

***THIS DOCUMENT IS NOT TO BE RECORDED FOR ANY PURPOSE***

Madison, Wisconsin  
3709 Kinsman Blvd  
L/C: 048-0429 Excess L/C: 048-9429  
RE File: 15981

**EXCESS SALES CONTRACT**

**THIS EXCESS SALES CONTRACT** ("Contract") dated \_\_\_\_\_, 2023 is between McDonald's USA, LLC, a Delaware limited liability company, ("Seller") and City of Madison, a Wisconsin municipal corporation ("Purchaser").

**1. CONVEYANCE:** Seller agrees to sell and convey, or cause to be sold and conveyed, to Purchaser by special warranty deed, and Purchaser agrees to purchase from Seller, the real estate located at the approximate address of 3709 Kinsman Blvd, City of Madison, County of Dane, State of Wisconsin, more particularly described on Exhibit A attached with all improvements and fixtures, located on or under the land (collectively the "Premises").

**2. PRICE:** The price (the "Price") for the Premises will be \$650,000.00. The Price will be paid at Closing (hereafter defined).

**3. CONDITIONS:** (a) Conveyance will be subject to matters generally excepted by title insurance companies in their title policies issued in the state in which the Premises are located; special taxes or special assessments, if any, for improvements not yet completed; installments not due at the date of this Contract of any special tax or special assessment for improvements previously completed, if any; general real estate taxes, if any, for the year in which Closing occurs; covenants, conditions, agreements, reservations and restrictions of record; zoning and building laws or ordinances; private and public utility and drainage easements and rights; roads and highways, access ways and driveways, whether or not of record; all matters which a current, accurate survey of the Premises would disclose; the terms, reservations and conditions of this sale.

(b) The Premises and all improvements and fixtures included in the Premises will be conveyed by the deed, which will include the following "AS IS" statement: **"THE PREMISES ARE SOLD TO AND ACCEPTED BY PURCHASER "AS IS" AND "WHERE IS", WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.**

(c) Purchaser agrees to accept in Seller's deed to Purchaser the following restriction (with defined terms modified to match the defined terms in the deed): "The Premises will not be leased, used or occupied (i) as a restaurant or for food service purposes (which includes any type of food or drink), drive-in, drive-thru or walk-up eating/drinking facility (including without limitation a kiosk, stand, booth, or area located inside another business facility); (ii) for the sale of pornographic materials or magazines, sexually-oriented material, marijuana or other legal drugs or controlled substances and/or any products containing marijuana and/or any of its components, drug paraphernalia or any items that are illegal, for a period of 20 years from the date of this deed. This restriction will be a covenant running with the land and be binding upon Purchaser, its heirs, administrators, successors and assigns."

(d) Seller has disclosed to Purchaser and Purchaser acknowledges that Purchaser is aware that the Premises may be impacted by a prospective eminent domain action.

**4. EARNEST MONEY:** Within five (5) days after full execution of this Contract, Purchaser shall tender to Escrowee the sum of \$25,000.00 ("Earnest Money") for consideration of this Contract, which amount will be applied to the Price at Closing.

**5. CLOSING:** The Closing (the "Closing") of the sale of the Premises will occur on or before 15 days after the expiration of the latest Contingency Period provided for in this Contract, unless extended pursuant to other provisions of this Contract. The sale will be closed by Stewart Title Company, located at 10 S Riverside Plaza, Suite 1450, Chicago, Illinois 60606, Attn: Angeline Paolini, Phone: (312) 849-5582, Email: APaolini@stewart.com, ("Escrowee"). The exact closing date will be mutually agreed upon in writing between Purchaser and Seller.

(a) At Closing the following will occur:

(1) Purchaser will deliver or cause to be delivered to Seller:

(i) Wired funds to Escrowee's bank account in the amount of the Price, due credit being given for the Earnest Money; and

(ii) Any documents Purchaser is required to execute by the terms of this Contract or to Seller and/or Escrowee to consummate Closing; and

(iii) Evidence reasonably satisfactory to Seller and Escrowee that the person executing the closing documents on behalf of Purchaser has the full right, power, and authority to do so.

(2) Seller will deliver to Purchaser the following:

(i) A special warranty deed subject to those items set forth in Article 3 (a) and all other items set forth in this Contract;

(ii) Evidence reasonably satisfactory to Escrowee that the person or persons executing the closing documents on behalf of Seller have the full right, power and authority to do so;

(iii) Affidavit of title; and

(iv) Physical possession of the Premises.

