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This Document Prepared By
and After Recording Return To:

Nicole C. Krol
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

2011 046376

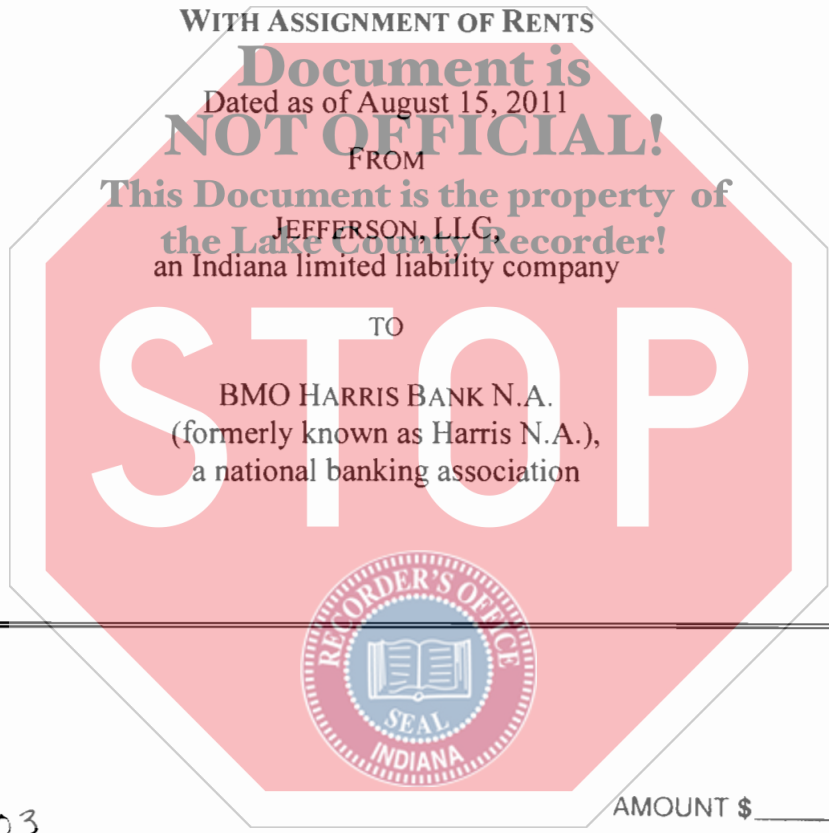
STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2011 AUG 25 AM 9:23

MICHELLE R. FAJMAN
RECORDER

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**THIRD SUPPLEMENT TO MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS**



920064603
Location of Property:

Lake County, Indiana

Supplement 3050384 01 02 (2).doc
1634021

AMOUNT \$ 36⁰⁰
CASH _____ CHARGE FN
CHECK # _____
OVERAGE _____
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NON - COM ✓
CLERK Rn

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**THIRD SUPPLEMENT TO MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS**

This Third Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of August 15, 2011 (this "*Supplement*") between JEFFERSON LLC, an Indiana limited liability company, with its principal place of business and mailing address at 1910 West US 30, Merriville, Indiana 46410 (hereinafter referred to as the "*Mortgagor*"), and BMO HARRIS BANK N.A. (formerly known as Harris N.A.), a national banking association, with its mailing address at 750 South Washington Street, Valparaiso, Indiana 46320 (hereinafter referred to as "*Mortgagee*");

WITNESSETH THAT:

WHEREAS, the Mortgagor did heretofore execute and deliver to the Mortgagee that certain Mortgage and Security Agreement with Assignment of Rents dated as of July 27, 2006, and recorded in the Recorder's Office of Lake County, Indiana on July 27, 2006 as Document No. 2006 06 5033, as amended by (i) that certain First Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of June 10, 2009 and recorded in the Recorder's Office of Lake County, Indiana on September 4, 2009 as Document No. 2009 061120 and (ii) that certain Second Supplement to Mortgage and Security Agreement with Assignment of Rents dated as of August 13, 2010 and recorded in the Recorder's Office of Lake County, Indiana on August 25, 2010 as Document No. 2011-046375 (such Mortgage and Security Agreement with Assignment of Rents, as amended and supplemented from time to time, the "*Mortgage*"), in order to secure certain indebtedness, whether now outstanding or hereafter incurred, of Albanese Confectionery Group, Inc. ("*Albanese*");

