

UNOFFICIAL COPY



2029510027

Doc# 2029510027 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/21/2020 10:10 AM PG: 1 OF

CCHI2005385LD DG 3 of 3

DOCUMENT COVER SHEET

ATTORNEY AGREEMENT

Prepared By and Mail To:

OakStar Bank
1020 E. Battlefield
Springfield, MO 65807

Property of Cook County Clerk's Office

S
P
R
I
N
G
F
I
E
L
D

UNOFFICIAL COPY

ATTORNMENT AGREEMENT

THIS ATTORNMENT AGREEMENT (this "Agreement") is entered into as of September 17, 2020 (the "Effective Date") by and between **OAKSTAR BANK**, a Missouri state chartered bank, having its principal place of business at 1020 E. Battlefield, Springfield, Missouri 65807 ("Lender"), **GREEN OAK SHOPPING CENTER, LLC**, an Illinois limited liability company ("Landlord") and **ANDY'S FROZEN CUSTARD STORES, LLC**, an Illinois limited liability company, with its principal address at 211 E. Water St., Springfield, Missouri 65806 ("Tenant"), with reference to the following facts:

A. Landlord owns a fee simple interest in the real property described in **Exhibit "A"** attached hereto (the "Property").

B. Landlord is the lessor under that certain Ground Lease dated February 15, 2006 with Illinois Del of Oak Lawn, LLC ("IDO") as lessee (the "Premises Lease") whereby Landlord has leased the Property described therein (the "Leased Premises") to the tenant named therein. IDO assigned all of its right, title and interest in and to the Premises Lease to Andy's Frozen Custard, Inc. and said interest was ultimately assigned to Tenant. Tenant is now the tenant under the Premises Lease.

C. Lender has agreed to extend credit to Tenant to be evidenced by one or more promissory notes (collectively the "Loan" or the "Note") the payment of said indebtedness to be secured by a Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing encumbering all of Tenant's interest in the Property (the "Leasehold Mortgage").

D. Lender desires to enter into this Agreement with Landlord and Tenant to further clarify relative rights, duties and obligations with respect to the Premises Lease.

NOW, THEREFORE, to induce Lender to make the Loan to Tenant, to induce Tenant to continue to Lease the Leased Premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Collateral Assignment of Premises Lease. To secure all indebtedness and obligations of the Tenant to Lender, whether now existing or hereafter accruing, including under the Loan, and payment of all sums due and fulfillment of all of the terms under the Note, Leasehold Mortgage and any other loan document (the "Obligations"), Tenant hereby conveys, transfers and assigns unto Lender, its successors and assigns, all of Tenant's entire right, title and interest in and to the Premises Lease pursuant to the Leasehold Mortgage executed by Tenant simultaneously herewith. Landlord consents to and acknowledges this assignment and all prior assignments from Tenant to Lender. This assignment is immediate and continuing provided, however, that Tenant shall enjoy all of its rights as a "tenant" under the Premises Lease for so long as Tenant is not in default under the terms of the Note, the Leasehold Mortgage or any other loan document or the Premises Lease. Landlord hereby consents to the Lender's recording of the Leasehold Mortgage covering the Property.

UNOFFICIAL COPY

2. Non-Disturbance. So long as Tenant is not in default under the Premises Lease (or if such default is cured by Tenant or Lender) Landlord shall not terminate or disturb Tenant's (or Lender's) possession of the Leased Premises under the Lease except in accordance with this Agreement. If any action or proceeding is commenced by Lender for the foreclosure of the Leasehold Mortgage, Landlord shall not be named as a party therein unless such joinder shall be required by law provided that such joinder shall not result in the termination of the Premises Lease or disturb the Tenant's and/or Lender's possession or use of the Property thereunder, and the sale of Tenant's interest in any such action or proceeding and the exercise by Lender of any of its other rights under the Leasehold Mortgage shall be made subject to all rights of Landlord under the Premises Lease.

3. Attornment. Upon Lender taking possession of the Leased Premises either by foreclosure pursuant to the Leasehold Mortgage, or by any other means, Lender agrees to comply with the Premises Lease and agrees to be bound by all the terms and conditions thereof (except as provided in this Agreement). In such event the parties agree that the Premises Lease shall continue in full force and effect with Lender as "tenant" under the Premises Lease except as modified in this Agreement. If Lender takes possession of the Leased Premises and becomes a successor tenant under the Premises Lease, Landlord hereby agrees to transfer any prepaid rent, paid to Landlord by Tenant to Lender (or for the benefit of Lender).

