

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

McDonald's Corporation, a Delaware corporation,

as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the purchase and sale of

700-730 Stanyan Street (Assessor's Block 1249, Lot 024)  
San Francisco, California

December 8, 2017

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**LIST OF EXHIBITS**

- EXHIBIT A – Real Property Description
- EXHIBIT B – Personal Property Description

EXHIBIT C – Grant Deed

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**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(700-730 Stanyan Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of December 8, 2017 is by and between McDonald's Corporation, a Delaware corporation, successor in interest to and by merger (dated December 21, 1979) with Franchise Realty Interstate Corporation, a surrendered Illinois corporation ("**Seller**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Buyer**" or "**City**").

IN CONSIDERATION of the payments and the respective agreements contained herein below, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately Thirty Seven Thousand, Eight Hundred and Thirteen (37,813) square feet of land, located in the City and County of San Francisco, commonly known as 700-730 Stanyan Street (Assessor's Block 1249, Lot 024) and more particularly described in Exhibit A attached h hereto (the "**Land**");

(b) all improvements and fixtures located on the Land, including, without limitation, that certain one-story commercial restaurant building containing approximately Three Thousand, Four Hundred and Sixty Three (3,463) square feet (collectively, the "**Improvements**"), specifically excluding any personal property and or Improvements that Seller elects to remove prior to closing. Seller shall be entitled to leave and abandon to City any personal property and/or Improvements it chooses at the Land and will be deemed to have done so if such personal property and/or Improvements are not removed by Closing;

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "**Appurtenances**");

(d) Inasmuch as it is the intention of City to demolish the Improvements in connection with City's intended development of the Land, the parties agree that Seller may, in accordance with applicable law and at its sole cost and expense, remove whatever Personal Property and/or demolish and remove all or any portion of the Improvements prior to Closing, without the necessity of repairing any damage to the Improvements so long as (i) following such demolition and removal of the Improvements, the Land is not in violation of any applicable law where such violation would not be cured by the discontinuation of all business operations within the Improvements or the demolition of all remaining Improvements on the Land (it being understood that Seller shall have no obligation hereunder to complete any remaining demolition so as to cause the Land to be in compliance with applicable law); and (ii) such demolition and removal of the Improvements does not have a materially adverse impact on City's ability to

develop, own or operate the Property or increase the costs to be incurred by City to develop the Property as it currently intends.

All of the items referred to in Subsections (a), (b), and (c), above are collectively referred to as the "Property."

## **2. PURCHASE PRICE**

### **2.1 Purchase Price**

The total purchase price for the Property is Fifteen Million, Five Hundred Thousand and no/100 Dollars (\$15,500,000.00) (the "**Purchase Price**").

### **2.2 Payment of Purchase Price**

(a) Within seven (7) business days after the date this Agreement is executed by the parties hereto, Buyer shall deposit in escrow with Chicago Title Insurance Company, 2150 John Glenn Drive, Suite 400, Concord, California 94520 c/o Tyson Miklebost, but with all underwriting for title and closing matters handled by Jon R. Gundling, Esq, Chicago Title Company, 701 5<sup>th</sup> Avenue, Suite 2700, Seattle, WA 98104 (collectively, the "**Title Company**"), the sum of One Million, Five Hundred Fifty Thousand and No/100 Dollars (\$1,550,000.00) as an earnest money deposit (the "**Deposit**"). The Deposit shall be considered as separate and independent consideration for Seller's execution of this agreement and the grant to City to conduct its due diligence investigation of the Property and the grant to City of the right to terminate this Agreement. The Deposit shall be fully refundable to City if the Agreement is terminated in accordance with Section 4.1 or for any reason prior to the expiration of the Due Diligence Period (as defined in Section 4.1 below). The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. At the Closing (as defined below) the Deposit shall be paid to the Seller and credited against the Purchase Price.

(b) On the Closing Date (as defined in Section 6.2 [Closing Date]), City shall pay the balance of the Purchase Price, less the Deposit, which is Thirteen Million, Nine Hundred Fifty Thousand and No/100 Dollars (\$13,950,000.00), adjusted pursuant to the provisions of Article 7 [Expenses and Taxes], and reduced by any credits due City hereunder.

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City through escrow the documents required under Sections 6.3(b) and 6.3(c) [Seller's Delivery of Documents], City may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), or Section 18662 of the California Revenue and Taxation Code (the "State Tax Code"). Any amount properly so withheld by City shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

### **2.3 Funds**

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer and must be of immediately available funds to Title Company as escrow agent.

