

PREPARED BY:

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ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT** is made and entered into this 14<sup>th</sup> day of September, 2000 by and between **RADHA K. NAIR and INDIRA D. NAIR**, 3646 Pebble Beach Road, Northbrook, Illinois 60062, (hereafter referred to as "Assignor") and **THE NATIONAL REPUBLIC BANK OF CHICAGO**, 1201 West Harrison Street, Chicago, Illinois 60607, (hereafter referred to as "Assignee"). For good and valuable consideration the receipt of which is hereby acknowledged and with intent to be legally bound hereby, and as an inducement for the making of the loan evidenced and secured as hereafter described, Assignor hereby assigns unto Assignee all the right, title, and interest of Assignor in and under the lease described on the attached Exhibit A, along with all extensions, renewals, modifications, or replacements thereof, as well as all guarantees of the lessee's obligations under any provisions thereof and under any and all extensions and renewals thereof (any such lease or leases being hereafter referred to collectively as the "Lease" and any and all tenants thereunder being hereafter collectively referred to as "Lessee").

**WHEREAS**, said Assignment will inure to the benefit of Assignee, its successors, and assigns as security for the payment of the principal and interest provided to be paid in or by **Nairs, Inc., d/b/a Burger King, Radha K. Nair and Indira D. Nair's** Note to Assignee in the original principal amount of **\$500,000.00**, (together with all other documents executed in connection with said Note, hereafter collectively referred to as the "Obligation") dated September 14, 2004, and the performance of the agreements of Assignor contained in the mortgages (hereafter collectively referred to as "Mortgage") dated September 14, 2004, in favor of the Assignee covering the real estate located at:

**LEGAL:** Lot 2 in M.C. Anderson's Resubdivision of Lot 1 in Rufus C. Hall's Subdivision of part of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**PIN:** 14-17-220-002-0000

**ADDRESS:** 4557 North Sheridan Road, Chicago, Illinois 60640

reserving, however, a license to collect, except as hereinafter provided, the rents, income, and profits accruing by virtue of said Lease as they respectively become due (hereafter referred to as "License"), but not in advance, and to enforce the agreements of said Lease, as long as Assignor does not default under the Obligation, Mortgage, or Assignment;

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NOW, THEREFORE, the parties mutually agree to the following terms and conditions:

1. **Assignee as Creditor of Lessee.** Assignee, and not Assignor, will be the creditor of Lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessee. Assignee, however, will not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Assignee will have the option to apply any monies received by it as such creditor towards the reduction of the principal or interest of the Obligation and Mortgage.
2. **Default Remedies of Assignee.** If Assignor defaults on the Obligation, Mortgage, or Assignment, and until such default will have been fully cured, the License of Assignor to collect rents, income, and profits will cease and terminate. Assignee will thereby be authorized at its option to enter and take possession of all or part of the leased premises, and to perform all acts necessary for the operation and maintenance of the premises in the same manner and to the same extent that Assignor might reasonably so act. In furtherance thereof, Assignee will be authorized, but under no obligation, to collect the rents, income, and profits arising from the Lease, and to enforce performance of any other terms of the Lease including, but not limited to, Assignor's right to fix or modify rents, sue for possession of the leased premises, re-let all or part of the leased premises, and collect all rents, income, and profits under such new lease. Assignee will, after payment of all proper costs, charges, and any damages (see Paragraph (6) of this Assignment), apply the net amount of income to the sums then due to Assignee under the Obligation and Mortgage. Assignee will have sole discretion as to the manner in which such net income is applied, the reasonableness of the costs to which it is applied, and the items that will be credited thereby.
3. **Termination of Assignment.** When Assignor pays Assignee for the full amount of indebtedness secured by the Mortgage, and such payment is evidenced by a recorded satisfaction or release of the Mortgage, this Assignment will become void.
4. **Notice to Lessee of Assignor's Default.** Assignor will irrevocably authorize Lessee, upon demand and notice from Assignee of Assignor's default under the Obligation, Mortgage, or Assignment, to pay all rents, income, and profits under the Lease to Assignee. Lessee will have the right to rely upon any such notices of Assignee that Lessee will pay all rents, income, and profits to Assignee, without any obligation or right to inquire as to the actual existence of the default, notwithstanding any claim of Assignor to the contrary. Assignor will have no claim against Lessee for any rents paid by Lessee to Assignee. Upon the curing of all defaults caused by Assignor under the Obligation, Mortgage, or Assignment, Assignee will give Lessee written notice of such cure and, thereafter, until further notice from Assignee, Lessee will pay the rents, incomes, and profits to Assignor.
5. **Assignment of Defaulting Assignor's Interest in Lease.** If Assignor has defaulted under the Obligation, Mortgage, or Assignment, Assignee will then have the right to assign Assignor's right, title, and interest in and to the Lease to any person acquiring title to the mortgaged premises through foreclosure or otherwise. Such assignee will not be liable to account to Assignor for the rents, income, and profits thereafter accruing.
6. **Indemnification of Assignee.** Assignor will indemnify and hold Assignee harmless from any and all liability, loss, or damage that Assignee may incur under the Lease or by reason of this Assignment. Such indemnification will also cover any and all claims that may be asserted against Assignee by reason of any alleged obligation to be performed by Assignee under the Lease or Assignment. Nothing in this paragraph will be construed to bind Assignee to the performance of any Lease provisions, or to otherwise impose any liability upon Assignee including, without limitation, any liability under the Lease's covenant of quiet enjoyment in the event that Lessee will have been joined as party defendant in any action to foreclose the Mortgage and will have been barred thereby of all right, title, interest, and equity of redemption in the premises. This Assignment will not impose liability upon the Assignee for the operation and maintenance of the premises or for carrying out the lease terms before Assignee has entered and taken possession of the premises. Any loss or liability incurred by Assignee, by reason of actual entry and taking possession, under the Lease of Assignment or in the defense of any claim will, at Assignee's request, be reimbursed by Assignor. Such reimbursement is to include interest at a rate equal to interest

