



Received & Sealed For Record  
MARK F. FAIRCHILD REGISTER OF DEEDS  
Muskegon County Michigan  
10/20/2010 08:26A LIBER 3860 PAGE 1

 5361744  
L-3860 P-1  
Mark Fairchild, Muskegon Co ROD 049 10/20/2010 08:26A  
Page: 1 of 12

## COOPERATION AGREEMENT

Prepared By and  
After Recording, Return to:  
Bruce A. Neumann, Esq.  
McDonald's USA, LLC  
One McDonald's Plaza  
Oak Brook, IL 60523

RETURN TO:  
Chicago Title of Michigan  
Commercial Division  
941 West Milham Road  
Portage, MI 49024  
**REI**

City & State: Muskegon, MI  
Address: 3586 E Apple Avenue  
L/C: 021-1425

#### COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT ("Agreement") is dated as of August 31, 2010 by and between McDonald's USA, LLC a Delaware limited liability company ("McDonald's") and Westwood MCD Tier I Properties LLC, Series Muskegon, a Delaware limited liability company ("Westwood"). The following statements are a material part of this Agreement:

#### PRELIMINARY STATEMENTS

- A. McDonald's and Westwood Financial Corp., a California corporation entered into a Real Estate Sale and Purchase Agreement dated as of December 31, 2009, which has been amended from time to time (collectively, the "Contract") for the sale of certain property as described therein.
- B. Pursuant to the Contract, McDonald's or an affiliate or related entity of McDonald's has conveyed (or will convey) to Westwood the property legally described on Exhibit A attached hereto (the "Parcel").
- C. McDonald's is the owner or the agent of the owner of that certain lot or parcel of real property located in the City of Muskegon, MI County, Muskegon, and more particularly described on Exhibit B, attached hereto (the "Adjacent Site").
- D. McDonald's and Westwood acknowledge that McDonald's will continue to own the Adjacent Site after the sale of the Parcel to Westwood and that McDonald's or Westwood may determine that it is necessary to establish easements in order to provide for, facilitate or ensure the continued operation of the McDonald's restaurant or other facilities located on the Adjacent Site or the facilities currently being operated on the Parcel in a manner substantially similar to the way such properties were being operated prior to the sale of said Parcel or to establish easements in connection with the use or development of the Parcel or the Adjacent Site, as the case may be.
- E. McDonald's and Westwood further acknowledge that Westwood may need utility easements over the Adjacent Site in connection with the development or redevelopment of the Parcel.
- F. McDonald's and Westwood desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interest by means of this Agreement.



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Mark Fairchild, Muskegon Co ROD 049 10/20/2010 08:26A  
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## TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, McDonald's and Westwood agree as follows:

1. Subject to the terms, conditions and requirements set forth herein, McDonald's and Westwood expressly agree to cooperate with each other and (a) to execute and deliver such easement or easements or other documents or agreements reasonably necessary or appropriate to maintain the status quo and to ensure that the respective properties can continue to be used in the same manner that they were used prior to the sale, and/or (b) to establish to the extent reasonably acceptable to the owner of the burdened property, such utility easements as necessary in connection with the development or redevelopment of the Parcel or the Adjacent Site, as the case may be. Provided however, in no event shall any utility easement granted under Subsection 1(b) above interfere with, restrict or otherwise limit in any way the current or future business operations on and/or any future development or redevelopment of the burdened property.

2. No easements granted pursuant to this Agreement shall allow for the construction of above ground utility lines on the Parcel or on the Adjacent Site without the prior written consent of the owner of such property, which consent may be withheld in that party's sole and subjective discretion.

3. The party requesting an easement shall bear the cost of constructing any improvements that are necessary in connection with such easement, (if any) and shall be responsible for the cost of maintaining and repairing such improvements.

4. McDonald's and Westwood shall each indemnify, defend and hold the other party harmless from and against any claims, demands, liabilities, judgments, awards, assessments, costs and expenses arising out of its use of such easement.

5. The party constructing improvements in the easement area and maintaining the improvements shall do so in a manner that minimizes interference with the other party's use or its tenants' operation of business, if any.

6. In addition to the other terms and conditions set forth herein, the party requesting utility easements or other agreements in connection with the development or redevelopment of its site pursuant to Section 1(b) above shall comply with the following terms, conditions and requirements, as applicable:

(a) The party requesting such utility easement (sometimes referred to herein as the "Grantee") shall cause a licensed civil engineer to prepare drawings and provide a legal description for the proposed utility at its sole cost and expense, and shall deliver same to the other party for its review and approval.

