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STATE OF INDIANA  
LAKE COUNTY  
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PREPARED BY AND AFTER  
RECORDING MAIL TO:

MICHELLE R. FAJMAN  
RECORDER

Valerie J. Freireich  
Chuhak & Tecson, P.C.  
30 South Wacker Drive  
Suite 2600  
Chicago, Illinois 60606-7413

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For Recorder's Use

**MUTUAL EASEMENT AND COST SHARING AGREEMENT**

THIS MUTUAL EASEMENT AND COST SHARING AGREEMENT ("Agreement") is made this 30th day of SEPTEMBER, 2010, by and between Walnut Creek Property, Inc., an Indiana corporation ("Walnut Creek") and Goodwill Industries of Michiana, Inc., an Indiana not-for-profit corporation ("Goodwill").

**RECITALS**

A. Walnut Creek is the fee simple title owner of a parcel of real estate legally described as follows:

Lot Numbered 10 as shown on the recorded plat of Ravenswood Business Center, Phase Two recorded in Plat Book 87 page 33 in the Office of the Recorder of lake County, Indiana ("Walnut Creek Parcel").

B. Goodwill is the fee simple title owner, by purchase from Walnut Creek pursuant to that certain Warranty Deed dated 9-30, 2010 and recorded by the office of the Recorder of Deeds of Lake County, Indiana as Document Number \_\_\_\_\_, of a parcel of real estate legally described as follows:

Lot Numbered 11 as shown on the recorded plat of Ravenswood Business Center, Phase Two recorded in Plat Book 87 page 33 in the Office of the

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Recorder of lake County, Indiana ("Goodwill Parcel") and together with the Walnut Creek Parcel, the "Land").

The Walnut Creek Parcel is presently unimproved. Goodwill plans to improve the Goodwill Parcel by the construction of certain structures to which Goodwill wishes to have access for ingress and egress, for itself and its invitees, agents, and employees pursuant to a driveway to be installed by the parties which will occupy a portion of the Goodwill Parcel and a portion of the Walnut Creek Parcel, which driveway will service both the Goodwill Parcel and the Walnut Creek Parcel and which driveway area is legally described as follows: The South 15.00 feet of the West 177.00 feet of lot 11 ("Goodwill Easement Area") and the North 15.00 feet of the West 177.00 feet of Lot 10 ("Walnut Creek Easement Area", and collectively with the Goodwill Easement Area, the "Driveway Easement").

- C. Walnut Creek and Goodwill desire to create a non-exclusive, perpetual easement for common driveway purposes upon, over and across the area of the Driveway Easement for their mutual benefit, pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, Walnut Creek and Goodwill, intending to be legally bound, hereby agree and covenant as hereinafter set forth.

#### AGREEMENTS

1. Incorporation of Recitals. The foregoing Recitals and all exhibits to this Agreement are, by this reference, incorporated herein as though fully set forth in this Section 1.
2. Grant of Easements. Subject to the terms and conditions hereinafter set forth, Walnut Creek and Goodwill hereby grant, bargain, sell and convey, each one to the other, the following easements:
  - A. For the benefit of and as an easement appurtenant to the Walnut Creek Parcel, a perpetual, non-exclusive easement and right-of-way for driveway purposes upon, and for ingress and egress of pedestrian and vehicular traffic upon, over and across the Goodwill Easement Area in favor of the owner of the Walnut Creek Parcel and its successors, assigns and designees, and their respective customers, employees, tenants, subtenants, suppliers, contractors, invitees and any other persons having contact with the activities being conducted on the Walnut Creek Parcel (the foregoing, collectively, are referred to herein as the "Walnut Creek Permittees"); and
  - B. For the benefit of and as an easement appurtenant to the Goodwill Parcel, a perpetual, non-exclusive easement and right-of-way for driveway purposes upon,

and for ingress and egress of pedestrian and vehicular traffic upon, over and across the Walnut Creek Easement Area in favor of the owner of the Goodwill Parcel and its successors, assigns and designees, and their respective customers, employees, tenants, subtenants, suppliers, contractors, invitees and any other persons having contact with the activities being conducted on the Goodwill Parcel (the foregoing, collectively, are referred to herein as the "Goodwill Permittees").

Goodwill and Walnut Creek are together referred to herein as the "Lot Owners" and individually referred to herein as a "Lot Owner". Walnut Creek Permittees and Goodwill Permittees are together referred to herein as the "Permittees" and individually referred to herein as a "Permittee".

