

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-14**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A PERPETUAL LEASE BETWEEN THE CITY OF MARATHON AND MCDONALD'S CORPORATION FOR CERTAIN PROPERTIES IN THE OWNERSHIP OF THE CITY; REQUIRING CERTAIN IMPROVEMENTS BE MADE BY MCDONALD'S TO PORTIONS OF THAT PROPERTY; AUTHORIZING THE MAYOR TO SIGN THE LEASE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City has engaged in continuing discussions with McDonald's in the Kmart / Winn Dixie Shopping Center (KIMCO) concerning the possible provision of a perpetual easement agreement between the City and McDonald's for the purposes of providing a second drive-through lane for menu ordering; and

WHEREAS, the City Council has agreed to approve the perpetual easement on the Conditions that the following improvements are completed to adjacent City property:

1. Paving of the approximate area of the Temporary Construction Easement (Exhibit F)
2. Striping of approximate area of Exhibit F
3. Establishment of parking bumpers for each parking space
4. Closure at the property line of access to adjacent bank property using landscape material
5. General landscaping or border between City of Marathon property and bank.
6. Final layout subject to adjustment of construction plans for area of Exhibit F based upon field determination; and

WHEREAS, the City desires to enter into the perpetual easement agreement with McDonald's Corporation,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council authorizes the Mayor to sign the Perpetual Lease Agreement between the City of Marathon and McDonald's Corporation, as attached in Exhibit A.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9th DAY OF FEBRUARY, 2016

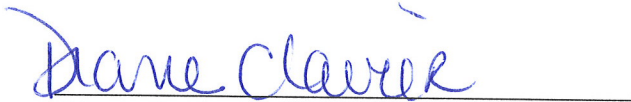
THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

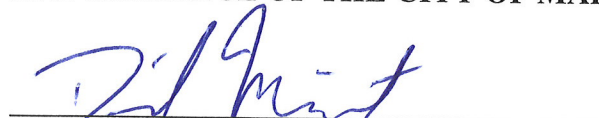

David Migut, City Attorney

EXHIBIT A

City, State: Marathon, Florida
Address: 5595 Overseas Hwy
L/C: 009-0735
File # 09226

Prepared by Diedre Dunn
After Recorded, return to: Doris Murray-Norris
McDonald's Corporation
One McDonald's Plaza
Oak Brook, IL 60523

EASEMENT AGREEMENT Doc# 2068135
Bk# 2787 Pg# 1015

This Easement Agreement ("**Agreement**") is dated March 7, 2016 between **The City of Marathon**, a municipal corporation ("**Grantor**") and **McDonald's Corporation**, a Delaware corporation ("**Grantee**"). The following statements are a material part of this Agreement:

- A. Grantee is the owner of Grantee's Property described on Exhibit A attached.
- B. Grantor is the owner of Grantor's Property described on Exhibit B attached.
- C. Grantor wishes to grant, and Grantee wishes to receive an easements over, under and across Grantor's Property.
- D. A site plan depicting the easements granted pursuant to this Agreement is attached as Exhibit C.

Therefore, in consideration of \$10.00 and other valuable consideration including the pavement and repair of certain property owned by Grantor, the receipt and sufficiency of which are acknowledged, the following grants, agreements, covenants and restrictions are made:

1. EASEMENT

A. INGRESS AND EGRESS EASEMENT

Grantor grants and conveys to Grantee a perpetual, exclusive easement for the purpose of installing, operating, maintaining, repairing, replacing and renewing a second side-by-side drive thru lane over that portion of Grantor's Property described on Exhibit D, attached hereto and incorporated herein by reference and depicted in the cross hatched area shown in Exhibit E attached and incorporated herein by reference.

B. TEMPORARY CONSTRUCTION EASEMENT

Grantor grants and conveys to Grantee a non-exclusive temporary construction easement over, under, upon and across that portion of Grantor's Property depicted on Exhibit F for the purpose of paving and striping the City of Marathon's employee parking lot and paving the temporary construction easement area. In addition, Grantee agrees to perform the following: 1) installation of parking bumpers; 2) closure of unauthorized gravel road with landscape material; and 3) installation of landscape border between Grantor's Property and Iberia Bank's property (collectively "Grantee's Work"). The temporary construction easement granted pursuant to this Article 1B will terminate on the earlier to occur of: 1) when Grantee has completed Grantee's

Work; or 2) 1 year from execution of this Easement Agreement. Grantee shall be responsible for all costs associated with Grantee's Work.

