

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
DAVIDSON COUNTY

KATHY A. LESLIE,
Plaintiff,

v.

AUBREY B. HARWELL, JR., AS
EXECUTOR OF ESTATE OF
MELISSA ANN WALL, and
ESTATE OF MELISSA ANN WALL,
Defendants.

No: 23-0267-II

FILED
2023 FEB 27 PM 3:06
CLERK OF COURT
DAVIDSON COUNTY
TENN.

COMPLAINT

Plaintiff Kathy A. Leslie brings this action against Defendants Aubrey B. Harwell, as Executor of Estate of Melissa Ann Wall, and the Estate of Melissa Ann Wall, for breach of contract and specific performance.

I. PARTIES

1. Plaintiff Kathy A. Leslie is an individual residing in Nashville, Davidson County, Tennessee. Leslie operates Shugga Hi Bakery and Cafe at 1000 Dickerson Pike. Shugga Hi Bakery and Cafe is a full-service restaurant known for serving thousands of free meals to the hungry and otherwise serving the community.

2. Defendant Aubrey B. Harwell, Jr. is executor of the Estate of Melissa Ann Wall. Harwell does business in Nashville, Davidson County, Tennessee, and may be served at Neal & Harwell, PLC, 1201 Demonbreun Street, Suite 1000, Nashville, Tennessee 37203.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action and venue is proper in Davidson County.

III. FACTS

4. In June of 2016, Leslie entered into a lease agreement (the "Original Lease," Exhibit A) with the Nathan Wall Marital Trust. The leased premises (the "Premises") comprised a commercial building located at 1000 and 1006 Dickerson Pike, and an adjacent lot located at 1012-B Dickerson Pike.

5. Because of her commitment to serving the local community through Shugga Hi, Leslie negotiated an addendum in the Original Lease, which provided Leslie a right of first refusal if Nathan Wall Marital Trust decided to sell the Premises.

6. In June of 2019, Leslie and Nathan Wall Marital Trust entered into an agreement extending the term of the Original Lease (the "Renewed Lease," Exhibit B). The Renewed Lease included the original right of first refusal, and added a provision requiring Leslie to close within 120 days of her exercise of the right of first refusal.

7. On information and belief, the Nathan Wall Marital Trust subsequently distributed the Premises and other adjacent property to Melissa Ann Wall.

Wall died in October of 2021, and Aubrey B. Harwell, Jr. was appointed executor of the Estate of Melissa Ann Wall (the "Estate").

8. On December 22, 2022, Harwell provided notice to Leslie that the Estate had received an offer to purchase the Premises and several contiguous tracts for \$5,475,000. (Exhibit C). Harwell offered Leslie ten days to match the terms of the offer.

9. Based on public records, the plaintiff alleges on information and belief that the property subject to the \$5,475,000 offer is the real property described as TRACT 2 and TRACT 4 on the quitclaim deed attached hereto as Exhibit

D. The property is also identified as follows:

1000 Dickerson Pike – Map/Parcel 082 02 0 025.00

1012-B Dickerson Pike – Map/Parcel 082 02 0 024.00

1014 Dickerson Pike – Map/Parcel 082 02 0 023.00

1018 Dickerson Pike – Map/Parcel 082 02 0 022.00

Dickerson Pike – Map/Parcel 082 02 0 021.00

Dickerson Pike – Map/Parcel 082 02 0 020.00

1005 B Whites Creek Pike – Map/Parcel 082 02 0 026.00

1007 Whites Creek Pike – Map/Parcel 082 02 0 0276.00

10. On December 28, 2022, Leslie emailed Harwell and notified him that she would accept the defendants' offer and match the terms of the existing

offer. On December 30, 2022, Leslie's counsel sent a letter to Harwell reiterating Leslie's acceptance of the offer. (Exhibit E).

11. Leslie and her counsel asked Harwell to provide the specific terms and conditions of the offer Leslie had agreed to match. The defendants have not provided those terms and conditions, other than the total purchase price.

12. The defendants subsequently provided the terms of a purported offer to buy only the property located at 1000 Dickerson Pike for \$2,000,000. The terms provided indicated that the offer was made in 2023.

13. Leslie responded that she had already accepted the offer to match the \$5,475,000 offer received by the defendants, and that she intended to enforce that contract. Leslie also reiterated her request to be provided all terms and conditions of the offer.

14. The defendants have repudiated their contractual obligation to allow Leslie to match the \$5,475,000 purchase offer; they have refused to disclose all terms and conditions of the \$5,475,000 purchase offer; and they have repudiated their obligation to allow Leslie a right of first refusal on any other purchase offers, including the purported \$2,000,000 purchase offer.

IV. CAUSES OF ACTION

A. BREACH OF CONTRACT

15. The plaintiff incorporates all preceding paragraphs herein by reference as if fully set forth.

16. The parties' agreement for the plaintiff to match the terms of an existing offer to purchase the Premises and several contiguous tracts for \$5,475,000 is a valid and enforceable contract.

17. The defendants have materially breached their contractual obligations by (a) repudiating and failing to perform their contractual obligation to allow the plaintiff to match the \$5,475,000 purchase offer, and (b) refusing to disclose all terms and conditions of the \$5,475,000 purchase offer.

18. In the alternative, the defendants have materially breached their contractual obligations under the Original Lease and Renewal Lease by repudiating their obligation to allow the plaintiff a right of first refusal on any other purchase offer, including the purported \$2,000,000 purchase offer. The plaintiff is entitled to enforce her right of first refusal on the Premises.