on the Assignor's Note, costs expenses, and reasonable attorney fees. Assignee may, upon entry and taking of possession, collect the rents, income, and profits and apply them toward reimbursement for the loss or liability.

7. **Quality of Assignor's Title to Lease.** Assignor represents itself to be the absolute owner, of the Lease, with absolute right and title to assign it and the rents, income, and profits due or to become due thereunder; that the Lease is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof or of the rents, income, and profits due or to become due thereunder; that there are no existing defaults under the provisions thereof on the part of either party; that Lessee has no defense, set-off or counterclaim against Assignor; that Lessee is in possession and paying rent and other charges under the Lease and as provided therein, and that no rents, income, or profits payable thereunder have been or will hereafter be anticipated, discounted, released, waived, compromised, or otherwise discharged, except as may be expressly permitted by the Lease. Assignor covenants not to cancel, abridge, surrender, or terminate the Lease or change, alter, or modify it, either to reduce the amount of the rents, income, and profits payable thereunder, or otherwise change, alter, abridge, or modify the Lease, or make any subsequent assignment of the Lease, or consent to subordination of the interest of Lessee in the Lease without the prior written consent of Assignee. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease without the written consent of Assignee will be null and void.

8. **Delivery of Necessary Instruments to Assignee.** Assignor will execute and deliver to Assignee, and hereby irrevocably appoints Assignee, its successors, and assigns as its attorney-in-fact to execute and deliver the term of this Assignment, all further instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

9. **Transfer of Title to Lessee; Cancellation of Lease.** The Lease will remain in full force and effect despite any merger of Assignor's and Lessee's interest thereunder. Assignor will not convey title to the premises to Lessee without the written consent of Assignee and without first requiring Lessee, in writing, to assume and agree to pay the Obligation and Mortgage in accordance with the terms, covenants, and conditions thereof, and to pay so much of the purchase price as Assignee deems necessary in reduction of the outstanding principal of the Obligation, in the order of maturity, which payment, if made during the period that the Obligation permits prepayment, will include applicable prepayment charges as set forth in the Obligation. In the event the Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Assignee to be applied, at the election of Assignee, to reduce the amount of the principal of the Obligation in the order of maturity or to be held in trust by Assignee as further security without interest for the payment of the principal and interest provided to be paid by the Obligation.