### **3. TITLE TO THE PROPERTY**

#### **3.1 Conveyance of Title to the Property**

At the Closing, Seller shall convey to City, or its nominee (provided this transaction continues to be exempt from transfer taxes), marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "**Deed**"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

#### **3.2 Title Insurance**

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Title Company to issue to City a CLTA extended coverage owner's policy of title insurance (the "**Title Policy**") in the amount of the Purchase Price

### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS**

#### **4.1 Due Diligence and Time for Satisfaction of Conditions**

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall expire 5:00 PM San Francisco Time on January 5, 2018 (the "**Due Diligence Period**"), subject to the terms and conditions provided hereinbelow. Seller has previously delivered to City all of the Documents and other items described in Sections 5.1.

**Notwithstanding anything in this Agreement to the contrary, City shall have the right to terminate this Agreement at any time during the Due Diligence Period upon written notice to Seller on or before the end of the Due Diligence Period, and upon such termination, the Deposit shall be returned to City. Upon such termination, neither City nor Seller shall have any further rights or obligations hereunder, except as otherwise expressly provided herein and further except that City shall deliver to Seller copies of all inspection reports. This Section is subject to, and shall not serve to modify or limit, any right or remedy of City arising under Section 5.1 [City's Conditions to Closing, of this Agreement].**

#### **4.2 Entry**

During the Due Diligence Period and at all times prior to the Closing Date Seller shall afford City and its Agents reasonable access to the for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the making of such environmental assessments, drilling of test wells, the taking of soil borings, and other investigations as City may deem necessary; provided, however, that any invasive testing shall be subject to Seller's sole but reasonable approval of City's work plan. City shall not alter or damage the Property in more than a de minimus manner as is customary for the type of survey or inspection being undertaken and City shall promptly repair any such damage following the completion of such survey or inspection. City shall not permit any mechanics' liens to be filed

against all or any part of the Property. Seller hereby acknowledges that City will conduct a Phase II environmental assessment of the Property. In the event City desires to perform any other invasive studies, not including a Phase II environmental assessment, then such invasive studies may only be performed with Seller's consent, which shall not be unreasonably withheld or delayed. City shall provide Seller no less than three (3) business days' written notice prior to entering onto the Property. City hereby agrees to indemnify, defend with counsel reasonably selected by Seller, and hold Seller, the McDonald's restaurant operator/franchisee, and all employees, affiliates, subsidiaries, shareholders, officers, directors, trustees and partners of both, as well as any agents of the foregoing (collectively, the "**Seller Parties**") harmless from and against any and all loss, injury, damage, claim, lien, liability, suit, cost, including, without limitation, reasonable attorneys' fees and costs, or expense (collectively, "**Claims**") actually incurred by Seller arising out of actions taken by City or its Agents or their respective employees, contractors, consultants, agents or representatives pursuant to this section, except to the extent such Claims arise from the acts or omissions of Seller or Seller Parties. The foregoing indemnity shall not apply to any devaluation of the Property resulting from the findings of City's studies or any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. The indemnity in this Section shall survive Closing, termination of this Agreement, and any other event, provided that Seller must give notice of any claim it may have against City under such indemnity (i) within six (6) months of such termination if the claim is brought by a third party against Seller or (ii) within three (3) months of such termination or the Closing Date, as applicable, if the claim involves damage to Seller's Property or any other claim not brought by a third party against the Seller. **Solely for the purposes of notices under this section relating to requesting access to the Property, notice by telephone or electronic mail shall be sufficient and shall be delivered to both: Tim Darnell at [Tim.Darnell@us.mcd.com](mailto:Tim.Darnell@us.mcd.com) or (630) 291-8949 and David Shammas at [David.Shammas@us.mcd.com](mailto:David.Shammas@us.mcd.com) or (925) 519-6867.** Such contact persons shall have the right to impose reasonable restrictions and requirements in connection with City's entry, tests and inspections in order to avoid interference with the ongoing business operations at the Property and/or to protect the Property. By way of example only, City acknowledges that it is restricted from and that it will not disturb any of Seller's signs, access drives, curbing or other improvements on the Property in connection with its performance of the tests and inspections and that it will not disrupt the operation of the McDonald's restaurant on the Property, nor will it photograph any portion of the Property that would not generally be accessible to the patrons of the McDonald's restaurant on the Property, including, without limitation, the kitchen. While the restaurant is open for business, City will not (1) block more than two parking stalls at any one time; (2) block in any manner more than half of any access driveway at any time, maintaining at least one lane open in each access driveway for vehicular traffic; or (3) perform any work in any drive-thru lane. Additionally, City will use commercially reasonable efforts to limit any of the tests and/or inspections during the following time periods: 7:00 am through 10:00 am; 11:30 am through 1:30 pm; and 5:00 pm through 7:00 pm; and immediately upon completion of any inspections, City will remove all of its equipment and tools.

