

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA

In re:)	Case No. 16-02263-als11
)	
BCDG, LP,)	Chapter 11
)	
Debtor and Debtor in Possession)	Hon. Anita L. Shodeen
)	
6500 University Ave., Ste. 204)	DEBTOR'S MOTION FOR ORDER
Windsor Heights, IA 50324)	AUTHORIZING SALE OF ASSETS
)	FREE AND CLEAR OF LIENS,
EIN: 41-1976987)	CLAIMS AND ENCUMBRANCES
)	
_____)	No Hearing Set

COMES NOW BCDG LP (the "Debtor"), Debtor and Debtor in Possession herein, by and through its Proposed General Reorganization Counsel, Jeffrey D. Goetz, Esq., of the law firm Bradshaw, Fowler, Proctor & Fairgrave, P.C., and hereby respectfully files the instant Motion for Order Authorizing Sale of Assets Free and Clear of Liens, Claims and Encumbrances and would show this Honorable Court as follows:

1. On November 18, 2016 (the "Petition Date") the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code, which case is now pending before this Court, and in which the Debtor is duly operating as a Debtor in Possession, pursuant to Bankruptcy Code Sections 1107 and 1108. There is no motion or application pending for the appointment of a Trustee or Examiner.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for relief sought herein include Bankruptcy Code sections 105(a), 363, 365 and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. The Debtor is a franchisee of six McDonald's restaurants, five located in Des Moines, Iowa, and one in Indianola, Iowa.

4. As of the Petition Date, the Debtor has received inquiries and an offer to purchase substantially all of the Debtor's assets used in connection with the operation of each of the McDonald's restaurants located at the addresses listed on Exhibit A to the APA (the "Assets"). Good-faith and arms-length negotiations have resulted in the Debtor executing an Asset Purchase Agreement (the "APA") with McDonald's Restaurants of Iowa, Inc. ("McDonald's"). Attached hereto as Exhibit "A" and incorporated by reference herein is a true and exact copy of the APA.

5. Paragraph 1.3 of the APA sets forth the Purchase Price of the Assets. The Purchase Price is \$3,316,047 plus an amount equal to the amount of cash on hand plus the value of the inventories, operating supplies and paper goods, gift certificates, promotional material, and new and unused uniforms, as more fully described in the APA.

6. As set forth in the First and Second Stipulated Orders Authorizing Interim Use Of Cash Collateral and Approving Adequate Protection, Citizens Bank, N.A., f/k/a RBS Citizens, N.A. ("Citizens") is owed by the Debtor the aggregate amount of the \$6,216,766.58 as of November 14, 2016, and holds a first priority, perfected security interest in all assets of the Debtor.

7. The Iowa Department of Revenue ("IDR") alleges that IDR holds a secured claim encumbering the Debtor's assets in the amount of \$443,703.86. The Debtor asserts that IDR's secured claim is junior to Citizens' first priority perfected security interest in the Debtor's assets.

8. The Purchase Price plus all other amounts payable to the Debtor under the APA shall be remitted to Citizens at closing, less the following two deductions:

- a. \$443,703.86¹ to IDR in full satisfaction of IDR's claims against the Debtor for all sales taxes due and owing by the Debtor to IDR; and
- b. \$250,000.00 to the Debtor's bankruptcy estate to be distributed in accordance with the Bankruptcy Code.

Relief Requested

9. The Debtor is seeking Court approval of a sale of the Assets, to McDonald's for the Purchase Price, pursuant to the APA, free and clear of all liens, claims, encumbrances and interests, including any successor liability related to sales taxes pursuant to Iowa Code §423 et seq. Debtor believes that a sale to McDonald's pursuant to the APA is in the best interest of Debtor's estate and its creditors.

10. Section 363 of the Bankruptcy Code governs Debtor's ability to sell property of the estate outside of the ordinary course of business. Although this section does not set forth a standard for determining when it is appropriate to authorize such a sale, courts have uniformly held that such a sale should be approved when it is justified by a sound business purpose. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *accord Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). The burden of establishing a rational business justification lies with the debtor. *Lionel*, 722 F.2d at 1070-71. However, once the debtor makes such a showing, a presumption will attach that the decision was made on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y.

¹ This figure is subject to confirmation.

1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

11. Here, the APA is supported by ample business justification and is reasonable and appropriate under the circumstances of this case.

The Proposed Transaction Satisfies All Applicable Legal Standards

12. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See also* Bankruptcy Rule 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction”). This section generally permits a debtor to sell property of the estate outside of the ordinary course of its business where the proposed sale is a sound exercise of the debtor’s business judgment and when such sale is proposed in good faith. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (“[A] bankruptcy court can authorize a sale of all a Chapter 11 debtor’s assets under § 363(b)(1) when a sound business purpose dictates such action”); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

13. In the instant case, the proposed Sale constitutes a sound exercise of Debtor’s business judgment and has been proposed in good faith. A sale of the Assets will aid in minimizing the expenses of the Debtor’s estate, resulting in greater distribution to creditors.

14. The Debtor believes this Motion and the transaction contemplated thereby is in the best interests of the bankruptcy estate and in the best interests of all other interested parties in this Chapter 11 case.

Sale Free and Clear of Liens

15. Section 363(f) of the Bankruptcy Code authorizes a debtor to use, sell or lease property of the estate outside of the ordinary course of business, free and clear of any interest in

such property. This Motion proposes the sale of the Assets free and clear of all interests, liens, claims and encumbrances, including existing or asserted rights of first refusal, contractual restrictions on transferability or other similar protective rights and including any successor liability related to sales taxes pursuant to Iowa Code §423 et seq. Any such interests, liens, claims and encumbrances would attach to the proceeds from the sale of the Assets (the “Sale Proceeds”) ultimately attributable to the property against or in which such interest, lien, claim or encumbrance is asserted.

16. Under Section 363(f)(2) of the Bankruptcy Code, a sale free and clear of all interests, liens, claims and encumbrances is permissible if all parties asserting liens on or other interests in the property consent. The Debtor is providing proper notice of this Motion to creditors, including, but not limited to Citizens, Bankers Trust Company, IDR, Forward Financing LLC, Global Merchant Cash, Inc., and TASS Enterprises Inc./Steven L. Nelson. Provided that no creditors or interested parties object to this Motion and the proposed sale transaction, Section 363(f)(2) will be satisfied. *See, e.g., Veltman v. Whetzal*, 93 F.3d 517, 521 n.5 (8th Cir. 1996) (in a Chapter 7 case, stating that “some courts have found implied consent, however, when a party with an interest in the bankruptcy estate fails to object after receiving notice of the sale under subsection 363(f)(2)”) (citing *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr.D.N.J.1994); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988)).

17. Under Section 363(f)(4) of the Bankruptcy Code, a sale free and clear of all interests, liens, claims and encumbrances is permissible if the interest of any entity is in *bona fide* dispute. Under Section 363(f)(5) of the Bankruptcy Code, a sale free and clear of all interests, liens, claims and encumbrances is permissible if any party asserting an interest in the assets could be compelled to accept money satisfaction of such interest in a legal or equitable

proceeding.

18. As provided for in Section 363 of the Code, the liens of Citizens and IDR will be released as to the Assets being sold by the Debtor. In exchange for payments at closing of the amounts provided in Paragraph 8 above, (i) Citizens agrees that the remaining balance of its claim against the Debtor will constitute an unsecured claim except with respect to any of the Debtor's assets that are not included with the Assets to be acquired by McDonald's as to which assets Citizens will retain its security interest, and (ii) the IDR agrees that any remaining amount owed to it shall constitute an unsecured claim.