19. The plaintiff is entitled to specific performance of the defendants' contractual obligations.

20. The defendants' breaches have caused the plaintiffs to suffer damages, including consequential damages.

B. LIEN LIS PENDENS

21. The plaintiff incorporates all preceding paragraphs herein by reference as if fully set forth.

22. The plaintiff accepted the defendants' offer to purchase the Premises and several contiguous tracts for \$5,475,000.

23. Upon acceptance of the offer, the plaintiff acquired equitable title to the property described on Exhibit D hereto, or such other property as is the subject of the \$5,475,000 offer.

24. The plaintiff is entitled to specific performance of the agreement for the plaintiff to match the terms of an existing offer to purchase the Premises and several contiguous tracts for \$5,475,000, and is entitled to acquire legal title to the property.

25. The plaintiff is therefore entitled to the immediate imposition of a lien lis pendens against the property described on Exhibit D hereto.

Wherefore, the plaintiff demands:

1. That process issue and that the defendants be required to respond to this complaint within the time required by law.

2. That the Court order specific performance against the defendants, requiring them to (a) provide the plaintiff all terms and conditions of the \$5,475,000 purchase offer, and (b) perform their contractual

obligation to allow Leslie to match the \$5,475,000 purchase offer and acquire the property that is the subject of the \$5,475,000 offer.

3. In the alternative, if it is determined that the plaintiff is not entitled to enforce the parties' contract for the plaintiff to match the \$5,475,000 purchase offer, that the Court order specific performance against the defendants, requiring them to perform their contractual obligations to (a) provide the plaintiff all terms and conditions of any offer to purchase any part of the Premises, and (b) allow Leslie to match any offer to purchase any part of the Premises.

4. That the Court award the plaintiff actual damages, including consequential damages, in an amount to be proven at trial.

5. That the Court issue a lien lis pendens against the property described as TRACT 2 and TRACT 4 on the quitclaim deed attached hereto as Exhibit D, and that the lien be recorded in the Register of Deeds Office for Davidson County, Tennessee.

6. That the Court award judgment against the defendants for attorneys' fees and costs.

7. That the Court award judgment against the defendants for pre- and post-judgment interest.

8. That the Court award such additional relief as may be just and equitable.

Respectfully submitted,



Nader Baydoun - 8077

Stephen C. Knight - 15514

Baydoun & Knight, PLLC

5141 Virginia Way, Suite 210

Brentwood, Tennessee 37027

(615) 256-7788

nader@baydoun.com

sknight@baydoun.com

BILL DORRIS AND ASSOCIATES PROPERTY MANAGEMENT

LEASE AGREEMENT

FILED
2023 FEB 27 PM 3:06

1. Parties. This lease, dated the 21st day of JUNE, 2016, by and between NATHAN WALL MADZRAL TRUST (his/her/its) heirs or assigns, whose record address is 3870 DICKERSON PIKE SUITE D NASHVILLE, TENNESSEE, 37207 hereinafter called Lessor and KATHY A. LESTER / Sister In Law whose record address is 1000 DICKERSON PIKE NASHVILLE, TENNESSEE 37207, hereinafter called Lessee.

WITNESSETH:

- 2. Considerations. In consideration of the rental stated below and their mutual covenants, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the premises described herein. 1000 & 1006 AND 1012-B DICKERSON PIKE NASHVILLE, TENNESSEE
- 3. Premises. The leased premises, hereinafter called the Premises are identified and described as follows: 1000 & 1006 BUILDING COMMERCIAL APPROX 3796 SQ FT 1012-B DICKERSON PIKE COMMERCIAL VACANT LOT 50X155
- 4. Term. The term of this Lease is 3 (months/years), commencing on JULY 1, 2016 and terminating on JUNE 30, 2019. THE 3 YEAR TERM AT 2,500.00 ONLY INCREASE WITH BEST TAXES & INSURANCE INCREASE
- 5. Basic Rental. Lessee agrees to pay to Lessor a (monthly/yearly) rental of Two thousand Five Hundred DOLLARS (\$2,500.00), payable in advance on the 1st day of JULY, 2016, and continuing on the 1st day of each consecutive month thereafter. A ten percent (10%) late penalty will be assessed for payments received after the 5th (5th) of each month. WITH 3 YEAR OPTION WITH SAME TERMS PLUS 3 MORE YEARS
BASE PLUS TAX & INSURANCE
Said monthly payments are to be made at Lessor's record address, as listed above, or at any address which Lessor may hereafter designate in writing, without demand or further notice, which is hereby waived at Lessor's option. Failure to make payments promptly shall result in default by Lessee as hereinafter stated in Paragraph 24 herein.
- 6. Rental Adjustment. For each year after the first year of this Lease, additional rental shall be charged based on the increase in the Consumer Price Index (Index) as published by the Bureau of Labor Statistics of the Department of Labor. This additional rental shall be computed as follows:
 - a. The Base Month is the month in which this Lease commences;
 - b. The Anniversary Month is the same calendar month as the Base Month in each consecutive year, and
 - c. The basic annual rental shall be increased by the percentage which the index for the Anniversary Month bears to the Index for the Base Month.

