-5923
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
BRIGHTON TITLE
BY: KCC, DEPUTY - WI 8 P.

EASEMENT AGREEMENT

THIS EASEMENT GRANT, dated August 17, 2001, is between SMITH'S FOOD AND DRUG CENTER, INC. a Delaware corporation ("Smith's") and McDONALD'S CORPORATION, a Delaware corporation ("McDonald's"). The following statements are a material part of this Easement Agreement:

- A. McDonald's is the owner of a tract of land described as Parcel 1 on Exhibit A, attached.
- B. Smith's is the owner of a tract of land described as Parcel 2 on Exhibit B, attached.
- C. Smith's and McDonald's wish to grant and receive, easements over, under and across each others Parcels.

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

1. EASEMENT FOR PARKING AND INGRESS AND EGRESS

Smith's grants and conveys to McDonald's a perpetual, non-exclusive easement for vehicular parking and vehicular and pedestrian ingress and egress, to and from Parcel 1, 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, as these areas shall, from time to time, be developed, altered or modified, on Parcel 2.

Smith's reserves, and McDonald's grants to Smith's, a perpetual, non-exclusive easement, appurtenant to Parcel 2, for the use and benefit of the Smith's and Smith's tenants, successors and assigns, for the purpose of automobile and pedestrian ingress and egress over and upon the sidewalks and walkways, driveways, access ways, entrances and exits, as such area shall, from time to time, be developed, altered or modified on Parcel 1.

Smith's agrees, that at Smith's sole cost and expense, Smith's will construct two new Access Ways located between Parcel 1 and Parcel 2 ("Access Ways"), as shown on Exhibit C. Smith's agrees that it will not close the current access areas until both Access Ways have been completed and accepted by McDonald's.

2. SIGN EASEMENT

Smith's grants to McDonald's a perpetual, non-exclusive easement appurtenant to Parcel 1, for the purpose of installing, operating, maintaining, repairing, replacing and renewing a "Welcome" sign and "Thank You" sign as shown on Exhibit C, attached. McDonald's shall be responsible for the fabrication and installation of the signs and Smith's shall reimburse McDonald's for the cost and expense of the two new signs. McDonald's agrees to maintain in good condition and repair the two new signs. McDonald's agrees to provide the electrical lighting and keep in good condition and replacing, when necessary, artificial lighting facilities as shall be reasonably required for the two new signs.

27-15-202-019

27-15-202-025

27-15-202-004

27-15-202-005

ACCOMMODATION RECORDING

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. Brighton Title Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

PG 5916

BK 8503 PG 5916

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ACCOMMODATION RECORDING

3. MAINTENANCE

Smith's and McDonald's covenant and agree to maintain in good condition and repair, or cause to be maintained and kept in repair, the parking, landscaping, driveways and other common areas situated on their respective properties. The obligation of Smith's and McDonald's to maintain, repair and keep in repair the parking, landscaping, 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

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.

4. BARRIERS

McDonald's and Smith's may erect curbs and landscaping on Parcel 1 and Parcel 2 in order to define their respective Parcels. Such improvements shall be made so as not to detract from the parking and access rights 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 Parcel 2.

5. PARKING RATIO AND CHANGES TO COMMON AREAS

McDonald's and Smith's agree that the parking areas shall be per city code and that the parking spaces, access drives and other common areas located within 50 feet of Parcel 1 shall not be changed or modified without McDonald's consent.

6. RULES AND REGULATIONS

Smith's and McDonald's shall have the right to enact reasonable rules concerning the conduct and operation of the parking areas and spaces, driveways and other common areas situated on their respective properties. Smith's shall not allow its employees or the employees of the other tenants on Parcel 2 to park on Parcel 1.

7. COMPLIANCE WITH LAWS AND REGULATIONS - INDEMNIFICATION

Smith's and McDonald's covenant and agree, with respect to their own property, 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, loss, damage, 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, Smith's or McDonald's failure to maintain their respective properties in a safe condition. Smith's and McDonald's shall give prompt and timely notice of any claim made or suit or action commenced against the other party which in any way would result in indemnification under this Easement Grant.

8. MAINTENANCE EXPENSES

Smith's and McDonald's further covenant and agree to pay the expense of maintaining and repairing the parking, ingress, egress and other common areas situated on their respective parcels, including the payment of all real estate taxes and assessments, subject only to the right to defer payment in a manner provided by law and/or in connection with a bonafide contest of such taxes or assessments, so long as the rights of the other party shall not be jeopardized by the deferring of payment.