City agrees that any inspection, test or other study or analysis of the Property shall be performed at City's sole expense and in accordance with applicable law.

#### **4.3 Insurance**

City agrees that City's third-party Agents accessing the Property at City's direction will be covered by not less than \$1,000,000 commercial general liability insurance (with, in the case of such coverage, a contractual liability endorsement, insuring its indemnity obligations under this Agreement) insuring all activity and conduct of City's third-party Agents and such persons while exercising such right of access and naming Seller and Seller's operator as additional insured, issued by a licensed insurance company reasonably acceptable to Seller. Seller



acknowledges that City is self-insured and self-funded to cover all activity and conduct of City and its employees described in Section 4.2.

## 5. CONDITIONS TO CLOSING

### 5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "**Conditions Precedent**"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) City acknowledges that Seller has delivered to City a current extended coverage preliminary report on the Real Property dated August 29, 2017, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "**Preliminary Report**");

(ii) Except for the documents disclosed on Exhibit E, Seller is not aware of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report and that will continue to be in effect at Closing, and City acknowledges that Seller has delivered to City copies of the documents listed on Exhibit E. ; and

(iii) City may at its option arrange for an "as-built" survey of the Land and Improvements prepared by a licensed surveyor (the "**Survey**"). Such survey shall be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment or survey exceptions.

If the Preliminary Report or Survey discloses any matters of title or survey to which City objects (the "Objections"), in its sole and absolute discretion, City may give Seller notice of such objection (the "Objection Notice") on or before 5:00 p.m. (San Francisco, CA, time) on January 5, 2018(the "Objection Date"). In the event City does not give an Objection Notice prior to the Objection Date, then all matters of title and survey existing as of the date hereof shall be deemed to be "Permitted Exceptions". In addition, all matters of title and survey existing as of the date hereof that are not timely raised as Objections in an Objection Notice shall be Permitted Exceptions. In the event City timely delivers an Objection Notice, then Seller shall give written notice ("Seller's Response Notice"), within ten (10) business days after Seller receives the Objection Notice, indicating (x) that Seller elects, at Seller's cost, to either (a) cure or remove such Objections or (b) cause such Objections to be insured over by the Title Company to the reasonable satisfaction of City, and to provide evidence thereof to City, or (y) that Seller is unable or unwilling to cure or remove such Objections. If Seller does not deliver the Seller's Response Notice on or before the expiration of the ten (10) business day period set forth above, Seller shall be deemed to have given City a Seller's Response Notice that Seller is unable or unwilling to cure such Objections. If Seller elects to cure or remove such Objections pursuant to clause (x) above, then such Objection shall not be a Permitted Exception and Seller shall cure or remove the same to the Title Company's satisfaction at or prior to Closing, and if Seller elects to cause such Objection to be insured over by the Title Company pursuant to clause (x)(b) above, then such Objection shall be insured over to City's satisfaction at Closing. If City fails to elect to terminate this agreement on or before the expiration of the Due Diligence Period, then, except for the Objections that Seller has agreed in writing to cure or remove, all Objections shall be deemed to be Permitted Exceptions hereunder. In addition to the foregoing, the following also shall be "Permitted Exceptions" hereunder: (A) all liens of general real estate taxes, personal

property taxes, other City and County of San Francisco ad valorem charges, and all applicable sewer, utility, trash and other similar charges, in each case, to the extent the same are not yet due and payable; (B) all liens, encumbrances and other defects or exceptions to title insurance coverage caused by (x) City; (y) any party acting by or on behalf of City; or (z) Seller or any of its representatives at City's or any party acting by or on behalf of City's written request; and (C) all laws, regulations and ordinances, including, without limitation, all environmental laws, building codes and zoning ordinances affecting the property or the ownership, use or operation thereof adopted by any governmental authority having jurisdiction over the Property or the ownership, use or operation thereof, and all amendments or additions thereto now in effect or which may be in force and effect on the Closing Date.

(b) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material (as defined in Section 8.1(j)). City shall be responsible for performing or arranging any such reviews at City's expense.

(c) If any of City's investigations reveal any contamination of the Property with any Hazardous Material, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period terminate this Agreement.

(d) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(e) City's acknowledges that Seller, except as listed on Exhibit E attached hereto, does not have and will not be delivering to City any of the following regarding the Property: environmental reports, studies, surveys, tests, assessments; soils and/or geotechnical reports (collectively, the "**Documents**").