2. WARRANTIES OF TITLE

Grantor warrants that Grantor has good and indefeasible fee simple title to the easement premises; that Grantor has the full right and lawful authority to grant these easements, that Grantor will defend and indemnify Grantee against all lawful claims, and that Grantee will and may peaceably have, hold and enjoy the easements.

3. GRANTEE'S INDEMNITY

Grantee covenants and agrees to indemnify, defend, protect and hold harmless, the Grantor, against any and all costs, liability, and expenses in respect to any and all loss of life or property, or injury or damage or person or property, of any person, firm or corporation and against any and all claims, demands and actions in respect to such loss, injury or damage caused by or arising out of the use of the easement, the existence of any of Grantee's facilities, and any construction, reconstruction, maintenance, repair, replacement, modification or other work performed by Grantee, its agents, representatives, employees, successors or assigns.

4. RUNNING OF BENEFITS

All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the parties.

5. COMPLIANCE WITH LAWS AND REGULATIONS

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, including without limitation, the Americans with Disabilities Act, money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect.

6. DEFAULT

If there is a failure by either party to perform, fulfill or observe any agreement contained within this Agreement, to be performed, fulfilled or observed by it, continuing for 30 days, or immediately in situations involving potential danger to the health or safety of persons in, on, or about, or substantial deterioration of Grantee's Property or Grantor's Property, 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 expends for such purpose including, but not limited to, reasonable and actual attorneys' fees (including charges for in-house attorneys), or which is otherwise due by either party to the other, will 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 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 becomes due to the date of payment in full. If the billing party is not paid within such 30 day period, then the billing party, at the billing party's sole option, may have a lien for unpaid costs placed upon the title to the property

of the other party by the billing party recording a lien claim and notice. The provisions of this paragraph will 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.

7. CONSTRUCTION

The rule of strict construction does not apply to this grant. This grant will 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.

8. NOTICE

Grantor's address is 9805 Overseas Highway, Marathon, Florida 33050 and Grantee's address is One McDonald's Plaza, Oak Brook, Illinois 60523, Attention: Director, U.S. Legal Department, L/C: 009-0735. Any party may lodge written notice of a change of address. All notices will be sent by reputable overnight courier with written confirmation of delivery or by certified mail, return receipt requested, to the addresses provided for in this paragraph and will be deemed given when deposited with such courier or when placed in the mail, as applicable.

9. ANTI-TERRORISM REPRESENTATION AND WARRANTY

Grantor and Grantee each represent and warrant that neither they nor the officers and directors controlling Grantor and Grantee, respectively, are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. Each Party agrees that in the event of a breach of this provision or any applicable law relating to the subject of this provision, the non-breaching Party may take such action as may be necessary in order to comply with this provision and/or the applicable law, including but not limited to terminating this Agreement.

10. WAIVER OF TRIAL BY JURY

Grantor and Grantee agree to waive any right to have a trial by jury with respect to any lawsuit based on, or arising under this Agreement or any course of conduct, course of dealing, statements or actions of Grantor and Grantee in connection with this Agreement.

11. AUTHORITY TO SIGN

No employee or agent of Grantee (other than an authorized signatory) has authority to make any warranty, representation, agreement or undertaking. All negotiations, considerations, representations and understandings between the parties are incorporated in this document and may be modified or altered only by agreement in writing between the parties, and no act or omission of any employee or agent of the parties, if any, will alter, change or modify any of the provisions of this Agreement. The parties executing this Agreement on behalf of Grantor and

Grantee represent that they have authority and power to sign this Agreement on behalf of Grantor and Grantee.

12. INVALIDITY

If any term or provision of this Agreement or the application to any person or circumstance, to any extent, is or becomes invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, will not be affected.

13. TERMINATION OF LIABILITY

Whenever a transfer of ownership of either Grantor's Property or Grantee's Property takes place, the transferor will not be liable for a breach of this Agreement occurring after a transfer.

