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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 04/22/2021 10:45 AM PG: 1 OF 14

This document was prepared by
And when recorded return to:

Max J. Kanter, Esq.
Much Shelist, PC
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606

AMENDMENT TO

DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS (“**Amendment**”) is executed as of the 9th day of December, 2020, by and between 409 N Milwaukee LLC, an Illinois limited liability company (“**Declarant**”), and Blommer Chocolate Company, a Delaware corporation (“**Blommer**”).

WHEREAS, Declarant’s predecessor in interest entered into that certain Declaration of Restrictive Covenants, dated as of March 21, 2013 (the “**Declaration**”), a fully executed copy of which is attached hereto as **Exhibit B**, pursuant to which Declarant agreed to certain restrictions relating to the property located at 409 North Milwaukee Avenue, Chicago, Illinois, and legally described on **Exhibit A** attached hereto (the “**Premises**”). The Declaration was not recorded with the Cook County Recorder of Deeds.

WHEREAS, Blommer desires and agrees with Declarant to amend the Declaration.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in the Declaration, and other good and valuable consideration, in hand paid, Declarant and Blommer hereby agree as follows:

1. Certain Defined Terms. Capitalized terms not otherwise defined in this Amendment will have the respective meanings ascribed to them in the Declaration.

2. Termination of Residential Restriction. Section 1.4A of the Declaration is hereby deleted in its entirety, provided no additional residential units beyond the six apartments existing as of the date of this Amendment shall be allowed.

3. Removal of Liquidated Damages. The \$5,000 liquidated damages cap in Section 1.5 is hereby deleted.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute one and the same instrument.

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5. Successors. The covenants and conditions made and entered into by the parties hereto shall be binding upon the parties and their successors and assigns.

6. Declarant Representation. Declarant represents that it is the legal owner of the Premises, and has full power, right and authority to enter into and perform its obligations under this Amendment. The execution, delivery and performance of this Amendment has been duly and properly authorized by proper limited liability company action.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Declaration of Restrictive Covenants to be duly executed as of the date first above written.

Declarant:

409 N Milwaukee, LLC. an Illinois limited liability company

By: Black Iron Group I, LLC
Its: Manager

By: Black Iron Hospitality, LLC
Its: Manager

By: MS
Print Name: Michael Sherrida
Title: Manager

STATE OF Illinois)
) ss.
COUNTY OF Cook)

On December 09, 2020 before me, Michael Sherrida Manager (here insert name and title of the officer), personally appeared Jaclyn D. Simmons who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Dated this 9th day of December, 2020.



Jaclyn D. Simmons
Notary Public

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

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BLOMMER:

Blommer Chocolate Company, a Delaware corporation

By: Robert Karr Jr.
Name: ROBERT KARR JR.
Title: Chief Legal Officer.

STATE OF IL)
) ss.
COUNTY OF COOK)

On April 1, 2021 before me, Robert Karr Jr. -chief legal officer. (here insert name and title of the officer), personally appeared Jaclyn D. Simmons who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Dated this 1 day of April, 2021.

Jaclyn D. Simmons
Notary Public



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EXHIBIT A

Legal Description

PARCEL 1:

LOTS 21, 22, 23 AND 24 IN SMITH AND OTHERS SUBDIVISION OF BLOCK 72 (EXCEPT LOTS 1, 2, 3 AND 4 IN DILLION SUBDIVISION OF LOTS 9, 10, 13 AND 14 IN BLOCK 72) IN RUSSEL, MATHER AND ROBERT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 29 TO 31 INCLUSIVE IN THIS RESUBDIVISION OF BLOCK 72 IN RUSSEL, MATHER AND ROBERT'S ADDITION TO CHICAGO IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

TRACT 1: LOTS 25 AND 26 IN HENRY SMITH AND OTHERS SUBDIVISION OF BLOCK 72 IN RUSSEL, MATHER AND ROBERTS ADDITION TO CHICAGO IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TRACT 2: LOTS 27 AND 28 IN HENRY SMITH AND OTHERS SUBDIVISION OF BLOCK 72 IN RUSSEL, MATHER AND ROBERT'S ADDITION TO CHICAGO IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 409 N. Milwaukee Avenue, Chicago, IL 60654

TAX PINS: 17-09-109-004-0000, 17-09-109-005-0000, 17-09-109-006-0000,
17-09-109-007-0000, 17-09-109-008-0000, 17-09-109-009-0000

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EXHIBIT B

Declaration

(see attached)

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COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made this 21 day of March, 2013 (the "Effective Date"), by 401 North Milwaukee, LLC, an Illinois limited liability company ("Declarant").