WHEREAS, the Mortgage currently secures, among other things, (i) that certain Promissory Note of Albanese (the "*Existing Note*"), in the principal sum of \$3,200,000, payable to the order of the Mortgagee and bearing interest thereon at the rates and at times provided in the 2009 Credit Agreement, (ii) the payment and performance of all obligations arising under that certain Line of Credit Agreement and Reaffirmation of Guaranties dated as of May 19, 2009 (as the same may be amended, modified or restated from time to time, the "*2009 Credit Agreement*") between Albanese and Mortgagee, and (iii) the Hedging Liability and Funds Transfer and Deposit Account Liability (each as hereinafter defined);

WHEREAS, Albanese may from time to time (i) enter into one or more agreements with respect to interest rate exchange, swap, cap, collar, floor or other similar agreements and one or more foreign currency contracts, currency swap contracts or other similar agreements with Mortgagee and/or its affiliates for the purpose of hedging or otherwise protecting against interest rate and foreign currency exposure (the liability of Albanese in respect of such interest rate and foreign currency hedging agreements being hereinafter referred to as "*Hedging Liability*") and (ii) enter into one or more agreements with Mortgagee and/or its affiliates with respect to the execution or processing of electronic transfer of funds by automatic clearing house transfer, wire transfer or otherwise to or from any deposit account of Albanese now or hereafter maintained with the Mortgagee and/or its affiliates, the acceptance for deposit or the honoring for payment

of any check, draft or other item with respect to any such deposit accounts, and other deposit, disbursement, and cash management services afforded to Albanese by Mortgagee and/or its affiliates (the liability of Albanese in respect of such arrangements being hereinafter referred to as "*Funds Transfer and Deposit Account Liability*")

WHEREAS, concurrently herewith Albanese and Mortgagee are entering into that certain Third Amendment to Line of Credit Agreement dated of even date herewith (the "*Third Albanese Amendment*"), whereby the parties thereto have agreed, among other things, to extend the maturity date of the 2009 Credit Agreement to August 15, 2012 and increase the amount of maximum credit available to Albanese thereunder to \$4,000,000;

WHEREAS, pursuant to the Third Albanese Amendment, Albanese is concurrently herewith executing and delivering, in replacement for the Existing Note, a Promissory Note (as amended, restated, modified or supplemented from time to time, the "*2009 Note*") of Albanese in the aggregate principal amount of \$4,000,000 payable to the order of the Mortgagee and bearing interest thereon at the rates and at times provided in the 2009 Credit Agreement;

WHEREAS, Mortgagor and Albanese heretofore entered into that certain Line of Credit Agreement dated as of June 10, 2009 (as the same may be amended, modified or restated from time to time, the "*June Credit Agreement*"; and together with the 2009 Credit Agreement, the "*Credit Agreements*" and each individually, a "*Credit Agreement*") among Mortgagor, Albanese and Mortgagee, with advances under the June Credit Agreement evidenced by a Promissory Note (the "*June Note*"; and together with the 2009 Note, the "*Notes*") of Albanese in the principal sum of \$2,000,000, payable to the order of the Mortgagee and bearing interest thereon at the rates and at times provided in the June Credit Agreement;

WHEREAS, as a condition precedent to entering into the Third Albanese Amendment and making certain other financial accommodations to Albanese and the Mortgagor, Mortgagee requires Mortgagor to execute and deliver this Supplement;

WHEREAS, the Mortgage is to continue to secure all the indebtedness now secured thereby and all additional indebtedness hereafter incurred by Mortgagor or Albanese pursuant to the terms of the Credit Agreements, as amended by the Third Albanese Amendment, this Supplement being executed and delivered to confirm and assure the foregoing; and

WHEREAS, the Mortgagor and Mortgagee intend these recitals to be a material part of the Mortgage.

