

20-7)



City Council Agenda Item
Meeting of January 8, 2013

TO: The Honorable Mayor and Members of the City Council

FROM: James R. O'Connor, City Manager *[Signature]*

DATE: December 14, 2012

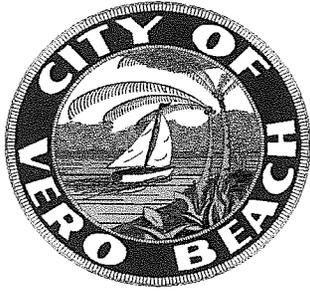
SUBJECT: Utility Easements #2011-EG-0092, 2011-EG-0093 and Bill of Sale of Utility Facilities – McDonald’s Corporation – 1925 US Hwy 1, SP10-00009

REQUESTED BY: City Manager/Water and Sewer Director

The following is requested as it relates to the above-referenced agenda item:

 X Request Council review and approval based on the attached supporting documentation.

 No action required. (Information only)



CITY OF VERO BEACH
AGENDA ROUTING SLIP

Date: December 13, 2012

For City Council Meeting on January 8, 2013

Originated by:
(Check one)

- City Council, motion adopted on: _____
- Council Member _____
- City Manager
- City Attorney
- City Clerk
- Water and Sewer Department

Person to Contact: Rob Bolton, Director

Telephone Number: 978-5228

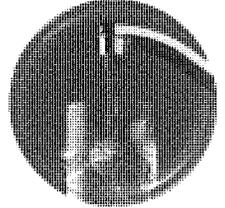
Brief Description: Utility Easements #2011-EG-0092, 2011- EG-0093 and
Bill of Sale of Utility Facilities
McDonald's Corporation, 1925 US Hwy 1, SP10-000009

			<u>Initial/Date</u>
<u>Route for Signature to:</u> (Fill in Departments which should review this item.)	1.	<u>Public Works</u> Dept.	<u>RB 12/13/12</u>
	2.	<u>City Attorney</u> Dept.	<u>PL 12/13/12</u>
	3.	<u>City Manager</u> Dept.	<u>[Signature] 12/14/12</u>
	4.	_____ Dept.	_____
	5.	_____ Dept.	_____
	6.	_____ Dept.	_____
	7.	_____ Dept.	_____
	8.	_____ Dept.	_____

Return Completed
Agenda Item and
Slip to (check one):

- City Attorney's Office
- City Manager's Office

cc: Tammy K. Vock, City Clerk



DEPARTMENTAL CORRESPONDENCE
WATER AND SEWER DEPARTMENT

To: James R. O'Connor, City Manager
Dept: City Manager

From: Robert J. Bolton, P.E., Director *RJB*

Date: December 13, 2012

RE: **Utility Easements #2011-EG-0092, 2011-EG-0093 and
Bill of Sale of Utility Facilities
McDonald's Corporation, 1925 US Hwy 1, SP10-000009**

Background:

As part of the McDonald's demolition of its existing restaurant and construction of a new restaurant, deeds of easement and a bill of sale for the water and sewer facilities were required to be granted to the City.

Funding:

There is no funding required for this item.

Recommendation:

Place this item on the City Council's January 8, 2013 agenda for approval. Recommend that the City approve and accept conveyance of the Utility Easement and Bill of Sale for the water and sewer facilities.

RB/da
Attachments

cc: Wayne R. Coment, City Attorney
David R. Gay, PSM, Chief Surveyor, Public Works

Prepared by and return to:
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

**UTILITY EASEMENT DEED
(2011-EG-0092)**

THIS INDENTURE made and entered into this 31st day of August 2011, by and between McDONALD'S CORPORATION, a foreign profit corporation (the "Grantor"), whose mailing address is One McDonald's Plaza, Oak Brook, IL 60523, and the CITY OF VERO BEACH, a Florida municipal corporation (the "Grantee"), whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

That Grantor is the owner in fee simple of that certain real property (the "Property") lying, situate and being in Indian River County, Florida and more particularly described as

Property conveyed by Warranty Deed as recorded in OR Book 327, Page 197 of the Public Records of Indian River County, Florida.

That Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Grantee, its successor and assigns, a public utility easement, which easement is more particularly described in Exhibit "A" (the "Easement Premises"), attached hereto and incorporated herein by reference, and which easement shall run with and be a burden upon the Property.

Grantor hereby reserves for itself, its successors, and assigns the right to use the Easement Premises for purposes not inconsistent with the Easements granted herein, including without limitation, the right of ingress, egress and passage by Grantor and its employees, agents, customers, and invitees, over, across, and through the Easement Premises.

Grantor further grants to the Grantee, its agents, employees, contractors, and assigns, a general ingress/egress easement over and across its driveways, parking, common and open areas of the Property for the purpose of access to, and/or maintenance of, any of the Grantee's improvements. Grantee shall not be otherwise responsible for maintenance of the Easement Premises.

The undersigned hereby covenants and warrants that Grantor owns the said land described herein and the undersigned, as or on behalf of Grantor, has the right to grant these easements.

IN WITNESS WHEREOF, the Grantor has duly authorized and caused this Indenture to be executed in its name as of the day and year first herein written.

GRANTOR (McDONALD'S CORPORATION, a foreign profit corporation):

WITNESS:

Sign: *K.S.S.*
Print: Kenneth S. Shiner

Sign: *[Signature]*
Print: Padraic G. Molloy Thomas R. Pickett
Title: Managing Counsel Senior Counsel

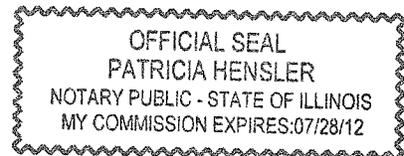
Sign: *Magdalena Haminski*
Print: Magdalena Haminski

[SEAL]

STATE OF ILLINOIS
COUNTY OF DuPage

The foregoing instrument was acknowledged before me this 1st day of September, 2011, by Thomas R. Pickett, Senior Counsel, Padraic G. Molloy, as Managing Counsel of McDonald's Corporation, as Grantor. He is [circle one] personally known to me OR produced [describe ID shown] as identification, and [circle one] did OR did not take an oath.

NOTARY PUBLIC
Sign: *[Signature]*
Print: PATRICIA HENSLER
State of Illinois at Large
My Commission No: 559109
My Commission Expires: 7.28.12



ACCEPTANCE OF CONVEYANCE

The foregoing conveyance is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

CITY OF VERO BEACH

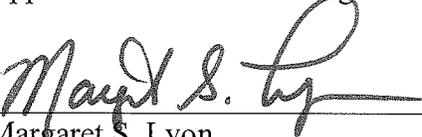
Tammy K. Vock
City Clerk

A. Craig Fletcher
Mayor

[CITY SEAL]

Date: _____

Approved as to form and legal sufficiency:



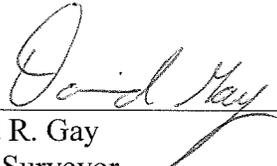
Margaret S. Lyon
Assistant City Attorney

Approved as conforming to municipal policy:



James R. O'Connor
City Manager

Approved as to technical requirements:



David R. Gay
Chief Surveyor

EXHIBIT "A"
PROPERTY DESCRIPTION
UTILITY EASEMENT #2011-EG-092
FANITHIA PLACE SUBDIVISION
PARCEL #33-39-01-00013-0010-00001.0

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Fanithia Place Subdivision as Recorded in Plat Book 1, Page 96, of the Public Records of Indian River County, Florida and being more particularly bounded and described as follows:

Commencing at the Southwest corner of Lot 3, Fanithia Place,

Thence North $89^{\circ}25'16''$ East along the south line of said Lot 3 for a distance of 124.49 feet to a point on the west right of way of U.S. Highway 1;

Thence North $01^{\circ}05'50''$ West along the west right of way of U.S. Highway 1 for a distance of 82.40 feet to the Point of Beginning of the utility easement;

Thence west and perpendicular to the said west right of way for a distance of 15.00 feet:

Thence north and parallel with the said west right of way for a distance of 15.00 feet;

Thence east and perpendicular with the said west right of way for a distance of 15.00 feet to a point on the said west right of way:

Thence south along the said west right of way for a distance of 15.00 feet to the Point of Beginning;

Said easement containing 225.0 square feet more or less.


