



201603140138

Skagit County Auditor

\$82.00

3/14/2016 Page

1 of

10 2:43PM

**AFTER RECORDING MAIL TO:**

Name Frost Brown Todd LLC - any Dreisbach  
Address 400 West Market St. 32nd Floor  
City/State Louisville, KY 40202-3363

**Document Title(s):**

1. Subordination, Non-Disturbance and Attornment Agreement

**Reference Number(s) of Documents Assigned or released:**

GUARDIAN NORTHWEST TITLE CO.

110654-6

**Grantor(s):**

1. McDonalds USA, LLC
- 2.

[ ] Additional information on page of document

**Grantee(s):**

1. German American Capital Corporation
- 2.

[ ] Additional information on page of document

**Abbreviated Legal Description:**

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

**Tax Parcel Number(s):**

P121437, P121438, P121439, P121440, P121441, P121442, P121443, P121444, P121448 and P121449

[ X ] Complete legal description is listed under Exhibit "A"

BURLINGTON, WA  
2034 Marketplace Drive  
L/C: 046-1025; File #43526  
Prepared by: Stephanie S. Hipp

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is dated February 9, 2016 between GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation ("Lender"), whose address is 60 Wall Street, 10<sup>th</sup> Floor, New York, New York 10005 (together with its successors and assigns) and McDONALD'S USA, LLC, a Delaware limited liability company, ("Tenant") having its offices at One McDonald's Plaza, Oak Brook, Illinois 60523, Attention: Director, U.S. Legal, L/C: 046-1025.

### **PRELIMINARY STATEMENTS**

A. Tenant has executed a Ground Lease dated April 18, 2006, as amended by that certain First Amendment to Ground Lease dated February 15, 2007, and supplemented by that certain Supplement to Lease dated March 2, 2007, and recorded with Skagit County Auditor (the "Recording Authority") as Document No. 200704020203, and corrected by the Amended Supplement to Lease dated January 7, 2016 as such may from time to time be amended (collectively, the "Lease"), as evidenced by Memorandum of Lease dated August 2, 2006 and recorded with the Recording Authority as Document No. 200609130113, as such may from time to time be amended, with Stratford Hall, Inc., a Delaware corporation, as successor in interest to Newman Development Group of Burlington, LLC ("Landlord") for the premises described in Exhibit A (the "Demised Premises").

B. Lender intends to grant a mortgage, deed of trust, or deed to secure debt on the Demised Premises or a portion of the Demised Premises and covenants and represents that such mortgage, deed of trust, or deed to secure debt, security agreement and all other applicable loan documents, (individually and collectively, the "Mortgage") will be recorded with the Recording Authority. If the Mortgage is not fully executed and recorded with the Recording Authority, and a validly recorded copy delivered to Tenant within sixty (60) days of Tenant's execution of this Agreement, this Agreement will automatically terminate and be of no further force and effect.

C. Tenant and Lender desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement.

### **TERMS OF THE AGREEMENT**

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Lender 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 defaults), then:

(a) Notwithstanding any contrary terms in the Mortgage or the note which the document secures, Tenant's right of possession to the Demised Premises and Tenant's other rights arising out of the Lease will not be affected or disturbed by Lender in the exercise of any of Lender's rights under the Mortgage or the note which the Mortgage secures or otherwise. Further, Tenant will not be named as a party defendant in any foreclosure of the lien of the Mortgage nor in any other way be deprived of Tenant's rights under the Lease.

(b) In the event Lender or any other person acquires title to the Demised Premises pursuant to the exercise of any remedy provided for in the Mortgage, or by conveyance in lieu of foreclosure, the Lease will not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. Lender covenants that any sale by Lender of the Demised Premises as a result of the exercise of any rights and remedies under the Mortgage, or otherwise, and any sale or transfer of the Mortgage or note which the Mortgage secures, will be made subject to the Lease and the rights of Tenant under the Lease, and Tenant covenants and agrees to attorn to Lender, or such person, as its new Landlord, and the Lease will continue in full force and effect as a direct Lease between Tenant and Lender, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event will Lender 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. All notices under this Agreement will be in writing and sent by U.S. certified mail return receipt requested or nationally recognized overnight courier. If intended for Lender, the notice will be sent to the address set forth above, with a copy to Frost Brown Todd LLC, 400 West Market Street, Suite 3200, Louisville, Kentucky 40202, Attention: John W. Gragg, Esq. and if intended for Tenant, the notice will be sent to the address set forth above, with a copy to McDonald's USA, LLC, 12131 113<sup>th</sup> Avenue NE, Suite 103, Kirkland, WA 98034, Attn: Regional Development Director, L/C: 046-1025. Any party may lodge a change of address by sending notice of such change to the other party in the manner provided under this Section. Each notice will be deemed to have been given at the time it is deposited in the United States Mail or with the overnight courier.

3. Subject to the terms of Article 1, the Lease is subject and subordinate to the lien of the Lender and to all advances made or to be made and to any renewals or extensions; provided, however, that all renewals and extensions are subject to the terms of this Agreement.