3. Easement Use and Maintenance.

- A. Goodwill shall construct an asphalt paved surface driveway upon the Driveway Easement ("Common Driveway") at the expense of the Lot Owners, each of which shall pay fifty percent (50%) of the cost thereof, provided however that the Common Driveway shall conform in all respects to all laws, statues and ordinances applicable to the Land, with proper underlayment sufficient to support a load of vehicular traffic from both Lots with proper drainage, curbing, lighting, storm sewers and required signage, if any, further provided that Walnut Creek shall first approve any plans for construction of the Common Driveway and shall first approve the cost thereof, including approval of any and all additional costs in excess of that first approval. Walnut Creek and Goodwill shall jointly obtain any necessary permits for construction of the Common Driveway.
- B. Following completion of construction of the Common Driveway, neither Lot Owner shall damage the Common Driveway, normal wear and tear excepted, nor obstruct, impede or interfere with the reasonable use of the Driveway Easement in accordance with this Agreement, nor shall either Lot Owner allow its Permittees to do any of the foregoing.
- C. Each Lot Owner shall share equally in the cost and expense of maintaining, repairing, replacing and resurfacing the Driveway Easement including, but not limited to, the installation of all pavement, lighting, curbing, storm sewers, underground utilities, required regulatory signage and all other maintenance items necessary to: (i) comply with all applicable governmental laws and regulations and (ii) provide safe roadway access over the Driveway Easement Area (collectively, the "Maintenance"), provided, however that until completion of improvements on the Walnut Creek Parcel, Walnut Creek shall have no obligation to pay for any Maintenance and prior to completion of improvements on the Walnut Creek Parcel, Goodwill, or its successors in interest, shall have the sole responsibility for the performance of all Maintenance, but further provided that each Lot Owner shall be solely responsible for the cost and expense of any Maintenance made necessary as a result of construction performed on the Lot of a Lot Owner which detrimentally affects the Driveway Easement. Lot Owners shall

perform and arrange for the performance of such Maintenance by mutual agreement; if no agreement can be reached as to Maintenance, the issue shall be submitted to binding arbitration with the American Arbitration Association in the northwestern Indiana area and the cost of arbitration shall be equally paid by the Lot Owners.

- D. The Lot Owners acknowledge that Goodwill may construct certain improvements upon the Goodwill Parcel, including without limitation, a building and tying in to storm sewers and to utility services. The Lot Owners agree that Goodwill may install utilities under the Driveway Easement and install other improvements upon the Driveway Easement to configure the Driveway Easement with the remainder of the improvements to be constructed upon the Goodwill Parcel subject to the approval of the local municipalities and the State of Indiana and the Owner of the Walnut Creek Parcel, which approval by the Owner of the Walnut Creek Parcel will not be unreasonably withheld or delayed, without interfering with the use of the Driveway Easement by Walnut Creek and the Walnut Creek Permittees, except as reasonably necessary for the construction. The Lot Owners agree that throughout the period commencing upon the construction of such improvements and concluding with the substantial completion of such improvements and cessation of such construction work, Goodwill shall have sole and exclusive responsibility for all costs and expenses of Maintenance of the Driveway Easement (and that such Goodwill shall keep the Driveway Easement clean and free of any debris or construction materials) and, at the conclusion of such construction, Goodwill shall have the sole and exclusive responsibility for all costs and expenses of repairing or resurfacing the Driveway Easement, to the extent necessary to restore it to serviceable condition.
- E. The Lot Owners acknowledge that Walnut Creek or its successors in interest may construct certain improvements upon the Walnut Creek Parcel, including without limitation, a building and tying in to storm sewers and to utility services. The Lot Owners agree that Walnut Creek may install utilities under the Driveway Easement and install other improvements upon the Driveway Easement to configure the Driveway Easement with the remainder of the improvements to be constructed upon the Walnut Creek Parcel subject to the approval of the local municipalities and the State of Indiana and the Owner of the Goodwill Parcel, which approval by the Owner of the Goodwill Parcel will not be unreasonably withheld or delayed, without interfering with the use of the Driveway Easement by Goodwill and the Goodwill Permittees, except as reasonably necessary for the construction. The Lot Owners agree that throughout the period commencing upon the construction of such improvements and concluding with the substantial completion of such improvements and cessation of such construction work, Walnut Creek shall have sole and exclusive responsibility to keep the Driveway Easement clean and free of any debris or construction materials and, at the conclusion of such construction, Walnut Creek or its successors in interest shall have the sole and exclusive responsibility for all costs and expenses of repairing

or resurfacing the Driveway Easement, to the extent necessary to restore it to serviceable condition.