(f) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date.

(g) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(h) Title Company shall be committed at the Closing to issue to City, or its nominee, (i) the Title Policy as provided in Section 3.2 [Title Insurance]

(i) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions, on or before Thirty (30) days after the expiration or waiver of the Due Diligence Period but in any event no later than January 23, 2018. In the event such

approval is not granted on or before such date, Seller shall have the right to terminate this Agreement.

**(j)** Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

**(k)** Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

**(l)** Seller shall have terminated any leases, licenses, operating or services agreements, and any other agreements related to the Property.

**(m)** City's compliance with all applicable laws, including, without limitation, the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA) ("Environmental Compliance"), prior to approval by any City Commission, and/or by City's Board of Supervisors. The City shall retain the absolute discretion before action on this project by the Board of Supervisors or any other Commission, as applicable, to (i) request modification to the form of the transaction documents as may be necessary to mitigate significant impacts, (ii) balance the benefits against any significant environmental impacts prior to taking final action or (iii) determine not to proceed with this project; provided, however, City may not take any action which would be binding on Seller or the Property if the closing does not occur. In the event City has not satisfied or waived this condition on or before the expiration of the Due Diligence Period, Seller shall have the right to terminate the Purchase and Sale Agreement.

The Conditions Precedent contained in the foregoing Subsections (a) through (m) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election and as its sole remedy, either **(1)** terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City and any other expenses incurred by City in connection with the performance of its due diligence review of the Property (it being understood that Seller shall not be required to reimburse any such costs or expenses in excess of \$75,000 in the aggregate), and in which event neither party shall have any further liability, rights or obligations hereunder, or **(2)** continue this Agreement pending City's action for specific performance of Seller's obligations under Section 6.3 below, provided that any action for specific performance must be initiated no later than ninety (90) days after the date that Closing is otherwise required to occur under this Agreement. Notwithstanding anything set forth in this Agreement to the contrary, City shall have all rights and remedies as may be available in law or in equity if Seller engages in fraud or intentional misconduct in connection with this Agreement.

## **5.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations. Provided however, no such applications or inquiries will have any material impact upon nor will they be binding upon the Property unless and until City closes upon and is owner of the Property.

## **6. ESCROW AND CLOSING**

### **6.1 Opening of Escrow**

Within seven (7) business days after the date of this Agreement, the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

### **6.2 Closing Date**

City acknowledges that Seller has a franchisee operating a McDonald's Restaurant on the Property. The timing of the closing must be structured so to allow such franchisee sufficient time to properly notify any and all impacted employees, to cease restaurant operations and remove such furniture, fixtures, equipment and such personal property as Seller and/or its franchisee desire. Accordingly, the consummation of the purchase and sale contemplated hereby (the "**Closing**") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 2150 John Glenn Dr., Suite 400, Concord, California 94520, on a date selected and determined by Seller which is on or between the dates of March 29, 2018 and April 9, 2018 (the, "**Closing Date**"). Such Closing Date may not be changed without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

### **6.3 Seller's Delivery of Documents**

Not less than Seventy (70) days prior to the Closing Date, Seller shall deliver to City through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit D, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;

(c) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;

(d) such resolutions, authorizations, or other partnership documents or agreements relating to Seller and its partners as the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(e) closing statement in form and content satisfactory to City and Seller; and

(f) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1 hereof.

#### **6.4 City's Delivery of Documents and Funds**

Not less than Seventy (70) days prior to April 9, 2018, City shall deliver to Seller through escrow the following:

(a) an acceptance of the Deed executed by City's Director of Property;

(b) such evidence as may be reasonably required by Title Company with respect to the authority of the person(s) executing the documents required to be executed by or on behalf of City;

(c) a closing statement in form and content satisfactory to City and Seller; and

(d) the Purchase Price, as provided in Article 2 hereof.

#### **6.5 Other Documents**

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

#### **6.6 Title Company as Real Estate Reporting Person**

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

## **7. EXPENSES AND TAXES**

### **7.1 Apportionments**

The following are to be apportioned through escrow as of the Closing Date:

#### **(a) Utility Charges**

Seller shall cause all the utility meters to be read on the day prior to the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. If there is no such meter reading, the charges therefor shall be adjusted as of the Closing Date on the basis of the charges for the most recent prior period for which a bill was issued and shall be further adjusted between the parties when a bill covering the Closing Date is issued. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

