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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/28/2014 11:52 AM Pg: 1 of 13

Recording Requested by and
When Recorded Mail to:

Rockford Local Development Corporation
John Phelps
120 West State Street, Suite 306
Rockford,

TITLE OF DOCUMENT

THIRD PARTY LENDER AGREEMENT

Property of Cook County Clerk's Office

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UNOFFICIAL COPY**THIRD PARTY LENDER AGREEMENT**

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 14 day of April, 2014, by and between Great Southern Bank ("Third Party Lender") whose address is 1451 E. Battlefield, Springfield and Rockford Local Development Corporation, ("CDC") whose address is 120 West State Street, Suite 306, Rockford,

RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the Authorization for Debenture Guarantee (SBA 504 Loan), as a needed ("Authorization"). The Third Party Lender will provide term financing ("Third Party Loan"), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration ("SBA"), for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference ("Project Property"):

SBA Loan #: 62137250-07

SBA Loan Name: Andy's Frozen Custard - Countryside

Borrower: White Shirts, LLC & Andy's Frozen Custard Countryside, LLC

Operating Company (if any): Andy's Frozen Custard Countryside, LLC

Third Party Loan Amount: \$ 775,000.00

Term of Third Party Loan: 10 years

If Real Property -- Project Property Address:

Street address: 5745 S. LaGrange Road

City, State, Zip code: Countryside

Attach Legal description as an exhibit.

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more. Attach a detailed description as an exhibit.

2. The parties have required the Borrower to grant liens on the Project Property to secure the separate loans advanced by the parties ("Common Collateral"), and the lien of the CDC ("CDC Lien") will be junior and subordinate to the lien of the Third Party Lender ("Third Party Lender Lien"), unless Third Party Lender, CDC and SBA agree otherwise in writing.

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TERMS AND CONDITIONS

In consideration of the above, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender Lien. Any amounts owed by Borrower to Lender in excess of the Third Party Lender Lien amount stated in the Authorization cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan.

2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA .

3. Accurate Information. The Third Party Lender warrants and represents that all information provided by the Third Party Lender to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered false statements to the federal government under 18 U.S.C. §1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA are relying upon the information submitted by the Third Party Lender.

4. Waiver of Provision Not to Encumber Common Collateral. Third Party Lender waives its rights to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.

5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program Requirements as established by SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program Requirements, Third Party Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.

a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except for reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender Lien.

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b. No Early Call or Demand Provisions. Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lender Lien do not contain an early call feature or any provision which allows Third Party Lender to make demand under the Third Party Lender Loan other than when there is a material default under the terms of its Third Party Loan documents, which shall include, but not be limited to, failure to make timely payments on the Third Party Loan, failure to pay taxes when due or violation of any financial covenants which would cause a prudent lender to believe that the prospect of payment or performance of the Third Party Note is impaired.

c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral will only secure its Third Party Loan and the Common Collateral is not currently, and will not be used in the future, as security for any other financing provided by Third Party Lender to Borrower that purports to be in a superior position to that of the CDC Lien, unless authorized in writing by CDC and SBA.

d. No Cross-Default. During the term of the 504 Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand on the Third Party Loan prior to maturity unless the Third Party Loan is in material default.

e. Maturity and Balloon Payments. The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 years). If the Third Party Lender has made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. No Preference. Third Party Lender must not establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA. If the Third Party Lender does take additional collateral as security for the Third Party Loan, or otherwise has a preference, in the case of liquidation, any proceeds received from such additional collateral, must be applied to the Third Party Lender's Loan prior to the proceeds from the liquidation of the Common Collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA. (See 13 C.F.R. §120.10 for a definition of preference.)