NOW, THEREFORE, for and in consideration of the execution and delivery by the Mortgagee of the Third Albanese Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor and the Mortgagee do hereby mutually promise and agree as follows, to wit:

To secure (i) payment of all principal of and interest and premium on the Notes (ratably among the Notes without preference or priority to one over the others) as and when the same become due and payable (whether by lapse of time, acceleration or otherwise) and all advances

now or hereafter evidenced thereby, (ii) payment with respect to all Hedging Liability and Funds Transfer and Deposit Account Liability, (iii) payment of all other indebtedness, obligations and liabilities which the Mortgage secures pursuant to any of its terms, and (iv) the performance and observance of all covenants and agreements contained in the Mortgage or in the Notes or in the June Credit Agreement or in the 2009 Credit Agreement or in any other instrument or document at any time evidencing or securing any of the foregoing indebtedness, obligations or liabilities or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii) and (iv) above being hereinafter collectively referred to as the “*indebtedness hereby secured*”), the Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto the Mortgagee, its successors and assigns, and does hereby grant to the Mortgagee, its successors and assigns, a security interest in, all and singular that certain real estate lying and being in Lake County in the State of Indiana described on Schedule I attached hereto and made a part hereof, together with all of the properties, rights, interests and privileges described in Granting Clauses I through VII, both inclusive, of the Mortgage, each and all of such Granting Clauses being hereby incorporated by reference herein with the same force and effect as though set forth herein in their entirety. The foregoing grant of a lien is in addition to and supplemental of and not in substitution for the grant of the lien created and provided by the Mortgage, and nothing herein contained shall affect or impair the lien or priority of the Mortgage as to the indebtedness which would be secured thereby prior to giving effect to this Supplement.

In order to induce the Mortgagee to enter into the Third Albanese Amendment and to induce the Mortgagee to accept this Supplement, the Mortgagor hereby further covenants and agrees with, and represents and warrants to, the Mortgagee as follows:

1. It is hereby agreed that all the indebtedness evidenced by the Notes and the other indebtedness hereby secured shall be secured by the Mortgage in the same manner as if such indebtedness had been specifically described therein as indebtedness secured thereby.

2. The Mortgagor hereby represents and warrants to the Mortgagee that as of the date hereof and after giving effect to the Third Albanese Amendment, each of the representations and warranties set forth in the Mortgage as supplemented hereby are true and correct and no event of default as defined in the Mortgage as supplemented hereby, or any other event which with the lapse of time, the giving of notice or both would constitute such an event of default, has occurred and its continuing or shall result after giving effect to this Supplement. The Mortgagor hereby repeats and reaffirms all covenants contained in the Mortgage, each and all of which shall be applicable to all of the indebtedness secured by the Mortgage as supplemented hereby. The Mortgagor repeats and reaffirms its covenant that all the indebtedness secured by the Mortgage as supplemented hereby will be promptly paid as and when the same becomes due and payable.

3. All of the provisions, stipulations, powers and covenants contained in the Mortgage as supplemented and amended hereby shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby.

4. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Mortgage. The definitions provided herein of any capitalized terms shall apply to such capitalized terms as the same appear in the Mortgage as supplemented hereby, all to the end that any capitalized terms defined herein and used in the Mortgage as supplemented hereby shall have the same meanings in the Mortgage as supplemented hereby as are given to such capitalized terms herein. Without limiting the foregoing, all references in the Mortgage to the term “*indebtedness hereby secured*” shall be deemed references to all the indebtedness, obligations and liabilities secured by the Mortgage as supplemented hereby; and all references to the term “*Notes*” contained in the Mortgage shall be deemed references to the Notes as such term is defined herein.

5. The Mortgagor acknowledges and agrees that the Mortgage as supplemented hereby is and shall remain in full force and effect, and that the Mortgaged Premises are and shall remain subject to the lien and security interest granted and provided for by the Mortgage as supplemented hereby for the benefit and security of all the indebtedness hereby secured, including without limitation the Notes. Without limiting the foregoing, the Mortgagor hereby agrees that, notwithstanding the execution and delivery hereof, (i) all rights and remedies under the Mortgage of the Mortgagee, (ii) all obligations of the Mortgagor thereunder and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the benefit and security of all the indebtedness hereby secured, it being specifically understood and agreed that this Supplement shall constitute and be, among other things, an acknowledgment and continuation of the rights, remedies, lien and security interest in favor of the Mortgagee, and the obligations of the Mortgagor to the Mortgagee, which exist under the Mortgage as supplemented hereby.