Exhibit A

7. **Full Payment with Set-Off.** The total rent due upon each due date shall be paid in full to Lessor and no set-off or counter-claims may be deducted by Lessee from the rentals due. The burden-of-proof of full payment shall be upon Lessee.
8. **Kind of Business.** Lessee shall occupy the Premises throughout the full term of the Lease, and the principal business to be conducted is Food Business, Off-ICE
9. **Assignment and Subletting.** This Lease may not be assigned and the premises may not be sublet, partially or fully, without prior written consent of Lessor, which consent shall not be unreasonably withheld. Even in the event of permitted assignment or subletting, Lessee acknowledges that it shall remain fully responsible for compliance with all terms of the Lease.
10. **Security Interest in Personal Property.** Lessee grants to Lessor, a security interest in all Lessee's personal property and/or contents of the leased Premises for the payment of rent and/or damages of any kind. To enforce such security interest, Lessor may take and keep possession of all such personal property of Lessee and may advertise and sell such property at public auction to satisfy said debt, without any process of law and in bar of any right of redemption, provided that notice be posted on the Premises and written notice be sent by certified mail to Lessee and any known creditors claiming any interest in such property at least ten (10) days prior to sale date. In furtherance of this provision, Lessee shall execute a financing statement and pay the filing fee for filing said instrument in the place designated by law.
11. **Alterations and Repairs.** All alterations, additions, repairs, replacements, and improvements made upon the Premises during the term of the Lease (including all heating and air conditioning, lighting and related improvements) shall become the property of Lessor upon expiration of this Lease; save and except, however, only this certain trade fixtures, machinery and equipment installed by Lessee solely for use in his business, which shall remain the property of Lessee. Such trade fixtures, machinery, and equipment installed by Lessee shall be removed in default, and provided the Premises be returned to substantially the same condition as when let, ordinary wear and tear excepted.
12. **Delivery Upon Termination of Lease; Deposit.** Upon termination of the Lease, by expiration of term or otherwise, Lessee shall redeliver in good order and condition, cleared of all goods and broom clean, and shall make good all damages to the Premises, ordinary wear and tear excepted, and shall remain liable for holdover rent until the Premises shall be returned in such order to Lessor. Lessee shall pay Lessor deposit in the amount of Two thousand Five Hundred DOLLARS (\$ 2500.00) to further secure compliance with this provision, said deposit to be placed in a noninterest-bearing escrow account and said deposit to be refunded to Lessee upon compliance with this provision. Otherwise, said deposit shall be applied to the damages. OWNER WILL HAVE DEPOSIT IN PLACE
13. **Lawful Use.** Lessee covenants that the Premises shall be used only and exclusively for lawful purposes, and Lessee shall save and hold Lessor harmless from any loss, cost, or liability arising out of Lessee's use of the Premises in violation of any law, ordinance or regulation. Lessee covenants that no activity which is unlawful or a nuisance, which causes an extra premium, or which shall

be deemed hazardous by Lessor's insurance carrier shall be carried on or suffered to exist upon the Premises.

14. **Cleanliness.** Lessee shall maintain a high degree of cleanliness and neatness in the building and on adjacent grounds, including loading docks, parking lots, and rail sidings alongside of and in the main vicinity of the building occupied by Lessee. If such cleanliness is not maintained, Lessor may, upon advance written notice to the person in charge of Lessee's Premises, have the area cleaned and include in Lessee's rental charges, the costs of such services.
15. **Holdover.** Should Lessee hold over the term hereby created, and with the consent of Lessor, Lessee shall become a tenant from month-to-month at the monthly rental payable hereunder for the prior month, and otherwise upon the covenants and conditions in this Lease contained, and shall continue to be such tenant until thirty (30) days after either party hereto serves upon the other written notice or intention to terminate such monthly tenancy. Should such termination occur on any day other than the last day of any rental month, any unearned prepaid rental shall immediately following surrender of the demised Premises by Lessee be refunded unto him.
16. **Right of Entry.** Lessor and its agents may enter said Premises at reasonable times to inspect, make repairs or additions, and within the last six months of the lease term, to show the premises to prospective tenants, provided Lessee's occupancy shall not be interfered with.
17. **Utilities.** All heat, water, electric current, gas, sewer, garbage, or special fees, metering charges, or utility charges used on the leased Premises shall be paid by Lessee.
18. **Improvements to be Made and Delivery of Premises.** If Lessor is to make any improvements prior to Lessee's occupancy, a separate Schedule "B" shall be attached and initialed by each party, setting out the agreed improvements, and Lessee acknowledges that the Premises shall be acceptable when such improvements are made. If no Schedule "B" is attached, Lessee shall be deemed to have accepted the Premises in its existing condition. *NO BUDGET FOR LESSOR*
19. **Upkeep of Premises.** Lessee will, at Lessee's sole expense, keep and maintain in good repair, the entire leased Premises including interior walls, floors, ceilings, ducts, utilities, lighting, doors, the HVAC system and all plumbing fixtures and windows.
 - a. **Repair.** Lessee agrees to keep and maintain the leased Premises, which includes but is not limited to all electrical, plumbing, heating, air conditioning and other mechanical equipment serving the leased Premises, all doors, and all plate glass and door and window glass, ~~and~~, exterior walls and parking areas in good order and repair.
20. **Fire Clause.** In case the said Premises shall be so damaged by fire or other cause as to be rendered untenable, Lessor shall have thirty (30) days from date of such casualty to determine the extent of repairs to be done and the time required to perform them. If the damage is such that repairs can be completed within ninety (90) days from commencement of said repairs, Lessor agrees to make such repairs promptly and to allow Lessee an abatement in rent for such

time as the building remains untenable. Lessor shall commence repairs within thirty (30) days from date of said casualty. If necessary repairs cannot be made within ninety (90) days from date of commencement of such repairs, this Lease shall terminate as of the date the Premises were rendered untenable. In the event of partial loss, the rent shall be abated by a portion equal to the area rendered unfit for use against the total area. Lessee to have contents insured at Lessee's expense.