(b) The location, size and scope of the utility easement shall be subject to the approval (in its reasonable discretion) of the party on whose land the easement will be located (sometimes referred to herein as the "Grantor"). Among other things, the party to be burdened by the easement shall have the

right to consider (i) the potential effect on the use, operation, development, marketability or value on its property, (ii) potential costs, liability or other impact on the subject property or the owner thereof, and (iii) potential interference with current and possible future business operations and existing easements, utilities or capacity.

(c) No construction shall occur until (i) the location, size and scope of the easement has been approved by the owner of the property that will be burdened by the easement, (ii) a mutually acceptable easement agreement has been executed by both parties and properly notarized, (iii) a certificate of insurance (in form and substance reasonably acceptable to such owner) has been delivered to the owner of the subject property, and (iv) all necessary governmental permits and approvals have been obtained.

(d) All construction shall take place on days and at times reasonably acceptable to the owner of the subject property. Construction vehicles and equipment shall be afforded access only to such areas as approved by the owner. No vehicles, equipment or materials shall be stored on the subject property.

(e) The owner of the subject property shall have the right to establish such construction terms, conditions and requirements as it deems appropriate, including the requirement that all debris, equipment and materials be removed at the end of each work day. In addition, the party requesting the easement and/or performing the work shall take such action to ensure that the work is completed in a safe manner, and shall specifically protect adjoining private or municipal property and provide barricades and temporary fences (with the property owner's approval) required to protect the safety of passers-by, as required by prudent construction practices and local building codes, ordinances or other laws.

(f) Upon completion of the work, the party requesting the easement shall remove all debris, temporary facilities, equipment, materials and tools from the subject property and shall repair, replace or restore, at its sole cost and expense and to the subject owner's reasonable approval, any damage or disturbance to landscaping, sidewalks, parking lots, curbs, utilities or other property as a result of the work and return the subject property to the same or better condition than it existed immediately prior to the commencement of the work. If any damage occurs to the Grantor's property or any improvements thereon arising out of, related to, or as a consequence of any of Grantee's work in the easement area, and the property is not repaired, replaced or restored to Grantor's satisfaction, then Grantor will notify Grantee in writing of the damage and the necessary repairs, replacement or restoration. Unless otherwise agreed by the parties, Grantee will repair the damage (or commence and diligently pursue repairing the damage) within fifteen (15) days after receipt of Grantor's notice. In the event that Grantee fails to properly restore the subject property to the required condition within such fifteen (15) day period, then Grantor shall be entitled to make such necessary repairs, replacements or restorations and bill Grantee therefor.

(g) All utilities shall be installed in approved utility easement areas. No utilities shall be installed that may in any way affect any existing buildings or other improvements located on the land, or affect the use or operation of existing utilities or facilities serving the subject property.

(h) In the event a utility easement granted pursuant to Section 1(b) above subsequently limits or otherwise restricts the actual development or redevelopment plans for the burdened property, the owner of the burdened property shall have the right to relocate such utility easement to such area as necessary to allow the intended development/redevelopment of the burdened property; provided that such relocation does not unreasonably interfere with the use of such utility easement.

(i) The requesting party shall pay all of the granting party's attorneys' fees (both in-house and outside counsel) and any and all other reasonable expenses incurred in connection with any requested easement or other agreements and the review and negotiation of any and all related documentation. In the event in-house counsel reviews and/or negotiates such requests, it is acknowledged that Five Hundred (\$500.00) Dollars per hour is a reasonable rate for reimbursing the granting party for the use of in-house time and resources. The requesting party shall pay the granting party's fees and expenses simultaneously with its execution of the easement agreement or other agreements, as the case may be, and prior to the commencement of any work on the subject property.

7. Any notice, demand or request required or made pursuant to the Agreement shall be in writing and shall be deemed delivered (a) two (2) business days after being deposited in the United States mail, registered or certified mail, return receipt requested, or (b) one (1) business day after being placed with a nationally recognized overnight express courier for next day delivery. All notices shall be addressed as follows:

McDonald's: One McDonald's Plaza  
Oak Brook, Illinois 60523  
Attn: US Legal Department  
L/C: 021-1425

Westwood: 9301 E. Shea Boulevard, Suite 124  
Scottsdale, Arizona 85260  
Attn: Mona Sullivan

8. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or by their respective successors in interest.

9. This Agreement shall run with the land, shall be recorded in the appropriate recorder's office, and shall be binding upon the parties hereto and their parents, subsidiaries, related entities, affiliates, successors, assigns, franchisees, licensees, invitees, tenants, employees and personal representatives for a period of five (5) years from the date first written above.

10. If any term, provision, or condition of this Agreement is found to be or is rendered invalid or unenforceable, such invalidity or unenforceability shall not affect the



remaining terms, provisions or conditions of this Agreement, and each and every term, provision and condition of this Agreement shall be deemed to be valid and enforceable to the maximum extent permitted by law.