14. ADDENDA AND EXHIBITS


This Agreement includes the following Addenda and/or Exhibits, which will take precedence over conflicting provisions (if any) of this Agreement, and are made an integral part of this Agreement and fully incorporated by reference:

- Exhibit A (Legal Description of Grantee's Property)
- Exhibit B (Legal Description of Grantor's Property)
- Exhibit C (Site Plan Depicting Easement Areas)
- Exhibit D (Legal Description of Permanent Easement)
- Exhibit E (Depiction of Permanent Easement Area)
- Exhibit F (Site Plan Depiction of Temporary Construction Easement and Grantee's Work)

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

GRANTOR:
THE CITY OF MARATHON

GRANTEE:
McDONALD'S CORPORATION, a Delaware corporation *DM*


By: 
Its: Mayor Mark Senmartin

By: Diede Dunn
Its: Senior Counsel - Diede Dunn

WITNESS:
Hilary Palmer
Diane Clavier

WITNESS:
Aimee Murray Nomi
Janet Ray

APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF THE CITY OF
MARATHON, FLORIDA ON


City Attorney

ACKNOWLEDGMENT - McDONALD'S
(No Attestation required)

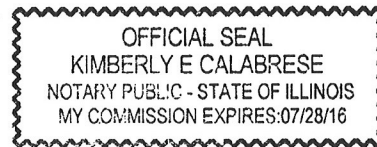
STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, Kimberly E Calabrese, a Notary Public in and for the county and state aforesaid, CERTIFY that Diedre Dwan, as 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 authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered this instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 7th day of March, 2016

Kimberly E Calabrese
Notary Public

My commission expires 7/28/2016



ACKNOWLEDGMENT - CITY OF MARATHON

STATE OF FL)
COUNTY OF Monroe) SS

I, Diane Claver, a Notary Public in and for the county and state aforesaid,
CERTIFY that mark senmartin as Mayor of
City of Marathon corporation, who is personally known
to me to be the person whose name is subscribed to the foregoing instrument as such authorized
party appeared before me this day in person and acknowledged that he/she signed, sealed and
delivered this instrument as his/her free and voluntary act as such authorized party and as the
free and voluntary act of the company/corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 19 day of February 2016

Diane Claver
Notary Public

My commission expires July 29, 2019

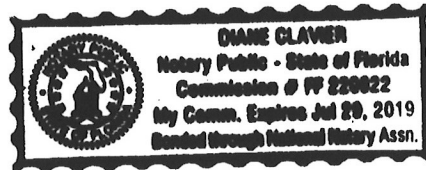


EXHIBIT A

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

A parcel of land being a portion of Government Lot 2, Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, being more particularly described as follows:

Commence at the intersection of the East line of Government Lot 2, with the Southerly right-of-way line of U.S. Highway No. 1, the following two (2) courses being along said Southerly right-of-way line; (1) thence South 74°20'00" West for 781.25 feet to the Northeast corner of a parcel of land as described in Official Records Book 732, Page 425, of the Public Records of Monroe County, Florida and the Point of Beginning of the hereinafter described parcel of land; (2) thence continue South 74°20'00" West for 110.00 feet; thence South 15°40'00" East, departing said Southerly Right-of-Way line, along a line being parallel with and 110.00 feet Westerly of, as measured at right angles to, the Easterly line of said Official Records Book 732, Page 425, for 190.00 feet; thence North 74°20'00" East, along a line parallel with and 190.00 feet Southerly of, as measured at right angles to, said Southerly Right-of-Way line for 110.00 feet to a point on said Easterly line of Official Records Book 732, Page 425; thence North 15°40'00" West along said Easterly line for 190.00 feet to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

PARCEL 1:

A parcel of land in a part of Government Lot 2, Section 11, Township 66 South, Range 32 East, on Key Vaca, Monroe County, Florida, and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of Government Lot 2 with the Southerly right-of-way line of U.S. Highway 1; thence bear South 74°20'00" West along the Southerly right-of-way line of U.S. Highway No. 1 a distance of 781.47 feet to a point;

Thence bear South 16°11'23" East, 190.0 feet to the Point of Beginning of the parcel of land herein being described; thence bear South 73°48'37" West 97.0 feet to a point; thence bear South 16°11'23" East, 103.85 feet to a point; thence bear North 73°48'37" East, 12.0 feet to a point; thence bear South 16°11'23" East, 147.15 feet to a point; thence bear North 73°48'37" East, 17.0 feet to a point; thence bear South 16°11'23" East, 24.0 feet to a point; thence bear North 73°48'37" East, 31.0 feet to a point; thence bear North 16°11'23" West, 44.0 feet to a point; thence bear North 73°48'37" East, 37.0 feet to a point; thence bear North 16°11'23" West, 231.0 feet to the Point of Beginning.