(b) The sale and purchase of the Premises will be closed by Escrowee in accordance with Escrow Instructions conforming to the terms of this Contract in the form set forth as Exhibit B attached, which Purchaser and Seller agree will be executed simultaneously with the execution of the Contract. Closing and settlement will take place at the office of Escrowee. The cost of recording the documents called for in this Contract will be paid for by Purchaser. All current real estate taxes and assessments are to be pro-rated to the date of Closing and if the amount of such taxes is not ascertainable, the pro-rating will be on the basis of the amount of the most recent ascertainable taxes. If the real estate tax bill includes additional property owned by Seller, at Closing Purchaser will give Seller a credit for taxes from the date of Closing through the remainder of the tax year. Seller covenants to pay the taxes prior to the date they are due. All state and county transfer and conveyance tax and/or documentary stamps will be paid by Seller. All local municipal transfer taxes will be paid by Purchaser. The costs of the escrow will be divided equally between Seller and Purchaser.

## 6. CONTINGENCY PERIOD/CONDITONS PRECEDENT:

**A. Contingency Period:** This Contract is subject to the following contingencies and/or conditions precedent. Purchaser covenants to act in good faith and use due diligence to satisfy all contingencies and/or conditions precedent for which they are responsible, and Purchaser will have the right to terminate this Contract only if Purchaser has so performed. If Purchaser fails to notify Seller of its election to terminate in writing prior to the expiration of the applicable contingency period (each a "Contingency Period") for each contingency and/or condition precedent in this Article, Purchaser shall be deemed to have waived the applicable contingency and/or condition precedent and this Contract will continue in full force and effect. In the event Purchaser terminates this Contract as provided in this Article 6A Seller agrees to return, or to cause the return of, the Earnest Money to Purchaser.

**(1) Evidence of Title:** Purchaser will order a title commitment from the Escrowee, within five (5) days after the date of last execution of this Contract, and agrees to pay all costs in connection with the examination, opinion and insurance of title. Purchaser agrees to provide a copy of such commitment and copies of all Schedule B exceptions referenced in such commitment within three (3) days after Purchaser obtains such commitment. If Purchaser's examination of title reveals exceptions or conditions which render title unmarketable or which do not comply with the permitted exceptions set forth in this Contract, ("Title Objections"), Purchaser must give Seller written notice of such Title Objections within 60 days from the date of last execution of this Contract. If Purchaser fails to provide written notice to Seller prior to the expiration of such 60-day period, Purchaser will be deemed to have waived this contingency and Seller will have no duty to address Purchaser's Title Objections. Upon receipt of written notice prior to the expiration of such 60-day period, Seller will then have 30 days to remove such Title Objections or have them waived by the title insurer, and the Closing date will be extended accordingly. If Seller is unable or unwilling to have such Title Objections cured or waived within such 30-day period, then Purchaser may, as its sole remedy, terminate this Contract by providing written notice to Seller prior to the expiration of such 30-day period. In no event will Seller have any obligation to commence litigation or to expend money to cure or remove any title objections.

**(2) Survey:** Purchaser may order, at Purchaser's sole cost and expense and within 10 days from the date of final execution of this Contract, a survey, to be performed by a licensed surveyor. Purchaser agrees to provide Seller with a copy of the survey within 60 days from the date of last execution of this Contract. Purchaser covenants that Purchaser will hire a surveyor who at all times maintains a minimum of \$1,000,000.00 of public liability insurance. If the survey discloses any matter not acceptable to Purchaser, then Purchaser may, at Purchaser's option and as Purchaser's sole remedy, terminate this Contract and declare this Contract null and void and of no further force and effect by providing written notice to Seller prior to the expiration of such 60-day period.

**(3) Environmental Site Assessments:** Purchaser may obtain at Purchaser's expense, a written Phase I Environmental Site Assessment ("ESA") of the Premises within 60 days from the date of last execution of this Contract. A licensed environmental professional, qualified to conduct an ESA ("Environmental Professional") chosen by and acceptable to Purchaser will conduct the ESA. Purchaser shall provide Seller with a copy of the Phase 1 report within 60 days from the date of final execution of this Contract.

If the Phase I ESA identifies any recognized environmental conditions or indicates that any hazardous substances are located on the Premises, Purchaser may, at Purchaser's option terminate this Contract and declare this Contract null and void and of no further effect by providing written notice to Seller prior to the expiration of such 60-day period.