David R. Gay, PSMA #5973


19TH PLACE 25' R.O.W.



SCALE 1" = 40'

LOT 5

LOT 4

LOT 1

SUBJECT UTILITY EASEMENT

15.0'

15.0'

15.0'

15.0'

POINT OF BEGINNING UTILITY EASEMENT

LOT 2

McDONALDS RESTAURANT

1925 US HWY #1

PARCEL # 33-39-01-00013-0010-00001.0

82.40'

N01°05'50"W

FANITHIA PLACE S/D
PB 1, PG 96

LOT 3

POINT OF COMMENCEMENT
S.W. CORNER OF LOT 3
FANITHIA PLACE S/D

N89°25'16"E 124.49'

U.S. HIGHWAY #1

FANITHIA PLACE S/D

PB 1, PG 96

1901 US HWY #1

THE WEST
74.85' OF TRACT "A"

15'

ADDITIONAL US#1 RIGHT OF WAY

TRACT "A"

19TH STREET

NOTE: EASEMENT WAS BASED ON A SURVEY SUBMITTED BY
ALL POINTS SURVEYING & MAPPING, INC., JOB #11-025

THIS SKETCH IS NOT A SURVEY

DAVID GAY, PSM #5893

DAVID GAY, PSM #5893

CERTIFICATE NO. 5893

STATE OF FLORIDA

SURVEYOR & MAPPER

DATE

SHEET 2 OF 2

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION UTILITY EASEMENT FANITHIA PLACE	EXHIBIT "A" CITY PROJECT NO. 2011-00-092 DATE 07/2011 DRWN BY DG CHKD BY MKF REV. NO. AUTHRD. BY DATE
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Prepared by and return to:
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

**UTILITY EASEMENT DEED
(2011-EG-0093)**

THIS INDENTURE made and entered into this 5th day of NOVEMBER 2012, by and between GIFFORD ESTATE LLC, a Florida limited liability company (the "Grantor"), whose mailing address is 8502 S.E. Royal Street, Hobe Sound, FL 33455, and the CITY OF VERO BEACH, a Florida municipal corporation (the "Grantee"), whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

That Grantor is the owner in fee simple of that certain real property (the "Property") lying, situate and being in Indian River County, Florida and more particularly described as

Property conveyed by Warranty Deed as recorded in OR Book 2188, Page 2016 of the Public Records of Indian River County, Florida.

That Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Grantee, its successor and assigns, a public utility easement, which easement is more particularly described in Exhibit "A" (the "Easement Premises"), attached hereto and incorporated herein by reference, and which easement shall run with and be a burden upon the Property.

Grantor hereby reserves for itself, its successors, and assigns the right to use the Easement Premises for purposes not inconsistent with the Easements granted herein, including without limitation, the right of ingress, egress and passage by Grantor and its tenant, subtenants, and all of their respective employees, agents, customers, and invitees, over, across, and through the Easement Premises.

Grantor further grants to the Grantee, its agents, employees, contractors, and assigns, a general ingress/egress easement over and across its driveways, parking, common and open areas of the Property for the purpose of construction of, access to, operation of, and/or maintenance of the water utility and fire hydrant improvements as set forth in that separate bill of sale recorded in conjunction herewith. Grantee shall not be otherwise responsible for maintenance of the Easement Premises.

The undersigned hereby covenants and warrants that Grantor owns the said land described herein and the undersigned, as or on behalf of Grantor, has the right to grant these easements.

IN WITNESS WHEREOF, the Grantor has duly authorized and caused this Indenture to be executed in its name as of the day and year first herein written.