6. This Supplement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed shall be an original but all of which to constitute one and the same instrument.

7. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of the Mortgagor, the Mortgagee, or other holder or holders of the indebtedness hereby secured contained in the Mortgage as supplemented hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

8. This Supplement is supplementary to the Mortgage. All provisions of the Mortgage, the June Credit Agreement, the 2009 Credit Agreement and the Notes, including the right to declare the principal and accrued interest due thereon for any cause specified therein, shall remain in full force and effect, it being the expressed intent of the parties that the indebtedness heretofore described is not discharged but merely modified pursuant to the terms of the Third Albanese Amendment.

9. No reference to this Supplement need be made in any note, instrument or other document making reference to the Mortgage, any reference to the Mortgage in any of such to be deemed to be a reference to the Mortgage as supplemented and amended hereby. The creation of

this Supplement, the perfection of the lien or security interest in the Mortgaged Premises, and the rights and remedies of the Mortgagee with respect to the Mortgaged Premises, as provided herein and by the laws of the state in which the Mortgaged Premises are located, shall be governed by and construed in accordance with the internal laws of the state in which the Mortgaged Premises are located without regard to principles of conflicts of law. OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MORTGAGE, THE CREDIT AGREEMENTS, THE NOTES, AND ALL OTHER OBLIGATIONS OF THE MORTGAGOR OR ALBANESE, AS APPLICABLE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the Mortgagor has caused these presents to be signed and sealed the day and year first written above.

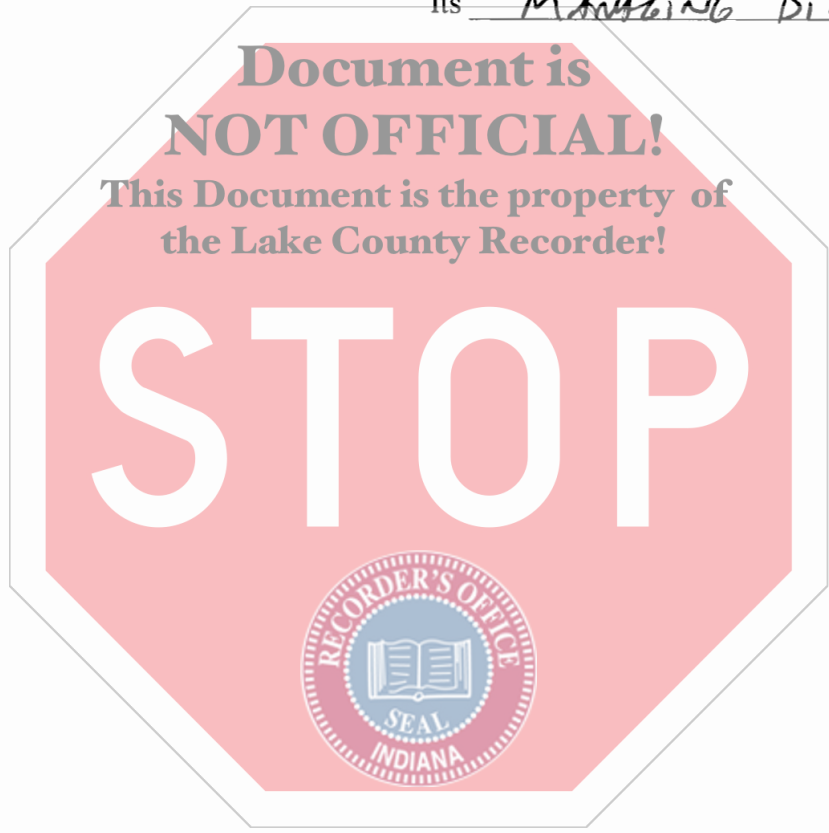
JEFFERSON, LLC

By [Signature]
Printed Name SCOTT ALBANESI
Its MANAGING MEMBER

Accepted and agreed to as of the date first above written.