All inspections/tests will be performed by an Environmental Professional, who maintains at all times, commercial general liability insurance coverage, which will have coverage and terms comparable to an ISO CG-0001 form including: (i) personal injury, products and completed operations liability, with bodily injury and property damage limits of at least \$1,000,000 per occurrence, and (ii) advertising and personal injury limits of at least \$1,000,000 per person or organization. Seller must be named as an additional insured under such insurance.

Purchaser will provide Seller with written notice, within 10 days of the last execution of this Contract, and a copy of the approved Environmental Professional's certificate of liability insurance prior to performing any such environmental inspections or tests. Any tests will be conducted in a manner so as not to substantially or unnecessarily interfere with any party in possession of the Premises and/or unnecessarily damage the Premises. Purchaser covenants to immediately remove all waste from the Premises, at its expense, and repair and restore the Premises and improvements on the Premises to the same condition that existed prior to the commencement of Purchaser's inspections/tests.

**B. Access for Due Diligence:** Seller grants to Purchaser, its agents and contractors, the right to enter upon the Premises to make the soil tests, surveys and environmental assessments, etc. Any agent or contractor of Purchaser entering the property pursuant to this Agreement will be required to maintain commercial general liability insurance coverage, which will have coverage and terms comparable to an ISO CG-0001 form including: (i) personal injury, products and completed operations liability, with bodily injury and property damage limits of at least \$1,000,000 per occurrence, and (ii) advertising and personal injury limits of at least \$1,000,000 per person or organization. Seller shall be named as an additional insured on such policy and Purchaser will provide or cause such party to provide Seller with a certificate of insurance indicating that Seller is an additional insured before and as a condition to the exercise of such right of entry.

## 7. INTENTIONALLY OMITTED

**8. NOTICES:** All notices and demands required by this Contract will be in writing and will be sent by reputable overnight courier with written confirmation of delivery, or by United States Certified mail, return receipt requested to Seller at 110 N. Carpenter Street, Chicago, Illinois 60607-2101, Attention: Director, U. S. Legal Department (L/C:048-0429), or to Purchaser at 215 Martin Luther King Jr. Blvd., 3rd Floor, Madison, WI 53701. Notices will be deemed to have been given when deposited with such overnight courier or when placed in the mail, as applicable.

**9. REMEDIES:** If this transaction is not closed due to the fault or nonperformance of either party, the other party may, at its election, declare this Contract terminated, or proceed to have this Contract specifically enforced and/or avail itself of any other remedy at law or in equity. If this transaction is not closed due to the Purchaser's default or nonperformance, then Seller may, in addition to the above described remedies retain the Earnest Money as agreed liquidated damages and just compensation and not as a penalty or forfeiture and declare this Contract terminated.

**10. REAL ESTATE COMMISSION:** Purchaser warrants that Purchaser has not dealt with a broker or finder in connection with this transaction. Seller warrants that Seller has not dealt with a broker or finder.

**11. LIKE-KIND EXCHANGE:** Purchaser agrees to execute such documents as may be reasonably necessary to enable Seller to complete a like-kind exchange involving the Premises pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations related to such like-kind exchanges. Seller expressly reserves the right to assign its rights under this Contract to a qualified intermediary to effectuate such like-kind exchange. All fees for the facilitation of the like-kind exchange will be paid by Seller. Purchaser agrees to cooperate with Seller and to execute such documents as the qualified intermediary may require in order to effectuate the like-kind exchange, provided, however, that Purchaser's facilitation such like-kind exchange will be at no cost, expense, or liability to Purchaser.

Seller agrees to execute such documents as may be reasonably necessary to enable Purchaser to complete a like-kind exchange involving the Premises pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations related to such like-kind exchanges. Purchaser expressly reserves the right to assign its rights under this Contract to a qualified intermediary to effectuate such like-kind exchange. All fees for the facilitation of the like-kind exchange will be paid by Purchaser. Seller agrees to cooperate with Purchaser and to execute such documents as the qualified intermediary may require in order to effectuate the like-kind exchange, provided, however, that Seller's facilitation such like-kind exchange will be at no cost, expense, or liability to Seller.