RECITALS

WHEREAS, Declarant is the owner and legal titleholder of a certain parcel of real estate in Cook County, Chicago, Illinois, commonly known as 409 N. Milwaukee Avenue, legally described on Exhibit A attached hereto and made a part hereof (the "Milwaukee Premises"); and

WHEREAS, Declarant has requested a zoning reclassification of the Milwaukee Premises from the M2-3, Light Industry District to the C3-3, Commercial, Manufacturing Employment District in order to allow the use of an outdoor patio as part of the restaurant on the ground floor an outdoor beer garden that serves alcoholic beverages and to repurpose the six existing residential units, above the restaurant, to a zoning use consistent with the C3-3 classification which does not allow for residential use; and

WHEREAS, Declarant has engaged discussions with Alderman Walter Burnett, Jr., ("Alderman"), Blommer Chocolate Company, a Delaware corporation ("Blommer") and surrounding neighborhood organizations regarding the zoning of the Premises in order to facilitate the consistency and compatibility of the current and future uses of the Milwaukee Premises with the proposed zoning designation.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant does hereby declare as follows:

ARTICLE I

RESTRICTIONS

1.1 **Recitals.** The recitals set forth above are incorporated herein by this reference.

1.2 Intentionally omitted

1.3 **Declarant's Representations and Warranties.** As a material inducement provided to Blommer to acknowledge this Declaration of Restrictive Covenants, Declarant makes each of the following representations and warranties to Blommer and its successors and assigns:

A. **Ownership and Control of the Milwaukee Premises.** Declarant is the fee owner of the Milwaukee Premises and all improvements located thereon and has full right and authority to enter into this Declaration and grant the restrictions granted

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hereunder to become effective

B. No Further Approvals or Consents. Declarant does not need to obtain the consent or approval of any mortgagee, lender, ground lessee or other third party in order to enter into this Declaration or for the restrictions granted hereunder to become effective.

C. Zoning of the Milwaukee Premises. As of the Effective Date, the Milwaukee Premises is zoned M2-3, Light Industry District, which zoning classification does not permit residential use of the Milwaukee Premises.

D. Current Residential Use of The Milwaukee Premises. As of the Effective Date, the Milwaukee Premises contains six residential units (the "Residential Units"), which residential use is in violation of the use restrictions established for the Milwaukee Premises current zoning classification.

E. Blommer's Use of its Property. Declarant and, to the best of Declarant's knowledge, all tenants and occupants of the Milwaukee Premises understand and agree that (i) Blommer occupies various real properties in the vicinity of the Milwaukee Premises and is using and intends to continue to use such real property for the manufacture of chocolate and other products, and (ii) Blommer's use of its property for such purposes or any other legal use may result in the production of odors, noise and increase in car and truck traffic which may affect the use and enjoyment of the Milwaukee Premises.

1.4 Declarant's Covenants. As a material inducement provided to Blommer in exchange for Blommer's willingness to acknowledge this Declaration of Restrictive Covenants, Declarant covenants and agrees as follows:

A. Residential Use of the Milwaukee Premises. Declarant shall terminate all residential use of the Milwaukee Premises as soon as reasonably possible but in no event later than March 31, 2014.

B. New Zoning Classification for the Milwaukee Premises. Declarant shall use its best efforts to have the Milwaukee Premises rezoned as C3-3, Commercial Manufacturing Employment District as soon as reasonably possible but in no event later than January 31, 2014.

1.5 Rezoning to Other Zoning Districts. Subject to the terms and conditions of Section 2.4 of this Declaration, Declarant and each subsequent holder of an interest in any portion of the Milwaukee Premises and their grantees, heirs, successors and assigns agree not to seek, request or petition the City of Chicago or any department, agency, official or employee thereof for a further zoning change to the Milwaukee Premises without the prior written consent of Blommer or its successors or assigns. Enforcement of this restriction may be brought by Blommer, its successors or assigns, in a proceeding at law or in equity,

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against any person or persons violating or attempting to violate this restriction. Such proceeding may be to restrain such violation and/or to recover damages. Enforcement of the provision may be any proceeding at law or in equity, brought by Blommer, its successors or assigns, against any person or persons violating and/or attempting to violate this restriction. In the event of any litigation arising out of this Declaration, the prevailing party shall be entitled to the payment of its court costs and reasonable attorneys' fees. Declarant acknowledges that it is difficult if not impossible to ascertain, as of the Effective Date, the amount of damage that Blommer or its successors or assigns would incur if Declarant or its successors and assigns were to violate the terms and conditions of this Declaration, including, without limitation, the restrictions contained in this Declaration. Therefore, if Declarant violates the terms and conditions of this Declaration, including, without limitation, the restrictions contained in this Declaration, Declarant shall pay Blommer or its successors or assigns the sum of \$5,000 per violation as liquidated damages and not as a penalty, which amount represents a reasonable estimate of the likely damages to arise from such a violation. Such liquidated damages amount shall be in addition to any other fees, costs or other amounts which may be recoverable pursuant to the terms of this Declaration or otherwise.