**Approval of Procedures for Assumption and
Assignment of Executory Contracts and Unexpired Leases**

19. To facilitate and effect a sale of the Assets, the Debtor will be required to assume and assign to McDonald's those certain franchise agreements (the "Franchise Agreements") and real property leases (the "Leases"). Debtor is default under both the Franchise Agreements and Leases. The total amount needed to cure the defaults is \$590,280.92 (the "Cure Amount"). In the event McDonald's is the ultimate purchaser, McDonald's will waive any such Cure Amount. However, to the extent the purchaser is someone other than McDonald's, then the Cure Amounts will need to be paid prior to an assumption and assignment of the Franchise Agreements and Leases. Under the terms of the Franchise Agreements, McDonald's must approve any proposed assignee of such franchise agreement.

20. Except as may otherwise be agreed to by the parties to a Franchise Agreement or Lease, on the Effective Date of the sale transaction, the purchaser shall cure those defaults, if any, under the Assumed and Assigned Franchise Agreements that need to be cured in accordance with section 365(b) of the Bankruptcy Code by (a) payment of the undisputed Cure Amounts, and/or (b) reserving amounts with respect to the disputed Cure Amounts. In the event of a

dispute regarding the Cure Amount, any payments required, following entry of a Final Order resolving such dispute, shall be made as soon as practicable thereafter. If no objection is timely received, the Cure Amounts set forth in this motion shall be controlling notwithstanding anything to the contrary in any Assumed Franchise Agreement or Lease or other documents.

21. Objections, if any, to the proposed assumption and assignment of the Franchise Agreements or Leases, including, but not limited to, objections relating to any Cure Amount and/or adequate assurances of future performance, must be filed on or before 4:00 p.m. (prevailing Central Time) at least five (5) business days prior to the Sale Hearing (the “Objection Deadline”).

A Proposed Sale Does Not Establish Any Sub Rosa Plan of Reorganization

22. A sale of assets may not be approved where such sale, rather than merely changing the composition of the debtor’s assets, either restructures the right of creditors or predetermines the rights of creditors under any future plan of reorganization. *See In re Braniff Airways, Inc.*, 700 F.2d 935, 939-40 (5th Cir. 1983); *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1227-28 (5th Cir. 1986).

23. In *Braniff*, the Fifth Circuit held that an agreement between the debtor and its creditors established a *sub rosa* plan of reorganization because, among other things, the agreement: (i) required that any future plan of reorganization allocate certain assets only to employees, shareholders or unsecured creditors of the debtor; (ii) required the secured creditors to vote a portion of their deficiency claim in favor of any future plan of reorganization approved by a majority of the unsecured creditors’ committee; and (iii) provided for the release of claims by all parties against the debtors, its secured creditors and its officers and directors. *Braniff*, 700 F.2d at 939-40.

24. Unlike *Braniff*, the sale transaction contemplated by this Motion will not restructure the rights of the Debtor's creditors or predetermine the rights of such creditors under any future plan of reorganization.

25. Furthermore, the Debtor has articulated sound business justifications for selling the Assets now, rather than as part of a plan. A Section 363 motion should be approved if it is based on good business reasoning. *In re Lionel Corp.*, 722 F.2d at 1070; *In re George Walsh Chevrolet, Inc.*, 118 B.R. 99, 101–102 (Bankr. E.D. Mo. 1990) (Court considered some of the following factors: whether all parties in interest received reasonable notice; whether the purchase price is fair and reasonable; whether there is a sound business reason for the sale; and whether the proposed sale unfairly benefits insiders or proprietary purchasers, or unfairly favors a creditor or class). All such factors have been met here.

26. The Purchase Price is a fair offer for the Assets at this time. Given the current economic climate, the Debtor believes it would be imprudent to ignore such an attractive offer now when the value of the Assets could be adversely affected or deteriorate in the coming months. In addition, the stores continue to deteriorate with each passing day and further delays in selling the stores will only serve to decrease value.

Sale Price and Terms were Negotiated at Arm's Length and in Good Faith

27. The Purchase Price and Sale Terms were negotiated and have been and are undertaken by the Debtor and McDonald's at arm's length, without collusion and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, and the Debtor accordingly requests that the Court determine that the entire sale process was conducted in good faith within the meaning of Section 363(m) of the Bankruptcy Code and that Seller and Purchaser are entitled to the protections of Section 363(m) of the Bankruptcy Code. *See In re Apex Oil Co.*, 92 B.R.

847, 874 (Bankr. E.D. Mo. 1988).

28. In the Debtor's view, the proposed sale of the Assets represents substantial value to the Debtor's estate inasmuch as it provides favorable terms for the disposition of the Assets at a price that represents fair and reasonable consideration having a certain value. *See id.* at 869. *See also Mellon Bank, N.A., v. Metro Commc'ns, Inc.*, 945 F.2d 635 (3d. Cir. 1991) (reasonably equivalent value under the Bankruptcy Code).

Reduction or Elimination of 14-Day Stay Under Bankruptcy Rules 6004(h) and 6006(d)

29. Time is of the essence in approving and closing the Sale, and any unnecessary delay in closing the Sale could result in the collapse of the Sale. Accordingly, this Court should waive the 14-day period staying any order to sell or assign property of the estate imposed by Bankruptcy Rules 6004(h) and 6006(d).

CONCLUSION

Based upon the authorities and facts detailed above, the Debtor submits that the Court should approve the Motion pursuant to the APA. Such relief is warranted because the Debtor has shown that the sale of the Assets is in the best interests of the Debtor, its estate and creditors, and because the decision to sell the Assets was reached in the exercise of the Debtor's sound business judgment, after careful deliberation of its consequences and possible alternatives.

WHEREFORE, the Debtor respectfully requests that the Court hear this Motion and (a) enter an Order authorizing the Debtor's sale of the Assets, free and clear of all liens, encumbrances, claims and interests; (b) find that the Sale be effective immediately and that the stay provisions of Bankruptcy Rules 6004(h) and 6006(d) do not apply; and (c) provide such other relief as is just and proper under the circumstances.

Date: December 5, 2016

Respectfully submitted,

/s/ Jeffrey D. Goetz
Jeffrey D. Goetz, IS #9999366
Bradshaw Fowler Proctor & Fairgrave, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004
515/246-5817
515/246-5808 FAX
goetz.jeffrey@bradshawlaw.com

Proposed General Reorganization Counsel
for BCDG, LP, Debtor and
Debtor in Possession

CERTIFICATE OF SERVICE

This document was served electronically on parties who receive electronic notice through CM/ECF as listed on CM/ECF's notice of electronic filing.

2066635.4

/s/ Barbara Warner

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is dated as of December 5, 2016 (hereinafter "AGREEMENT"), by and between **McDonald's Restaurants of Iowa, Inc.**, an Iowa corporation (hereinafter "PURCHASER"); **BCDG, LP**, a Minnesota limited partnership (hereinafter "SELLER"); and **Larry Brown and Brenda M. Brown** (hereinafter "GUARANTORS").

WITNESSETH:

WHEREAS, PURCHASER agrees to purchase from SELLER, and SELLER agrees to sell to PURCHASER, substantially all of the assets used in connection with the operation of each of the McDonald's restaurants located at the addresses listed on Exhibit A attached hereto (hereinafter said McDonald's restaurants are collectively referred to as the "RESTAURANT").

NOW, THEREFORE, in consideration of the premises, mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

SECTION 1. CLOSING AND EFFECTIVE DATE, ASSETS AND PURCHASE PRICE

1.1 Closing and Effective Date. The closing shall take place by mail, with all documents delivered to PURCHASER on or before December 31, 2016, at the McDonald's USA, LLC office located at 2915 Jorie Boulevard, Oak Brook, Illinois 60523, or such other time and/or place as shall be mutually agreed upon by all of the parties hereto (hereinafter referred to as the "CLOSING DATE"). The sale agreed to herein shall be effective as of the CLOSING DATE, and PURCHASER shall take possession of the RESTAURANT at said time and date (hereinafter referred to as "EFFECTIVE DATE").