11. Should either party employ attorneys to enforce their rights hereunder or any of the provisions hereof, the unsuccessful party in any such action shall pay the prevailing party all reasonable costs, charges and expenses incurred by the prevailing party in connection therewith, including without limitation, attorneys' fees and costs, expert witness fees and costs and court costs.

12. The parties agree to take such further action, give such further assurances and execute such other documents as necessary to give effect to this Agreement.

13. This Agreement may be signed in counterparts and shall have the same force and effect as if all parties executed one document.

14. This Agreement shall be interpreted in accordance with the laws of the state where the Parcel and Adjacent Site are located.

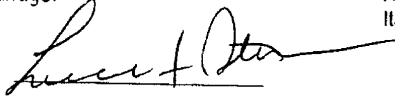
[NO FURTHER TEXT APPEARS ON THIS PAGE]



TO INDICATE THEIR CONSENT TO THIS AGREEMENT AND THEIR AGREEMENT TO BE BOUND BY THE TERMS HEREOF, the parties or their authorized representatives or officers have signed this Agreement as of the date first set forth above.

**Westwood MCD Tier I Properties  
LLC, Series Muskegon, a  
Delaware limited liability  
company**

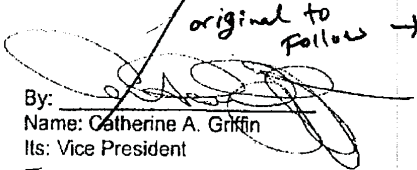
By: Westwood Financial Corp.,  
a California corporation  
its: Manager

By: 

Name: LAWRENCE F. STERN

Its: VICE PRESIDENT

**McDonald's USA, LLC a Delaware  
limited liability company**

By:   
Name: Catherine A. Griffin  
Its: Vice President

*original to Follow →*

NOTARY PAGES FOLLOWING

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of **LOS ANGELES**

On **AUG 31 2010**

before me,

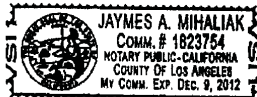
**JAYMES A. MIHALIAK, NOTARY PUBLIC**

Here Insert Name and Title of the Officer

**Lawrence F. Stern**

personally appeared

Name of Signer



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity (ies), and that by his her their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

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**L-3860 P-1**

Mark Fairchild, Muskegon Co ROD 049

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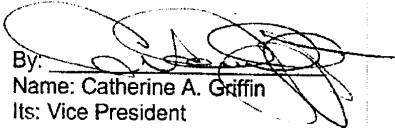


TO INDICATE THEIR CONSENT TO THIS AGREEMENT AND THEIR AGREEMENT TO BE BOUND BY THE TERMS HEREOF, the parties or their authorized representatives or officers have signed this Agreement as of the date first set forth above.

**Westwood MCD Tier I Properties  
LLC, Series Muskegon, a  
Delaware limited liability  
company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**McDonald's USA, LLC a Delaware  
limited liability company**

By:   
Name: Catherine A. Griffin  
Its: Vice President

Authorized Agent for  
McDonald's Corporation

**NOTARY PAGES FOLLOWING**

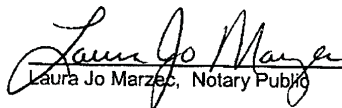
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**L-3860 P-1**  
Mark Fairchild, Muskegon Co ROD 049 10/20/2010 08:26A  
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**MCDONALD'S ACKNOWLEDGMENT**

STATE OF ILLINOIS            )  
  )       SS:  
COUNTY OF DuPAGE        )

I, Laura Jo Marzec, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Catherine A. Griffin U.S. Vice President of McDonald's USA, LLC, a Delaware limited liability company, who are personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Catherine A. Griffin, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument of her free and voluntary act as such U.S. Vice President, respectively, as the free and voluntary act of said limited liability for the uses and purposes therein set forth.

Given under my hand and notarial seal, this day of August 27, 2010.

  
\_\_\_\_\_  
Laura Jo Marzec, Notary Public

My commission expires: January 25, 2014

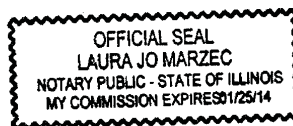


Exhibit A

Legal Description

Location Code: 021-9049

Property Address: 3536 E Apple & 891 Mill Iron Road, Muskegon, MI 49422

Tax Identification No: 61-10-024-300-0024-10; 63-10-024-300-0024-20

The land referred to herein below is situated in the Township of Muskegon, Muskegon County, State of Michigan, and is described as follows:

Parcel 3:

Commencing at the South quarter corner of Section 24, Town 10 North, Range 16 West, Muskegon Charter Township, Muskegon County, Michigan; thence North 90 feet; thence West 403.03 feet to point of beginning; thence continue West 258.97 feet; thence North 569.41 feet; thence East 260.75 feet; thence South 570.28 feet to the point of beginning.