PARCEL 2:

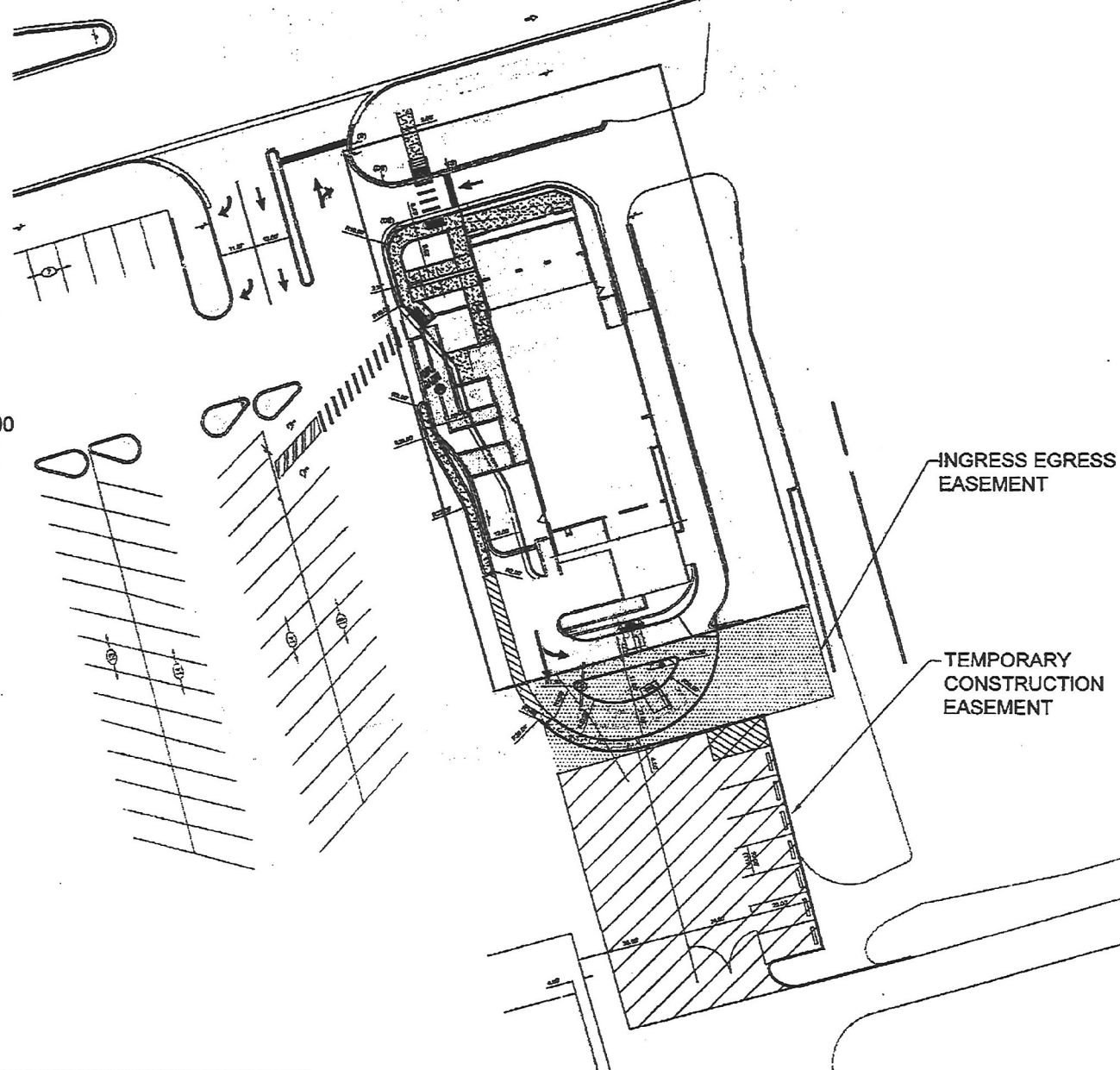
A parcel of land being a portion of Government Lot 2, Section 11, Township 66 South, Range 32 East, at Marathon, Key Vaca, Monroe County, Florida, being more particularly described as follows:

Commencing at the intersection of the Southerly right-of-way line of U.S. Highway No. 1 (State Road No. 5) and the Easterly line of said Government Lot 2, Section 11, Township 66 South, Range 32 East for a point of reference; thence South 73°48'37" West, along said Southerly right-of-way line, 781.47 feet to the Northwesterly corner of those lands described in Official Records Book 659, Page 254, of the Public Records of Monroe County, Florida; thence South 16°11'23" East, perpendicular to said Southerly right-of-way and along the Westerly line of said lands described in Official Records Book 659, Page 254, 421.00 feet to the Point of Beginning of the parcel herein described; thence continue South 16°11'23" East, along said Easterly line, 79.00 feet to the Southerly line of said lands described in Official Records Book 659, Page 254; thence South 73°48'37" West, parallel with said Southerly right-of-way line, 37.00 feet; thence North 16°11'23" West, parallel with the Westerly line of said lands described in Official Records Book 659, Page 254, 79.00 feet; thence North 73°48'37" East 37.00 feet to the Point of Beginning.