**GRANTOR (GIFFORD ESTATE LLC,
a Florida limited liability company)**

WITNESS:

Sign: *Sam DiPaola*
Print: SAM DI PAOLA

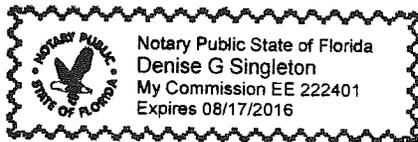
Sign: *Daniel D. Ross*
Print: Daniel D. Ross
Title: Managing Member

Sign: *Denise G Singleton*
Print: DENISE G SINGLETON

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21st day of OCTOBER, 2012, by Daniel D. Ross, as Managing Member, of Gifford Estate LLC, as Grantor. He is [circle one] personally known to me OR produced [describe ID shown] as identification, and [circle one] did OR did not take an oath.



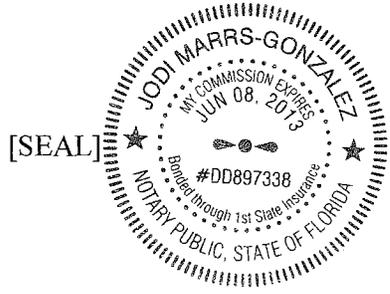
NOTARY PUBLIC
Sign: *Denise G Singleton*
Print: DENISE G SINGLETON
State of ~~Illinois~~ FLORIDA at Large
My Commission No:
My Commission Expires:

WITNESS:

Sign: *Ruth A Martini*
Print: Ruth A. Martini

Sign: *Amanda J Ross*
Print: Amanda J. Ross
Title: Secretary

Sign: Dean Walcott
Print: DEAN WALCOTT



STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 5th day of November, 2012, by Amanda J. Ross, as Secretary, of Gifford Estate LLC, as Grantor. She is [circle one] personally known to me OR produced [describe ID shown] n/a as identification, and [circle one] did OR did not take an oath.

NOTARY PUBLIC

Sign: Jodi Marrs-Gonzalez
Print: Jodi Marrs-Gonzalez
State of ~~Illinois~~ at Large Florida
My Commission No: DD 897338
My Commission Expires: 6/8/13

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

CITY OF VERO BEACH

Tammy K. Vock
City Clerk

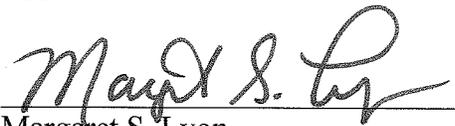
A. Craig Fletcher
Mayor

[CITY SEAL]

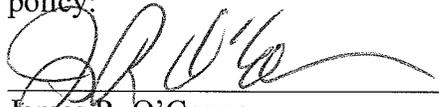
Date: _____

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

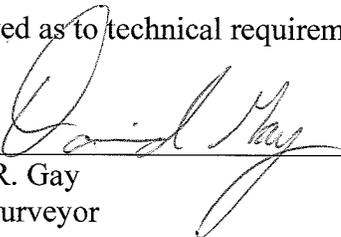


Margaret S. Lyon
Assistant City Attorney



James R. O'Connor
City Manager

Approved as to technical requirements:



David R. Gay
Chief Surveyor

CONSENT TO CONVEYANCE AND SUBORDINATION OF LEASEHOLD

McDonald's Corporation, a foreign profit corporation, whose mailing address is One McDonald's Plaza, Oak Brook, IL 60523, in consideration of securing required municipal approvals to allow the utility services necessary to conduct business, hereby consents to the foregoing conveyance by and between Gifford Estate, LLC and the City of Vero Beach of the Utility Easement Deed. McDonald's Corporation further agrees that said conveyance shall be subordinate to the Lease Agreement, and any amendments thereto, between McDonald's Corporation as Tenant and Gifford Estate, LLC as Landlord, as evidenced by the Amended Memorandum of Lease dated April 21, 2010, recorded in the public records on April 28, 2010 in Official Record Book 2415, Page 2082, Indian River County, Florida. This Consent to Conveyance and Subordination of Leasehold is hereby executed by McDonald's Corporation as evidenced by the signature of the undersigned, who is authorized to provide this consent and subordination.