OTHER PROVISIONS

2.1 Notice to Third Parties. Prior to selling, mortgaging, leasing or granting any other property interest in the Milwaukee Premises, Declarant shall provide written notice to any third party acquiring an interest in the Milwaukee Premises and obtain written confirmation that such third party acknowledges and understands that (a) Blommer occupies various real properties in the vicinity of the Milwaukee Premises and uses such real property for the manufacture of chocolate and other products, and (b) Blommer's use of its property for such purposes or any other legal use may result in the production of odors, noise and an increase in car and truck traffic which may affect the third party's use and enjoyment of the Milwaukee Premises.

2.2 Duration. This Declaration and the restrictions contained herein shall run with the land and shall respectively inure to the benefit of and be binding upon Blommer and Declarant and their respective successors and assigns.

2.3 Non-Waiver of Covenants. No covenant, restriction, condition, obligation or other provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

2.4 Survival and Severability. If any term, provision, covenant, restriction, agreement or condition contained in this Declaration shall be held to be invalid, whether in general or as to any particular situation or circumstance, the remainder of this Declaration and its applicability to any other situation or circumstances, as the case may be, shall not be invalidated or terminated thereby, but shall remain in full force and effect to all intents and purposes as though such invalid term, provision, covenant, restriction, agreement or condition had never been.

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Invalidation of all or any portion of any of the covenants, restrictions, agreements or conditions imposed by this Declaration, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.

If any of the covenants, restrictions, agreements or conditions of this Declaration would otherwise violate (a) the rule against perpetuities or some analogous statutory provision, or (b) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the current incumbent and all currently living former Presidents of the United States.

2.5 Gender of Terms, Numbers. As used in this Declaration, the masculine shall mean the feminine or neuter and singular shall mean plural where the context requires preserving the meaning of the appropriate provision.

2.6 Laws of Illinois. This Declaration shall be governed by and construed in conformity with the laws of the State of Illinois.

2.7 Modifications. No modifications, waivers, variations, or releases of the duties and obligations under this Declaration shall be effective unless agreed to in writing by Blommer or its successor or assign.

2.8 Notice. Except as otherwise provided herein, any notice required to be given under the provisions of this Declaration to Declarant or the Alderman or any successor or assign of Declarant or the Alderman shall be deemed to have been properly delivered when deposited in the U.S. Certified Mail, postage prepaid and return receipt requested, directed to such person at the last known addresses for such persons as it appears on the records of the Cook County Recorder of Deeds at the time of such mailing and if to a corporation or limited liability company, at the office of its registered agent.

2.9 Captions. The Article and Paragraph headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

2.10 Survival of Payment Obligations. Any payment obligations of either party under this Declaration accruing prior to expiration or other termination of this Declaration shall survive the expiration or other termination of this Declaration.

2.11 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Declaration in which time of performance is a factor.

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2.12 Authority. Declarant represents and warrants that this Declaration is a duly authorized obligation of said party. The individual signing this Declaration on behalf of Declarant represents and warrants that it is duly authorized to sign on behalf of and to bind said party.

2.13 Recording. This Declaration will be recorded in the records of Cook County, Illinois.

[Signature Pages Follow]

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21st IN WITNESS WHEREOF, the undersigned has hereunto set his hand this day of March, 2013.

401 N. Milwaukee, LLC, an Illinois limited liability company

By: John R. Kelly
Member/Manager

I, the undersigned, a Notary Public in and for the County of Cook, in the State of Illinois, DO HEREBY CERTIFY that John Kelly, 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 acknowledges that he signed, sealed and delivered the foregoing instrument as his free and voluntary act, for the uses and purposes set forth.

Given under my hand and notarial seal this 21st day of March, 2013.

[Signature]
Notary Public



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ACKNOWLEDGMENT

Blommer Chocolate Company, a Delaware corporation, hereby acknowledges the terms and conditions of this Declaration.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this 21st day of March, 2013.

BLOMMER CHOCOLATE COMPANY, a Delaware corporation

By: [Signature]

Name: JACKS LARSEN

Title: V.P.

I, the undersigned, a Notary Public in and for the County of Cook, in the State of Illinois, DO HEREBY CERTIFY that Jacks Larsen, 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 acknowledges that he/she signed, sealed and delivered the foregoing instrument as his/her free and voluntary act, for the uses and purposes set forth.

Given under my hand and notarial seal this 21st day of March, 2013.

[Signature]
Notary Public

This Instrument Prepared By:
Barry Ash, Esq.
Ash, Anos, Freedman & Logan, LLC
77 West Washington Street
Suite 1211 Chicago, IL 60602



When Recorded Return To:
Kevin J. Howley
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

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EXHIBIT A LEGAL DESCRIPTION OF THE MILWAUKEE PREMISES

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TOTAL LAND AREA = 9,240 SQ. FT. OR 0.212 ACRES +/-

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