1.2 Assets To Be Sold Hereunder. SELLER agrees upon the terms and conditions set forth herein to grant, convey, sell, assign and transfer to PURCHASER on the EFFECTIVE DATE, all of the tangible and intangible assets, excluding certain assets as listed below, affecting, or used in connection with and in the conduct and operation of the RESTAURANT of every kind and description wherever located including, but not limited to: (a) any and all franchise rights and agreements, including, but not limited to, license(s), offers of new term franchise(s), exclusive territory rights, rights of first refusal, option(s), sublease(s), lease(s), and all other rights received or obtained from McDonald's USA, LLC, its parent, predecessor, subsidiaries or affiliates (hereinafter collectively referred to as "McDonald's"); and (b) all RESTAURANT operating supplies, uniforms, promotional material, food and paper goods inventory, gift certificates, cash on hand, equipment, furniture, machinery and signs. The following are excluded from the assets conveyed to PURCHASER: (a) cash in banks; (b) accounts and notes receivable; (c) vehicles; (d) investment securities; (e) worker's compensation and utility deposits; and (f) office equipment and supplies. All of the assets to be transferred hereunder are hereinafter collectively referred to as the "ASSETS".

1.3 Purchase Price. The purchase price for the ASSETS (hereinafter referred to as the "PURCHASE PRICE") is as follows:

- a) \$3,316,047; PLUS
- b) An amount equal to the amount of cash on hand at the RESTAURANT plus the value, taken at cost, of: (i) the inventories of food, operating supplies and paper goods of a quality useable and/or saleable in the normal course of business at the RESTAURANT; (ii) gift certificates; (iii) such promotional material as PURCHASER, in its sole discretion, desires to purchase; and (iv) new and unused uniforms of the style approved for use at the RESTAURANT. PURCHASER and SELLER shall conduct an inventory of the ASSETS referred to in Section 1.3b) hereof after the close of business on the day before the CLOSING DATE.

1.4 Payment. The PURCHASE PRICE and other payments required herein shall be paid as follows:

- a) PURCHASER shall deliver to SELLER on the EFFECTIVE DATE, by electronic wire transfer of cash funds payable to SELLER, the amount provided on the Closing Statement, which is attached hereto as Exhibit B;
- b) The portion of the PURCHASE PRICE attributed to those ASSETS referred to in Section 1.3b) hereof, except for cash on hand which will be paid on the EFFECTIVE DATE, shall be paid to SELLER immediately after the EFFECTIVE DATE by a cashier's check, wire transfer, or other immediately distributable funds in the amount agreed to and approved in writing by SELLER and PURCHASER at Closing; and
- c) Prepaid service contracts shall be prorated to the EFFECTIVE DATE and the payment of the PURCHASE PRICE shall be adjusted in accordance with Section 8.2 hereof.

ARTICLE II

SECTION 2. DOCUMENTS TO BE DELIVERED BY SELLER

On the CLOSING DATE or such other time as specified below, SELLER shall deliver to PURCHASER the following documents, exhibits and certificates in the form and substance satisfactory to Counsel for PURCHASER:

- a) Bill(s) of Sale for the ASSETS with warranties of title in the form and of the substance set forth in Exhibit C attached hereto;

- b) To the extent any such documents are in the SELLER'S possession, originals or copies of the McDonald's franchise(s) documents including, as applicable, Franchise Letter Agreement(s), License Agreement(s), Operator's Lease(s) and all amendments or supplements thereto, (hereinafter collectively referred to as the "Franchise Documents"), together with an Assignment and Consent to Assignment of Franchise, in the form and of the substance set forth in Exhibit D attached hereto, duly executed by SELLER and GUARANTOR;
- c) INTENTIONALLY DELETED;
- d) SELLER'S certificate required pursuant to Section 7.1 hereof;
- e) INTENTIONALLY DELETED;
- f) To the extent any such documents are in the SELLER'S possession, copies of all the RESTAURANT'S contracts, agreements, documents, leases and licenses in effect on the EFFECTIVE DATE, including all attachments and amendments thereto;
- g) Copies of the RESTAURANT'S regular profit and loss statement(s) for the twelve month period ending on the EFFECTIVE DATE, and balance sheet(s) as of EFFECTIVE DATE (hereinafter collectively referred to as the "Financial Statements"), subject to SELLER'S regular business practices and ability to produce such Financial Statements;
- h) To the extent any such documents are in SELLER'S possession or are able to be reasonably produced, RESTAURANT'S detailed fixed asset subsidiary ledger(s) with an itemized list of individual fixed asset and leasehold improvements costs, including acquisition dates;
- i) Copies of the most recent sales, payroll and personal property tax returns, or other proof evidencing that SELLER is not delinquent in the payment of such taxes for the most recent time period prior to the EFFECTIVE DATE;
- j) INTENTIONALLY DELTED;
- k) INTENTIONALLY DELETED;
- l) List of all employees who are presently employed at the RESTAURANT, the date they commenced employment and the number of hours they worked in all prior calendar years. SELLER may fulfill this obligation by delivering to PURCHASER all copies of Form W-2 delivered to the current employees, or payroll registers, for the two (2) years prior to the EFFECTIVE DATE. SELLER shall retain original copies of said payroll records for three years after the EFFECTIVE DATE;

- m) A guaranty executed by GUARANTORS in the form set forth in Exhibit G attached hereto;
- n) Certified copies of resolutions of all the partners of SELLER unanimously approving and adopting the form and substance of this AGREEMENT, and authorizing and directing its execution and delivery;
- o) SELLER'S certificate of good standing from the state of Minnesota.
- p) Assignment of certificate(s) of occupancy and permits for the IMPROVEMENTS to PURCHASER.

ARTICLE III

SECTION 3. BANKRUPTCY COURT APPROVAL

- a) Seller and Purchaser acknowledge that under the Bankruptcy Code, this AGREEMENT and all of their rights and obligations, and the sale of the ASSETS, are subject to approval of the United States Bankruptcy Court for the Southern District of Iowa (the "BANKRUPTCY COURT").
- b) As soon as possible after the execution of this AGREEMENT, but in no event later than five (5) business days after the date of this AGREEMENT, Seller shall file with the Bankruptcy Court a motion seeking approval of the transactions contemplated by this AGREEMENT pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.
- (c) Seller shall use its commercially reasonable efforts to obtain entry of an order approving the transactions contemplated by this AGREEMENT by no later than December 26, 2016 (the "SALE ORDER"). The SALE ORDER shall be in a form approved by PURCHASER in its sole discretion and provide that PURCHASER is acquiring the ASSETS free and clear of any interests, liens, claims or encumbrances, including without limitation, any including any interests, claims, liens or encumbrances of the Iowa Department of Revenue related to the ASSETS and any claims of successor liability against PURCHASER after having acquired the ASSETS pursuant to Iowa Code §423 et seq..
- (d) From and after the date hereof, Seller shall not take any action which is intended, or fail to take any action the intent of which failure to act would result in the reversal, voiding, modification or staying of the Sale Order.

ARTICLE IV

SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AND GUARANTORS.

SELLER and GUARANTORS, jointly and severally, represent, warrant and covenant that the following are true and correct on the date hereof, and shall remain true and correct on each day up to and including the EFFECTIVE DATE:

4.1 Litigation. Except as listed on Exhibit H attached hereto, to the best knowledge and belief of SELLER and GUARANTORS after diligent inquiry:

- a) There is no investigative action, inquiry, proceeding or litigation pending or to the best knowledge of SELLER or GUARANTORS threatened against SELLER, the ASSETS or the RESTAURANT before any court or before or by any government department, commission, board, agency or instrumentality; and
- b) There is no employment discrimination claim, labor dispute, grievance, controversy, strike or request for union representation pending or threatened against SELLER or the RESTAURANT, and neither SELLER nor GUARANTORS knows of the occurrence of any events which are likely to give rise to any such claim, dispute, grievance, controversy, strike or request for union representation.

SELLER is and shall remain responsible for any and all litigation and other items described on Exhibit H, and SELLER hereby agrees to pay all costs, fees and expenses incurred in connection with the said defense and/or prosecution of such litigation, including, but not limited to, all damages, judgments and legal fees.