10. **Guaranties: Assignment of Lease; Alterations of Premises.** Assignor will not alter, modify, cancel, or terminate any guaranties of the Lease without the written consent of Assignee. Nor will Assignor consent to any Lease assignment or subletting, nor agree to a subordination of the Lease to any mortgage or other encumbrance now or hereafter affecting the premises without Assignee's prior written consent. Assignor will not permit a material alteration of or addition to the premises by Lessee without Assignee's prior written consent unless the right to alter or enlarge is expressly reserved by Lessee in the Lease.

11. **Assignor to Ensure Continued Performance Under Lease.** Assignor will not execute any other assignment of the Lease, of any interest therein, or of any rents payable thereunder. Assignor will perform all of its covenants as Lessor under the Lease, and will not permit any release of liability of Lessee or any withholding of rent payment by Lessee. Assignee will promptly receive from Assignor copies of all notices of default Assignor has sent Lessee. Assignor will, at Assignee's request, enforce the Lease and all remedies available to Assignor thereunder upon Lessee's default.

12. **Changes in Obligation Terms.** Notwithstanding any variation of the terms of the Obligation and/or the Mortgage, including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the lands subject to the

Mortgage, the Lease and the benefits hereby assigned will continue as additional security in accordance with the terms of this Assignment.

13. **Additions to and Replacements of Obligation.** Assignee may take security in addition to the security already given to Assignee for the payments of the principal and interest provided to be paid in or by the Obligation or by the Mortgage or release such other security, and may release any party primarily or secondarily liable on the Obligation, may grant or make extensions, renewals, modifications, or indulgences with respect to the Obligation or Mortgage and replacements thereof, which replacements of the Obligation or Mortgage may be on the same or on terms different from the present terms of the Obligation or Mortgage, and may apply any other security thereof held by it to the satisfaction of the Obligation, without prejudice to any of its rights hereunder.

14. **Additional Leases.** Assignor will give Assignee prompt notice of any Lease of the above-described real estate it enters into, if the Lease is not listed in this Assignment. Upon notice from Assignee to that effect, such Lease will be deemed included in this Assignment as though originally listed therein.

15. **Exercise of Assignee's Rights.** Assignee's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, will not constitute a waiver thereof. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Obligation and Mortgage. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

16. **Amendment, Modification, or Cancellation of Assignment.** No amendment, modification, or cancellation of this Assignment or any part hereof will be enforceable without Assignee's prior written consent.

17. **Other Provisions.**

(a) This Assignment is governed by the law of the State of Illinois, notwithstanding anything to the contrary, if, by Operation of Law, the laws of another jurisdiction must apply to enforce the provisions of this Assignment, then that jurisdiction's law shall apply.

(b) This Assignment will bind and inure to the benefit of the respective heirs, successors, assigns, executors, and administrators of Assignor and Assignee;

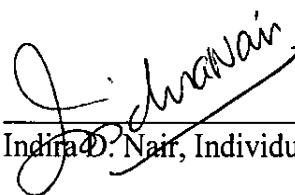
(c) Time is of the essence of this Assignment;

(d) This Assignment, along with the Lease, Mortgage, Obligation and all other documents expected and delivered by Assignor in favor of Assignee to evidence or secure the Loans Obligation, represents the entire agreement between the parties, and no oral or written promises and agreements made before or during the execution hereof and not contained herein will be binding on the parties.

IN WITNESS WHEREOF, the Assignor has executed this instrument and the Assignee has accepted delivery of this instrument as of the date aforesaid.



Radha K. Nair, Individually,



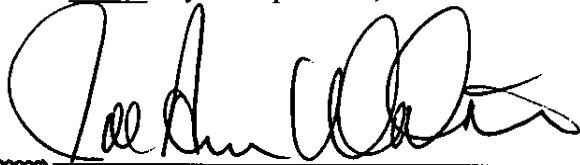
Indira D. Nair, Individually

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, a Notary Public, in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that on this day personally appeared before me, Radha K. Nair and Indira D. Nair, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act and deed, for the uses and purposes therein set forth, including the waiver of rights of redemption and waiver of all rights and benefits under and by virtue of the homestead exemption laws of this state.

GIVEN under my hand and Notarial seal this 14 day of September, 2000.



Notary Public

Property of Cook County Clerk's Office

EXHIBIT A

LEASES

Property of Cook County Clerk's Office