**12. ACCEPTANCE OF OFFER:** This offer when accepted will constitute the entire agreement between the parties for the sale and purchase of the Premises. This Contract may be modified only in writing. The parties agree there are no oral agreements or representations between Purchaser and Seller affecting this Contract and this Contract supersedes and cancels any and all previous negotiations, agreements, arrangements, representations and understandings, if any, between the parties. No employee or agent of Seller or Listing Agent, if any, has authority to make a contract, alter, change or modify any provisions, or make any warranty, representation, agreement or undertaking. The submission of this Contract for examination and negotiation does not constitute an offer to sell, a reservation of, or any option for the Premises. This Contract will become effective and binding only upon execution and delivery by Purchaser and an authorized employee of Seller.

**13. ASSIGNMENT:** Purchaser shall not, except as part of a like-kind exchange permitted by Article 11 above, have the right to assign this Contract to any other party. The Purchaser may, however, assign its interest in this Contract to a single purpose entity of Purchaser without Seller's consent but with written notice thereof to Seller given not later than five (5) business days prior to the Closing. The members of the single purpose entity shall be identical to the members of the Buyer entity. No other assignment of this Contract by Purchaser is permitted.

**14. TIME IS OF THE ESSENCE:** Time is of the essence of this Contract, but any defaulting party will have 10 days after receipt of notice of a default to cure before the other party may terminate and/or exercise other remedies available at law or in equity.

**15. COVENANTS AND WARRANTIES:** All of the covenants, warranties and agreements contained in this Contract will survive the termination of this Contract or the Closing, as applicable, and will extend to and be binding on the heirs, executors, administrators, successors and assigns of the respective parties. **PURCHASER HAS INSPECTED THE PREMISES AND AGREES TO TAKE TITLE TO THE PREMISES AS IS WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, BY SELLER OR ANY AGENT OF SELLER EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION OR FITNESS FOR USE WHICH IS NOT EXPRESSLY STATED IN THIS CONTRACT.**

**16. ANTI-TERRORISM REPRESENTATION AND WARRANTY:** Seller and Purchaser each represent and warrant that neither they nor the officers and directors controlling Seller and Purchaser respectively are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. Each party agrees that in the event of a breach of this provision or any applicable law relating to the subject of this provision, the non-breaching party may take such action as may be necessary in order to comply with this provision and/or the applicable law, including, but not limited to, terminating this Contract.

**17. JOINT PREPARATION OF CONTRACT:** This Contract will not be construed against the party preparing it, but will be construed as if it were prepared jointly by both Seller and Purchaser, and any uncertainty or ambiguity will not be interpreted against either party.

**18. EXECUTION:** Seller and Purchaser execute this Contract knowingly and voluntarily. Each party to this Contract has read and understands the effect of the terms and conditions of this Contract, and executes this Contract of its own free will and accord for the purposes and conditions contained in this Contract. Further, Seller and Purchaser agree that they enter into this Contract upon the advice of, or knowingly and voluntarily deciding not to seek the advice of counsel. Accordingly, in any construction to be made of this Contract, it will not be construed for or against any party, but rather will be given a fair and reasonable interpretation, based on the plain language of this Contract and the expressed intent of the parties.

**19. ELECTRONIC SIGNATURES:** This Contract may be executed through the use of electronic signature, which each party acknowledges is a lawful means of obtaining signatures in the United States. Each party agrees that its electronic signature on this Contract is the legal equivalent of its manual signature on this Contract. Each party further agrees that its use of a keypad, mouse or other device to select an item, button, icon or similar act/action to electronically sign this Contract constitutes its signature ("E-Signature") of this Contract as if actually signed by such party in writing. Each party also agrees that no certification authority or other third-party verification is necessary to validate its E-Signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its E-Signature on this Contract.

**20. EXHIBITS:** This Contract includes the following Exhibits, which will take precedence over conflicting provisions (if any) of this Contract, and are made an integral part of this Contract and fully incorporated by reference:

- Exhibit A - Legal Description
- Exhibit B - Escrow Agreement

SELLER AND PURCHASER, by their execution below, indicate their consent to the terms of this Contract.

**PURCHASER:**

City of Madison, a Wisconsin municipal corporation

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

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

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

**SELLER:**

McDonald's USA, LLC, a Delaware limited liability company

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

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

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

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PREMISES

Part of Lot Eight (8), Kinsman Business Park, recorded in Volume 56-74B of Plats, page 218, Dane County Registry, located in the Southwest 1/4 of Section 28, Township 8 North, Range 10 East, in the City of Madison, Dane County, Wisconsin, to wit: Commencing at the Southwest corner of Lot 6 of said Kinsman Business Park; thence North 02° 27' 28" West, 481.62 feet to the point of beginning; thence continuing North 02° 27' 28" West, 144.69 feet to a point of curve; thence Northeasterly on a curve to the right with a radius of 25.00 feet and a chord which bears North 38° 02' 20.5" East, 32.47 feet; thence North 78° 32' 09" East, 112.95 feet; thence South 88° 34' 24" East, 89.54 feet; thence South 00° 29' 50" East, 188.47 feet; thence South 89° 30' 10" West, 215.65 feet to the point of beginning.