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7. Notice of Default under the Third Party Loan. Within thirty (30) days after the expiration of any cure period for any continuing material default of the Third Party Loan or Third Party Lender Lien, Third Party Lender must provide written notice (referencing SBA's loan number for the 504 Loan) of the default to CDC and SBA. At least sixty (60) days prior to any legal proceedings against or liquidation of the Common Collateral (not including sending a demand letter), Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC or SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party Loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

d. The Third Party Lender agrees:

(1) If the Third Party Lender sells its Note (other than when liquidating the Third Party Loan), then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

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(2) If the Third Party Loan is in default and the Third Party Lender, as part of its liquidation strategy,

(i) proposes to sell its note, or

(ii) receives an offer from a third party, then the Third Party Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 9(c). SBA will have forty-five (45) days from receipt of the notice from the Third Party Lender to exercise its option to purchase the note. If SBA does not exercise its option and the Third Party Lender sells its note, then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

e. If the Third Party Lender sells or otherwise transfers its note to a third party, then any Default Charges, including, but not limited to, prepayment penalties, late fees, other Default Charges, and escalated interest after default due under the Third Party Loan must be subordinate to the amount outstanding on the 504 Loan and/or CDC Lien.

f. If the Third Party Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Common Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

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Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.

12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supersede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts each of which will be deemed an original, and all of which together constitute one and the same instrument.

18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

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Great Southern Bank

By: _____

Print Name: Monte McNew

Title: ~~Senior~~ Vice President

State of Missouri

County of GREENE

On April 15, 2014 before me, A Annin, a Notary Public, personally appeared MONTE MCNEW

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

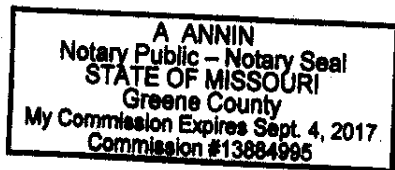
I certify under PENALTY OF PERJURY under the laws of the State of Missouri that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Annin

(seal)



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Rockford Local Development Corporation

By: _____
Print Name: John Phelps
Title: Executive Director

ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

By: _____ Date: 4/14/14
Typed Name: John Phelps, authorized officer of CDC.

State of ILLINOIS
County of WINNEBAGO

On April 14, 2014 before me, KELLIE S. MANE, a Notary Public, personally appeared JOHN PHELPS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Kellie S. Mane



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EXHIBIT A LEGAL DESCRIPTION

LOT 22 (EXCEPT THE NORTH 36 FEET THEREOF) AND (EXCEPT THE SOUTH 16.00 FEET OF THE WEST 27.00 FEET THEREOF) IN STOUFFER'S SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 (EXCEPT THE EAST 384.78 FEET OF THE SOUTH 417.06 FEET) IN SECTION 16, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 31, 1922 AS DOCUMENT NUMBER 7521572, IN COOK COUNTY, ILLINOIS.

PIN #18-16-208-024-0000
5745 S. LaGrange Road, Countryside, IL 60525

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UNOFFICIAL COPYAndy's Frozen Custard
Equipment List

Qty	Manufacturer/Distributor	Description
2	Holloway America	P-36481 Custard Machines
		Shelving-Dry Storage including 24"x48" wire shelf, 24"x72" wire shelf, 86" posts, 5" casters w/brakes & labels
Lot	Concept Services	
1	Concept Services	stainless steel utility wall shelf
3	Concept Services	Aluminum dunnage rack 18" x 35" x 8"
2	Concept Services	Aluminum dunnage rack 24" x 60" x 8"
Lot	Concept Services	Green Wall Shelving including 14"x 60", 14" x 36", labels & hooks
		Remote beer system
1	Concept Services	Hoff/Stevens Keg couplings & tap handles
1	Concept Services	Reach-In Freezer 120/208- 230/60/1
1	Hoshizaki	KM-320MWH Ice Machine includes ice bin & 22" top kit
1	Concept Services	Water Filter System w/Scale Inhibitor
1	Concept Services	Electric convection oven with extra stainless steel stand w/rack glides & cord set
1	Concept Services	S/S 30" x 72" 16/300 series work table with casters
1	Hobart	LX1H Glass Washer
1	Concept Services	3-compartment sink with 24" drainboards, s/s legs, faucet & pre rinse with fauset
3	Concept Services	Level wast drains for sink (above)
1	Concept Services	Walk In Cooler white painted finish, 5 yr compressor warranty, floorless, kick plate with cove base
lot	Concept Services	Walk in shelving including 24"x60" wire shelf, 74" posts, 5" casters w/brakes
1	Concept Services	Reach-In Freezer beverage air
1	Silver King	SK11MP milk dispenser, 115V/60/1, 7" cord and plug
1	Concept Services	Keg Rack
2	Concept Services	S/S 24" x 144" 16/300 series work table, extra S/S undershelf
1	Concept Services	Custom bar sink with overflow holes, faucet and lever waste w/overflow
2	Concept Services	Blenders w/foot switch
1	Panasonic	NE-1064 Microwave