4.2 Financial Statements. The Financial Statements accurately reflect the financial condition of the RESTAURANT as of the date of such Financial Statements.

4.3 Contracts. Except as listed on Exhibit I attached hereto, and relating solely to the RESTAURANT and the ASSETS, SELLER is not and shall not be, through and including the EFFECTIVE DATE, a party to any written or oral:

- a) contract for employment which may not be terminated, at any time, without liability to PURCHASER or the RESTAURANT;
- b) contract with any labor union;
- c) contract or agreement for the purchase or sale of materials, supplies, services, machinery, equipment, or other personal property which involves payment by SELLER on behalf of the RESTAURANT which may not be

terminated, at any time, without liability to PURCHASER or the RESTAURANT;

- d) lease or license of personal property;
- e) contract for the purchase or sale of real property;
- f) pension or profit sharing plan, welfare or retirement plan, or other employee benefit plan, formal or informal, written or oral, or any plan or agreement subject to the compliance, disclosure or other provisions of the Employee Retirement Income Security Act of 1974, as amended;
- g) distributorship, sales, agency or license agreement, other than with McDonald's;
- h) maintenance agreements;
- i) management service agreements;
- j) government contract or sub-contract;
- k) government grant, loan, guarantee, or other government funding agreement which, in any way, could place any obligation on PURCHASER;
- l) settlement, consent decree, judgment or other agreement of any kind affecting or applicable to the ownership and/or operation of the RESTAURANT'S or SELLER'S employees; or
- m) agreement or contract not in the ordinary course of business.

There presently are no disputes or proceedings pending or threatened in connection with any of said contracts, leases, licenses and agreements, and SELLER and GUARANTORS have no knowledge of the occurrence of any events which are likely to give rise to any such dispute or proceeding in the future. SELLER has duly performed all of SELLER'S obligations under such contracts, leases, licenses and agreements required to be performed prior to the date hereof, and will continue to perform all of SELLER'S obligations through, but not including, the EFFECTIVE DATE.

4.4 Taxes.

- a) SELLER shall pay, either prior to or at Closing, without contribution from PURCHASER, all taxes, whether federal, state, or local including, but not limited to, real estate, sales, payroll and/or income taxes, but only to the extent that such taxes arise in connection with the operation and/or ownership of the ASSETS or RESTAURANT during the period between

November 18, 2016 and the EFFECTIVE DATE (except that the PURCHASER acknowledges that the proceeds from the Purchase Price may be used to satisfy these obligations);

- b) SELLER agrees to timely file all tax returns required by law to be filed subsequent to the CLOSING DATE, and timely pay all tax liabilities with respect to the ASSETS or RESTAURANT for the period up to, but not including, the EFFECTIVE DATE. Upon request of the Purchaser, SELLER will deliver to PURCHASER the following documents as proof of payment of all applicable taxes on or before the later of (a) thirty (30) days after the respective documents are filed with the appropriate taxing authority, and (b) thirty (30) days after the PURCHASER's request: (i) a copy of the applicable tax returns; and (ii) cancelled checks evidencing payment of all taxes; or (iii) a release or tax clearance certificate from all appropriate governmental authorities with respect to payment of all taxes; and
- c) Any and all sales tax, bulk transfer tax, or any other similar tax, regardless of the designation, that may be or become due and owing by reason of the transfer of the ASSETS to PURCHASER shall be the responsibility and liability of SELLER in accordance with the Bankruptcy Code and the Orders of the Bankruptcy Court, and will be paid by SELLER without contribution from PURCHASER (except that the PURCHASER acknowledges that the proceeds from the Purchase Price may be used to satisfy these obligations). The preparation and filing of the appropriate tax return will be the responsibility of SELLER.

4.5 Leases. Except for leases with McDonald's or leases listed on Exhibit I, SELLER and GUARANTORS are not parties to any written or oral lease or sublease of real or personal property used in connection with the RESTAURANT, and SELLER does not utilize, formally or informally, any other real or personal property in connection with the RESTAURANT.

4.6 No Breach of Other Agreements. The execution and delivery of this AGREEMENT and consummation of the transactions herein provided does not conflict with or result in a breach of the terms and conditions of, accelerate any provision of, or constitute a default under, any contract, promissory note or agreement to which SELLER is a party or is bound.

4.7 Title to ASSETS. Except as listed on Exhibit J attached hereto, SELLER presently has and shall continue to have, through the EFFECTIVE DATE, good and marketable title to all of the ASSETS, and the ASSETS shall not be subject to any mortgage, lease, pledge, lien, security interest or encumbrance of any nature. The amount of each and every indebtedness resulting from any mortgage, lease, pledge, lien, security interest, or encumbrances of any nature is listed on Exhibit J which amount shall be deducted from the PURCHASE PRICE, as provided on the Closing Statement, and be remitted by PURCHASER directly to said designated creditors

upon the submission to PURCHASER of payoff letters, termination of debt statements and releases.

4.8 Condition of Machinery, Equipment and Signs. Except as listed on the punch list provided for in Article III hereof, as of the date hereof, as well as through the EFFECTIVE DATE, all of the machinery, equipment and signs at the RESTAURANT are and shall remain in good working order and repair in accordance with McDonald's specifications. The RESTAURANT shall possess, on the EFFECTIVE DATE, all ASSETS necessary to operate a McDonald's restaurant consistent with McDonald's standards. Neither SELLER nor GUARANTORS has removed or converted, and neither SELLER nor GUARANTORS will remove or convert, any of the RESTAURANT'S tangible and intangible ASSETS used in the operation of the RESTAURANT or located at the RESTAURANT as of the EFFECTIVE DATE.

4.9 Insurance. SELLER shall maintain all insurance required by the Franchise Documents for the RESTAURANT for the period through the EFFECTIVE DATE.

4.10 Business Arrangements. Except for real estate leased to SELLER by McDonald's, neither SELLER, nor any partner of SELLER, nor GUARANTORS nor any member of the immediate family of GUARANTORS, and to the best knowledge of GUARANTORS, no other member of GUARANTORS'S family has any interest in any real estate located within a radius of 500 yards of the RESTAURANT.

4.11 Broker's Fee. SELLER is not and shall not be a party to, or in any way obligated under, any contract or agreement, oral or written, for the payment of fees or expenses, other than legal or accounting fees and expenses, to any broker or other party in connection with the origin, negotiation, execution or consummation of this AGREEMENT.

4.12 Compliance With Laws. To the best of SELLER'S and GUARANTORS'S knowledge after diligent inquiry, SELLER has complied, and shall be in compliance, with all laws, regulations and orders applicable to the RESTAURANT and ASSETS.

4.13 Material Change. Since the date of this AGREEMENT:

- a) There has been no material adverse change, including without limitation, loss or damage by fire, theft or other casualty, in the ASSETS and/or financial condition of the RESTAURANT;
- b) There has been no material adverse change in the business organization, personnel, or properties of SELLER or the relationships of SELLER with its suppliers, employees, principals, customers or others; and
- c) The business and affairs of SELLER have been conducted in substantially the same manner as prior thereto.

4.14 Additional Covenants of SELLER. SELLER shall up to the EFFECTIVE DATE:

- a) endeavor to improve and promote the business, profits and sales of the RESTAURANT;
- b) perform all customary maintenance and repairs in accordance with McDonald's standards;
- c) maintain advertising and promotional efforts at a percentage not less than that required by the Franchise Documents for the RESTAURANT;
- d) use best efforts without cost to SELLER or PURCHASER to induce present employees of SELLER to remain in PURCHASER'S employ; and
- e) comply with all terms and conditions of the Franchise Documents for the RESTAURANT.

4.15 Ownership Rights. SELLER is the sole owner of all rights in and to the franchise under which the RESTAURANT is operated, as evidenced by the Franchise Documents, as well as all other rights of any nature whatsoever, directly or indirectly related thereto, granted by McDonald's, and no other entity, person or persons have any such rights whatsoever. All persons and entities having equity or beneficial ownership in SELLER are listed on Exhibit A attached hereto.

