

# UNOFFICIAL COPY

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

**MUCH SHELIST, P.C.**  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606.1615  
Attention: Courtney E. Mayster

**Permanent Tax Index Numbers:**

See Exhibit "A"

**Property Address:**

1347 Shermer Road  
Northbrook, Illinois 60062



Doc# 2103617045 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/05/2021 11:51 AM PG: 1 OF 13

*This space reserved for Recorder's use only*

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of January [w], 2021 (the "Agreement"), is executed by and among **TEF SHERMER LLC**, an Illinois limited liability company (the "Landlord"), **GRAETER'S ICE CREAM COMPANY** (f/k/a Graeter's Manufacturing Co.) an Ohio corporation (the "Tenant"), and **NORTHBROOK BANK & TRUST COMPANY, N.A.**, a national banking association (the "Lender").

### RECITALS:

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of even date herewith, to be recorded concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of \$1,300,000.00.

B. The Tenant has entered into that certain Retail Lease dated [**November 5, 2014**] with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately [**1,881**] rentable square feet of space in the building ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on **Exhibit A** attached hereto and made a part hereof.

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**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

## AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.

2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. Subject to the non-disturbance covenants set forth in Section 5 of this Agreement, the Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt by the Tenant of a notice from the Lender of the occurrence of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Landlord hereby agrees that any rents, fees or other amounts paid by the Tenant to or as directed by the Lender pursuant to this section shall be deemed to have been duly and validly paid by the Tenant under the Lease, and any such amounts shall be credited against the Tenant's obligations under the Lease as if the same were paid directly to the Landlord. The Landlord further agrees that the Tenant shall have no obligation to determine whether the Landlord is in default under such assignment, and the Tenant may rely on such notice and direction from the Lender without any duty to investigate.

5. The Lender agrees that so long as the Tenant is not in default under the Lease beyond the expiration of any applicable notice and cure period:

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(a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

(b) The possession by the Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of failure giving rise to the Landlord's Default, specifying the nature thereof, the section of the Lease under which such failure arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender the same period of time to cure the underlying failure to Landlord under the Lease which shall commence as of the date of receipt of the notice of Landlord's Default and the notice shall specify in **BOLD LETTERS THE PERIOD OF TIME THE LENDER HAS TO CURE PURSUANT TO THE LEASE**. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

7. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the

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extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including the Landlord);

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid more than thirty (30) days to any prior landlord (including the Landlord), unless such prepayment is expressly required under the Lease and/or otherwise received by the new owner;

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease to the extent the amendment or modification modifies a party's monetary obligations, the term of the Lease, a party's termination rights under the Lease, the Lease guaranty or the description of the Premises, made without the Lender's consent; or

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord).

Notwithstanding anything in this Section 7(b) to the contrary, the parties hereby acknowledge and agree that (i) Lender's exclusion from liability and offsets above shall not apply to actions or omissions from Lender from and after the date it succeeds to the interest of the prior landlord (including the Landlord), (ii) Lender shall not be relieved from the obligation to cure any "landlord" defaults under the Lease from and after the date Lender succeeds to the interest of landlord which are continuing in nature and any liability that may arise as a result of any failure to cure the same by Lender within the applicable cure periods set forth in the Lease, and (iii) the exclusion of offset rights shall not apply to any express rights the Tenant may have under the Lease.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To the Lender

**NORTHBROOK BANK & TRUST COMPANY, N.A.**

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100 West North Avenue  
Chicago, Illinois 60610  
Attention Adam Vishny

With a copy to:

**MUCH SHELIST, P.C.**  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606.1615  
Attention: Courtney E. Mayster

To the Landlord:

**TEF SHERMER LLC**  
8601 West Bryn Mawr Avenue, Suite 112  
Chicago, Illinois 60631  
Attention: Jonathan Berger

With a copy to:

**GREENBERG TRAUIG LLP**  
77 West Wacker Drive  
Suite 3100  
Chicago, Illinois 60601  
Attention: Sean W. Bezark

To the Tenant:

**GRAETER'S ICE CREAM COMPANY**  
1175 Regina Graeter Way  
Cincinnati, Ohio 45216  
Attention: Richard Graeter

With a copy to:

**DINSMORE & SHOPL LLP**  
255 E. Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
Attention: Lee M. Stautberg

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, or (ii) if sent by overnight, express carrier or by registered or certified mail, then on the date of delivery (or if delivery is refused, on the date of such refusal).

9. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

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[Signature page to follow]

Property of Cook County Clerk's Office  
COOK COUNTY  
RECORDER OF DEEDS  
COOK COUNTY  
RECORDER OF DEEDS

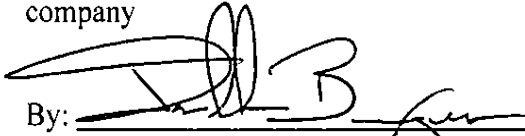
COOK COUNTY  
RECORDER OF DEEDS

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

**LANDLORD:**

**TEF SHERMER LLC**, an Illinois limited liability company

By:   
Name: Jonathan Berger  
Title: Manager

**TENANT:**

**GRAETER'S ICE CREAM COMPANY**, an Ohio corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**NORTHBROOK BANK & TRUST COMPANY, N.A.**, a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**IN WITNESS WHEREOF**, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

**LANDLORD:**

**TEF SHERMER LLC**, an Illinois limited liability company

By: \_\_\_\_\_

Name: Jonathan Berger

Title: Manager

**TENANT:**

**GRAETER'S ICE CREAM COMPANY**, an Ohio corporation

By: \_\_\_\_\_

Name: Richard Graeter

Title: President

**LENDER:**

**NORTHBROOK BANK & TRUST COMPANY, N.A.**, a national banking association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

**LANDLORD:**

**TEF SHERMER LLC**, an Illinois limited liability company

By: \_\_\_\_\_

Name: Jonathan Berger

Title: Manager

**TENANT:**

**GRAETER'S ICE CREAM COMPANY**, an Ohio corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LENDER:**

**NORTHBROOK BANK & TRUST COMPANY, N.A.**, a national banking association

By: Adam Vishny

Name: Adam Vishny

Title: Vice President

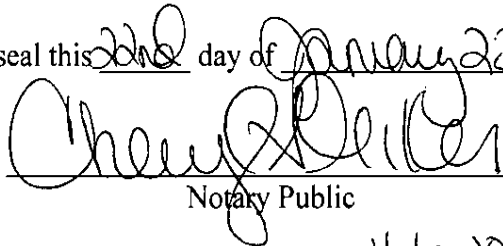
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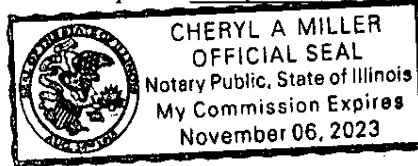
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that **TEF SHERMER LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such **Jonathan Berger**, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11-06-2023



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STATE OF KENTUCKY )  
 ) SS.  
COUNTY OF CAMPBELL )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Richard Graeter, the President of **GRAETER'S ICE CREAM COMPANY**, an Ohio corporation who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such person, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21st day of January, 2021.

**CRAIG J. ETEN**  
Notary Public - State at Large  
State of Kentucky  
ID # KYNP6497  
My commission expires April 27, 2024

[Signature]  
Notary Public  
My Commission Expires: 4/27/2024

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that ADAM VISHNY, the VICE PRESIDENT of **NORTHBROOK BANK & TRUST COMPANY, N.A.**, a national banking association, 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 as such VICE PRESIDENT, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25<sup>th</sup> day of January, 2021.



Kelly Yzaguirre  
Notary Public

My Commission Expires: 12/31/22

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 1 (EXCEPT THAT PART THEREOF CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY DEED RECORDED MARCH 9, 1995 AS DOCUMENT 95158158) AND ALL OF LOT 2 IN LORENZ SUBDIVISION, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PROPERTY ADDRESS OF REAL ESTATE:

1347 Shermer Road  
Northbrook, Illinois 60062.

### PERMANENT TAX IDENTIFICATION NUMBERS:

04-10-302-026-0000

04-10-302-027-0000