## ESCROW INSTRUCTIONS

DATE:

RE: Madison, Wisconsin  
L/C:048-0429  
Excess L/C 048-9429  
RE File#: 15981

PURCHASER:

City of Madison  
215 Martin Luther King Jr. Blvd.  
3rd Floor, Madison, WI 53701

SELLER:

McDonald's USA, LLC  
110 N. Carpenter Street  
Chicago, IL 60607-2100  
Attn: Director, US Legal (048-0429)

ESCROW AGENT:

Stewart Title Company  
10 S. Riverside Plaza, Suite 1450  
Chicago, Illinois 60606  
Attn: Angeline Paolini

You are requested to act as escrow agent in the above captioned real estate purchase and sale transaction. The following instructions, together with the attached copy of the Real Estate Sale Contract dated \_\_\_\_\_ ("Contract") are submitted to you for the purpose of governing the closing and settlement of the subject transaction.

1. Purchaser has or will deposit \$25,000.00, representing the payment of the earnest money deposit called for in the Contract with McDonald's USA, LLC, a Delaware limited liability company. The balance of the purchase price, \$625,000.00 will be deposited with you by Purchaser's certified check, or wire transfer, when all contingencies in the Contract, if any, have been met and the Deed has been delivered to you by the Seller.
2. Seller will deposit the following:
  - (a) A Special Warranty Deed conveying title to the Purchaser, subject to those items and containing the restriction in Paragraph 3 of the Contract.
  - (b) Any other document you may require for tax purposes.
3. You are authorized to record the deed and then disburse the funds when you have been notified in writing by Seller that all contingencies contained in the Contract have been met.
4. In disbursing the funds, you are to make the following adjustments and payments:
  - (a) Prorate the current real estate taxes as of the date of closing based upon the last available tax bill, or as otherwise agreed to in writing by the parties. Seller shall give Purchaser a credit for Seller's share of unpaid taxes through the date of closing.
  - (b) Charge Purchaser for all costs relating to issuance of the title policy, including title examination fees. Unless separately ordered by Purchaser, this is not an order for title insurance.

(c) Charge Seller and Purchaser equally for the cost of escrow.

(d) Charge the Purchaser for the cost of recording the Deed and other documents.

(e) Charge Seller for all state and county documentary stamps and/or conveyance or transfer taxes or other similar fees. Charge Purchaser for all local or city transfer stamps or other similar fees.

5. After you have recorded the documents and disbursed the funds, email a PDF of the recorded Deed, together with the final closing statement to Tammy Salinas via email at [tamara.salinas@us.mcd.com](mailto:tamara.salinas@us.mcd.com) with a copy to Nancy Dittmeier at [Nancy.dittmeier@us.mcd.com](mailto:Nancy.dittmeier@us.mcd.com).
6. You are advised that you are not to be concerned in any way with interpreting the attached contract or verifying that the conditions contained in the contract have been met. If you have not been notified by the Seller that the conditions of this escrow have been met on or before \_\_\_\_\_, Purchaser or Seller shall have the option of terminating this escrow, and the money and documents deposited in escrow shall be returned to the depositing party. If you are uncertain as to your duties or rights or if you receive any instructions from either party as to monies or to instruments deposited which, in your opinion, are in conflict with any of the provisions of this agreement, you may refrain from taking any action other than to keep safely the monies and instruments deposited until you are directed otherwise in writing by both parties or by a final court order.
7. This agreement may be signed in counterparts and shall have the same force and effect as if all parties executed one document.
8. Please acknowledge receipt of these instructions and advise Seller and Purchaser of the name and address of your agent, employee or approved attorney who will be acting as the escrow closing agent.

**PURCHASER:**

City of Madison, a Wisconsin municipal corporation

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

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

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

**SELLER:**

McDonald's USA, LLC, a Delaware limited liability company

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

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

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

**ESCROW AGENT**  
Stewart Title Company

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

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

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