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Doc# 1734219019 Fee \$48.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/08/2017 11:29 AM PG: 1 OF 6

This document was prepared by,  
and after recording, return to:

Gary P. Segal, Esq.  
DYKEMA GOSSETT PLLC  
10 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606

Permanent Tax Index Number:

10-21-204-017-0000

Property Address:

4811 Dempster Street  
Skokie, Illinois 60077

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## THIRD AMENDMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS THIRD AMENDMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Amendment") is made as of November 28, 2017, by and between NORTH AURORA ICE CREAM, LLC, an Illinois limited liability company ("Mortgagor"), and CIBC BANK USA (f/k/a The PrivateBank and Trust Company), an Illinois state chartered bank, its successors and assigns ("Mortgagee").

### RECITALS:

A. Oberweis Dairy, Inc., an Illinois corporation ("Original Mortgagor"), executed and delivered that certain Mortgage, Assignment of Leases and Rents and Fixture Filing dated October 29, 2012 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on November 5, 2012, as Document No. 1231004027 (the "Original Mortgage") to and for the benefit of Mortgagee, creating a first mortgage lien on certain improved real estate located at 4811 Dempster Street, Skokie, Illinois 60077, and legally described in Exhibit A attached hereto (the "Real Estate").

B. The Original Mortgage was given by Original Mortgagor to secure the performance of all of the obligations of Original Mortgagor, The Oberweis Group, Inc., and Oberweis Franchise Systems, LLC (each an "Original Borrower" and collectively, the "Original Borrowers"), to Mortgagee pursuant to that certain Amended and Restated Loan and Security Agreement dated as of May 2, 2012 (as amended, the "Loan Agreement").

C. On or about April 29, 2014, (i) Original Mortgagor conveyed the fee simple ownership of the Real Estate to Mortgagee, (ii) Mortgagee was added as a borrower to the Loan Agreement, and (iii) Mortgagee executed and delivered that certain Assumption and Reaffirmation of Mortgage, Assignment of Leases and Rents and Fixture Filing dated April 29, 2014 and

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recorded in the Office of the Recorder of Deeds of Cook County, Illinois on May 20, 2014 as document no. 1414035269 (the "Assumption").

D. On or about October 9, 2014, Mortgagor executed and delivered that certain First Amendment of Mortgage, Assignment of Leases and Rents and Fixture Filing dated October 9, 2014 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on October 22, 2014 as document no. 1429510062 (the "First Amendment").

E. On or about April 28, 2017, Mortgagor executed and delivered that certain Second Amendment of Mortgage, Assignment of Leases and Rents and Fixture Filing dated April 28, 2017 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on July 13, 2017 as document no. 1719412033 (the "Second Amendment").

F. The Original Mortgage as amended by the Assumption, the First Amendment, the Second Amendment and herein is hereinafter referred to as the "Mortgage".

G. The Original Borrowers, Mortgagor and TOGI BRANDS, LLC, an Illinois limited liability company, are hereinafter referred to collectively as the "Borrowers" and each a "Borrower".

H. The Borrowers and the Bank desire to amend the Loan Agreement (the "Loan Agreement Amendment") and one of the conditions precedent to the closing of the transactions contemplated by the Loan Agreement Amendment is the execution and delivery of this Amendment by Mortgagor and Mortgagee.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Mortgagor hereby agree as follows:

1. **Recitals.** That the recitals set forth above are true and accurate and are by this reference incorporated herein and made a part of this Amendment.

2. **Definitions.** Capitalized terms used in this Amendment and not otherwise defined herein are used with the meanings given such terms in the Mortgage.

3. **Amendment.** The Mortgage is amended by amending Section 33(o) in its entirety as follows:

(o) **Description of Loans.** As of November 28, 2017, the Loans consist of a revolving credit loan facility in the maximum amount of \$3,500,000, a term loan with a balance of \$9,931,103, a capital expenditure facility in the maximum amount of \$1,300,000 and certain other extensions of credit to the Borrowers. The Loans have a stated maturity date of April 30, 2022.

4. **References.** From and after the date of execution of this Amendment, any reference to the Mortgage contained in the Original Mortgage or otherwise shall be deemed to refer to the Original Mortgage, as amended by the Assumption, the First Amendment, the Second Amendment, this Amendment and as hereafter amended, modified or supplemented.