4.16 Tradenames. SELLER has operated the RESTAURANT pursuant to SELLER'S name(s) set forth herein, and SELLER has not done business at the RESTAURANT pursuant to any other assumed name or tradename.

4.17 Post Term Restriction. GUARANTORS shall not for a period of eighteen (18) months following the EFFECTIVE DATE, for any reason, directly or indirectly, engage in or acquire any financial or beneficial interest (including any interest in corporations, partnerships or trusts, unincorporated associations and joint ventures) in, or become a landlord of any restaurant business which is similar to the RESTAURANT within a ten (10) mile radius of any RESTAURANT.

4.18 INTENTIONALLY DELETED.

4.19 Piracy and Nondisclosure. GUARANTORS hereby covenant and agree that GUARANTORS shall not, for a period of eighteen (18) months after the EFFECTIVE DATE, employ or seek to employ any person who is employed by PURCHASER or otherwise induce, directly or indirectly, such person to leave such employment, except as otherwise agreed in writing by PURCHASER. On the EFFECTIVE DATE, with respect to the RESTAURANT, SELLER and GUARANTORS further agree: (i) to return to McDonald's the business manuals furnished to SELLER or GUARANTORS, together with all other material containing trade secrets or confidential information, operating instructions or business practices; (ii) to discontinue the use of the McDonald's System and its associated trade names, service marks and

trademarks or service marks or trademarks similar or likely to be confused therewith and the use of any and all signs and printed goods bearing such names and marks, or any reference to them; and (iii) not to disclose, reveal or publish all or any portion of the McDonald's System.

4.20 Environmental Covenants. SELLER and GUARANTORS have complied with all federal, state or local laws and regulations involving the disposal of hazardous substances as that term is defined by the United States Environmental Protection Agency.

4.21 INTENTIONALLY DELETED.

4.22 Accurate Report of Sales. SELLER and GUARANTORS, during the period SELLER or GUARANTORS operated the RESTAURANT, accurately reported all sales at the RESTAURANT and paid all fees due to McDonald's as required under the Franchise Documents.

4.23 Ownership in Other McDonald's Restaurants. Except as listed on Exhibit K, neither SELLER nor GUARANTORS nor any individual or entity owning an interest in SELLER has any interest whatsoever, directly or indirectly, in any franchise for a McDonald's restaurant or any entity owning all or a portion of such a franchise or stock or equity interest of any operating corporation or other operating entity.

4.24 Employees and Compensation.

- a) SELLER has complied in all material respects with all laws relating to the employment of personnel and labor, including provisions thereof relating to wages and hours, equal opportunity, collective bargaining, plant closing and mass layoff, health and safety, immigration and the payment of social security and other taxes.
- b) SELLER has not agreed to recognize any labor union. No labor union or other collective bargaining representative has been certified as the exclusive bargaining representative of any employee. SELLER is not a party to or bound by any collective bargaining agreement. SELLER has not experienced any strike, slowdown, lockout, unfair labor practice complaint or other employee or labor dispute. To SELLER'S knowledge, there has been no organization effort made or threatened by or on behalf of any labor union with respect to any employees.
- c) The employment of all employees as of the CLOSING DATE is terminable at will by SELLER without penalty or severance obligation. SELLER has withheld all amounts required by law or by agreement to be withheld from the wages, salaries, and other payments to employees and consultants who perform work for SELLER with respect to the RESTAURANTS, and is not liable for any arrears of wages, overtime pay or any taxes or any penalty for failure to comply with any of the foregoing. SELLER has not misclassified or improperly classified any

employees as exempt from applicable federal, state or local laws, rules or regulations pertaining to wages, hours of work, or payment of overtime. All employees (including leased employees and any other individuals hired by SELLER or any of its affiliates “for employment,” within the meaning of 8 U.S.C. 1324a) are or were at all times during which such employees were employed by SELLER authorized and eligible to work in the United States. All employees have completed an Employment Eligibility Verification Form I-9. No consultant or independent contractor performing work on behalf of SELLER was or is unauthorized or ineligible to work in the United States.

- d) No claim, charge or complaint is pending or threatened between SELLER, on the one hand, and any employees, contract hires or consultants, on the other hand.
- e) SELLER has not effectuated (i) a “plant closing” (as defined in the Worker Adjustment and Retraining Notification Act (the “WARN Act”)) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of SELLER or (ii) a “mass layoff” (as defined in the WARN Act) affecting any site of employment or facility of SELLER. SELLER has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any applicable federal, state, or local legal requirement with respect to plant closings or mass layoffs.
- f) SELLER has delivered to PURCHASER complete and correct copies of all wage garnishment orders by which SELLER is subject with respect to any EMPLOYEE.

4.25 Organization. The SELLER is duly organized, existing and in good standing under the laws of the state of Minnesota.

4.26 Authorization. The SELLER has taken all necessary action in connection with the authorization, execution and delivery of this AGREEMENT, documents executed in connection therewith (hereinafter collectively referred to as “ACQUISITION DOCUMENTS”) and the transactions provided for herein required under SELLER’S Partnership Agreement. The ACQUISITION DOCUMENTS have been duly executed and delivered by and are the legal and binding obligations of SELLER and GUARANTORS, and are enforceable in accordance with their respective terms.

4.27 Prior Action by Partners of SELLER. By resolutions duly, validly and unanimously adopted, the partners of the SELLER shall have approved the form, substance, execution and delivery of the ACQUISITION DOCUMENTS and the sale of the ASSETS to PURCHASER as provided herein. The resolutions so adopted shall remain in full force and effect and shall not be amended, altered, or rescinded in whole or in part.

ARTICLE V

SECTION 5. CONDITIONS TO OBLIGATIONS OF SELLER

The obligation of SELLER to consummate the transactions provided for herein is subject to the following conditions any of which SELLER may, but need not, in SELLER'S sole discretion, waive:

5.1 Representations. All of the representations, warranties and covenants made herein by PURCHASER shall be true and correct on the EFFECTIVE DATE and all of the terms and conditions of this AGREEMENT to be complied with and performed by PURCHASER on or prior to the EFFECTIVE DATE shall have been timely complied with and performed.

5.2 Challenge to This AGREEMENT. There shall be no pending or threatened claim and/or suit by any party challenging this AGREEMENT or the consummation of the transactions contemplated herein.

5.3 Approval of Instruments. Counsel for SELLER shall review and approve, if appropriate, the form, substance and sufficiency of all instruments to be delivered by PURCHASER on or before the CLOSING DATE, which approval shall not be unreasonably withheld.

5.4 Consents. PURCHASER shall have furnished SELLER with consents or licenses from every landlord, tenant, mortgagee, lender, secured creditor and public authority from whom consent is required for consummation of the transactions contemplated herein.

5.5 Sale Order. The Bankruptcy Court shall have entered the Sale Order in a form satisfactory to PURCHASER and such Sale Order shall be a final non-appealable order.

ARTICLE VI

SECTION 6. REPRESENTATIONS AND WARRANTIES OF PURCHASER

PURCHASER represents, warrants and agrees that the following are true and correct on the date hereof and shall remain true and correct on each day up to and including the EFFECTIVE DATE:

6.1 INTENTIONALLY DELETED.

6.2 Authorization. PURCHASER shall have taken all necessary action in connection with the authorization, execution and delivery of this AGREEMENT and the transactions provided for herein required under its organizational documents. This AGREEMENT has been duly executed and delivered by and is the legal and binding obligation of PURCHASER and is enforceable in accordance with its terms.

6.3 Challenge to This AGREEMENT. There is no pending or threatened claim and/or suit by any party challenging this AGREEMENT or the consummation of the transactions provided for herein.

6.4 Brokers. PURCHASER is not a party to, or in any way obligated under, any contract or agreement, oral or written, for payment of fees or expenses, other than legal and accounting fees and expenses, to any broker or other party in connection with the origin, negotiation, execution or consummation of the transactions contemplated by this AGREEMENT.