4. The above provisions will 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 Lender or to any person to whom Tenant agrees to attorn such other instruments as either will reasonably request in order to comply with these provisions.

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

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]**

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

LENDER:  
GERMAN AMERICAN CAPITAL CORPORATION  
a Maryland corporation

By [Signature]  
Name Jon Till  
Title Vice President

By [Signature]  
Name MURRAY MACKINNON  
Title VICE PRESIDENT

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

By [Signature]  
Name: Stephanie S. Hipp  
Title: Senior Counsel

WITNESSES/NOTARY TO FOLLOW ON SEPARATE PAGE]

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

LENDER:  
**GERMAN AMERICAN CAPITAL CORPORATION**  
a Maryland corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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

cc/ By Stephanie S. Hipp  
Name: Stephanie S. Hipp  
Title: Senior Counsel

[ACKNOWLEDGEMENTS/NOTARY TO FOLLOW ON SEPARATE PAGE]

ACKNOWLEDGMENT - McDONALD'S

STATE OF ILLINOIS     )  
                                  ) SS:  
COUNTY OF DUPAGE     )

I, Catherine B. O'Connor, a Notary Public in and for the county and state set forth above, CERTIFY that Stephanie S. Hipp, 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 described in this instrument.

Given under my hand and notarial seal, this 9<sup>th</sup> day of February, 2016.

Catherine B. O'Connor  
Notary Public

My commission expires 11/12/2017



ACKNOWLEDGMENT - CORPORATE

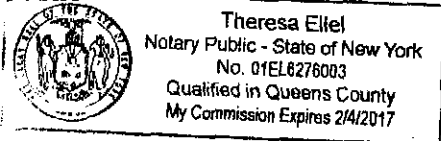
STATE OF New York     )  
                                  ) SS:  
COUNTY OF New York     )

I, Theresa Elie, a Notary Public in and for the county and state set forth above, CERTIFY that Ten Tili as Vice President of German American Tap Corp a(n) Maryland Corp, 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 described in this instrument.

Given under my hand and notarial seal, this 9 day of March, 2016

Theresa Elie  
Notary Public

My commission expires 2/4/17



ACKNOWLEDGMENT - McDONALD'S

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF DUPAGE )

I, Catherine B. O'Connor, a Notary Public in and for the county and state set forth above, CERTIFY that Stephanie S. Hipp, 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 described in this instrument.

Given under my hand and notarial seal, this 9<sup>th</sup> day of February, 2016.

Catherine B. O'Connor  
Notary Public

My commission expires 11/12/2017



ACKNOWLEDGMENT - CORPORATE

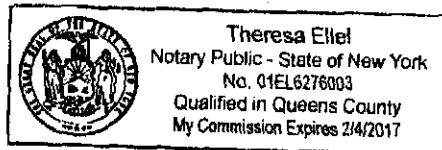
STATE OF New York )  
 ) SS:  
COUNTY OF New York )

I, Theresa Ellet, a Notary Public in and for the county and state set forth above, CERTIFY that Murray Mackinnon as Vice President of German American Cap. Corp., a(n) Maryland Corp., 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 described in this instrument.

Given under my hand and notarial seal, this 9 day of March, 2016

Theresa Ellet  
Notary Public

My commission expires 2/4/17

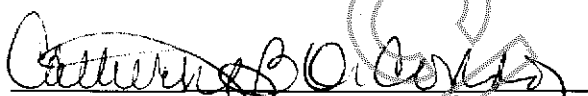


ACKNOWLEDGMENT - McDONALD'S

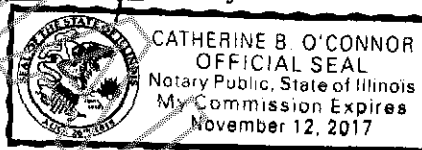
STATE OF ILLINOIS       )  
                                      ) SS:  
COUNTY OF DUPAGE       )

I, Catherine B. O'Connor, a Notary Public in and for the county and state set forth above, CERTIFY that Stephanie S. Hipp, 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 described in this instrument.

Given under my hand and notarial seal, this 9<sup>th</sup> day of February, 2016.

  
Notary Public

My commission expires 11/12/2017



ACKNOWLEDGMENT - CORPORATE

STATE OF \_\_\_\_\_ )  
                                      ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the county and state set forth above, CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, 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 described in this instrument.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_.