- F. In the event that: (i) a Lot Owner fails to pay its share for the performance of the Maintenance in accordance with this Agreement, and (ii) such failure persists following ten (10) business days after receipt of written notice thereof from the other Lot Owner, then the Lot Owner requesting reimbursement or direct payment to a contractor shall promptly, following completion of such Maintenance, deliver a written notice including an invoice to the non-paying Lot Owner setting forth the actual costs and expenses for such Maintenance, plus a 10% supervision fee ("Maintenance Invoice Amount") together with appropriate supporting documentation. The 10% supervision fee shall only be due from the other Lot Owner in the event the non-paying Lot Owner fails to reimburse the Lot Owner requesting payment within thirty (30) business days after receipt of such invoice and supporting documentation, unless such Lot Owner's non-payment is a result of successfully asserting and prevailing or settling in connection with a legitimate contest of the correctness of such invoice or supporting documentation. The unpaid amount shall constitute a lien on the Lot of such non-paying Lot Owner. Such lien shall attach to that Lot as of the date payment becomes delinquent and may be enforced by suit against the Lot Owner.
- G. No fence or other barrier shall be erected or permitted within or across the Driveway Easement that would prevent or obstruct the passage of pedestrian or vehicular travel; provided, however, that the foregoing shall not prohibit: (i) the temporary erection of barricades that are reasonably necessary for security and/or safety purposes in connection with the construction, reconstruction, repair and maintenance of improvements, including the Driveway Easement Area, on a Lot Owner's land, it being acknowledged, however, that all such work shall be conducted in an expeditious manner, minimizing when reasonably possible interference with the use of the Driveway Easement by each Lot Owner, and that all such work shall be diligently prosecuted to completion; or (ii) the construction, repair, maintenance, replacement or resurfacing of the Common Driveway as described herein.
- H. No vehicles shall be parked within the Driveway Easement.
- I. Each Lot Owner reserves the right to close-off its portion of the Driveway Easement for such period of time as does not exceed the minimum legally necessary to prevent the acquisition of prescriptive rights therein by anyone; provided, however, that prior to taking such action, the Lot Owner shall give written notice to the other Lot Owner of its intention to do so and, to the extent reasonably possible, the Lot Owners shall: (i) coordinate such closing so that any interruption in the use and enjoyment of the Driveway Easement is kept to a minimum, and (ii) provide a temporary alternative access for ingress and egress throughout the period of such closing-off.

- J. Neither Lot Owner will modify or otherwise alter the Common Driveway without the prior written consent of the other Lot Owner, which consent shall not be unreasonably withheld, delayed or conditioned.
4. Mechanics' Liens. With respect to any Maintenance or construction performed hereunder by a Lot Owner, such Lot Owner shall not cause or permit any mechanics' lien to be filed against any Land owned by the other Lot Owner, whether within or outside of the Driveway Easement; provided, however, that each such Lot Owner may diligently pursue a dispute or contest of any such mechanics' lien claim that is wrongfully filed, if adequate security acceptable to the other Lot Owner and its title insurer, such as a lien bond or title insurance, is provided to the other Lot Owner, and so long as the other Lot Owner's interests is not substantially threatened thereby. Each Lot Owner agrees to indemnify, defend and hold harmless the other Lot Owner from and against all losses, damages, injuries, claims, demands and expenses, of any nature, including reasonable legal expenses that may arise out of any mechanics' lien filed in connection with such Lot Owner's Maintenance or construction.
5. Insurance. Any person hired or otherwise retained to perform Maintenance (a "Maintenance Party"), shall at all times, maintain in full force and effect commercial general liability insurance with an insurer licensed in the State of Indiana and rated A/VII or better in Best's Rating Guide, such insurance to provide for a combined single limit for personal or bodily injury or death and property damage in amounts acceptable to the Lot Owner performing such Maintenance, but in no event less than One Million and No/100ths Dollars (\$1,000,000.00). Such insurance policy shall name both Lot Owners as insured parties and shall contain a provision that such policy shall not be canceled without at least thirty (30) days' prior written notice being given by the insurer to all insureds. The Lot Owner performing such Maintenance agrees to furnish to the other Lot Owner, upon request, a certificate of insurance evidencing that the insurance required hereunder is in full force and effect. Such insurance may be carried under (i) an individual policy covering the Maintenance Party, (ii) a blanket policy or policies that include other liabilities, properties and locations of the Maintenance Party, or (iii) a combination of any of the foregoing insurance programs.
6. Enforcement.
- A. In the event that: (i) either Lot Owner permits a condition to exist on the Driveway Easement that is in violation or breach of any covenant, condition, restriction or easement herein contained or granted; or (ii) the Lot Owner responsible for Maintenance fails to perform or complete the Maintenance, the other Lot Owner shall have the right, but not the obligation, following no less than ten (10) days prior written notice to the other Lot Owner without cure or correction of such violation or breach, to enter the Driveway Easement and summarily abate and/or remove such condition and to complete or perform such Maintenance or construction obligations, or to prosecute a proceeding, at law or in equity, against the entity or entities, person or persons who are violating or attempting to violate this Agreement, to enjoin or prevent them from doing so, to

cause the violation to be remedied or to recover damages for such violation. In addition, and without waiving any of the foregoing rights, any Lot Owner, if so injured by such violation, shall also be entitled to reimbursement from the violating Lot Owner for its reasonable expenses incurred by entering the Driveway Easement and remedying, abating or removing such condition as stated above.