6.5 Other Agreements. The execution and delivery of this AGREEMENT and the consummation of the transactions provided for herein will not result in a breach of any terms or provisions of, or constitute a default or permit acceleration of maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which PURCHASER is a party or is bound.

6.6 Assumption of Obligations by PURCHASER. PURCHASER shall assume obligations relating to the RESTAURANT arising on or after the EFFECTIVE DATE with respect to participation in and payment of advertising and promotional expenses to Co-op and OPNAD, or if no obligations exist, undertake to participate in and pay advertising and promotional expenses to such organizations. PURCHASER further agrees to assume SELLER'S obligations relating to the RESTAURANT arising on or after the EFFECTIVE DATE under the contracts listed on Exhibit L. Except as expressly stated in this AGREEMENT or on Exhibit L, PURCHASER does not assume any liabilities or obligations of SELLER under any contract or agreement.

6.7 Integrated Cashless System. PURCHASER shall assume all obligations relating to the Integrated Cashless System ("CASHLESS") at the RESTAURANT arising on and after the EFFECTIVE DATE. PURCHASER agrees to contact First Data to obtain a personal Merchant Number. SELLER and PURCHASER shall be responsible for resolving any discrepancies involving CASHLESS transactions processed directly with First Data. SELLER also agrees to reimburse PURCHASER for any CASHLESS transactions credited to SELLER'S account for sales occurring after the EFFECTIVE DATE.

ARTICLE VII

SECTION 7. CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligations of PURCHASER to consummate the transactions provided for herein are subject to the following conditions any of which PURCHASER may, but need not, in PURCHASER'S sole discretion, waive:

7.1 Representations. All of the representations, warranties, covenants and agreements made herein by the SELLER and GUARANTORS shall be true and correct on the EFFECTIVE DATE, and all of the terms and conditions of this AGREEMENT to be complied with and performed by SELLER on or prior to the EFFECTIVE DATE shall have been timely complied

with and performed. A certificate to that effect shall be delivered by SELLER to PURCHASER on the EFFECTIVE DATE.

7.2 INTENTIONALLY DELETED.

7.3 Challenge to This AGREEMENT. There shall be no pending or threatened claim and/or suit by any party challenging this AGREEMENT or the consummation of the transactions contemplated herein.

7.4 Approval of Instruments. Counsel for PURCHASER shall review and approve, if appropriate, the form, substance and sufficiency of all instruments to be delivered by the SELLER on or before the CLOSING DATE, which approval shall not be unreasonably withheld.

7.5 INTENTIONALLY DELETED.

7.6 Documents. SELLER shall have delivered all documents required in Section 2 hereof.

ARTICLE VIII

SECTION 8. PAYMENT OF CREDITORS AND PRORATIONS

8.1 Payments. SELLER shall timely pay, either directly or as provided on the Closing Statement, all costs, expenses, debts and liabilities resulting from or arising out of the possession, ownership and/or operation of the RESTAURANT and the ASSETS by SELLER for the period starting from the date the SELLER files a petition for relief under Chapter 11 of the Bankruptcy Code through, but excluding, the EFFECTIVE DATE. Said liabilities shall include, but are not limited to, all RESTAURANT'S trade debts, Co-op and OPNAD dues and charges, advertising and promotional expenses, gift certificates, insurance premiums, profit sharing, federal and state employer taxes, withholding taxes, payments due under retirement or other employee benefit plans, as well as wages and fringe benefits of all employees employed at the RESTAURANT, and any fees and charges due McDonald's. Liabilities to McDonald's may include SELLER'S prorated portion of certain costs, charges and expenses, including, but not limited to, real estate taxes, common area maintenance and other shopping center, office building or mall charges. SELLER agrees that accrued vacation pay shall be considered earned and due to SELLER'S employees on the EFFECTIVE DATE notwithstanding SELLER'S vacation pay policy.

8.2 Prorations. All common area maintenance and other shopping center, office building or mall charge prorations shall be based on the most current tax bills and landlord invoices. Prorations for real estate taxes, rents, service fees, OPNAD and other charges due to McDonald's from SELLER shall be made by PURCHASER and SELLER shall pay the SELLER'S prorated amount of such charges to McDonald's at closing. If the current real estate tax bill is not available, the real estate tax proration shall be calculated based upon not less than 110% of the amount due as stated on the most recent real estate tax bill available. If any prorated charges for real estate taxes (including the 110% estimate), common area maintenance and other

shopping center, office building or mall shops are approximations only, and such charges are adjusted by McDonald's, SELLER shall immediately pay to McDonald's the actual amount due upon receipt of an invoice for said items. All prorated charges shall be listed on the Closing Statement.

ARTICLE IX

INTENTIONALLY DELETED

ARTICLE X

INTENTIONALLY DELETED

ARTICLE XI

SECTION 11. RELEASES

11.1 Release of PURCHASER and Covenant Not to Sue. Except for the obligations, duties, representations, covenants and warranties of PURCHASER and McDonald's as provided in this AGREEMENT, SELLER and GUARANTORS hereby agree not to bring any type of claim relating to any matter that occurred on or before the EFFECTIVE DATE and release and forever discharge PURCHASER and McDonald's and their respective officers, directors, agents and employees, as of and including the EFFECTIVE DATE, of and from all claims, losses, liabilities and causes of action of every name and nature, in law or in equity, known or unknown, fixed or contingent, pending or not pending, liquidated or unliquidated, including, but not limited to, claims, losses, liabilities and causes of action which were asserted or might have previously been asserted by SELLER or GUARANTORS or on SELLER'S or GUARANTORS'S behalf for any reason whatsoever, and including, but not limited to, any claims, losses, liabilities and causes of action arising from or with respect to any McDonald's franchise (including any Franchise Documents) issued by McDonald's. Notwithstanding any terms of this release, SELLER'S and GUARANTORS'S release does not extend to McDonald's duties to SELLER and GUARANTORS arising after the EFFECTIVE DATE pursuant to franchises for McDonald's restaurants owned and operated by SELLER or GUARANTORS after the EFFECTIVE DATE.

11.2 Release of SELLER and GUARANTORS and Covenant Not to Sue. Except for the obligations, duties, representations, covenants and warranties of SELLER and GUARANTORS as provided in this AGREEMENT, PURCHASER and McDonald's hereby agree not to bring any type of claim relating to any matter that occurred on or before the EFFECTIVE DATE and release and forever discharge SELLER and GUARANTORS and their respective officers, directors, agents and employees, as of and including the EFFECTIVE DATE, of and from all claims, losses, liabilities and causes of action of every name and nature, in law or in equity, known or unknown, fixed or contingent, pending or not pending, liquidated or unliquidated, in connection with the RESTAURANT, including, but not limited to, claims, losses, liabilities and causes of action which were asserted or might have previously been asserted by PURCHASER or McDonald's or on PURCHASER'S or McDonald's behalf for any

reason whatsoever, in connection with the RESTAURANT, and including, without limitation, any claims, losses, liabilities and causes of action arising from or with respect to any McDonald's franchise (including any Franchise Documents) issued by McDonald's for the RESTAURANT. Notwithstanding any terms of this release, McDonald's release does not extend to SELLER'S or GUARANTORS'S duties to McDonald's pursuant to franchises for McDonald's restaurants owned and operated by SELLER or GUARANTORS after the EFFECTIVE DATE.

ARTICLE XII

SECTION 12. MISCELLANEOUS

12.1 Survival of Terms of AGREEMENT. All agreements, representations, warranties, terms and conditions set forth in this AGREEMENT shall survive the execution and delivery of this AGREEMENT and the consummation of the transactions provided for herein.

12.2 Successors and Assigns. This AGREEMENT shall be binding upon the successors, assigns, personal representatives and heirs, as applicable, of SELLER, GUARANTORS and PURCHASER.