**McDONALD'S CORPORATION, a
foreign profit corporation:**

75

WITNESS:

Sign: [Signature]
Print: THOMAS R PICKETT

Sign: [Signature]
Padraic G. Molloy
Managing Counsel

Sign: [Signature]
Print: GORDANA WJANDUCH

[SEAL]



STATE OF ILLINOIS
COUNTY OF DUPAGE

The foregoing instrument was acknowledged before me this 20th day of November, 2012, by Padraic G. Molloy, as Managing Counsel of McDonald's Corporation. He is personally known to me ~~or produced~~ _____ as ~~identification~~ _____

[Signature]
NOTARY PUBLIC:

Commission No.:
My Commission Expires:

EXHIBIT "A"
PROPERTY DESCRIPTION
UTILITY EASEMENT #2011-EG-093
H. T. Gifford Estates
PARCEL #33-39-01-00001-0000-00020.0

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of H. T. Gifford Estates as Recorded in Plat Book 1, Page 13, of the Public Records of St Lucie County, Florida, said lands now lying and being in Indian River County, and being more particularly bounded and described as follows:

Commencing at the Northwest corner of Lot 20, H. T. Gifford Estates;

Thence North $89^{\circ}27'39''$ East along the north line of said Lot 20 for a distance of 108.43 feet to a point on the west right of way of U.S. Highway 1;

Thence South $01^{\circ}05'50''$ East along the west right of way of U.S. Highway 1 for a distance of 94.59 feet to the Point of Beginning of the utility easement;

Thence west and perpendicular to the said west right of way for a distance of 6.00 feet;

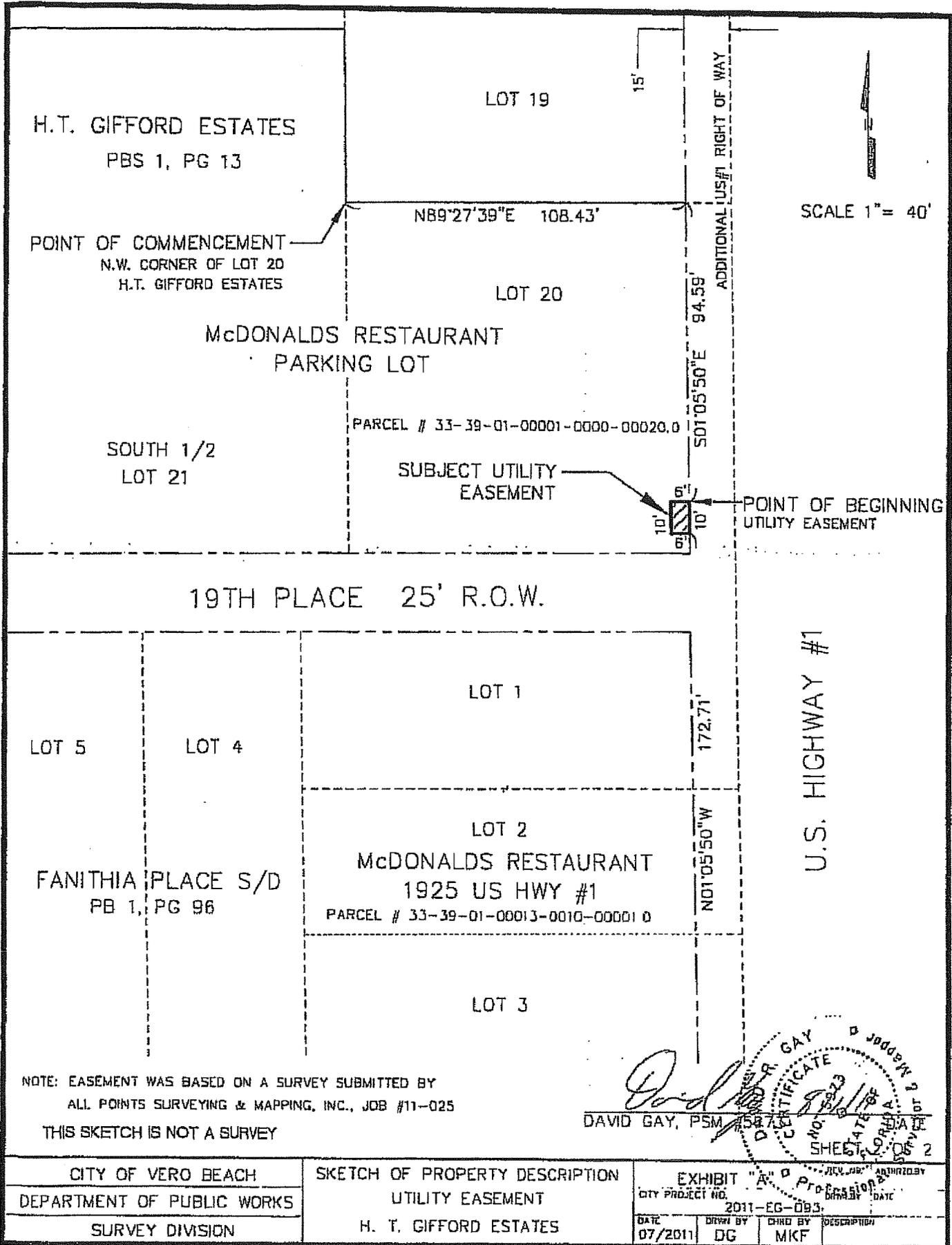
Thence south and parallel with the said west right of way for a distance of 10.00 feet;