All of said lands situate, lying and being in Monroe County, Florida.



GRAPHIC SCALE



500 W. Fulton St.
Sanford, FL 32771
Ph: 407.322.6841

Date: 2/4/2016
Job No. M29805

Scale: 1" = 50'
File: Base

McDonald's.
MARATHON MRP
MARATHON / FLORIDA

EXHIBIT
C
©2016

Exhibit D

Doc# 2068135
Bk# 2787 Pg# 1025

LEGAL DESCRIPTION: EASEMENT PARCEL

A parcel of land being a portion of Government Lot 2, Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the East line of Government Lot 2, with the Southerly right-of-way line of U.S. Highway No. 1, the following two (2) courses being along said Southerly right-of-way line; (1) thence South 74°20'00" West for 781.25 feet to the Northeast corner of a parcel of land identified as Parcel "C" in that Special Warranty Deed recorded in the Public Records of Monroe County, Florida in Official Records Book 1484 at Pages 661-665, also being the Northeast corner of the McDonald's Parcel; (2) thence continue South 74°20'00" West along said Southerly right-of-way line, also being the Northerly boundary line of said McDonald's Parcel for 110.00 feet; thence South 15°40'00" East, departing said Southerly right-of-way line, along a line being parallel with and 110.00 feet Westerly of, as measured at right angles to, the Easterly line of said Parcel "C", also being the Westerly boundary line of said McDonald's Parcel for 190.00 feet to the Southwest corner of said McDonald's Parcel; thence North 74°20'00" East, along a line parallel with and 190.00 feet Southerly of, as measured at right angles to, said Southerly right-of-way line also being the Southerly boundary line of said McDonald's Parcel for 110.00 feet to a point on said Easterly line of Parcel "C" and the Point of Beginning of the hereinafter described Easement Parcel; thence South 15°40'00" East along the Southerly prolongation of said Easterly line of Parcel "C" for 35.00 feet; thence South 74°20'00" West, along a line parallel with and 225.00 feet Southerly of, as measured at right angles to said Southerly right-of-way line and Northerly boundary line for 97.00 feet; thence North 15°40'00" West, along said line being parallel with and 97.00 feet Westerly of, as measured at right angles to, said Easterly line of said Parcel "C" for 35.00 feet; thence North 74°20'00" East, along said line being parallel with and 190.00 feet Southerly of, as measured at right angles to, said Southerly right-of-way line also being said Southerly boundary line of McDonald's Parcel for 97.00 feet to said point on the Easterly line of Parcel "C" and the Point of Beginning.

SURVEYOR'S NOTES:

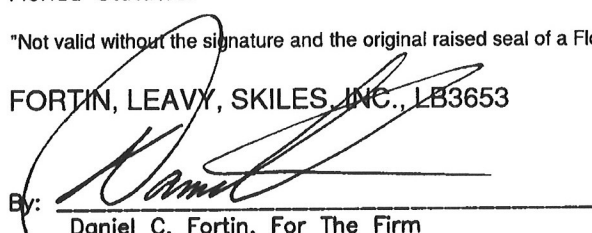
- This site lies in Government Lot 2, Section 11, Township 66 South, Range 32 East, City of Marathon, Monroe County, Florida.
- Bearings hereon are referred to an assumed value of S 74°20'00" W for the Southerly right of way line of Overseas Highway.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2013-161-2.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on February 5, 2016, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By: 
Daniel C. Fortin, For The Firm
Surveyor and Mapper, LS2853
State of Florida.