21. **Taxes and Insurance.** Lessee shall pay as additional rent, all property taxes and insurance, including fire, extended coverage, vandalism and malicious mischief and other perils. Lessor to be named Insured.
22. **Damages and Accidents.** Lessee agrees to hold harmless and indemnify Lessor from and against any liability or loss, including counsel fees incurred in good faith by the Lessor, arising out of any cause associated with Lessee's business or use of the Premises. In addition, Lessee agrees to provide public liability insurance naming Lessor as additional insured to protect Lessor from risks customarily covered by such insurance, in amounts not less than \$100,000 per person and \$300,000 per accident, and \$50,000 per damage to property. Lessee also shall carry contents coverage on its contents with a waiver of subrogation clause as to Lessor.
23. **Default by the Lessee.** Lessee shall be in default if payment of rental is not received by Lessor's agent as herein provided with five (5) days of each due date. Default on the part of Lessee in keeping or performing any term or condition herein shall authorize Lessor at its option, and upon thirty (30) days' written notice thereof to Lessee to declare this Lease terminated by default of Lessee. However, immediately upon default, without regard to the thirty (30) days notice requirement, Lessor, if he feels insecure concerning Lessee's intention or ability to pay rental or to keep or perform any other term or condition herein, may re-enter the Premises and take possession of all personal property therein found, without legal process; also upon such default, all rental due hereunder for the balance of the term of the Lease shall become immediately due and payable, but Lessee shall remain obligated to keep and perform such other term and condition other than the payment of rentals and continued occupancy, and shall be liable for additional damages for failure to keep any such other term and condition. However, in the event of default, Lessor shall attempt to relet the premises to some other tenant and shall after first recouping all expenses and remodeling costs incurred incident to the reletting, then refund to Lessee monthly rentals collected up to Lessee's regular monthly rental.
24. **Non-Waiver.** Failure of Lessor to declare any default immediately upon occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but Lessor shall have the right to declare any such default at any time; no waiver of any default shall alter Lessee's obligation under the Lease, with respect to any other existing or subsequent default.
25. **Attorney's Fees and Interest.** In the event it becomes necessary for Lessor to employ an attorney to enforce collection of the rents agreed to be paid or to enforce compliance with any of the covenants and agreements herein contained, Lessee shall be liable for reasonable attorney's fees, costs, and expenses incurred by Lessor, and, in addition, shall be liable for interest at ten percent (10%) per

annum on the sum determined to be due by reason of breach of this Lease, such interest to run from the date of breach of the Lease.

26. **Condemnation.** In the event of Lessor's receipt of notice of a condemning authority's intention to take by eminent domain a substantial part of the property on which the leased premises are situated, either party may at any time thereafter, by notice in writing effective on the date of taking or six months after the date of service of the notice, whichever shall be earlier, terminate this Lease. In the event of termination of this Lease, Lessee shall have the right to remove all of his property and contents, but shall have no right to any part of the condemnation settlement or award, except for reasonable moving expenses, if specifically set aside for tenant relocation by the condemning authority.
27. **Quiet Possession.** In consideration of the covenants and agreements herewith contained, Lessor agrees to warrant and defend Lessee in the quiet and peaceful possession of the said Premises during the term of this Lease.
28. **Entirety of Understanding in Written Lease.** It is agreed that the entire understanding between the parties is set out in this Lease and any riders which are hereto annexed, that this Lease supersedes and voids all prior proposals, letters, and agreements, oral or written, and that no modifications or alteration of the Lease shall be effective unless evidenced by an instrument in writing, signed by both parties. The Laws of the State where the leased Premises are situated shall apply.
29. **Bankruptcy or Insolvency of Lease.** In the event of the filing of any petition for bankruptcy or receivership relating to the Lessee, unless dismissed in twenty-one (21) days, or in the event of any assignment of Lessee's assets for the benefit or creditors, then Lessor shall have the right on thirty (30) days notice to terminate this Lease, irrespective of whether rental payments shall then be in default.

IN WITNESS WHEREOF, the parties have hereunto executed the Lease the day and year above written.

Patricia E. Wall
LESSOR

Dusty Dale Soderstrom
LESSEE

Will Malone
Agent for Lessee

SCHEDULE "B"

1. OWNER WARRANT TO LESSEE THAT UPON ACCEPTANCE OF THE PREMISES, THE PRESENT CONDITION OF THE PREMISES WILL BE IN GOOD ORDER, AND THAT ALL PLUMBING AND SEWAGE FACILITIES, ALL MECHANICAL EQUIPMENT, INCLUDING AIR CONDITIONING, HEATING, IS OPERATIVE AND MECHANICALLY SOUND.

2. OWNER WILL MAINTAIN ROOF ONLY. ALL OTHER MAINTENANCE IS A COST TO LESSEE.

3. ALL IMPROVEMENTS INSIDE TO BE MADE BY LESSEE. TO REMOVE WALLS IN FRONT, ADD DOORS TO BACK OF SHOWROOM, PATCH FLOOR, ALL IMPROVEMENTS ARE TO BE MADE BY LESSEE AT LESSEE'S SOLE EXPENSE, INSIDE AND OUT OF BUILDING.

4. WATER coming under side door on Dickerson Park Side to be fixed by OWNER

Patricia E. Wall
LESSOR

Theresa K. ...
LESSEE

Mike ...
Agent for Lessee

6/20/01c
IN EVENT NATHAN T. WALL MARITAL TRUST SHOULD DECIDE TO SELL BUILDING # 1000 DICKERSON PARK KATHY DESIRES TO HAVE FIRST RIGHT OF REFUSAL

X [Signature]



RENTAL AGREEMENT RENEWAL

REGISTERED MAIL
REGISTERED MAIL
REGISTERED MAIL

2023 FEB 27 PM 3:07

FILED

Rental Agreement for:

Expiring on:

Kathy A. Goshoe - Shoppa Ho Bakery

JUNE 30, 2019

Located at:

1000 Dickerson Pike, Nashville, Tenn.

Is Renewed this the

1st

day of

July

at the rate of \$

2,500.00

per month. This Renewal shall expire thereon:

6/30/2022

It is expressly understood and agreed by Tenant(s) that the terms and conditions set forth in the Rental Agreement remain applicable and in force for the term of this Renewal.