Tax No. 61-10-024-300-0024-10

Parcel 4:

Commencing at the South quarter corner of Section 24, Town 10 North, Range 16 West, Muskegon Charter Township, Muskegon County, Michigan; thence North 380.06 feet; thence West 403.03 feet; thence North 280.22 feet; thence East 403.06 feet; thence South 281.49 feet to the point of beginning.

Tax No. 61-10-024-300-0024-20

Street Address: 3536 E. Apple Ave. and 891 S. Mill Iron Road, Muskegon



EXHIBIT B

Location Code: 021-1425

Property Address: 3586 East Apple Avenue, Muskegon, MI

The land referred to herein below is situated in the Township of Muskegon, Muskegon County, State of Michigan, and is described as follows:

That part of the South 1/2 of the East 1/2 of the Southeast 1/4 of the Southwest 1/4 of Section 24, Town 10 North, Range 16 West, More fully described as follows: Commencing at the South 1/4 corner of said Section 24; thence North 00 degrees 38 minutes 53 seconds West along the North-South 1/4 line, a distance of 90.00 feet to the Point of Beginning. Thence South 89 degrees 29 minutes 18 seconds West, parallel with the South line of said Section 24, a distance of 662.00 feet; thence North 00 degrees 28 minutes 15 seconds East along the West line of the East 1/2 of the Southeast 1/4 of the Southwest 1/4, a distance of 569.41 feet; thence North 89 degrees 18 minutes 28 seconds East along the North line of the South 1/2 of the Southeast 1/4 of the Southwest 1/4, a distance of 663.81 feet; thence South 00 degrees 38 minutes 53 seconds West, along the North-South 1/4 line, a distance of 571.55 feet to the Point of Beginning.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

Parcel 3:

Commencing at the South quarter corner of Section 24, Town 10 North, Range 16 West, Muskegon Charter Township, Muskegon County, Michigan; thence North 90 feet; thence West 403.03 feet to point of beginning; thence continue West 258.97 feet; thence North 569.41 feet; thence East 260.75 feet; thence South 570.28 feet to the point of beginning.

Parcel 4:

Commencing at the South quarter corner of Section 24, Town 10 North, Range 16 West, Muskegon Charter Township, Muskegon County, Michigan; thence North 380.06 feet; thence West 403.03 feet; thence North 280.22 feet; thence East 403.06 feet; thence South 281.49 feet to the point of beginning.





Mark Fairchild, Muskegon Co ROD 034

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L-3612 P-6  
07/20/2004 12:39P  
Page: 1 of 5

### EASEMENT

Indenture made this 22nd day of June A.D., 2004,

between McDonald's Corporation  
(Name of Owners)

of One McDonald's Plaza

(Street Address)

Oak Brook

(City)

IL

(State)

60523

(Zip code)

as Grantors, and Muskegon Charter Township, a municipal corporation, by and through its Township board, Township Building, Muskegon, Michigan 49442, as Grantee, hereafter referred to as the "Township" or "Grantee".

### RECITALS

Grantors are the owners of certain property, hereinafter described, and Muskegon Charter Township is desirous of obtaining an easement over and upon a portion of said premises for the purpose of constructing, maintaining and using certain Watermains.

Grantor is willing to grant and convey to the Township an easement for said purposes upon the terms and conditions hereinafter set forth.

a perpetual non-exclusive

Witnesseth, that the Grantors, for and in consideration of the sum of lawful money of the United States to them in hand paid by the Township, the receipt of which is hereby acknowledged, do by these presents grant, and convey unto the Township of Muskegon and its successors and assigns, permanent easement over, across and under strips of land situated in the Township of Muskegon, Muskegon County, Michigan, which said strips of land are described on the attached easement drawing, for the purpose of clearing, trenching for, laying, constructing, maintaining, repairing and using utility pipe lines necessary or convenient to the Township general plan for the Eastside Water System with all of its necessary apparatus and appurtenances, which is a part of the Muskegon Township Eastside Water System.

as the Permanent Watermain Easement

attached as Exhibit A,

Grantors grant and convey to the Township herewith, the right and privilege to use the temporary easement, when required for the initial construction of the said watermain, and mains, which shall expire after same are constructed, but not before the calendar year 2005 whichever shall first occur, being a 15ft strip of land parallel to and North and South of the Permanent Watermain Easement,

temporary easement

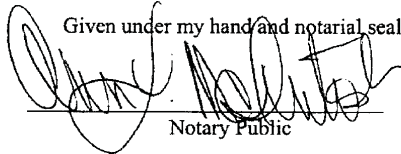


ACKNOWLEDGEMENT - McDONALD'S

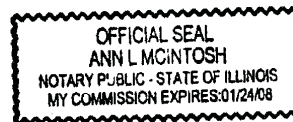
STATE OF ILLINOIS       )  
                                  ) SS  
COUNTY OF DUPAGE       )

I, **Ann L. McIntosh**, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that **Katherine M. Kuta, Managing 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 Managing Counsel, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act as such Managing Counsel and as her free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 22nd day of June, 2004.