9. DEFAULT

If there is a failure by either party to perform, fulfill or observe any agreement contained within this Easement Grant, 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 or Parcel 2, or any portion or any part thereof, 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.

10. COVENANTS RUNNING WITH LAND

The rights contained within this Easement Grant shall run with the land and inure to and be for the benefit of the Smith's and McDonald's, their successors and assigns, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such persons.

11. COVENANTS OF TITLE AND QUIET ENJOYMENT

Smith's and McDonald's warrant that they have good and indefeasible fee simple title to Parcel 2 and Parcel 1, respectively, and Smith's and McDonald's warrant and will defend the title to the easement premises owned by each other and will indemnify each other against any damage and expense which they may suffer by reason of any lien, encumbrance, restriction or defect in the title or description of the easement premises.

12. 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 McDonald's shall remain liable if it transfers its interest to a licensee or subsidiary corporation.

13. 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 Smith's and McDonald's is carried out.

14. NOTICE

Smith's address is 1550 South Redwood Road, Salt Lake City, Utah 84104 and McDonald's address is One McDonald's Plaza, Oak Brook, Illinois 60523, Attention: Director, U.S. Legal Department, L/C: 043-0115. 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, the Smith's or McDonald's, or their authorized officers or representatives, have signed this document.

SMITH'S: SMITH'S FOOD AND DRUG CENTER, INC.

MCDONALD'S: MCDONALD'S CORPORATION

By: *[Signature]*
Its: Executive Vice President

By: *[Signature]*
Troy M. Brethauer, Senior Counsel

(ATTACH ACKNOWLEDGMENTS AND EXHIBITS A, B AND C)



Prepared by and Return to:

Robin A. Greaves
U.S. Legal Department
McDONALD'S CORPORATION
One McDonald's Plaza
Oak Brook, Illinois 60523

ACKNOWLEDGMENT - McDonald's Corporation

STATE OF ILLINOIS)
) ss:
COUNTY OF DUPAGE)

I, **Arlene D. Scarlato**, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that **Troy M. Brethauer, Senior Counsel** 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 **Senior Counsel** 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 **Senior Counsel** and as the free and voluntary act of said corporation for the uses and purposes therein set forth. August 17, 2001

Arlene D. Scarlato
Notary Public

My commission expires 7/29/03



ACKNOWLEDGMENT

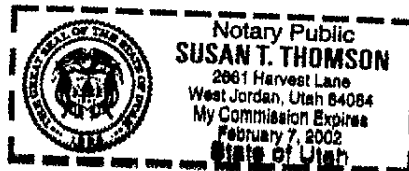
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

I, SUSAN T. THOMSON, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that WADE S. WILLIAMS, SR. VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC. a(n) DELAWARE corporation, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument as such SR. VICE PRESIDENT, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such SR. 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 6th day of SEPTEMBER, 2001.

Susan T. Thomson
Notary Public

My commission expires 2-7-2002



BK8503PG5920

Exhibit A

The land referred to in this policy is situated in the State of Utah, County of Salt Lake and is described as follows:

BEGINNING at a point which is South $0^{\circ}06'05''$ West (basis of bearing) along the Redwood Road Monument Line 1131.43 feet and South $89^{\circ}42'06''$ East (parallel with 10400 South Street) 33.00 feet from the County Survey Monument at the North Quarter Corner of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point of BEGINNING also being North $0^{\circ}06'05''$ East 187.72 feet and South $89^{\circ}42'06''$ East 33.00 feet from the County Survey Monument at the intersection of 10400 South Street and Redwood Road; thence South $89^{\circ}42'06''$ East 330.00 feet; thence South $0^{\circ}06'05''$ West 188.57 feet; thence North $89^{\circ}42'06''$ West 330.00 feet; thence North $0^{\circ}06'05''$ East 188.57 feet to the point of BEGINNING.