Tenant Signature

Date

Tenant Signature

Date

Property Manager

Date

Exhibit B

**BILL DORRIS AND ASSOCIATES PROPERTY
MANAGEMENT**

LEASE AGREEMENT

1. **Parties.** This lease, dated the 21st day of JUNE, 2016, by and between NATHAN WALL MARZAL TRUST (his/her/its) heirs or assigns, whose record address is 3870 DICKERSON PIKE SUITE D NASHVILLE, TENNESSEE, 37207 hereinafter called Lessor and KATHY A. LESTER / Sister In Law whose record address is 1000 DICKERSON PIKE NASHVILLE, TENNESSEE 37207, hereinafter called Lessee. *Legal Firm*

WITNESSETH:

2. **Considerations.** In consideration of the rental stated below and their mutual covenants, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the premises described herein. 1000 & 1006 AND 1012-B DICKERSON PIKE NASHVILLE, TENN. LESSEE

3. **Premises.** The leased premises, hereinafter called the Premises are identified and described as follows: 1000 & 1006 BUILDING COMMERCIAL APPROX 3796 SFF 1012-B DICKERSON PIKE COMMERCIAL VACANT LOT 50 X 155

4. **Term.** The term of this Lease is 3 (months/years), commencing on JULY 1, 2016 and terminating on JUNE 30, 2019. *THE 3 YEAR TERM AT 2,500.00 ONLY INCREASE WITH BEST FAVORABLE INSURANCE INCREASE*

5. **Basic Rental.** Lessee agrees to pay to Lessor a (monthly/yearly) rental of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable in advance on the 1st day of JULY, 2016, and continuing on the 1st day of each consecutive month thereafter. A ten percent (10%) late penalty will be assessed for payments received after the 5th (5th) of each month. *WITH 3 YEAR OPTION WITH SAME TERMS PLUS 3 MORE YEARS*
BASE PLUS TAX & INSURANCE

Said monthly payments are to be made at Lessor's record address, as listed above, or at any address which Lessor may hereafter designate in writing, without demand or further notice, which is hereby waived at Lessor's option. Failure to make payments promptly shall result in default by Lessee as hereinafter stated in Paragraph 24 herein.

6. **Rental Adjustment.** For each year after the first year of this Lease, additional rental shall be charged based on the increase in the Consumer Price Index (Index) as published by the Bureau of Labor Statistics of the Department of Labor. This additional rental shall be computed as follows:

- The Base Month is the month in which this Lease commences;
- The Anniversary Month is the same calendar month as the Base Month in each consecutive year, and
- The basic annual rental shall be increased by the percentage which the index for the Anniversary Month bears to the Index for the Base Month.

7. **Full Payment with Set-Off.** The total rent due upon each due date shall be paid in full to Lessor and no set-off or counter-claims may be deducted by Lessee from the rentals due. The burden-of-proof of full payment shall be upon Lessee.
8. **Kind of Business.** Lessee shall occupy the Premises throughout the full term of the Lease, and the principal business to be conducted is Food Business, Off-206
9. **Assignment and Subletting.** This Lease may not be assigned and the premises may not be sublet, partially or fully, without prior written consent of Lessor, which consent shall not be unreasonably withheld. Even in the event of permitted assignment or subletting, Lessee acknowledges that it shall remain fully responsible for compliance with all terms of the Lease.
10. **Security Interest in Personal Property.** Lessee grants to Lessor, a security interest in all Lessee's personal property and/or contents of the leased Premises for the payment of rent and/or damages of any kind. To enforce such security interest, Lessor may take and keep possession of all such personal property of Lessee and may advertise and sell such property at public auction to satisfy said debt, without any process of law and in bar of any right of redemption, provided that notice be posted on the Premises and written notice be sent by certified mail to Lessee and any known creditors claiming any interest in such property at least ten (10) days prior to sale date. In furtherance of this provision, Lessee shall execute a financing statement and pay the filing fee for filing said instrument in the place designated by law.
11. **Alterations and Repairs.** All alterations, additions, repairs, replacements, and improvements made upon the Premises during the term of the Lease (including all heating and air conditioning, lighting and related improvements) shall become the property of Lessor upon expiration of this Lease; save and except, however, only this certain trade fixtures, machinery and equipment installed by Lessee solely for use in his business, which shall remain the property of Lessee. Such trade fixtures, machinery, and equipment installed by Lessee shall be removed in default, and provided the Premises be returned to substantially the same condition as when let, ordinary wear and tear excepted.
12. **Delivery Upon Termination of Lease; Deposit.** Upon termination of the Lease, by expiration of term or otherwise, Lessee shall redeliver in good order and condition, cleared of all goods and broom clean, and shall make good all damages to the Premises, ordinary wear and tear excepted, and shall remain liable for holdover rent until the Premises shall be returned in such order to Lessor. Lessee shall pay Lessor deposit in the amount of Two Thousand Five Hundred DOLLARS (\$ 2500.00) to further secure compliance with this provision, said deposit to be placed in a noninterest-bearing escrow account and said deposit to be refunded to Lessee upon compliance with this provision. Otherwise, said deposit shall be applied to the damages. OWNER will have deposit in place
13. **Lawful Use.** Lessee covenants that the Premises shall be used only and exclusively for lawful purposes, and Lessee shall save and hold Lessor harmless from any loss, cost, or liability arising out of Lessee's use of the Premises in violation of any law, ordinance or regulation. Lessee covenants that no activity which is unlawful or a nuisance, which causes an extra premium, or which shall

be deemed hazardous by Lessor's insurance carrier shall be carried on or suffered to exist upon the Premises.

