

**MEMORANDUM**

**TO:** Mr. Kurt Ulrich  
City Administrator, City of Ramsey

**FROM:** Sarah J. Edstrom Smith

**DATE:** March 21, 2017

**RE:** **The City of Ramsey, Minnesota and the Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota – Right of Re-Entry Contained in Deed to McDonald’s Client Matter No. 12952.57**

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Documents Executed at Closing

1. Deed. On February 26, 2014, The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota (the “HRA”) executed a Quit Claim Deed conveying Lot 2, Block 1, COR TWO, Anoka County, Minnesota (the “Property”) to McDonald’s USA, LLC (“McDonald’s”). The Quit Claim Deed was recorded in the office of the Anoka County Registrar of Titles on March 3, 2014 as Document No. 522138.002 (the “Deed”). McDonald’s planned to construct a new restaurant on the Property.

The Deed contained a right of re-entry in favor of the HRA. Pursuant to the terms of the right of re-entry contained in the Deed, the HRA may commence an action in Anoka County District Court seeking an order re-vesting title to the Property in the HRA if either of the following conditions are not met:

- (i) McDonald’s does not commence construction of the improvements on the Property within 720 days after the date of the Deed (deadline was February 16, 2016), or
- (ii) McDonald’s does not substantially complete the construction of the improvements within 1080 days after the date of the Deed (deadline was February 10, 2017).

As defined in the Deed, McDonald’s will be deemed to have commenced construction when it has (a) obtained building permits for the construction of the improvements; and (b) caused material or labor to be furnished to the Property in a manner and to an extent sufficient that a mechanic's lien for such work would attach and take effect pursuant to Minn. Stat.

§514.05. McDonald's will be deemed to have substantially completed construction of the improvements when McDonald's opens for business on the Property.

2.     Restrictive Covenant. At the closing for the Property, the HRA also executed a Restrictive Covenant recorded in the office of the Anoka County Registrar of Titles on March 3, 2014 as Document No. 522138.003 (the "Restrictive Covenant"). The Restrictive Covenant prohibits certain surrounding property from being leased, used or occupied as a Quick Service Restaurant (as defined therein) for 20 years from the date of the Restrictive Covenant. The Restrictive Covenant also contains a list of example restaurants that are prohibited from operating in the surrounding areas covered by the Restrictive Covenant (ex. Burger King, Wendy's, Hardee's, Five Guys, Chick-fil-A, etc.). The Restrictive Covenant provides that if McDonald's is not operating a McDonald's restaurant within 1080 days of the date listed in the Restrictive Covenant, the Restrictive Covenant will be null and void and of no further force or effect. That required operating deadline was February 9, 2017.

3.     Escrow Agreements. At the closing for the Property, the HRA also put \$120,223.50 into escrow for completion of the sign obligations relating to the Property (the "Sign Escrow Funds") and \$45,000.00 into escrow for potential soil work to be done at the Property in connection with McDonald's construction (the "Soil Escrow Funds"). The agreement for the Sign Escrow Funds provides that if McDonald's has not requested release of the funds pursuant to the agreement within 780 days after the date the Deed was recorded (deadline was April 21, 2016), then the escrow agent could return the Sign Escrow Funds to the HRA. The agreement for the Soil Escrow Funds provides that if McDonald's has not requested release of the funds pursuant to the agreement within 1080 days after the date the Deed was recorded (deadline was February 15, 2017), then the escrow agent could return the Soil Escrow Funds to the HRA.

#### Current Status

McDonald's has not obtained a building permit or taken any steps to commence construction on the Property, so the various dates relating to the Deed, Restrictive Covenant, and the escrow agreements have all lapsed. McDonald's has informed the City that it desires to continue to hold the property and develop the site when there is an appropriate level of demand to support the restaurant.

1.     Deed. Since McDonald's did not substantially complete the construction of the improvements by February 10, 2017, the City, as assignee or the HRA, can commence an action in Anoka County District Court seeking an order re-vesting title to the Property. The City's current options are to:

- A. Start the district court action seeking an order re-vesting title to the Property.
- B. Do nothing and wait for McDonald's to develop the Property.

C. Negotiate a new settlement with McDonald's.

2. Restrictive Covenant. Upon the execution of an affidavit by a City representative indicating that no construction has taken place and that McDonald's is not operating a restaurant at the Property, the Examiner of Titles for Anoka County has agreed to issue an examiner's directive ordering the removal of the Restrictive Covenant from the various certificates of title for the property it was originally recorded against. The affidavit and examiner's directive are in process.

3. Escrow Agreements. The City requested the release of the Sign Escrow Funds and the Soil Escrow Funds in February after the last date had passed and the escrow agent has returned all funds to the City (with the consent of McDonald's).