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## 5. Miscellaneous.

(a) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Section captions and headings used in this Amendment are for convenience only and are not part of and shall not affect the construction of this Amendment.

(c) This Amendment shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Whenever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

(d) Except as expressly set forth herein, nothing in this Amendment is intended to or shall be deemed to have amended the Mortgage, which is hereby reaffirmed in all respects. Notwithstanding anything contained herein, the terms of this Amendment are not intended to and do not serve to effect a novation of the Mortgage.

[remainder of page intentionally left blank; signature page follows]

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IN WITNESS WHEREOF, this Amendment has been entered into as of the date first above written.

NORTH AURORA ICE CREAM, LLC, an Illinois limited liability company

By: *Joseph Oberweis*  
Joseph Oberweis, Manager

CIBC BANK USA (f/k/a The PrivateBank and Trust Company), an Illinois state chartered bank

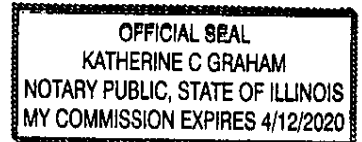
By: \_\_\_\_\_  
Michael D. Ryden, Associate Managing Director

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF                    )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph Oberweis, the Manager of NORTH AURORA ICE CREAM, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2017.

*Katherine C. Graham*  
NOTARY PUBLIC



STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK            )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael D. Ryden, an Associate Managing Director of CIBC BANK USA, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of November, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

Signature and Notary Page to Third Amendment  
of Mortgage, Assignment of Leases and Rents and Fixture Filing

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IN WITNESS WHEREOF, this Amendment has been entered into as of the date first above written.

NORTH AURORA ICE CREAM, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Joseph Oberweis, Manager

CIBC BANK USA (f/k/a The PrivateBank and Trust Company), an Illinois state chartered bank

By:   
Michael D. Ryden, Associate Managing Director

STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Joseph Oberweis, the Manager of NORTH AURORA ICE CREAM, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

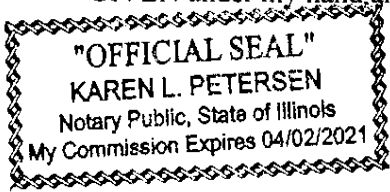
GIVEN under my hand and notarial seal this \_\_\_\_ day of November, 2017.

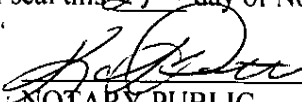
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF COOK <sup>Lake</sup>(<sub>5</sub>) )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael D. Ryden, an Associate Managing Director of CIBC BANK USA, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2017.



  
NOTARY PUBLIC

Signature and Notary Page to Third Amendment of Mortgage, Assignment of Leases and Rents and Fixture Filing

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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

#### PARCEL 1:

LOTS 1 TO 5, INCLUSIVE, (EXCEPT THE NORTH 7 FEET OF SAID LOTS TAKEN FOR THE WIDENING OF DEMPSTER STREET); (EXCEPT THAT PORTION OF LOTS 1 AND 2 TAKEN FOR STREET PURPOSES IN CASE NUMBER 80L8688) AND (EXCEPT THE SOUTH 4 FEET OF SAID LOTS TAKEN FOR PUBLIC ALLEY PURSUANT TO THE PLAT OF DEDICATION ATTACHED TO THE ORDINANCE APPROVING SAID PLAT RECORDED AS DOCUMENT NUMBER 1214329017) IN TERMINAL SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 16, 1924 AS DOCUMENT NUMBER 8368019, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOT 6 (EXCEPT THE NORTH 7 FEET THEREOF) AND (EXCEPT THE SOUTH 4 FEET OF THEREOF TAKEN FOR PUBLIC ALLEY PURSUANT TO THE PLAT OF DEDICATION ATTACHED TO THE ORDINANCE APPROVING SAID PLAT RECORDED AS DOCUMENT NUMBER 1214329017) IN TERMINAL SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 16, 1924 AS DOCUMENT NUMBER 8368019, IN COOK COUNTY, ILLINOIS.

PINs: 10-21-204-001-0000

10-21-204-016-0000 NOW KNOWN AS 10-21-204-017-0000

Property Address: 4811 Dempster Street, Skokie, Illinois 60077