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16. **Right of Entry.** Lessor and its agents may enter said Premises at reasonable times to inspect, make repairs or additions, and within the last six months of the lease term, to show the premises to prospective tenants, provided Lessee's occupancy shall not be interfered with.
17. **Utilities.** All heat, water, electric current, gas, sewer, garbage, or special fees, metering charges, or utility charges used on the leased Premises shall be paid by Lessee.
18. **Improvements to be Made and Delivery of Premises.** If Lessor is to make any improvements prior to Lessee's occupancy, a separate Schedule "B" shall be attached and initialed by each party, setting out the agreed improvements, and Lessee acknowledges that the Premises shall be acceptable when such improvements are made. If no Schedule "B" is attached, Lessee shall be deemed to have accepted the Premises in its existing condition. *NO BIDD OUT FOR LESSOR*
19. **Upkeep of Premises.** Lessee will, at Lessee's sole expense, keep and maintain in good repair, the entire leased Premises including interior walls, floors, ceilings, ducts, utilities, lighting, doors, the HVAC system and all plumbing fixtures and windows.
 - a. **Repair.** Lessee agrees to keep and maintain the leased Premises, which includes but is not limited to all electrical, plumbing, heating, air conditioning and other mechanical equipment serving the leased Premises, all doors, and all plate glass and door and window glass, ~~and~~ exterior walls and parking areas in good order and repair.
20. **Fire Clause.** In case the said Premises shall be so damaged by fire or other cause as to be rendered untenable, Lessor shall have thirty (30) days from date of such casualty to determine the extent of repairs to be done and the time required to perform them. If the damage is such that repairs can be completed within ninety (90) days from commencement of said repairs, Lessor agrees to make such repairs promptly and to allow Lessee an abatement in rent for such

time as the building remains untenable. Lessor shall commence repairs within thirty (30) days from date of said casualty. If necessary repairs cannot be made within ninety (90) days from date of commencement of such repairs, this Lease shall terminate as of the date the Premises were rendered untenable. In the event of partial loss, the rent shall be abated by a portion equal to the area rendered unfit for use against the total area. Lessee to have contents insured at Lessee's expense.

21. **Taxes and Insurance.** Lessee shall pay as additional rent, all property taxes and insurance, including fire, extended coverage, vandalism and malicious mischief and other perils. Lessor to be named insured.
22. **Damages and Accidents.** Lessee agrees to hold harmless and indemnify Lessor from and against any liability or loss, including counsel fees incurred in good faith by the Lessor, arising out of any cause associated with Lessee's business or use of the Premises. In addition, Lessee agrees to provide public liability insurance naming Lessor as additional insured to protect Lessor from risks customarily covered by such insurance, in amounts not less than \$100,000 per person and \$300,000 per accident, and \$50,000 per damage to property. Lessee also shall carry contents coverage on its contents with a waiver of subrogation clause as to Lessor.
23. **Default by the Lessee.** Lessee shall be in default if payment of rental is not received by Lessor's agent as herein provided with five (5) days of each due date. Default on the part of Lessee in keeping or performing any term or condition herein shall authorize Lessor at its option, and upon thirty (30) days' written notice thereof to Lessee to declare this Lease terminated by default of Lessee. However, immediately upon default, without regard to the thirty (30) days notice requirement, Lessor, if he feels insecure concerning Lessee's intention or ability to pay rental or to keep or perform any other term or condition herein, may re-enter the Premises and take possession of all personal property therein found, without legal process; also upon such default, all rental due hereunder for the balance of the term of the Lease shall become immediately due and payable, but Lessee shall remain obligated to keep and perform such other term and condition other than the payment of rentals and continued occupancy, and shall be liable for additional damages for failure to keep any such other term and condition. However, in the event of default, Lessor shall attempt to relet the premises to some other tenant and shall after first recouping all expenses and remodeling costs incurred incident to the reletting, then refund to Lessee monthly rentals collected up to Lessee's regular monthly rental.
24. **Non-Waiver.** Failure of Lessor to declare any default immediately upon occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but Lessor shall have the right to declare any such default at any time; no waiver of any default shall alter Lessee's obligation under the Lease, with respect to any other existing or subsequent default.
25. **Attorney's Fees and Interest.** In the event it becomes necessary for Lessor to employ an attorney to enforce collection of the rents agreed to be paid or to enforce compliance with any of the covenants and agreements herein contained, Lessee shall be liable for reasonable attorney's fees, costs, and expenses incurred by Lessor, and, in addition, shall be liable for interest at ten percent (10%) per

annum on the sum determined to be due by reason of breach of this Lease, such interest to run from the date of breach of the Lease.

26. **Condemnation.** In the event of Lessor's receipt of notice of a condemning authority's intention to take by eminent domain a substantial part of the property on which the leased premises are situated, either party may at any time thereafter, by notice in writing effective on the date of taking or six months after the date of service of the notice, whichever shall be earlier, terminate this Lease. In the event of termination of this Lease, Lessee shall have the right to remove all of his property and contents, but shall have no right to any part of the condemnation settlement or award, except for reasonable moving expenses, if specifically set aside for tenant relocation by the condemning authority.
27. **Quiet Possession.** In consideration of the covenants and agreements herewith contained, Lessor agrees to warrant and defend Lessee in the quiet and peaceful possession of the said Premises during the term of this Lease.
28. **Entirety of Understanding in Written Lease.** It is agreed that the entire understanding between the parties is set out in this Lease and any riders which are hereto annexed, that this Lease supersedes and voids all prior proposals, letters, and agreements, oral or written, and that no modifications or alteration of the Lease shall be effective unless evidenced by an instrument in writing, signed by both parties. The Laws of the State where the leased Premises are situated shall apply.
29. **Bankruptcy or Insolvency of Lease.** In the event of the filing of any petition for bankruptcy or receivership relating to the Lessee, unless dismissed in twenty-one (21) days, or in the event of any assignment of Lessee's assets for the benefit or creditors, then Lessor shall have the right on thirty (30) days notice to terminate this Lease, irrespective of whether rental payments shall then be in default.