- B. If either Lot Owner brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs, in addition to any other relief granted. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.
  - C. The failure of either Lot Owner to enforce any covenant, condition, restriction or easement herein contained shall in no event be deemed a waiver of the right to do so thereafter or the right to enforce any other covenant, condition, restriction or easement contained herein.
  - D. No breach of this Agreement shall entitle any Lot Owner to cancel, rescind, or otherwise terminate the easement grant herein made; provided, however, the foregoing limitation shall not affect any other right or remedy a Lot Owner may have with respect to such breach.
  - E. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE LOT OWNERS, HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ANY AMENDMENT HERETO, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
7. Amendments. This Agreement may be amended or terminated only by written agreement executed by both Lot Owners, or their successors in interest, which is recorded in the Office of the Recorder of Deeds of Lake County, Indiana.
8. Covenants Running with the Land. This Agreement and all restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every portion of the Lots, shall create mutually equitable servitudes upon each portion of the Lots in favor of every other portion, shall create reciprocal rights and obligations between the respective Lot Owners of all portions of or interests in the Lots and privity of contract and estate between all grantees of such portions or interests therein, their successors and assigns and shall, as to each Lot Owner, and the successors and assigns of such Lot Owner, operate as covenants running with the land for the benefit of all other portions of the Lots.
9. Indemnity. It is expressly understood and agreed that no Lot Owner assumes any liability for the negligent acts or omissions of the other Lot Owner, its agents, servants,

independent contractors, invitees, successors and assigns, as it relates to the ownership, construction, operation and/or Maintenance of the Driveway Easement. Any Lot Owner found responsible for any property damage or bodily injury by any court of competent jurisdiction as a result of its covenants and agreements hereunder shall indemnify, protect, defend (with counsel of the other Lot Owner's choosing) and hold harmless the other Lot Owner from and against all losses, damages, injuries, claims, demands and expenses, of any nature arising therefrom, including reasonable legal expenses. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of this Agreement, whether by expiration of time, by operation of law, or otherwise.

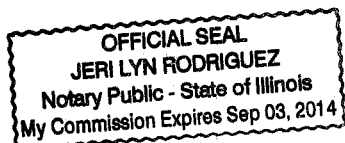
10. Notice. All notices, demands and requests required or desired to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such writing is: (i) delivered to the Lot Owner intended, or (ii) delivered to the then current address of the Lot intended, provided such Lot is then improved with a building, and in all cases provided such notice was personally delivered or was sent certified mail, return receipt requested, postage prepaid.
11. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Driveway or Driveway Easement Area or of any Lot or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any Lot Owner shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.
12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same instrument.
13. Governing Law. The laws of the State of Indiana shall govern the interpretation and enforcement of the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WALNUT CREEK PROPERTY, INC., an  
Indiana corporation

Signed and Sealed before me  
this 30<sup>th</sup> day of Sept. 2010

*Jeri Lyn Rodriguez*



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By: William Christakes  
Name: WILLIAM CHRISTAKES  
Its: MANAGER



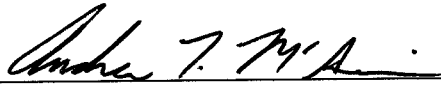
By: J. Larry Noffs  
Name: J. Larry Noffs  
Its: Pres.

State of Indiana, County of St. Joseph ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named J. Larry Neff, the President of Goodwill Industries of Michiana, Inc., who acknowledged the execution of the foregoing Mutual Easement and Cost Sharing Agreement and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS, my hand and Seal this 1st day of October, 2010.

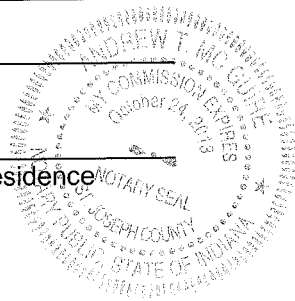
My Commission Expires: \_\_\_\_\_



Signature of Notary Public

Printed Name of Notary Public

Notary Public County and State of Residence



Prepared By: Valerie J. Freireich

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security numbers in this document, unless required by law.

Name JK