  
\_\_\_\_\_  
Notary Public

My commission expires: January 24, 2008



**5112328**  
**L-3612 P-6**  
07/20/2004 12:39P  
Page: 3 of 5

# EASEMENTS

PARCEL NO. 61-10-024-300-0024-10  
TAX NO.  
PROPERTY ADDRESS 3536 Apple Avenue  
NAME: McDonald's Corporation  
ADDRESS: P.O. Box 66207, AMF O'Hare  
Chicago, IL 60666

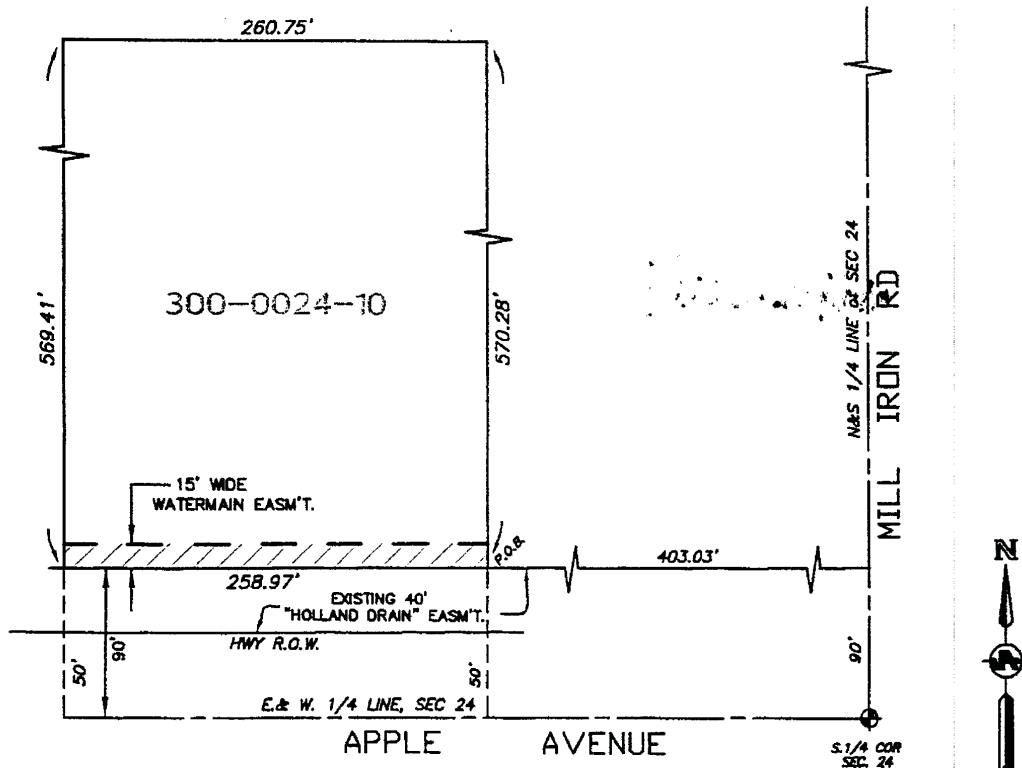
## DESCRIPTION OF PROPERTY

(As taken from Muskegon Charter Twp Tax Roll)

COMMENCING AT THE S 1/4 CORNER OF SECTION 24, TOWN 10 NORTH, RANGE 16 WEST, MUSKEGON CHARTER TOWNSHIP, MUSKEGON COUNTY, MICHIGAN; THENCE N 90 FEET; THENCE W 403.03 FEET TO POB; THENCE CONTINUE W 258.97 FEET; THENCE N 569.41 FEET; THENCE E 260.75 FEET; THENCE S 570.28 FEET TO POB. (Split from 61-10-024-000-0660-60)

## DESCRIPTION OF EASEMENT(S)

PERMANENT WATERMAIN EASEMENT: THE SOUTH 15.0 FEET OF THE ABOVE DESCRIBED PARCEL.