LESS:

A parcel of land in fee for the widening of 10400 South Street known as Project No. 0151, being part of an entire tract of property, situate in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 3 S., R. 1 W., S.L.B.&M. The boundaries of said parcel of land are described as follows:

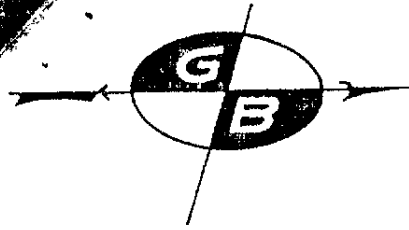
Beginning at the Northwest Corner of said entire tract at a point which is 344.860 meters (1131.43 feet) S. $00^{\circ}06'05''$ W. along the Redwood Road monument line and 10.058 meters (33.00 feet) S. $89^{\circ}42'06''$ E. from the North Quarter Corner of said Section 15 [Note: said point of beginning is also 57.217 meters (187.72 feet) N. $00^{\circ}06'05''$ E. and 10.058 meters (33.00 feet) S. $89^{\circ}42'06''$ E. from the county monument in the intersection of 10400 South Street and Redwood Road, used as the Southwest Corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 15]; and running thence S. $89^{\circ}42'06''$ E. 8.382 meters (27.50 feet) along the northerly boundary line of said entire tract to a point which is 18.440 meters (60.50 feet) perpendicularly distant easterly from the centerline of Redwood Road for said project at Engineer Station 1+057.154; thence S. $00^{\circ}38'36''$ E. 31.445 meters (103.17 feet) to a point which is 18.849 meters (61.84 feet) perpendicularly distant easterly from said centerline at Engineer Station 1+025.711; thence S. $07^{\circ}27'39''$ E. 4.500 meters (14.76 feet) to a point which is 19.441 meters (63.78 feet) perpendicularly distant easterly from said centerline at Engineer Station 1+021.250; thence S. $45^{\circ}39'01''$ E. 7.400 meters (24.28 feet) to a point which is 16.154 meters (53.00 feet) perpendicularly distant northerly from the centerline of 10400 South Street for said project at Engineer Station 35+135.126; thence S. $89^{\circ}44'32''$ E. 85.900 meters (281.82 feet) parallel to the centerline of said project to the easterly boundary line of said entire tract; thence S. $00^{\circ}06'05''$ W. 16.492 meters (54.11 feet) along said easterly boundary line to the southeast corner of said entire tract; thence N. $89^{\circ}42'06''$ W. 100.584 meters (330.00 feet) to the southwest corner of said entire tract; thence N. $00^{\circ}06'05''$ E. 57.476 meters (188.57 feet) to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation. The above described parcel of land contains 2027.7 square meters (21,826 square feet), of which 1037.7 square meters (11,170 square feet) is now occupied by the existing 10400 South Street. Balance 989.9 square meters (10,655 square feet).

(Note: Rotate above bearings $00^{\circ}10'11''$ clockwise to equal highway bearings.)

-PODR COPY-
CO. RECORDER

BK 8503 PG 5921

EXHIBIT B



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors
P.O. Box 9307
Ogden, Utah 84409

Ogden (801) 394-4515
Salt Lake (801) 521-8529
FAX (801) 392-7544



May 4, 1993

SMITH'S #138 - SOUTH JORDAN, UTAH - LESS SHOPS PARCEL

Beginning at a point on the Easterly right-of-way line of Redwood Road (as widened to 53.00 feet half width) being South 0°06'05" West, along the center line of Redwood Road, 460.24 feet and South 89°47'25" East 53.00 feet from the North Quarter Corner of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey; and running thence South 0°06'05" West, along a line parallel to and being 53.00 feet perpendicularly distant Easterly from the center line of Redwood Road, 25.00 feet; thence South 89°47'25" East 140.06 feet; thence South 0°06'05" West 289.315 feet; thence North 89°53'55" West 140.06 feet to said line being 53.00 feet from centerline of Redwood Road; thence South 0°06'05" West 355.42 feet along said line; thence South 89°47'25" East 351.11 feet; thence North 22°52'35" East 65.82 feet to point of curvature; thence Northeasterly along the arc of a 688.76 foot radius curve to the right a distance of 99.82 feet (the cord of which bears North 27°01'43" East 99.74 feet) to a point of tangency; thence North 31°10'50" East 297.52 feet to the point of curvature of a 205.26 foot radius curve to the left; thence along said curve 103.09 feet (the cord of which bears North 16°47'32" East 102.01 feet); thence North 2°24'13" East 167.50 feet; thence North 89°47'25" West 611.37 feet to the point of beginning.

Contains 304,041 Square Feet
Or 6.980 Acres

SMC #138

MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS / MEMBER OF UTAH COUNCIL OF LAND SURVEYORS
MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL

-POOR COPY-
CO. RECORDER

BK 8503 PG 5922