IN WITNESS WHEREOF, the parties have hereunto executed the Lease the day and year above written.

Patricia E. Wall
LESSOR

Butch A. Siler / Sister of Paul Siler
LESSEE

Mark Malone
Agent for Lessee

SCHEDULE "B"

1. OWNER WARRANT TO LESSEE THAT UPON ACCEPTANCE OF THE PREMISES, THE PRESENT CONDITION OF THE PREMISES WILL BE IN GOOD ORDER, AND THAT ALL PLUMBING AND SEWAGE FACILITIES, ALL MECHANICAL EQUIPMENT, INCLUDING AIR CONDITIONING, HEATING, IS OPERATIVE AND MECHANICALLY SOUND.

2. OWNER WILL MAINTAIN ROOF ONLY. ALL OTHER MAINTENANCE IS A COST TO LESSEE.

3. ALL IMPROVEMENTS INSIDE TO BE MADE BY LESSEE. TO REMOVE WALLS IN FRONT, ADD DOORS TO BACK OF SHOWROOM, PATCH FLOOR, ALL IMPROVEMENTS ARE TO BE MADE BY LESSEE AT LESSEE'S SOLE EXPENSE, INSIDE AND OUT OF BUILDING.

4. Water coming under Side door on Dickerson Pike side to be fixed by OWNER

Patricia E. Wall
LESSOR

William Keith Johnson
LESSEE

Mike McNeil
Agent for Lessee

6/20/2019

IN EVENT NATHAN T. WALL MARITAL TRUST SHOULD DECIDE TO SELL BUILDING # 1000 DICKERSON PIKE KATHY DESIGNS TO HAVE FIRST RIGHT OF REFUSAL

X WJM

6/3/2019

First Right of Refusal with 120 Days to Close ON Property at 1000 Dickerson Pike Nashville, Tenn



December 22, 2022

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED
& U.S. MAIL

Ms. Kathy Leslie
Sister-in-Law Legal Firm
202 Point East Drive
Nashville, TN 37216

Re: Estate of Melissa Ann Wall (1000 Dickerson Pike)

Dear Ms. Leslie:

Please be advised that I am the Executor of the Estate of Melissa Ann Wall who died October 6, 2021. Prior to her death, Ms. Wall received title to the property at 1000 Dickerson Pike as a distribution from The Nathan Wall Marital Trust. Accordingly, Ms. Wall's estate is now the owner of the subject property.

In reviewing the June 21, 2016 Lease Agreement between The Nathan Wall Marital Trust and yourself, we have noted that there is a June 3, 2019 provision in the lease that you have requested a first right of refusal to purchase 1000 Dickerson Pike. You should be advised that the estate has received an offer to purchase the subject property and several contiguous tracts owned by the estate for a purchase price of \$5,475,000.00.

As there is not a time limit provision in the lease in regard to the right of first refusal, please consider this letter notice that if you wish to match the terms of the current offer, we would like to hear from you within ten days of your receipt of this correspondence. If we have not heard from you within the specified time, we will consider that as your desire not to match the offer. In that event, please consider this letter notice of the termination of the subject lease. We will allow you 60 days to vacate the premises, the time period to begin upon your receipt of this letter. Finally, I am enclosing a \$2,500.00 check payable to you as a refund of the security deposit, as referenced in Paragraph 12 of the lease.

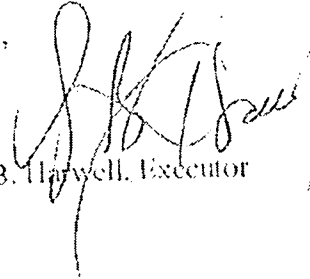
Exhibit C

FILED
2023 FEB 27 PM 3:07
CLERK OF COURSE
N. CLERK

Ms. Kathy Leslie
December 22, 2022
Page 2

Thank you for your attention to this matter.

Sincerely,



Aubrey B. Harwell, Executor

As
Enclosure

1124

ESTATE OF MELISSA ANN WALL
1201 DEMONBREUN ST SUITE 1000
NASHVILLE, TN 37203


DATE 12/22/22 67-938/G40

PAY TO THE ORDER OF Kathy Leslie \$ 2,500.00

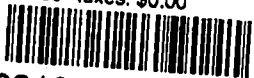
Two Thousand Five Hundred and 00/100 DOLLARS

CAPSTAR BANK

FOR Security deposit in full - 1000 Dollars - K/L



Karen Johnson Davidson County
Batch# 728052 DEEDQC
09/30/2021 01:08:06 PM 6 pgs
Fees: \$32.00 Taxes: \$0.00



20210930-0131741

PREPARED BY:

NEAL & HARWELL, PLC
1201 Demonbreun Street
Suite 1000
Nashville, TN 37203

FILED
2023 FEB 27 PM 3:07

DAVIDSON COUNTY REGISTER
CLERK OF COURTS
B.C.M.M.