4. Notice to Lender. Landlord and Tenant hereby agree to give Lender written notice of any alleged or actual event of default, change, modification, alteration, termination or any other breach by Tenant under the Premises Lease. Lender shall have the right to cure a default by Tenant after receipt of such notice from Landlord as provided in paragraph 7 below. If Lender elects to cure any such default or breach then Landlord agrees that at Lender's option either (i) Landlord will recognize and accept any action of cure of such default or breach made by Lender on behalf of Tenant and shall continue the Premises Lease with respect to the Tenant as if Tenant had cured the breach, or (ii) Lender may exercise its rights under Section 1 herein, or its rights under the Leasehold Mortgage and take possession of the Leased Premises in accordance therewith. In such event Lender shall be deemed to be a "Successor Tenant" and shall be deemed to be an assignee of the Tenant under the Premises Lease with all of the duties, obligations, rights and privileges of the Tenant under the Premises Lease as if the Lender had been the original tenant thereunder.

5. Representations and Warranties. Landlord and Tenant hereby represent and warrant that: (i) the Premises Lease is in full force and effect and no events of default or other breaches of the Premises Lease exist as of the date hereof; (ii) that the Premises Lease attached hereto as **Exhibit "B"** is a true and correct copy of the Premises Lease and no modifications or amendments have been made except as attached hereto; and (iii) the granting of the Leasehold Mortgage by Tenant is not in violation of any of the provisions of the Premises Lease.

6. Further Documentation. The provisions of this Agreement shall be effective and self-operative without any need for Landlord, Lender or Tenant to execute any further documents. Landlord, Tenant and Lender shall, however, confirm the provisions of this Agreement in writing upon request by either of them within ten (10) days of such request.

UNOFFICIAL COPY

7. Lender's Right to Cure. Notwithstanding anything to the contrary in the Premises Lease or this Agreement, before exercising any right to terminate the Premises Lease:

(a) Notice to Lender. Landlord shall provide Lender with notice of the breach or default by Tenant giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

(b) Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of fifteen (15) days beyond the time available to Tenant under the Lease in which to cure the breach or default by Tenant. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Tenant, except to the extent that Lender agrees or undertakes otherwise in writing. In addition, as to any breach or default by Tenant the cure of which requires possession and control of the Leased Premises by Lender, Lender's cure period shall continue provided Lender pays all Rent and Additional Rent in advance for each day for such additional time (the "Extended Cure Period") as Lender may reasonably require either (i) to obtain possession and control of the Leased Premises with due diligence and thereafter cure the breach or default with reasonable diligence and continuity, or (ii) to obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default (hereinafter referred to as "Lender's Cure Rent"). If Lender does not pay Lender's Cure Rent then Lender's Extended Cure Period shall expire and Lender shall no longer have any rights to cure a default and Landlord shall have the right to take possession of the Leased Premises.

8. Notices. All notices by any party hereto shall be made to the addresses set forth below. Any notice given hereunder shall be in writing and may be sent by Federal Express, certified or registered mail, postage prepaid, addressed to the party to receive the notice. Any notice mailed in accordance with the preceding sentence shall be deemed to have been given and served two (2) business days after it is deposited in the mail or with Federal Express except in the case of any payment due under the Note which shall not be deemed to have been paid until it is actually received by Lender. If a party by notice to the other parties, at any time, designates some other person to receive notices, notices thereafter shall be made or given to the person so designated. Actual receipt of written notice by a party shall be deemed to comply with this section regardless of the means of delivery.

If to Lender: OakStar Bank
Attn. Luke Fraser
1020 E. Battlefield
Springfield, MO 65807

If to Tenant: Andy's Frozen Custard Stores, LLC
211 E. Water St.
Springfield, MO 65806

UNOFFICIAL COPY

If to Landlord: Green Oak Shopping Center, LLC
1333 North Wells St.
Chicago, IL 60610

9. Insurance. If and to the extent required by the Premises Lease, Tenant shall cause its insurance policies to name Lender as an additional insured or such other capacity as may be required by the Lease.

10. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns. If Lender assigns the Leasehold Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, any obligations of the assignor shall terminate.

11. Entire Agreement. This Agreement constitutes the entire agreement among the parties regarding the subject matter of this Agreement.

12. Interaction with Lease. If this Agreement conflicts with the Premises Lease, then this Agreement shall govern as between the parties. This Agreement supersedes, and constitutes full compliance with, any provisions in the Premises Lease.

13. Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Landlord with respect to the Premises Lease.

14. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the state where the Property is located, excluding such jurisdiction's principles of conflict of laws.

15. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

16. Due Authorization. The undersigned parties represent that they have full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

17. Waiver of Jury Trial. The parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to the Agreement.

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

IN WITNESS WHEREOF, the Lender, Landlord and Tenant have caused this Agreement to be executed as of the date first above written.

[SIGNATURE PAGES FOLLOW]

UNOFFICIAL COPY

LENDER:
OAKSTAR BANK

By: *Luke Fraser*
Luke Fraser, Senior Vice President

STATE OF MISSOURI)
) ss
COUNTY OF GREENE)

On this 30th day of September 2020, personally appeared before me **Luke Fraser**, to me personally known who, being by me duly sworn, did say that he is a Senior Vice President of OakStar Bank, and acknowledged that he executed the foregoing instrument as the free act and deed of OakStar Bank in his capacity as Senior Vice President.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.