#### **(b) Other Apportionments**

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

### **7.2 Closing Costs and Reimbursement of Expenses**

#### **(a) Closing Costs**

There are no transfer taxes due upon closing of escrow. Seller agrees to pay all third party closing costs, including escrow fees, title insurance (but not including endorsements requested by or on behalf of City) and recording fees actually incurred in consideration for a closing of sale without burden of transfer taxes. Notwithstanding the foregoing, Seller shall not be responsible for the payment of any costs, fees or expenses in excess of Seventy Five Thousand Dollars (\$75,000.00). Additionally, Seller will not be responsible for any legal fees or costs incurred by the City in connection with the negotiation of the Purchase and Sale Agreement and the transactions contemplated thereby nor will Seller be responsible for any fees, costs and/or expenses incurred by the City in connection with the due diligence of the Property, including but not limited to any investigations, tests, studies, surveys, reports, appraisals and/or inspections of the Property.

#### **(b) Reimbursement of Expenses to Seller After Default or Termination**

The parties acknowledge and agree that Seller is entitled to compensation for any detriment suffered if City fails to perform any of its covenants in any material respect but agree that it would be extremely difficult to ascertain the extent of the actual detriment Seller would suffer as a result of such breach and/or failure. Consequently, if City fails to consummate the purchase of the Property on the Closing Date, or otherwise defaults in any material respect in performance at its obligations hereunder, then Seller shall be entitled to terminate this Agreement by giving written notice thereof to City prior to or at the Closing, in which event the Deposit shall be paid to Seller as fixed, agreed and liquidated damages and as Seller's sole and exclusive remedy against City under this Agreement, and, after the payment the Deposit to Seller, neither Seller nor City will have any further rights or obligations under this Agreement, except for any obligations that expressly survive termination.

### **7.3 Real Estate Taxes and Special Assessments**

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. At or before the Closing, Seller shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, but only to the extent such assessments are applicable to the period prior to the Closing Date.

### **7.4 Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

### **7.5 Survival**

The provisions of this Section shall survive the Closing.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 Representations and Warranties of Seller**

As used in this Agreement, “**Seller’s knowledge**” shall mean the present, actual knowledge of David Shammas and Byron Chandler, both employees of Seller whom Seller represents and warrants are in the primary position of responsibility with respect to the Property, without investigation or review of files relating to the Property. Seller’s knowledge does not include logical conclusions from known facts. Specifically, Sellers know that a gas station was formerly located at the property, but they have no additional factual knowledge of the existence of any remaining equipment or residue related to said gas station. Such persons shall have no personal liability for any matter set forth in this Agreement. Seller represents and warrants to and covenants with City as follows:

(a) To Seller's knowledge, there are not now, and at the time of the Closing will be, no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, except such violations that would be cured by the discontinuation of all business operations within the improvements or the demolition of all remaining improvements on the land.

(b) To Seller’s knowledge, the Documents furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to Seller, and are and at the time of Closing will be true, correct and complete copies of such documents.

(c) To Seller’s knowledge, no document or instrument furnished or to be furnished by the Seller to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) To Seller's knowledge and except as otherwise disclosed in the Documents or otherwise obtained by City during the Due Diligence Period, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(f) There is no litigation pending or, after due and diligent inquiry, to the best of Seller's knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(g) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(h) Seller is a Corporation duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(i) Seller represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(j) Seller knows of no facts, except to the extent disclosed in the Documents and/or any other document delivered by or on behalf on Seller to City, nor has Seller failed to disclose any fact that would prevent City from using and operating the Property after Closing in the normal manner in which it is intended.

(k) Except with respect to issues disclosed in any environmental report(s) and other information described in Exhibit E or otherwise obtained by City during the Due Diligence Period (collectively, the "Environmental Report"), to Seller's actual knowledge: (i) Seller has not received any written notice from any governmental authority of any violation of any Environmental Law (as hereinafter defined) relating to the Property; (ii) during Seller's term of ownership, the Property has not been used for industrial purposes or for the storage, treatment or disposal of Hazardous Materials (as defined below), other than equipment, cleaning solutions, maintenance materials and other products customarily used or stored incidental to the operation and/or maintenance of the Property in accordance with all applicable laws, (iii) no claim, investigation, administrative order, consent order and agreement, litigation, or settlement with respect to release or threatened release of any Hazardous Material is pending or threatened in



writing with respect to the Property, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property, (iv) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property, (v) there are no known underground storage tanks, septic tanks or wells or any above ground storage at any time used to store Hazardous Material located in, on or under the Property; and (vi) the Property does not consist of any landfill or of any building materials that contain Hazardous Material. As used herein, the following terms shall have the meanings below:

**(i)** "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

**(ii)** "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

**(iii)** "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

**(l)** At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Property or the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing and on behalf of Seller or an agent of Seller. There are no obligations in connection with the Property which will be binding upon City after Closing.