12.3 Notices. All notices necessary or desirable to be given hereunder shall be in writing and delivered in person or sent by registered mail or overnight delivery return receipt requested, if to SELLER, addressed to SELLER at:

BCDG, LP
Attn: Mr. Larry Brown
6500 University Avenue, Suite 204
Windsor Heights, IA 50324

with a copy to:

Bradshaw, Fowler, Proctor & Fairgrave, P.C.
Attn: Jeffrey D. Goetz
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004

and if to PURCHASER, addressed to PURCHASER at:

McDonald's Restaurants of Iowa, Inc.
One McDonald's Plaza
Oak Brook, Illinois 60523
Attention: U.S. Vice President – U.S. General Counsel

with a copy to:

McDonald's USA, LLC
One McDonald's Plaza
Oak Brook, Illinois 60523
Attention: Managing Counsel

or to such other address as is stated in a notice given in compliance herewith. Any notice given in accordance with the foregoing shall be deemed to have been given when delivered in person or, if mailed, on the day received or refused by the intended recipient.

12.4 Headings. The various headings used in this AGREEMENT as headings of sections, articles or otherwise are for convenience only and shall not be used in interpreting or limiting the text in which they appear.

12.5 Severability. The invalidity of any provision of this AGREEMENT shall not impair the validity of any other provision. If any provision of this AGREEMENT is determined to be unenforceable by a court of competent jurisdiction, such provision shall be deemed severable and the remaining provisions of this AGREEMENT shall be enforced.

12.6 Governing Law. This AGREEMENT shall be construed and interpreted in accordance with, and the validity of this AGREEMENT shall be judged by, the laws of the state of Illinois.

12.7 Entire Agreement. This AGREEMENT sets forth the entire agreement and understanding of the parties hereto and supersedes any and all written or oral agreements or representations between parties hereto relating to the transactions contemplated by this AGREEMENT or related documents. This AGREEMENT may be amended, modified or terminated only by the written consent of all of the parties hereto, duly executed by each party's authorized representatives.

12.8 Exhibits. All exhibits attached hereto are hereby incorporated herein by reference, with the same effect as if set forth fully herein.

12.9 Further Cooperation. SELLER and PURCHASER agree to cooperate with one another on and after the CLOSING DATE by furnishing any additional information and by executing and delivering any additional documents, as may be reasonably required by their respective Counsel, in order to transfer or further perfect title to the ASSETS and RESTAURANT in PURCHASER and to otherwise effect and complete all transactions contemplated by the AGREEMENT.

12.10 Joint and Several Liability. Except as set forth in Article IV hereof, each SELLER and GUARANTORS shall be jointly and severally liable for all obligations, agreements, representations, covenants and warranties made by more than one party herein, whether or not so stipulated in the relevant provisions herein.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above written.

PURCHASER: McDonald's Restaurants of Iowa, Inc.

By: _____
Anne-Marie D'Angelo
Authorized Representative
of both companies and
on behalf of both companies

SELLER: BCDG, LP

By: Brown Customer Delight Group,
Inc., General Partner

By: _____
Larry Brown, individually, as
Operations Partner, as Limited
Partner, as Guarantor and as President

Brenda M. Brown, as Limited Partner

EXHIBIT A

RESTAURANT

3000 SE 14th St.
DES MOINES, IOWA
L/C: 014-0033

1207 N. Jefferson
INDIANOLA, IOWA
L/C: 014-0075

4201 Fleur Dr.
DES MOINES, IOWA
L/C: 014-0168

710 Army Post Rd.
DES MOINES, IOWA
L/C: 014-0182

1404 Des Moines St.
DES MOINES, IOWA
L/C: 014-0203

2901 SW 9th St.
DES MOINES, IOWA
L/C: 014-0261

Equity Ownership

BCDG, LP		100%
Larry Brown	62.13%	
Brenda M. Brown	36.87%	
The Brown Customer Delight Group, Inc.	1%	
Larry Brown		100%

EXHIBIT B

CLOSING STATEMENT

McDonald's Restaurants

3000 SE 14th St.
DES MOINES, IOWA
L/C: 014-0033

1207 N. Jefferson
INDIANOLA, IOWA
L/C: 014-0075

4201 Fleur Dr.
DES MOINES, IOWA
L/C: 014-0168

710 Army Post Rd.
DES MOINES, IOWA
L/C: 014-0182

1404 Des Moines St.
DES MOINES, IOWA
L/C: 014-0203

2901 SW 9th St.
DES MOINES, IOWA
L/C: 014-0261

EXHIBIT B - Continued

(Effective Date)

Credits to SELLER

\$ _____ Purchase Price

\$ _____ Real Estate Taxes

Credits to PURCHASER

Lien Payments

\$ _____ L/C: 014-0033
 \$ _____ L/C: 014-0075
 \$ _____ L/C: 014-0168
 \$ _____ L/C: 014-0182
 \$ _____ L/C: 014-0203
 \$ _____ L/C: 014-0261

Real Estate Taxes

\$ _____ L/C: 014-0033
 \$ _____ L/C: 014-0075
 \$ _____ L/C: 014-0168
 \$ _____ L/C: 014-0182
 \$ _____ L/C: 014-0203
 \$ _____ L/C: 014-0261

Base Rent

\$ _____ L/C: 014-0033
 \$ _____ L/C: 014-0075
 \$ _____ L/C: 014-0168
 \$ _____ L/C: 014-0182
 \$ _____ L/C: 014-0203
 \$ _____ L/C: 014-0261

Percentage Rent*

\$ _____ L/C: 014-0033
 \$ _____ L/C: 014-0075
 \$ _____ L/C: 014-0168
 \$ _____ L/C: 014-0182
 \$ _____ L/C: 014-0203
 \$ _____ L/C: 014-0261

EXHIBIT B - Continued

Service Fees*

\$ _____	L/C: 014-0033
\$ _____	L/C: 014-0075
\$ _____	L/C: 014-0168
\$ _____	L/C: 014-0182
\$ _____	L/C: 014-0203
\$ _____	L/C: 014-0261

OPNAD*

\$ _____	L/C: 014-0033
\$ _____	L/C: 014-0075
\$ _____	L/C: 014-0168
\$ _____	L/C: 014-0182
\$ _____	L/C: 014-0203
\$ _____	L/C: 014-0261

CASH TO SELLER: \$ _____

*Based upon estimated sales for the period _____ through _____:

\$ _____	L/C: 014-0033
\$ _____	L/C: 014-0075
\$ _____	L/C: 014-0168
\$ _____	L/C: 014-0182
\$ _____	L/C: 014-0203
\$ _____	L/C: 014-0261

SELLER Initials

PURCHASER Initials

EXHIBIT C

BILL OF SALE

BCDG, LP, an Iowa partnership (“SELLER”) does hereby sell, transfer, assign and convey unto **McDonald’s Restaurants of Iowa, Inc.**, an Iowa corporation (“PURCHASER”) all the tangible property and chattels, used and held in connection with each of the McDonald’s restaurants located at the addresses listed on Schedule 1 to Exhibit C (collectively “RESTAURANT”), except for the following which are excluded from the assets herein conveyed:

1. Cash in banks;
2. Accounts and notes receivable;
3. Vehicles;
4. Investment securities;
5. Workers compensation and utility deposits; and
6. Office equipment and supplies.

The assets of the RESTAURANT, with the exception of the items listed above as exclusions, are herein referred to collectively as the “ASSETS”.

The SELLER covenants and warrants that the: (i) SELLER is the lawful owner of the ASSETS and shall defend title to the ASSETS against the claims and demands of all persons; (ii) ASSETS are free from all liens, claims, charges and encumbrances; and (iii) SELLER has the right to sell the ASSETS.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Bill of Sale effective at _____ on _____.