JOHNSON & ANDERSON, INC.  
2685 Holton Road, Muskegon, MI. 49445

Date: 02/20/2004  
Scale: Not To Scale  
Job No: 15414-00



Mark Fairchild, Muskegon Co ROD 034

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ADDENDUM

1. Grantee will not park on or store any construction vehicles, equipment or materials within the easement area or on Grantor's other property.
2. If any damage occurs to Grantor's property or any improvements thereon arising out of, related to, or as a consequence of any of Grantee's work in the easement area, Grantor promptly will notify Grantee in writing of the damage. Unless otherwise agreed by the parties, Grantee will repair the damage (or commence and diligently pursue repairing the damage) within 30 days after receipt of Grantor's notice.
3. Grantee will hold harmless and indemnify Grantor, its lessees, licensees, employees, agents, contractors and assigns, and each of their lessees, licensees, employees, agents, contractors and assigns, against any and all claims, liabilities and costs (including, but not limited to reasonable attorney's fees) for injuries to any person and damage to any property arising out of, in connection with, or as a result or consequence of Grantee's work in and/or use of the easement area.

PREPARED BY AND RETURN TO  
MUSKEGON CHARTER TOWNSHIP



Mark Fairchild, Muskegon Co ROD 034

5112328

L-3612 P-6

07/20/2004 12:39P

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2010 MAR 28 1

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
RECORDS

1997 AUG 11 AM 11:33

Cal. Civil Code  
§ 1113

DECLARATION OF EASEMENTS AND COVENANTS

2

THIS DECLARATION OF EASEMENTS AND COVENANTS ("Declaration") is dated this 18th day of July, 1997 by McDonald's Corporation, a Delaware corporation ("Declarant"). The following statements are a material part of this Declaration:

A. Declarant is, or will be at the time of recording of this document, the owner of certain real property described in Exhibit A, attached.

B. Declarant intends to develop and use a portion of its parcel more particularly described on Exhibit B, attached ("Parcel 1").

C. Declarant intends to subdivide and sell the remaining portion of its parcel as shown on Exhibit C, attached. The individual parcels are more particularly described as follows: Exhibit D, hereinafter Outlot 2, Exhibit E, hereinafter Outlot 3, Exhibit F, hereinafter Outlot 4, (all collectively referred to as the "Outlots").

D. The future owners of any Outlot(s) are hereinafter referred to as the "Owners."

1. INGRESS/ EGRESS EASEMENT

Declarant reserves for itself and grants and conveys to the Owners a perpetual, non-exclusive easement, appurtenant to Parcel 1 and the Outlots for the use and benefit of the Owners, their tenants, successors and assigns, for the purpose of automobile and pedestrian ingress and egress over and upon that portion of Parcel 1 and Outlot 2 shown as the cross-hatched area on Exhibit C ("Access Easement"). The rights contained within this Access Easement shall run with the land and inure to and be for the benefit of Declarant and/or the Owners, their successors and assigns, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such persons.

Declarant covenants and agrees to maintain in good condition and repair, or cause to be maintained and kept in repair, the Access Easement. The obligation of Declarant to maintain, repair and keep in repair said easement 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.

Metro - 614

271<sup>A</sup>

Declarant and the Owners each covenant and agree to pay twenty five percent (25%) of the total expense to maintain and repair the Access Easement to be paid bi-annually to Declarant within thirty (30) days after receipt of a statement therefor set forth with reasonable detail. In the event Declarant retains ownership to any of the Outlots, it shall pay the aforesaid 25% share for each parcel it owns. If Declarant is not reimbursed within thirty (30) days from the date of billing for its costs, the parties failing to pay their share may, at the Declarant's discretion, have a lien for unpaid costs placed upon the title to their property by the Declarant recording a lien claim and notice. Notwithstanding the foregoing, Declarant and the Owners shall pay all real estate taxes and assessments levied on their respective parcels including any portion of the Access Easement located thereon.

## 2. STORM SEWER EASEMENT

Declarant reserves for itself and Owners of Outlot 2 and Outlot 4 a perpetual, non-exclusive easement, appurtenant to Parcel 1, Outlot 2 and Outlot 4, for the purpose of installing, operating, maintaining, repairing, replacing and renewing a storm sewer line(s) and related facilities over, above, along, under, in and across that portion of Outlot 3 as shown in Exhibit C. The parties will have the right of ingress and egress across Outlot 3 for the purpose(s) granted in this article and such ingress and egress will be exercised in a reasonable manner.

Declarant also reserves for itself and any Owner of Parcel 1 and/or Outlot 2 and Outlot 4 an irrevocable license, coupled with the easement, to use the storm sewer lines, the storm water detention area and all related facilities located in the easement area, if any. No additional charge or fee of any type shall be charged for this license.