**(m)** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(n) Except as set forth on Exhibit E and which has been delivered by Seller to City, Seller does not possess any Documents regarding the Property.

## 8.2 Indemnity

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any material misrepresentation or material breach of warranty or material breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material.

All of Seller's representations that are deemed to be made as of Closing shall be deemed to be revised pursuant to any information disclosed by or on behalf of Seller in any update prior to or as of the Closing. In the event any such update discloses changes to the representations and warranties set forth in Section 8.1, then it shall not be a default by Seller hereunder. In addition, to the extent City has actual knowledge, or is deemed to have knowledge as set forth below, prior to the expiration of the Due Diligence Period, that any representations or warranties made by Seller are inaccurate, untrue or incorrect in any way, if City nonetheless proceeds to Closing hereunder, such representations and warranties shall be deemed modified to reflect such actual knowledge (or deemed knowledge) of City and such inaccuracy, untruth or incorrectness shall not constitute a failure of the condition to Closing set forth in Section 5.1. For purposes of this Agreement, City shall be deemed to have knowledge of any inaccuracy, untruth or incorrectness in the representations or warranties made by Seller if such inaccuracy, untruth or incorrectness is revealed by (i) any document or information identified on any of the exhibits and/or schedules attached to this Agreement, and/or any due diligence activities conducted by City, or (ii) any of the Documents, or (iii) any other document, plat or other writing disclosing information first learned of by Seller after the date hereof that, within five (5) business days after Seller's learning of the same and at least two (2) business days prior to the expiration of the Due Diligence Period, is made available by Seller to City (by any method permitted hereunder). Notwithstanding anything set forth in the foregoing provisions or elsewhere in this Agreement but subject to this Section 8.2, Seller shall not be relieved from any liability for, and City retains all rights and remedies for and in respect of, any fraud or intentional misrepresentation by Seller.

The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement. Such indemnification provisions shall survive for twelve (12) months beyond the Closing Date. Anything in this Agreement to the contrary notwithstanding, the maximum aggregate liability of Seller for breaches of representations and warranties shall be limited as set forth below.

In the event that Seller breaches any of its representations, warranties and/or covenants (as the same may be updated), and such breach shall continue for ten (10) business days after City gives notice thereof to Seller, City's sole and exclusive remedy shall be the right to pursue a claim against Seller for City's actual monetary damages resulting from such breach, which may in no event exceed the Cap (as defined below); provided that, in no event shall Seller have any liability to City unless City files an action with a court of competent jurisdiction within twelve (12) months following the Closing, TIME BEING OF THE ESSENCE. Notwithstanding the foregoing, City hereby expressly waives, relinquishes and releases any right or remedy available to City at law, in equity or under this Agreement to make a claim against Seller for damages that

City may incur, or to rescind this Agreement and the transactions contemplated hereby, as the result of any of Seller's representations or warranties being untrue, inaccurate or incorrect if City (or any of its affiliates) had actual knowledge that such representation or warranty was untrue, inaccurate or incorrect at the time of the Closing and City nevertheless closes title hereunder. Notwithstanding any provisions in this Agreement to the contrary, in the absence of fraud or intentional misconduct by Seller, if Closing shall occur under this Agreement, Seller's maximum liability under this Agreement and any of the documents delivered by Seller under this Agreement (including, without limitation, all of the documents delivered at Closing and any documents of further assurance required thereafter) shall not exceed in the aggregate Five Hundred Thousand and 00/100ths Dollars (\$500,000), excluding attorney's fees and costs as provided in Section 11.10; provided that, the limitations on City's liability set forth in this Section shall not apply if Seller engages in fraud or intentional misconduct, in which case, City shall have all rights and remedies as may be available in law or in equity.

### **8.3 "AS-IS" Purchase**

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, SELLER IS CONVEYING, AND CITY IS ACQUIRING, THE PROPERTY "AS IS," "WHERE IS," AND "WITH ALL FAULTS AND DEFECTS," LATENT AND PATENT. EXCEPT FOR THE EXPRESS REPRESENTATIONS, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE IMPROVEMENTS OR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH CITY MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING, WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (F) THE ACREAGE OR VALUATION OF THE PROPERTY, (G) ANY TAX CONSEQUENCES OF THE TRANSACTION CONTEMPLATED HEREBY, OR (H) ANY OTHER MATTER RELATED TO OR CONCERNING THE PROPERTY (COLLECTIVELY, THE "DISCLAIMED MATTERS"). CITY SHALL HAVE NO RIGHT TO SEEK RECOURSE AGAINST SELLER ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY CITY WITH REGARD TO ANY OF THE DISCLAIMED MATTERS. BY ITS PROCEEDING TO CLOSING HEREUNDER, CITY ACKNOWLEDGES THAT CITY, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ANY STATEMENT, REPRESENTATION OR OTHER ASSERTION MADE BY SELLER WITH RESPECT TO THE PROPERTY EXCEPT FOR THE EXPRESS REPRESENTATIONS. CITY HEREBY WAIVES, RELEASES AND

DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO THE DISCLAIMED MATTERS.

## **9. RISK OF LOSS AND POSSESSION**

### **9.1 Risk of Loss/Demolition and Removal of Existing Building**

The parties acknowledge that City intends to demolish the Improvements and to remove all existing personal property located on the Property. There is, therefore, no obligation to maintain the Improvements or personal property. Within Sixty (60) days following the Closing, City will demolish, raze and remove the Improvements. In the event City has not completed such work within this time period, Seller shall have the right, at the City's sole cost and expense, to enter onto the Property and demolish, raze and remove any and/or all such portions, elements and parts of the Improvements as Seller desires. City acknowledges and agrees that the Improvements will not be utilized for any use or reason following the Closing and in the event any trademarked or proprietary items remain on the Property at or after the Closing, such items will be fully and completely destroyed or returned to Seller.

### **9.2 Insurance**

Through the Closing Date, Seller shall maintain or cause to be maintained, at no cost and expense to City, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the ownership of the Property as follows: (a) commercial general liability insurance coverage written on an Insurance Services Office (ISO) coverage form CG 00 01 or another occurrence form providing equivalent coverage, with limits of not less than One Million and No/100ths Dollars (\$1,000,000.00) per occurrence, (b) if Seller uses any automobiles, commercial automobile insurance coverage of not less than One Million and No/100ths Dollars (\$1,000,000.00) per occurrence which shall cover liability arising in connection with any automobile at the Property (including owned, hired and non-owned automobiles), (c) if Seller has any employees, workers' compensation insurance as required by statute in the State of California and employer's liability insurance of not less than One Million and No/100ths Dollars (\$1,000,000.00) per accident. City acknowledges that for so long as Seller has a net worth of One Hundred Million (\$100,000,000.00) or greater Seller may self-insure for any or all of the insurance required pursuant to this Section.

### **9.3 Possession**

Possession of the Property shall be delivered to City on the Closing Date.

## **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **10.1 Maintenance of the Property by Seller**

Seller shall have no obligation to City to (a) bring the Property into compliance with any laws or regulations applicable to the Property, (b) make any repairs or improvements to any portion of the Property, or (c) make or perform, during the term of this Agreement, any capital repairs or replacements; provided that, Seller shall be obligated to cure any notices of violation issued for the Property arising prior to Closing that (i) would not be cured by the discontinuation of all business operations by Seller within the Improvements or the demolition of all remaining Improvements on the Land (it being understood that Seller shall have no obligation hereunder to complete any demolition so as to cause the Land to be in compliance with applicable law), or (ii)

would have a materially adverse impact on City's ability to develop, own or operate the Property for its intended use or increase the costs to be incurred by City to develop the Property for its intended use. Notwithstanding the foregoing, prior to Seller's discontinuation of all business operations at the Property, Seller shall maintain the Property in good order, condition and repair, and otherwise operate the Property in the same manner as before the making of this Agreement. Seller shall cooperate with City so that prior to Close of Sale, immediately upon cessation of the current operation at the Property, City may, at its own expense, install a chain link fence with a secured opening, in accordance with applicable laws of the City.

## **10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts**

After the date the Director of Property submits legislation for approval by City's Board of Supervisors of this Agreement [the Effective Date], Seller shall not enter into any Lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, without in each instance obtaining City's prior written consent thereto. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management agreements affecting the Property that City does not agree in writing prior to the Closing to assume.