Place notary stamp in box above in black ink and press firmly.

Krista Souser
Notary Public
Krista Souser
Print Name
My Commission expires: 4-26-24
My Commission is in Greene County.

UNOFFICIAL COPY

LANDLORD:
GREEN OAK SHOPPING CENTER, LLC

By: _____
Name: Stephen D Kant
Title: Manager

STATE OF ILLINOIS)
) ss
COUNTY OF Cook)

On this 17th day of September, 2020, personally appeared before me Stephen D Kant, to me personally known who, being by me duly sworn, did say that he is the manager of Green Oak Shopping Center, LLC, and acknowledged that he/she executed the foregoing instrument as the free act and deed of Green Oak Shopping Center, LLC in his capacity as Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.



Place notary stamp in box above in black ink and press firmly.

Notary Public

Jeniffer E Zaleiski
Print Name
My Commission expires: 06/25/2022
My Commission is in Cook County.

UNOFFICIAL COPY

TENANT:

ANDY'S FROZEN CUSTARD STORES,
LLC

By: *Andy Kuntz*
Anthony "Andy" Kuntz, Manager

STATE OF MISSOURI)
) ss
COUNTY OF GREENE)

On this 30 day of September, 2020, personally appeared before me Anthony "Andy" Kuntz, to me personally known who, being by me duly sworn, did say that he is the Manager of Andy's Frozen Custard Stores, LLC, and acknowledged that he executed the foregoing instrument as the free act and deed of Andy's Frozen Custard Stores, LLC in his capacity as Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.



Place notary stamp in box above in black ink and press firmly.

Krista Souser
Notary Public

Krista Souser
Print Name
My Commission expires: 4-26-24
My Commission is in Greene County.

UNOFFICIAL COPY

EXHIBIT A

PARCEL I:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (EXCEPT THE SOUTH 33 FEET THEREOF) OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE FOLLOWING WHICH IS LEASED TO THE WHITE CASTLE SYSTEM INCORPORATED, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST 95TH STREET (AS WIDENED TO 100 FEET) AND THE EAST LINE OF SOUTH CICERO AVENUE (AS FORMERLY LOCATED, BEING 33 FEET EAST, OF, MEASURED AT RIGHT ANGLES TO THE WEST LINE OF SECTION 10 AFORESAID); THENCE EAST ALONG THE SOUTH LINE OF WEST 95TH STREET, 197 FEET TO A POINT; THENCE SOUTH, PARALLEL WITH THE AFORESAID FORMER EAST LINE OF SOUTH CICERO AVENUE, 180 FEET TO A POINT; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF WEST 95TH STREET, 197 FEET TO A POINT IN THE AFORESAID FORMER EAST LINE OF SOUTH CICERO AVENUE; THENCE NORTH, ALONG THE AFORESAID FORMER EAST LINE OF SOUTH CICERO AVENUE, 180 FEET TO THE POINT OF BEGINNING, ALSO (EXCEPT THE EAST 33 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10) AND ALSO (EXCEPT THAT PART DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE AFORESAID FORMER EAST LINE OF SOUTH CICERO AVENUE WITH THE SOUTH LINE OF WEST 95TH STREET SAID SOUTH LINE OF 95TH STREET BEING 50 FEET SOUTH OF MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 10; THENCE SOUTH ALONG SAID FORMER EAST LINE OF SAID CICERO AVENUE A DISTANCE OF 180 FEET FOR A POINT OF BEGINNING; THENCE EAST ALONG A STREET LINE WHICH IS PARALLEL WITH SAID SOUTH LINE OF WEST 95TH STREET, A DISTANCE OF 22.60 FEET TO A POINT; THENCE SOUTH ALONG LINE WHICH IS PARALLEL WITH THE SAID FORMER EAST LINE OF SOUTH CICERO AVENUE, A DISTANCE OF 431.55 FEET TO A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, A DISTANCE OF 22.00 FEET TO A POINT IN SAID FORMER EAST LINE OF SOUTH CICERO AVENUE; THENCE NORTH ALONG SAID FORMER EAST LINE OF SOUTH CICERO AVENUE, 431.55 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL II:

THE NORTH 125.86 FEET (EXCEPT THE EAST 135 FEET) OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10 AND THE SOUTH 33 FEET (EXCEPT THE EAST 135 FEET) OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT FROM SAID TRACT OF LAND THE EAST 17 FEET OF THE WEST 50 FEET THEREOF), ALL IN COOK COUNTY, ILLINOIS.

PERMANENT TAX INDEX NUMBER 24-10-100-013-0000 VOL. 242

Address: 9507 S. Cicero Avenue, Oak Lawn, IL 60453