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Equipment List

Qty	Manufacturer/Distributor	Description
		S/S 18" x 24" microwave shelf
1	Concept Services	w/ 18" x 24" wire legs
1	Concept Services	S/S 24" x 36" 14/300 series work table w/undershelf
1	Stoelting	Custom hinged lid work top freezer
Lot	Custom	Prep table w/ overshelf
1	Concept Services	Dipping cabinet
1	Concept Services	Worktop freezer
2	Concept Services	Caramel server
		Single Stand Condiment
3	Concept Services	Dispenser
1	Concept Services	Fudge server w/pump
1	Concept Services	Fudge server w/ladle
1	Concept Services	Spritzer
1	Custom	Worktop cabinet w/ cut outs
1	Concept Services	Dipping cabinet
1	Concept Services	Display freezer
		Ice Tea/Coffee Brew with 2 glass decanters & 1 brew basket
1	Concept Services	
1	Concept Services	30"x48" stainless work table
		5-tier single section employee lockers
1	Concept Services	Safe
1	Concept Services	Washer/Dryer
2	Concept Services	Hand sinks
		Steel Trash Cans with wood sides & stainless tops
2	Midwest Sheet Metal	MS short stools power coated clear
24	Midwest Sheet Metal	
6	Midwest Sheet Metal	MS short stool tables
3	Midwest Sheet Metal	16 ga ss #3 dip cabinet lids
		20 ga ss #3 custard machine louvered panels
2	Midwest Sheet Metal	
3	Midwest Sheet Metal	CH-16 16" cup holder channels
1	Midwest Sheet Metal	CH-10 10" cup holder channel
1 each	Midwest Sheet Metal	SR 1 Stir Rod, BS-1 brownier stick & BDH-1 Bag drain hook
		18 ga SS #3 extrac tube shelf
1	Midwest Sheet Metal	6x10x3/4 dep
1	Midwest Sheet Metal	SPL-1 Syrup pump lid & FR-1 flavor rack
3	Midwest Sheet Metal	Outdoor menu boards
Lot	Midwest Sheet Metal	Wall panels,(4)
Lot	Midwest Sheet Metal	16 ga SS #3 pony wall edge angles (6)
1	Midwest Sheet Metal	12 ga SS #3 drive through window shelf
2	Midwest Sheet Metal	18 ga SS #3 pony wall shelves
1	Midwest Sheet Metal	14 ga SS #3 stub wall cap

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Equipment List

Qty	Manufacturer/Distributor	Description
1	Midwest Sheet Metal	6" x 15# WF beam table bases
1	Midwest Sheet Metal	14 ga. SS #3 cash register counter top
1	Midwest Sheet Metal	14 ga SS #3 pony wall cap
1	Midwest Sheet Metal	Indoor menu board power coated clear
1	Midwest Sheet Metal	16 ga SS #3 wall edge angle
Lot	Midwest Sheet Metal	16 ga kick plates
		16 ga SS wall end cap channels
4	Midwest Sheet Metal	ladle (12), Vollrath ladle (2), frozen custard spade (6), plastic ladle (6) 1/6 food pan (36), 1/6 food pan cover (36), serving tongs (2), 1 qt. round food storage container & lid (36 each), 6 sq. square food storage container & lids (10 each), 4 qt. square food storage container & lid (3 each), 2 aq round storage container (7), 3.5 qt. round food storage container (3), food storage box, scoop, plastic funnel, bar mat (2), parin knife (2), ladle, pan strainer, 3.5 ga. food storage box (3), condiment bin organizer (6), dish box pump with cover (4), fountain jar (12), cutler holder (4), food pan covers (6 each), stainless steel malt cup (12), stainless bucket (4), wire white (2), disher six 6 (2), disher, size 10 (12), disher size 20 (12), plastic spatual (6), mat (4), utility cart (2), trash container (4), chlorine test paper (2), pocket thermometer (2), pail opener, plastic measureing cup (2),
Lot	Concept Services	