QUITCLAIM DEED

Address New Owners As Follows:	Send Tax Bills To:	Map & Parcel Number:
Melissa Wall P.O. Box 138 White House, TN 37048	SAME	SEE ATTACHED

WHEREAS, that certain Nathan T. Wall Marital Trust f/b/o Patricia Wall U/W Nathan T. Wall dated February 23, 2005 (the "Trust") was terminated; and

WHEREAS, Patricia E. Wall, Co-Trustee intended to convey certain real properties from the Trust to Melissa Wall by virtue of a quitclaim deed of record as Instrument No. 20210802-0103291, Register's Office for Davidson County, Tennessee; and

WHEREAS, the above-referenced quitclaim deed, due to as scrivener's error, conveyed the therein described real properties to Patricia E. Wall, individually, instead of to Melissa Wall; and

WHEREAS, in order to correct the scrivener's error, Patricia E. Wall, Co-Trustee and individually, is executing this instrument.

THEREFORE, FOR AND IN CONSIDERATION of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, the Nathan T. Wall Marital Trust f/b/o Patricia Wall U/W Nathan T. Wall dated February 23, 2005, by and through Patricia E. Wall, Co-Trustee, and Patricia E. Wall, individually, to convey any right, title or interest she may have acquired in the herein described real properties, the Grantor, by these presents does hereby quitclaim and convey unto Melissa Wall, the Grantee, her heirs, successors and assigns, all its right, title and interest in and to the following described tracts of land:

SEE EXHIBIT "A" ATTACHED HERETO.

Said properties are conveyed subject to such limitations, restrictions, and encumbrances as may affect the premises.

Witness the Grantor's hand this 30th day of September, 2021

Exhibit D

GRANTOR:

THE NATHAN T. WALL MARITAL TRUST
F/B/O PATRICIA WALL U/W NATHAN T.
WALL DATED FEBRUARY 23, 2005

By: Patricia E. Wall
PATRICIA E. WALL, Co-Trustee

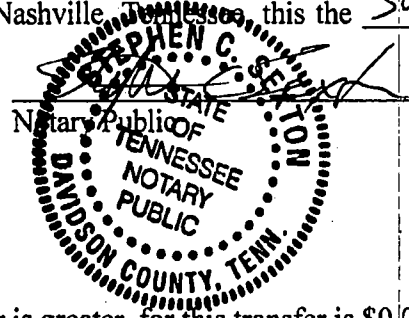
Patricia E. Wall
PATRICIA E. WALL, individually

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, a Notary Public in and for the County and State aforesaid, personally appeared Patricia E. Wall, Co-Trustee, and individually, the bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that she executed the foregoing instrument for the purposes therein contained, in her capacity as Co-Trustee, and individually.

WITNESS my hand and seal, at office in Nashville, Tennessee, this the 30th day of September, 2021.

My Commission Expires: 5/9/23



STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

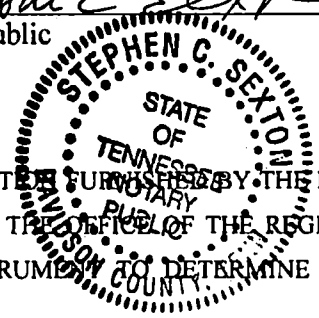
The actual consideration or value whichever is greater, for this transfer is \$0.00.

Patricia E. Wall
Affiant Patricia E. Wall, Co-Trustee

Subscribed and sworn to before me, this 30th day of September, 2021.

Stephen C. Sexton
Notary Public

Commission Expiration Date: 5/9/23



THIS INSTRUMENT PREPARED FROM INFORMATION FURNISHED BY THE PARTIES HEREIN AND NO EXAMINATION OF THE PUBLIC RECORDS IN THE OFFICE OF THE REGISTER OF DEEDS HAS BEEN MADE BY THE PREPARER OF THIS INSTRUMENT TO DETERMINE OWNERSHIP OR STATUS OF TITLE.

EXHIBIT A

TRACT 1

Land in Davidson County, Tennessee, being Lot No. 2 as shown on the plan of Re-Subdivision of Fred Hunnicutt's Property, of record in Book 6900, page 906, Register's Office, for Davidson County, Tennessee, to which plan reference is made for a more complete description.

Being the same property conveyed to Patricia E. Wall and Pendleton Square Trust Company, LLC, Co-Trustees of the Nathan T. Wall Marital Trust f/b/o Patricia Wall U/W Nathan T. Wall dated February 23, 2005, by Quitclaim Deed from Patricia E. Wall and Cumberland Trust & Investment Co., of record in Instrument No. 20180521-0048384, Register's Office for Davidson County, Tennessee.

This is improved property known as 3841-A, 3837, 3839 and 3825 Dickerson Pike, Nashville, Tennessee 37207.

Tax Map and Parcel No. 04112008300

TRACT 2

BEING small lots Nos. 1, 2, 3, 4, 24 and 25 on the map of the subdivision of the lands of Mary R. Brown's Heirs, as of record in Book 314, Pages 540 and 541, Register's Office for said County.

SAID Lots Nos. 1, 2, 3 and 4 are described together as follows:

BEGINNING on the westerly margin of the Dickerson Pike at its intersection with the northerly margin of the Whites Creek Pike; thence with the westerly margin of the Dickerson Pike, northwardly 298.8 feet to the corner of lots Nos. 4 and 5; thence with the line between said two lots, westwardly 150 feet to the easterly margin of an alley; thence with said alley, southwardly 163.8 feet, more or less, to the northeasterly margin of Whites Creek Pike; thence with same, southeastwardly 169 feet to a turn in said Pike; thence eastwardly 34 feet to the beginning.

SAID Lots Nos. 24 and 25 are described together as follows:

BEGINNING on the northeasterly margin of Whites Creek Pike at its intersection with the westerly margin of an alley; thence with the westerly margin of said alley, northwardly 165 feet to the corner of Lots Nos. 23 and 24; thence with the line between said two lots, southwestwardly 102 feet to the northeasterly margin of Whites Creek Pike; thence with said Pike, southeastwardly 136 feet to the beginning.