The storm system from Parcels 1, 2, 3 and 4 will discharge to the detention pond located in the northwest corner of Parcel 3. The overflow from the detention pond will flow directly into the drainage easement to the Holland Drain, said easement as granted to the Muskegon County Drain Commission in that certain Drainage Easement dated July 22, 1997 and recorded August 11, 1997 in Liber 2010 Page 278-280.

Each Owner agrees to maintain at its sole cost that portion of the storm sewer line running from its parcel to the hook-up point located on Outlot 3 ("Responsible Owner"). The Owner of Outlot 3 agrees to maintain the stormwater detention area located on Outlot 3 and the balance of the system. Declarant, as Owner of Parcel 1, and the Owners of Outlot 2 and Outlot 4 each covenant and agree to pay twenty five percent (25%) of the total expense to maintain the detention pond and related drainage facilities bi-annually to the Owner of Outlot 3 within thirty (30) days after receipt of a statement therefor set forth with reasonable detail. In the event Declarant retains ownership to any of the Outlots, it shall pay the aforesaid 25% share for each parcel it owns. If Outlot 3 Owner is not reimbursed within thirty (30) days from the date of billing for its costs, the parties failing to pay their share may, at the Outlot 3 Owner's discretion, have a lien for unpaid costs placed upon the title to their property by the Outlot 3 Owner recording a lien claim and notice. Should the Outlot 3 Owner fail to maintain the system, all other Owners will have the right, but not the obligation, to maintain the system and seek reimbursement from the Outlot 3 Owner and its heirs, successors and assigns. Notwithstanding anything to the contrary: (a) each Responsible Owner shall perform the construction, repair and maintenance of its sewer line in such a manner so as to not unduly disrupt the operation of the business of Declarant or the other Owners; (b) each Responsible Owner agrees to restore any other party's parcel, at its sole cost, to the same condition which existed prior to the commencement of Responsible Owner's work; and (c) each Responsible Owner agrees to indemnify, defend and hold Declarant and the other Owners harmless against any and all claims, liability and costs (including, but not limited to reasonable attorneys' fees and costs) for any and all injuries to persons and for any and all damage to property occurring as a result of the Responsible Owner's failure to safely and properly maintain the sewer line located on its parcel.

### 3. COMPLIANCE WITH LAWS AND REGULATIONS - INDEMNIFICATION

The Owners and the Declarant 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, any party's failure to maintain their respective properties in a safe condition. The Owners and Declarant 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 Declaration.

### 4. DEFAULT

If there is a failure by either party to perform, fulfill or observe any agreement contained within this Declaration, to be performed, fulfilled or observed by it, continuing for thirty (30) days, 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.

### 5. COVENANTS RUNNING WITH LAND

The rights contained within this Declaration shall run with the land and inure to and be for the Declarant and future Owner(s) of the Outlot(s), their successors and assigns, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such persons.

### 6. TERMINATION OF LIABILITY

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

### 7. AMENDMENT

This Declaration may only be amended or terminated upon the written consent of both Declarant and all the Owners of the Outlots.

### 8. 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 Owners and Declarant is carried out.

9. NOTICE

Declarant's address is One McDonald's Plaza, Oak Brook, Illinois 60521, Attention: Director, Real Estate Legal Department. The notice address for any Owner of any Outlot shall be the address of such Outlot. Any party may lodge written notice of a change of address with the other. All notices shall be sent by certified mail, return receipt requested, and shall be deemed given when placed in the mail.

To indicate its consent to this Declaration, the Declarant or its authorized officers or representatives, have signed this document.

DECLARANT: McDonald's Corporation,  
a Delaware corporation

By *[Signature]*  
Sophia Galanti  
Vice President



WITNESS:

*[Signature]*  
Marjorie A. Moczek  
*[Signature]*  
Angela K. Villanueva

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STATE OF MISSISSIPPI  
COUNTY OF HARRIS

NOTED AS 11/11/11 31

*Carroll*

DRAINAGE EASEMENT

(2)

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**DRAINAGE EASEMENT  
WITHIN SECTION 24, TOWN 10 NORTH, RANGE 16 WEST  
MUSKEGON, MI**

STATE OF MICHIGAN )  
COUNTY OF MUSKEGON)

KNOW ALL MEN BY THESE PRESENTS, THAT McDONALD'S CORPORATION, a Delaware corporation, hereinafter referred to as Grantor, for and in consideration of One Dollar (\$1.00) in hand paid by the Muskegon County Drain Commission, the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey unto the Muskegon County Drain Commission a permanent and perpetual easement for storm drainage purposes over, under and across the following property situated in the southeast quarter of Section 24, Town 10 North, Range 16 West, City of Muskegon, Muskegon County, Michigan, to wit:

A twenty foot (20') wide strip of property located along the west and north boundaries of the following described property:

Part of the south 1/2, of the east 1/2, of the southeast 1/4, of the southwest 1/4, of section 24, town 10 north, range 16 west, township of Muskegon, County of Muskegon, State of Michigan, described as follows:

COMMENCING at the south quarter corner of said section 24; Thence north 00 degrees 38 minutes 53 seconds east, along the north-south quarter line, a distance of 90.00 feet; Thence south 89 degrees 29 minutes 18 seconds west, parallel with the south line of said section 24, a distance of 403.03 feet to the POINT OF BEGINNING; Thence continuing south 89 degrees 29 minutes 18 seconds west, along said line, a distance of 258.97 feet to the west line of the east 1/2, of the southeast 1/4, of the southwest 1/4; Thence north 00 degrees 28 minutes 15 seconds east, along said line, a distance of 569.41 feet to the north line of the south 1/2, of the east 1/2, of the southeast 1/4, of the southwest 1/4; Thence north 89 degrees 18 minutes 28 seconds east, along said line, a distance of 260.75 feet; Thence south 00 degrees 38 minutes 53 seconds west, parallel with the north-south quarter line, a distance of 570.28 feet to the POINT OF BEGINNING.

Said parcel contains 3.40 acres, more or less.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 20th day of JULY, 19 97.

WITNESS:

*Angela K. Villanueva*  
Angela K. Villanueva  
*Marjorie A. Krocok*  
Marjorie A. Krocok

McDONALD'S CORPORATION  
a Delaware corporation

By *Sophia G...*  
Sophia G...  
Vice President



Prepared by and return after recording to:  
Laura Holt, Attorney at Law  
Development Team Legal Department  
McDonald's Corporation  
One McDonald's Plaza  
Oak Brook, IL 60521  
LARELEGAL\WORD\DOC\SLH01SMUSKEGN.DOC

6.279

Right of Way.

Clyde Haan et ux  
to

Consumers Power Co.

Received for record and recorded this 18th  
day of June A.D. 1928 at 6:30 o'clock A.M.  
Edward Hansen, Register of Deeds.

Clyde Haan and Alma Haan, his wife, and in her own right of the first part, in consideration of One dollar (\$1.00) to them paid by the Consumers Power Company, a Maine Corporation, authorized to do business in Michigan, of the second part, receipt of which is hereby acknowledged, convey and warrant to the party of the second part, its successors and assigns, forever, the easement and right to erect and maintain electric lines consisting of poles, wires and distributing appliances for the purpose of transmitting and distributing electricity, on, over, and across the following described parcel of land in the Township of Muskegon County of Muskegon and State of Michigan, to wit: The Southeast one-quarter ( $\frac{1}{4}$ ) of the Southeast one-quarter ( $\frac{1}{4}$ ) of the South west one-quarter ( $\frac{1}{4}$ ) of Section twenty four (24), Township ten (10) North, Range sixteen (16) West. The route to be taken by said line of poles and wires across said land being more specifically described as follows:

Poles to be set North of and not more than fifty-five (55) feet from the center line of State Trunk Line Highway M-46.

With full right and authority to the party of the second part, its successors or assigns, and its and their agents, servants and employees, to enter at all times upon said premises for the purpose of constructing, repairing, removing, replacing and maintaining such poles and other supports, with all necessary braces, guys, anchors, and transformers, and stringing thereon and supporting and suspending therefrom lines of wire or other conductors, for the transmission of electrical energy, and to trim or remove any trees which at any time may interfere to threaten to interfere with the maintenance of such lines. It is expressly understood that no buildings or other structures will be placed under such wires without the written consent of said second party.

Second party to pay at the rate of Forty dollars (\$40.00) per mile of length of the line of poles and wires across said above described premises. The same to be paid before any work is done on the land and also to pay for any damage to crops in erecting and maintaining said line of poles and wires.

Witness the hands and seals of the parties of the first part this 1st day of June 1928.

Clyde Haan (LS)  
Alma Haan (LS)

Signed, Sealed and Delivered in  
presence of

Guy C. Adams  
Oliver E. Shaw

State of Michigan:

ss

County of Muskegon:

On this 1st day of June 1928, before me, a Notary Public, of Eaton County, Michigan, acting in Muskegon County, personally appeared, Clyde Haan and Alma Haan to me known to be the same persons named in and who executed the foregoing instrument, and severally acknowledged the execution of the same to be their free act and deed.

Guy C. Adams  
Notary Public Eaton Co., Mich.

My commission expires January 2, 1931.

SW 1/4, Sec. 24, 10-16