

2008-012524

Klamath County, Oregon



00052775200800125240050058

**COVER SHEET**

ORS: 205.234

09/08/2008 12:00:17 PM

Fee: \$41.00

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet DO NOT affect the transaction(s) contained in the instrument itself.

1st 1032014

After recording, return to:

1st American Title  
404 Main  
Klamath Falls, OR 97601

The date of the instrument attached is 8-29-08.

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)

NDN - Disturbance Agreement  
& Subordination Agreement

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

MEXS  
\_\_\_\_\_  
\_\_\_\_\_

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

McDonalds  
\_\_\_\_\_  
\_\_\_\_\_

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ \_\_\_\_\_

5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S LIEN RECORDS, ORS 205.121(1)(c)

\_\_\_\_\_

6) RE-RECORDED to correct: \_\_\_\_\_  
Previously recorded as: \_\_\_\_\_

Klamath Falls, OR  
1874 Avalon Boulevard  
L/C: 036-0021  
File 1151

Prepared by Consuelo Boyd  
After Recorded, return to: Amy Evans  
McDonald's Corporation  
One McDonald's Plaza  
Oak Brook, IL 60523

**NON-DISTURBANCE ATTORNMENT AND  
SUBORDINATION AGREEMENT  
(DEED OF TRUST)**

15-1032014

THIS AGREEMENT is dated August 15, 2008 between **Mortgage Electronic Registration Systems, Inc., as successor in interest to the Administrator of the U.S. Small Business Administration** ("Beneficiary") and **McDONALD'S USA, LLC, a Delaware limited liability company** ("Tenant") having its offices at One McDonald's Plaza, Oak Brook, Illinois 60523.

**PRELIMINARY STATEMENTS**

A. Tenant has executed a Ground Lease Additional Property dated August 12, 2008 ("Lease") with **James Andropoulos, an individual** ("Landlord") for the premises ("Premises") described in Exhibit A.

B. Beneficiary holds a Deed of Trust on the Premises or a portion of the Premises. The Deed of Trust is dated July 21, 1994 and was recorded October 11, 1994 at Volume M94, Page 31773, as amended by Amendment to Deed of Trust and Statement of Additional Advance recorded December 8, 1995 at Volume M95, Page 33628 of the Public Records of Klamath County, Oregon.

C. Tenant and Beneficiary desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of the Non-Disturbance, Attornment and Subordination Agreement.

**TERMS OF THE AGREEMENT**

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Beneficiary and Tenant agree as follows:

1. Provided the Lease is in full force and effect and Tenant is not in default under the Lease (beyond any period given Tenant to cure the default), then:

(a) Tenant's right of possession to the Premises and Tenant's other rights arising out of the Lease shall not be affected or disturbed by Beneficiary in the exercise of any of its rights under the Deed of Trust or the note which it secures. Further, Tenant shall not be named as a party defendant in any foreclosure of the lien of the Deed of Trust nor in any other way be deprived of its rights under the Lease.

(b) In the event Beneficiary or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Deed of Trust or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. Beneficiary also covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the Deed of Trust, or otherwise, shall be made subject to the Lease and the rights of Tenant under the Lease, and Tenant covenants and agrees to attorn to Beneficiary, or such person, as its new Landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and Beneficiary, or such person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall Beneficiary or such person be:

(i) liable for any act or omission of Landlord; or

(ii) bound by any payment of rent or additional rent made by Tenant to Landlord for more than one month in advance unless such pre-paid or additional rent was paid pursuant to the terms of the Lease.

2. The Lease shall be subject and subordinate to the lien of the Deed of Trust and to all of its terms, conditions and provisions, to all advances made or to be made and to any renewals, extensions, modifications or replacements.

3. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, Tenant agrees to execute and deliver to Beneficiary or to any person to whom Tenant agrees to attorn such other instruments as either shall reasonably request in order to comply with these provisions.