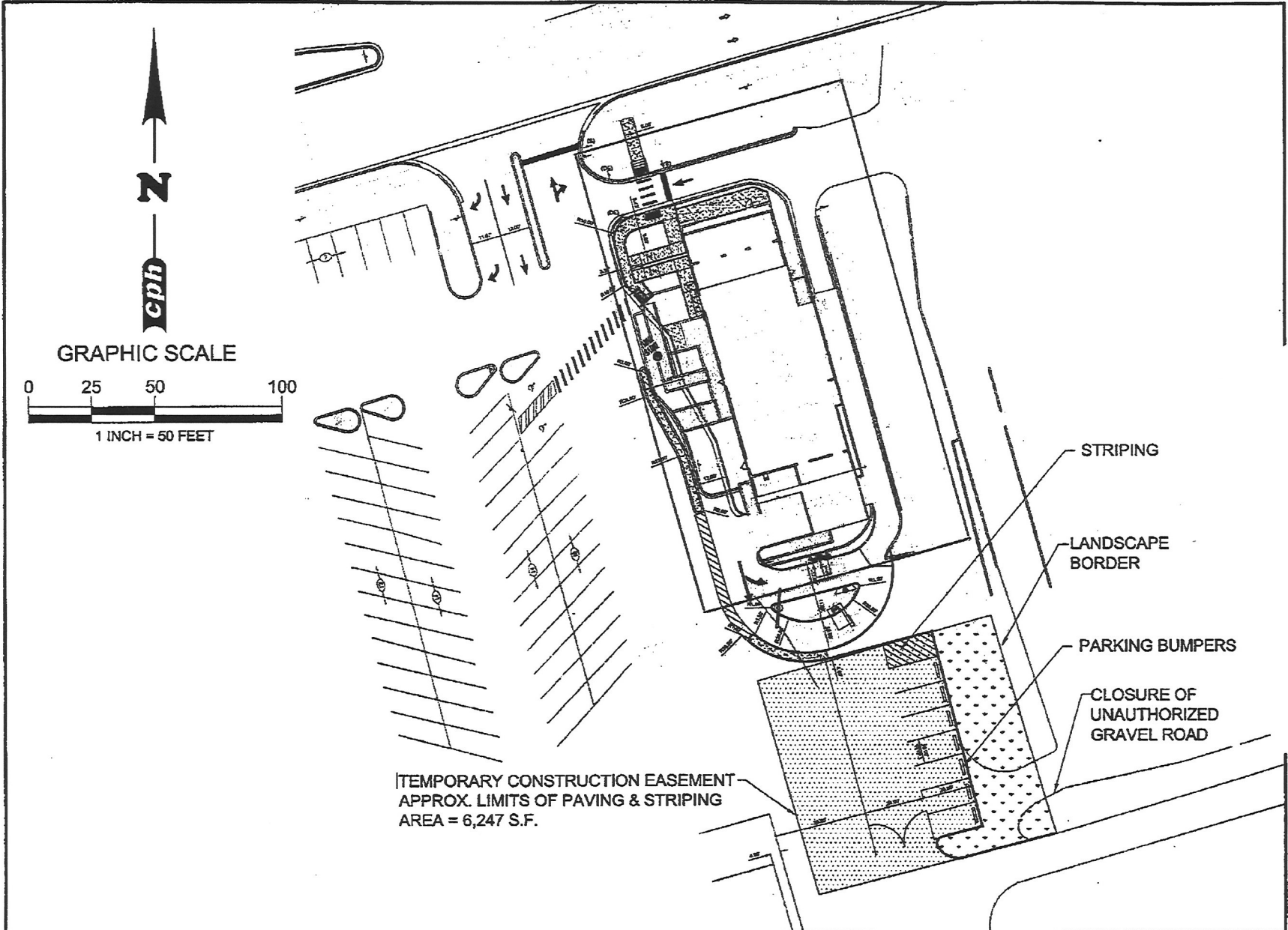


Drawn By	MAP
Cad. No.	151414
Ref. Dwg.	2013-161-2
	REV.1 160148
Plotted:	2/5/16 7:53a

LEGAL DESCRIPTION, NOTES & CERTIFICATION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th Street / North Miami Beach, Florida 33162
Phone 305-653-4493 / Fax 305-651-7152 / Email fls@flsurvey.com

Date	2/5/16
Scale	NOT TO SCALE
Job. No.	151414
Dwg. No.	1015-103
Sheet	1 of 3



MONROE COUNTY
OFFICIAL RECORDS



500 W. Fulton St.
Sanford, FL 32771
Ph: 407.322.6841

Date: 2/4/2016
Job No. M29805

Scale: 1" = 50'
File: Base

McDonald's
MARATHON MRP
MARATHON / FLORIDA

EXHIBIT
F
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