## **11. GENERAL PROVISIONS**

### **11.1 Notices**

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: [Identify Project/Property]  
Facsimile No.: (415) 552-9216

with copy to:

\_\_\_\_\_  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: [Identify Project/Property]  
Facsimile No.: (415) \_\_\_\_\_

Seller:

Tim Darnell  
Development Director  
2999 Oak Road, Suite 900  
Walnut Creek, CA 94597

**[With a copy to:**

Bruce Neumann  
Senior Counsel  
McDonald's Corporation  
2915 Jorie Blvd.  
Oak Brook, Illinois 60523

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. Neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### **11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

### **11.4 Amendments**

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

## **11.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City and County of San Francisco.

## **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings **including, without limitation, the Proposal to Purchase dated September 15, 2017, between the parties hereto.** The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

## **11.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

## **11.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

## **11.10 Attorneys' Fees**

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of: (a) the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as

employed by the Office of the City Attorney and (b) the Seller's in house legal department shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Seller's in house attorneys' services were rendered who practice in the City of Chicago in law firms with approximately the same number of attorneys as employed in Seller's in house legal department. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **11.11 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

### **11.12 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

### **11.13 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller further acknowledges that the prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees, upon request, to provide to City the names of each person, entity or committee described above.



#### **11.14 Non-Liability of City Officials, Seller Officers, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

Notwithstanding anything appearing to the contrary in this Agreement, no officer or director of Seller nor any employee or agent of Seller nor any shareholder of Seller (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the obligations of, or in respect of any claims against, Seller arising under this Agreement or any of the documents or instruments executed and delivered by Seller in connection herewith. No personal judgment shall be sought or obtained against any of the foregoing in connection with this Agreement or such documents and instruments.

#### **11.15 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **11.16 Effective Date**

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

#### **11.17 Severability**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

#### **11.18 Acceptance of Agreement by Seller**

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on \_\_\_\_\_, 20\_\_\_\_.

#### **11.19 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGES]*

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

\_\_\_\_\_ a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[NAME OF DEPUTY]  
Deputy City Attorney

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Beginning at the point of intersection of the Northerly line of Waller Street with the Easterly line of Stanyan Street, running thence Easterly along said Northerly line of Waller Street 37 feet and 6 inches; thence at a right angle Northerly 275 feet to the Southerly line of Haight Street; thence at a right angle Westerly along said Southerly line of Haight Street 137 feet and 6 inches; to the Easterly line of Stanyan Street; thence at a right angle Southerly along said Easterly line of Stanyan Street 275 feet to the Northerly line of Waller Street and the point of beginning.

Being a portion of Western Addition Block Number 698.

APN: Lot 024, Block 1249

**EXHIBIT B**

**PERSONAL PROPERTY DESCRIPTION**

**[TO COME FROM SELLER]**

**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (CA Govt. Code § 27383)  
and Documentary Transfer Tax (CA Rev. & Tax Code  
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
\_\_\_\_\_, a \_\_\_\_\_, hereby grants to  
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property  
located in the City and County of San Francisco, State of California, described on Exhibit A  
attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or  
appurtenant to the Property [, **including, without limitation, any and all minerals, oil, gas and  
other hydrocarbon substances on and under the Property, as well as any and all  
development rights, air rights, water, water rights, riparian rights and water stock relating  
to the Property, and any and all easements, rights-of-way or other appurtenances used in  
connection with the beneficial use and enjoyment of the Land and all of Grantor's right,  
title and interest in and to any and all roads and alleys adjoining or servicing the Property**].

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_, By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

\_\_\_\_\_, By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Updike  
Director of Property

**EXHIBIT D**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is \_\_\_\_\_; and

3. Transferor's office address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 20\_\_\_\_.

On behalf of:

\_\_\_\_\_,  
[NAME]

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

## **EXHIBIT E**

### **Due Diligence Documents Delivered to City by Seller**

1. Chicago Title Insurance Company title commitment dated August 29, 2017.
2. Grant Deed to Franchise Realty Interstate Corporation dated April 26, 1974.
3. Boundary and Topographic Survey prepared by C&H Engineering Company, Inc. and certified April 21, 1974.
4. Four (4) photographs of the Property taken in 1974 prior to Seller's acquisition of the Property..
5. As Built Survey prepared by James F Carroll & Associates dated January 5, 1976.
6. ASTM Practice E 1527-13 Owner/Operator/Site Manager Questionnaire completed by David Shammass, dated September 20, 2017.
7. Enterprise Holding termination of lease agreement dated June 28, 2017.
8. Zipcar License Agreement dated August 1, 2008 by and between McDonald's USA, LLC and Zipcar, Inc., along with the following amendments:
  - a. Amended and Restated First Amendment to Zipcar License Agreement dated October 8, 2014,
  - b. Second Amendment to Zipcar License Agreement dated April 13, 2015,
  - c. Third Amendment to Zipcar License Agreement dated October 21, 2015,
  - d. Fourth Amendment Zipcar License Agreement dated to January 28, 2016 and
  - e. Fifth Amendment to Zipcar License Agreement dated February 9, 2017.