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

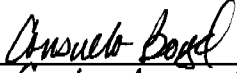
5. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

BENEFICIARY:  
**Mortgage Electronic Registration Systems, Inc.**

TENANT:  
**McDONALD'S USA, LLC,**  
**a Delaware limited liability company**

By   
Its VICE PRESIDENT

By   
Its SENIOR COUNSEL

(ACKNOWLEDGMENTS OF ALL SIGNATURES AND EXHIBIT A)

Document #: 506126-v1

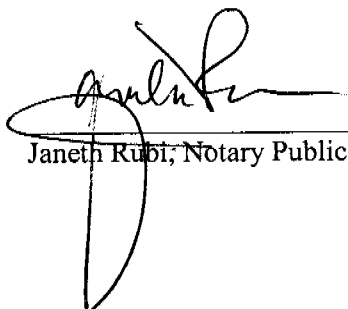


ACKNOWLEDGMENT - McDONALD'S

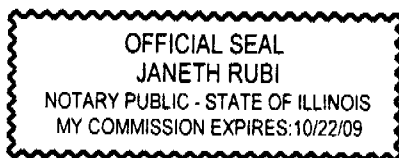
STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF DU PAGE )

I, Janeth Rubi, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Consuelo Boyd, Senior Counsel of McDonald's USA, LLC, a Delaware limited liability company, whose place of business is at One McDonald's Plaza, Oak Brook, Illinois 60523, 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 she signed, sealed and delivered the said instrument as her 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.

Given under my hand and notarial seal, this 18th day of August, 2008.

  
Janeth Rubi, Notary Public

My commission expires: 10/22/2009



ACKNOWLEDGMENT - CORPORATE

STATE OF COLORADO )  
 ) SS:  
COUNTY OF DOUGLAS )

I, CARRIE BLACK, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that

~~DOMINGUE ALZOLA-PATH SORRELL~~, VICE President and

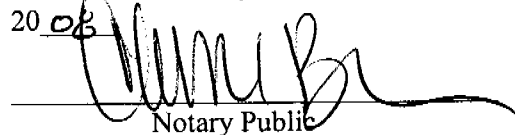
Secretary of

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a(n)

corporation, who reside at 10350 PARK MEADOWS DR, LITTLETON, CO, 80138

who are personally known to me to be the persons whose names are subscribed to the foregoing instrument as such President and Secretary, 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 29 day of AUGUST,  
20 08

  
Notary Public

My commission expires 11/20/2009

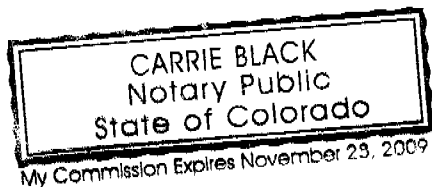


EXHIBIT A  
PREMISES

A PORTION OF TRACTS 36 AND 43 OF ENTERPRISE TRACTS, BEING LOCATED IN THE NW 1/4 OF THE NW 1/4 OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF AVALON STREET, 50.00 FEET FROM CENTERLINE WHEN MEASURED PERPENDICULAR TO SAID CENTERLINE, WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF PERSHING WAY, 30.00 FEET FROM CENTERLINE WHEN MEASURED PERPENDICULAR TO SAID CENTERLINE, THENCE NORTH  $30^{\circ}38'30''$  EAST ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, 180.04 FEET TO A RAILROAD SPIKE; THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH  $59^{\circ}21'23''$  WEST 200.00 FEET TO A 5/8" IRON ROD WITH A 1.5" ALUMINUM CAP AND THE POINT OF BEGINNING. THENCE CONTINUING NORTH  $59^{\circ}21'23''$  WEST 95.77 FEET; THENCE NORTH  $30^{\circ}37'42''$  EAST 60.88 FEET; THENCE SOUTH  $74^{\circ}39'14''$  EAST 137.77 FEET; THENCE SOUTH  $59^{\circ}26'34''$  EAST 200.05 FEET TO SAID NORTHWESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH  $30^{\circ}38'30''$  WEST ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE 20.00 FEET TO A 5/8" IRON ROD WITH A 1.5" ALUMINUM CAP; THENCE NORTH  $59^{\circ}26'34''$  WEST 200.02 FEET TO A 5/8" IRON ROD WITH A 1.5" ALUMINUM CAP; THENCE SOUTH  $30^{\circ}37'42''$  WEST 140.00 FEET TO TO A 5/8" IRON ROD WITH A 1.5" ALUMINUM CAP AND THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 14,577 SQUARE FEET OR 0.33 ACRES, MORE OR LESS.