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

My commission expires \_\_\_\_\_



## Exhibit "A"

### Legal description

The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

#### PARCEL 1:

That portion of Lot 13, "CITY OF BURLINGTON UPDATED BINDING SITE PLAN NO. BURL-01-04, ENTITLED NEWMAN DEVELOPMENT OF BURLINGTON, LLC, RETAIL/COMMERCIAL CENTER", approved June 12, 2006 and recorded June 27, 2006 under Skagit County Auditor's File No. 200606270207, and being a portion of Government Lot 8 and the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 7, Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Southeast corner of said Lot 13; thence North  $00^{\circ}51'19''$  West along the East line of said Lot 13 a distance of 81.20 feet to the true point of beginning; thence Westerly along a non-tangent curve to the right, having a radius of 65.00 feet, a central angle of  $51^{\circ}24'57''$ , the center of which bears North  $52^{\circ}14'30''$  West, an arc distance of 58.33 feet to a point of tangency; thence South  $89^{\circ}10'27''$  West 83.24 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 80.00 feet, a central angle of  $27^{\circ}54'57''$ , the center of which bears North  $00^{\circ}49'33''$  West, an arc distance of 38.98 feet to a point of tangency; thence North  $62^{\circ}54'36''$  West 39.47 feet; thence North  $65^{\circ}04'12''$  West 43.86 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 42.18 feet, a central angle of  $19^{\circ}51'14''$  the center of which bears North  $24^{\circ}55'48''$  East, an arc distance of 14.62 feet to the West line of said Lot 13; thence along the West and North lines of said Lot 13 the following courses and distances:

North  $00^{\circ}49'33''$  West 117.67 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 38.00 feet, a central angle of  $91^{\circ}44'48''$ , the center of which bears North  $89^{\circ}10'20''$  East, an arc distance of 60.85 feet to a point of tangency; thence South  $89^{\circ}04'45''$  East 31.33 feet; thence South  $71^{\circ}49'34''$  East 112.88 feet to the beginning of a tangent curve to the left; thence along said tangent curve to the left, having a radius of 247.00 feet, a central angle of  $15^{\circ}14'03''$ , the center of which bears North  $18^{\circ}10'26''$  East, an arc distance of 65.67 feet to a point of tangency; thence South  $87^{\circ}03'37''$  East 5.77 feet; thence leaving said North line, South  $00^{\circ}49'33''$  East 19.75 feet; thence North  $89^{\circ}10'27''$  East 10.48 feet to the East line of said Lot 13; thence South  $00^{\circ}51'19''$  East along said East line 115.77 feet to the true point of beginning.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities established by Auditor's File No. 200402110099 extending Southerly from Marketplace Drive to Whitmarsh Road.

#### PARCEL 2:

Non-exclusive easements for ingress, egress, parking and utilities over, across, upon and below Lots 1 through 15, inclusive, "CITY OF BURLINGTON UPDATED BINDING SITE PLAN NO. BURL-01-04, ENTITLED NEWMAN DEVELOPMENT OF BURLINGTON, LLC, RETAIL/COMMERCIAL CENTER", approved June 12, 2006 and recorded June 27, 2006 under Skagit County Auditor's File No. 200606270207, and being a portion of Government Lot 8 and the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 7, Township 34 North, Range 4 East, W.M. said easements being established by restriction agreement and grant of easements recorded under Auditor's File No. 200404080093, and amended by documents recorded as Auditor's File Nos. 200603150120, 200603150121 and 200607060000 ... Skagit County, Washington;

UNRECORDED

EXCEPT that portion of Lot 13, "CITY OF BURLINGTON UPDATED BINDING SITE PLAN NO. BURL-01-04, ENTITLED NEWMAN DEVELOPMENT OF BURLINGTON, LLC, RETAIL/COMMERCIAL CENTER", approved June 12, 2006 and recorded June 27, 2006 under Skagit County Auditor's File No. 200606270207, and being a portion of Government Lot 8 and the Southeast ¼ of the Northeast ¼ of Section 7, Township 34 North, Range 4 East W.M., described as follows:

Commencing at the Southeast corner of said Lot 13; thence North 00°51'19" West along the East line of said Lot 13 a distance of 81.20 feet to the true point of beginning; thence Westerly along a non-tangent curve to the right, having a radius of 65.00 feet, a central angle of 51°24'57", the center of which bears North 52°14'30" West, an arc distance of 58.33 feet to a point of tangency; thence South 89°10'27" West 83.24 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 80.00 feet, a central angle of 27°54'57", the center of which bears North 00°49'33" West, an arc distance of 38.98 feet to a point of tangency; thence North 62°54'36" West 39.47 feet; thence North 65°04'12" West 43.86 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 42.18 feet, a central angle of 19°51'14" the center of which bears North 24°55'48" East, an arc distance of 14.62 feet to the West line of said Lot 13; thence along the West and North lines of said Lot 13 the following courses and distances:

North 00°49'33" West 117.67 feet to the beginning of a tangent curve to the right; thence along said tangent curve to the right, having a radius of 38.00 feet, a central angle of 91°44'48", the center of which bears North 89°10'20" East, an arc distance of 60.85 feet to a point of tangency; thence South 89°04'45" East 31.33 feet; thence South 71°49'34" East 112.88 feet to the beginning of a tangent curve to the left; thence along said tangent curve to the left, having a radius of 247.00 feet, a central angle of 15°14'03", the center of which bears North 18°10'26" East, an arc distance of 65.67 feet to a point of tangency; thence South 87°03'37" East 5.77 feet; thence leaving said North line, South 00°49'33" East 19.75 feet; thence North 89°10'27" East 10.48 feet to the East line of said Lot 13; thence South 00°51'19" East along said East line 115.77 feet to the true point of beginning.

RECORDED