BMO HARRIS BANK N.A. (formerly known as Harris N.A.), as Mortgagee

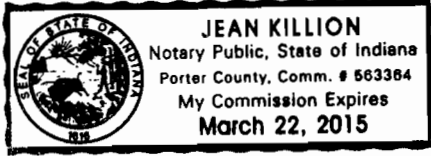
By [Signature]
Printed Name GEORGE M. DLWY
Its MANAGING DIRECTOR



STATE OF IN)
) SS
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me this 15 day of August, 2011, by SCOTT ALBANESE, the MANAGING MEMBER of Jefferson, LLC, on behalf of Jefferson, LLC.

Given under my hand and Notarial Seal this 15 day of August, 2011.



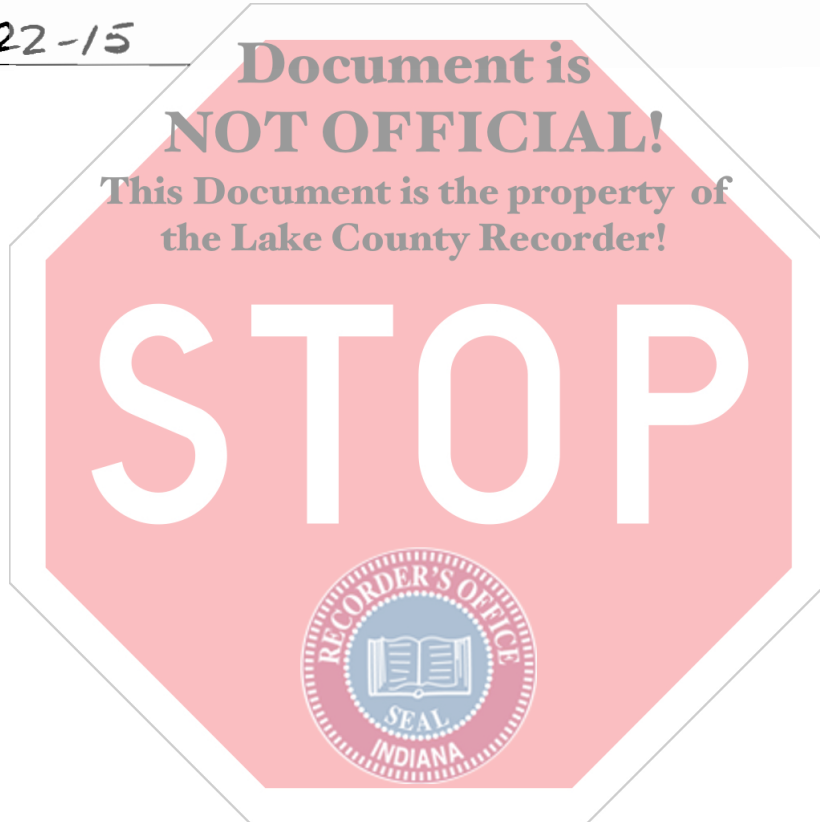
Jean Killion
Notary Public

Jean Killion
Type or Print Name

(SEAL)

My Commission Expires:

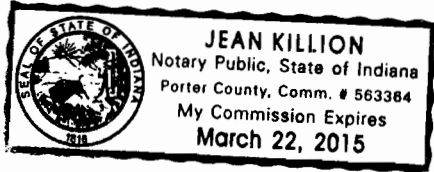
3-22-15



STATE OF IN)
) SS
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me this 15 day of August, 2011, by GEORGE M. DLUHY, a MANAGING of BMO Harris Bank N.A. (formerly known as Harris N.A.). DIRECTOR

Given under my hand and Notarial Seal this 15 day of August, 2011.



Jean Killion
Notary Public

Jean Killion
Type or Print Name

(SEAL)

My Commission Expires:

3-22-15



**SCHEDULE I
LEGAL DESCRIPTION**

LOT 3 IN U.S. 30 ENTERPRISE PARK, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 81,
PAGE 99, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