SELLER: BCDG, LP

By: Brown Customer Delight Group, Inc.,
General Partner

By: _____
Larry Brown, individually, as
Operations Partner, as Limited
Partner, and as President

Brenda M. Brown, as Limited Partner

SCHEDULE 1 TO EXHIBIT C

3000 SE 14th St.
DES MOINES, IOWA
L/C: 014-0033

1207 N. Jefferson
INDIANOLA, IOWA
L/C: 014-0075

4201 Fleur Dr.
DES MOINES, IOWA
L/C: 014-0168

710 Army Post Rd.
DES MOINES, IOWA
L/C: 014-0182

1404 Des Moines St.
DES MOINES, IOWA
L/C: 014-0203

2901 SW 9th St.
DES MOINES, IOWA
L/C: 014-0261

EXHIBIT D

ASSIGNMENT AND CONSENT

TO ASSIGNMENT OF FRANCHISE

This Assignment and Consent to Assignment of Franchise, dated _____ (“Assignment”), is between **McDonald’s USA, LLC**, a Delaware limited liability company (“McDonald’s”); **BCDG, LP**, an Iowa partnership (“Assignor”); and **McDonald’s Restaurants of Iowa, Inc.**, an Iowa corporation (“Assignee”).

Background

A. McDonald’s or its predecessor in interest issued to Assignor or its predecessor(s) in interest a License Agreement or Franchise Agreement and an Operator’s Lease, both dated the dates listed on Schedule 1 to Exhibit D (collectively “Franchise”), for each of the McDonald’s restaurants located at the addresses listed on Schedule 1 to Exhibit D (collectively “Restaurant”); and

B. Assignor requests McDonald’s consent to transfer the rights in the Franchise to the Assignee.

Agreement

The parties, intending to be legally bound and for good and valuable consideration, agree as follows:

1. The effective date of this Assignment is _____ at _____ (“Effective Date”).
2. On the Effective Date, Assignor assigns and transfers all the right, title, and interest of Assignor in the Franchise to Assignee.
3. McDonald’s consents to the assignment of the Franchise to Assignee as required by the Franchise.
4. Assignee must pay all fees and perform all obligations under the Franchise.
5. All terms and conditions of the Franchise remain in full force and effect.
6. Immediately after Assignor assigns the Franchise to Assignee, McDonald’s and Assignee agree that the Franchise is terminated.

EXHIBIT D - Continued

The parties have signed this Assignment evidencing that they have read, understand, and are bound by the terms of this Assignment.

McDonald's USA, LLC and Assignee

Assignor: BCDG, LP

By:

By: Brown Customer Delight Group, Inc.,
General Partner

Anne-Marie D'Angelo
Authorized Representative
of both companies and
on behalf of both companies

By: _____

Larry Brown, individually, as
Operations Partner, as Limited
Partner, and as President

Brenda M. Brown, as Limited Partner

SCHEDULE 1 TO EXHIBIT D

<u>Restaurant</u>	<u>Franchise Date</u>
3000 SE 14th St. DES MOINES, IOWA L/C: 014-0033	December 17, 2014
1207 N. Jefferson INDIANOLA, IOWA L/C: 014-0075	May 26, 2001
4201 Fleur Dr. DES MOINES, IOWA L/C: 014-0168	May 3, 2012
710 Army Post Rd. DES MOINES, IOWA L/C: 014-0182	May 3, 2012
1404 Des Moines St. DES MOINES, IOWA L/C: 014-0203	May 3, 2012
2901 SW 9th St. DES MOINES, IOWA L/C: 014-0261	November 1, 2002

EXHIBIT E

INTENTIONALLY DELETED

EXHIBIT F

INTENTIONALLY DELETED

EXHIBIT G

GUARANTY

For value received, the undersigned unconditionally guarantees to **McDonald's Restaurants of Iowa, Inc.**, an Iowa corporation ("PURCHASER") the performance of **BCDG, LP**, an Iowa partnership ("SELLER"), and all representations, warranties, promises, covenants and indemnities of SELLER in that certain Purchase and Sale Agreement, dated as of _____, by and between PURCHASER and SELLER (the "AGREEMENT") documenting the sale of each of the McDonald's restaurant businesses located at the addresses listed on Schedule 1 to Exhibit G.

Any default by the SELLER of any terms of the AGREEMENT shall oblige the undersigned to pay all damages, costs and reasonable expenses that PURCHASER may incur or be awarded from the SELLER by reason of such default.

This guaranty by the undersigned is unconditional and PURCHASER need not exhaust its remedies against, or seek relief or satisfaction from the SELLER prior to exercising such remedies or seeking such relief or satisfaction from the undersigned.

This guaranty shall be binding on the undersigned and on the undersigned's legal representatives and assigns.

Executed this ____ day of _____.

Larry Brown

Brenda M. Brown

SCHEDULE 1 TO EXHIBIT G

3000 SE 14th St.
DES MOINES, IOWA
L/C: 014-0033

1207 N. Jefferson
INDIANOLA, IOWA
L/C: 014-0075

4201 Fleur Dr.
DES MOINES, IOWA
L/C: 014-0168

710 Army Post Rd.
DES MOINES, IOWA
L/C: 014-0182

1404 Des Moines St.
DES MOINES, IOWA
L/C: 014-0203

2901 SW 9th St.
DES MOINES, IOWA
L/C: 014-0261

EXHIBIT H

LITIGATION

Iowa Department of Revenue
Hoover State Office Building
PO Box 10471
Des Moines, IA 50306-0471

Revocation of sales tax permit: Dept. Acct. Nbr.: 001770871
Permit Number: 0-00-000415

Unpaid accumulated sales taxes due for 2015 through period ending October 31, 2016:
\$672,519.48

Request for hearing before Administrative Law Judge submitted November 11, 2016;
no hearing yet set by the Iowa Department of Revenue

Forward Financing LLC
36 Bromfield St., Ste. 210-212
Boston, MA 02108

Attorney:
Adam Combies, Esq.
Combies Hanson
137 Lewis Wharf
Boston, MA 02110

Litigation filed September 15, 2016, in the United States District Court for the District of Massachusetts, as Civil Action No.: 1:16-CV-11878-DPW, entitled "Forward Financing LLC, Plaintiff vs. BCDG LP *d/b/a* McDonalds, Larry Brown, and Brenda Brown, Defendants"

Litigation demands judgment against the defendants in the amount of \$200,797.88 and possession of collateral, based upon a breach of contract of a Future Receipt Sales Agreement dated June 23, 2016

Litigation is pending

EXHIBIT I
CONTRACTS

Ford Motor Credit Company
PO Box 62180
Colorado Springs, CO 80962

Lease dated August 8, 2015, on a 2015 Ford F-150 truck; lease payments of \$709.05 per month; 16 months paid through November, 2016; 20 months remaining on the lease with payments totaling \$14,181.00; lease terminates August 8, 2018

JKoester Properties LLC
6500 University Ave., Ste. 308
Windsor Heights, IA 50324

Lease dated August 31, 2015, on business property at 6500 University Avenue, Suite 204, Windsor Heights, Iowa; lease payments of \$2,100.00 per month; 15 lease payments made through November, 2016; 33 months remaining on the lease with payments totaling \$69,300.00; lease terminates September 30, 2019

McDonald's USA, LLC
ATTN: Walt Maney, Vice President and General Manager
1650 W. 82nd Street, Unit 900
Minneapolis, MN 55431

Assignment and Consent to Assignment of Franchise to a Partnership Purchaser, including Franchise Agreement/License Agreement and Operator's Lease, covering six McDonald's franchises (five in Des Moines and one in Indianola)

EXHIBIT J

LIENS ON ASSETS

RBS Citizens, N.A. aka Citizens Bank, N.A.
28 State Street
Boston, MA 02109

Iowa UCC Financing Statement filed August 2, 2011, as No. X11019558-2, and
Minnesota UCC Financing Statement filed July 17, 2015, as No. 833549500200,
both covering all assets of BCDG LP

EXHIBIT K

OWNERSHIP IN OTHER RESTAURANTS

NONE

EXHIBIT L

OBLIGATIONS ASSUMED BY PURCHASER

NONE

2066844.2