

PINCONNING TOWNSHIP  
RESOLUTION # 97-2

RESCINDED ON 12-9-97  
REGULAR MEETING

RE: COVERING NON-GOVERNMENTAL OPERATION OF WASTEWATER  
SYSTEMS SERVING THE PUBLIC

MICHIGAN DEPARTMENT OF NATURAL RESOURCES UNDER RULE R299.2933

WHEREAS, T & D Company has proposed to share with the McDonalds Corporation the existing **Stabilization Lagoon System (waste system)** located at **770 E Pinconning Rd.** In the Pinconning Township com **387.96 Ft E & 75 FT S OF N 1/4 COR OF SEC TH S 725 FT TH E 400 FT TH N 800 FT TH W 250 FT TH S 75 FT W 150 FT TO BEG. SEC 28, T17N, R4E.** and

WHEREAS, primary responsibility for the effective and continuing operation and maintenance of said system will be assumed by **T & D Company 770 E. Pinconning Rd. Pinconning, Michigan 48650** and

WHEREAS, the **Township of Pinconning** recognizes the need for effective and continued operation and maintenance of said system to protect the public health and prevent unlawful pollution of the surface and groundwater of the State and to prevent the development of nuisance conditions; and

WHEREAS, the **Township of Pinconning** recognizes and accepts the responsibilities established by State Law and regulations adopted thereunder for provision of effective wastewater treatment systems for service to its residents;

NOW THEREFORE BE IT RESOLVED that the **Township of Pinconning** shall assume responsibility for the effective and continued operation and maintenance of the proposed sewage system if the owner in any way fails to perform in this capacity. The basis upon which this agreement has been established is attached and becomes a part of this resolution.

MOVED BY: STALSBERG

SUPPORTED BY: KUSTERER

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I hereby certify that this is a true copy of a resolution adopted by the Pinconning Township Board of Pinconning Township, Bay County at its regular meeting held on the 11 day of FEBRUARY, 1997 at 7 P.M.

Donald H Moore  
Pinconning Township Clerk  
Donald Moore



## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement"), dated FEBRUARY 11, 1997 is between PINCONNING TOWNSHIP, a Michigan municipal corporation. (the "Township") and McDONALD'S CORPORATION, a Delaware corporation, whose address is One McDonald's Plaza, Oak Brook, IL 60521 ("McDonald's"). The following statements are a material part of this agreement:

A. McDonald's is the owner of the property located in the Pinconning Township, County of Bay, State of Michigan, described as Parcel 1 in Exhibit A.

B. T&D Company (T&D), a Michigan co-partnership comprised of Thomas Courtemanche and Daniel Courtemanche, currently operates and maintains a certain wastewater stabilization lagoon system (Waste System) under NPDES permit no. M10021466 (issued to Hepner Villa restaurant) on Parcel 2 described on Exhibit B, attached hereto.

C. McDonald's intends to use the Waste System for its sanitary sewer requirements in conjunction with the present user Hepner Villa restaurant, and T&D shall continue to solely operate and maintain the Waste System. However, because of the proposed dual use of the Waste System, the Township shall be a co-permittee for said Waste System.

D. Michigan Act 451, P.A. 1994 generally provides when a waste water system serves two or more entities, then: (i) it is considered a "public system" that will be owned and operated by the local municipality; or (ii) alternatively under MDEQ Rule 299.2933 (4), where the local municipality does not own and operate said system, that municipality is required to pledge responsibility for the operation of the system if the current owner in any way fails to perform its operational obligations.

E. McDonald's and the Township wish to set forth certain obligations and indemnities for the operation, maintenance and repair of the Waste System on Parcel 2.

THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and the mutual covenants contained in this agreement, McDonald's and Township agree as follows:

1. **Operation of Waste System:** If, after reasonable notice, T&D fails to properly operate or maintain the Waste System so that the Township bears, or potentially may bear, certain responsibility or liability under Act 451, P.A. 1994 or MDEQ Rule 299.2933, then McDonald's or its agent (and not the Township) shall assume and bear sole responsibility for: (a) bringing the Waste System into compliance with applicable governmental laws, rules or regulations (including those of governing agencies); or (b) the continued operation and maintenance of the Waste System. The Township, as co-permittee, shall reasonably cooperate (but shall not be required to incur any costs) with McDonald's in its operation and maintenance of the Waste System which shall include, but not be limited to: reports, statements, or other paperwork filed with the regulatory authorities; assisting McDonald's in obtaining a permit (which decision shall be in the reasonable judgment McDonald's) to operate, or jointly operate with the Township, the Waste System; assisting McDonald's in complying with applicable governmental laws, rules or regulations.



2. **Indemnification:** McDonald's shall indemnify the Township and hold it harmless against any and all claims, liability and costs (including those arising from fines, inspections, certification and reasonable attorneys fees) incurred in connection to the operation or maintenance of the Waste System. McDonald's shall reimburse Township for any costs arising in connection with the above indemnification within thirty (30) days of receipt of a statement set forth with reasonable detail.

3. **Termination:** McDonald's or the Township may terminate this agreement if and when: (i) the Township is relieved of all obligations, or potential obligations, under the laws of the State of Michigan with respect to the operation and/or maintenance of the Waste System; or (ii) McDonald's utilizes any alternative sanitary sewage system and no longer uses the Waste System. The terminating party shall provide prompt notice of said termination to the other party. The termination shall be effective thirty (30) days after receipt of termination notice by the other party.

4. **Survivability:** This agreement shall bind and inure to McDonald's successors and assigns and the covenants contained herein shall be deemed to be, and shall be, continuing covenants running with the land. This agreement does not become binding and effective until it is recorded in the Register of Deeds for Bay County. Notwithstanding anything to the contrary in Article 3 herein, this agreement shall survive, whether or not it has been terminated, with respect to any claim, liability or cost arising from a particular act, omission, event or series of events (collectively "Event"), or an obligation arising in connection to an Event, which occurred prior to the date of termination.

5. **Notice:** The Township's address is 1751 Cody-Estey Road (P.O. Box 58), Pinconning, Michigan 48650, and McDonald's address is McDonald's Corporation, Development Team Legal, One McDonald's Plaza, Oak Brook, Illinois 60521, attention: Assistant Vice President, Development Team Legal. Any party may lodge written notice of a change of address. All notices shall be sent by certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given when placed in the mail.

To indicate their consent to this Agreement, the parties or their authorized agents or officers have signed this document.

McDONALD'S CORPORATION

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Assistant Vice President

PINCONNING TOWNSHIP

By: Sharon Halseberg

Its: Township Supervisor

WITNESSES:

WITNESSES:

Michelle J. Rudell  
Ronald H. Moore

Exhibit A: McDonald's property  
Exhibit B: T&D property