Thence east and perpendicular with the said west right of way for a distance of 6.00 feet to a point on the said west right of way;

Thence north along the said west right of way for a distance of 10.00 feet to the Point of Beginning;

Said easement containing 60.0 square feet more or less.


David R. Gay, P.S.

DAVID GAY, PSM
 CERTIFICATE
 NO. 11111
 SHEET 2 OF 2

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION UTILITY EASEMENT H. T. GIFFORD ESTATES	EXHIBIT A CITY PROJECT NO. 2011-EG-093 DATE 07/2011 DRAWN BY DG CHECKED BY MKF	AUTHORIZED BY DATE

BILL OF SALE OF UTILITY FACILITIES

To

CITY OF VERO BEACH, FLORIDA

(when constructed within existing or proposed easement or road rights-of-way)

KNOW ALL MEN BY THESE PRESENTS, that:

McDONALD'S CORPORATION, a foreign profit corporation, whose mailing address is One McDonald's Plaza, Oak Brook, IL 60523, hereinafter called GRANTOR, in consideration of value received, the receipt and sufficiency of which is hereby acknowledged, has and does hereby grant, bargain, sell, transfer, and deliver unto the CITY OF VERO BEACH, a Florida municipal corporation, Indian River County, Florida, whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389, hereinafter called GRANTEE, this ____ day of _____, 20____, the following goods and chattels:

UTILITY FACILITIES OF McDONALD'S

Description	Manufacturer	Quantity	Cost	Extended Cost
<u>Fire Service</u>				
8"x6" Tapping Sleeve & 6" Tapping Valve	JCM 432 Stainless Steel/ American Flow control/ Tyler Union	2 EA	\$2,200	\$ 4,400
6" C900 DR 18 PVC Water Main	North American Pipe Corp	10 LF	26	260
6"x4" Reducer, M.J.	Tyler Union	1 EA	200	200
4" C900 DR 18 PVC Water Main	North American Pipe Corp	7 LF	20	140
4" 90° Bends, M.J.	Tyler Union	2 EA	100	200
4" Double Detector Check Valve	Colt Series C300	1 EA	5,500	5,500
Fire Hydrant	American-Darling	1 EA	1,800	1,800
<u>Water Service</u>				
8"x2" Tapping Saddle & 2" Corp Stop, 10 LF 2" DR 9 PE Service Pipe, and Service Fittings	Ford S91/Ford FB1100/ Tyler Union/ENDOT	1 LS	800	800
2" RPZ	Wilkins-Zurn	1 LS	1,800	1,800
6"x2" Tapping Saddle, 2" Corp	Ford S91/Ford FB1100/ Ford	1 EA	600	600
<u>Sewer Service</u>				
8" SDR-35 PVC San. Sewer Pipe	North American Pipe Corp	20 LF	28	560
4" SDR-35 PVC San. Sewer Pipe	North American Pipe Corp	7 LF	22	154
8x8x4 Wye PVC	Trench Tough Plus	1 EA	50	50
4" 45° PVC Bend	Trench Tough Plus	1 EA	40	40
SDR-35 To Clay Pipe Adapter	Fernco	2 EA	150	300
Total Construction Cost				\$16,804

which utility facilities are located in existing or proposed easements or road rights of way described generally as 1925 U.S. Highway 1, Vero Beach, FL 32960.

TO HAVE AND TO HOLD the same unto GRANTEE forever, and GRANTOR hereby warrants to the GRANTEE that it has free and unencumbered title to the above-described facilities, that all persons or entities which have supplied labor or materials with respect to these facilities have been paid in full, that none of them has any claim whatsoever with respect thereto, and that the GRANTOR has full authority to make this conveyance and will warrant and defend the sale of said chattels and utility facilities hereby made unto GRANTEE against the lawful claims and demands of all persons whomsoever.

GRANTOR hereby further warrants that should the above described utility facilities fail or otherwise become defective during a period of one year from the date of acceptance of same by GRANTEE, due to defective materials or workmanship, GRANTOR shall upon each occasion be responsible in all respects for such failure or defect and shall correct same at GRANTOR'S sole cost and without expense to GRANTEE upon reasonable notice by GRANTEE. GRANTOR shall be solely liable and shall save GRANTEE harmless from any direct or consequential damage attributable to such failure or defect. GRANTOR hereby also assigns all its right, title, and interest in and to manufacturer's or supplier's warranties with respect to the described facilities.

IN WITNESS WHEREOF, the GRANTOR has herein set its hand and seal the day and year first above written.

GRANTOR: (McDONALD'S CORPORATION, a foreign profit corporation):

WITNESS:

Sign: [Handwritten Signature]
Print: [Handwritten Name]

Sign: [Handwritten Signature]
Print: LISA NOLAN

Sign: [Handwritten Signature]
Print: Padraic G. Molloy
Title: Managing Counsel



STATE OF ILLINOIS
COUNTY OF DUPAGE

The foregoing instrument was acknowledged before me this 30th day of October, 2012, by Padraic G. Molloy as Managing Counsel of McDonald's Corporation, as Grantor. He/She is [circle one] personally known to me OR produced [describe ID shown] _____ as identification, and [circle one] did OR did not take an oath.



NOTARY PUBLIC
Sign: [Handwritten Signature]
Print: PATRICIA HENSLE
State of Illinois at Large
My Commission No: 559109
My Commission Expires: 7.28.16

[SEAL]

**ACCEPTANCE OF CONVEYANCE
OF UTILITY FACILITIES**

The conveyance of those certain utility facilities pursuant to the foregoing Bill of Sale dated _____ is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST

CITY OF VERO BEACH

Tammy K. Vock
City Clerk

A. Craig Fletcher
Mayor

[CITY SEAL]

Date: _____

Approved as to form and legal sufficiency:

Approved as conforming to municipal
policies:

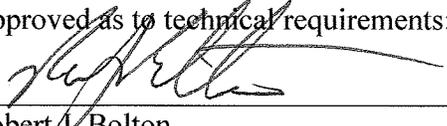
for: 

Wayne R. Coment
City Attorney



James R. O'Connor
City Manager

Approved as to technical requirements:



Robert J. Bolton
Water & Sewer Director