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Cook County Recorder 39.50



0020216494



This instrument was prepared by and after recording should be returned to:  
Jeffery L. Keffer, Esquire  
Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, MA 02111

01-12-719  
343

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

Cook County, Illinois

THIS ASSIGNMENT made this 19<sup>th</sup> day of February, 2002 by Farley's & Sathers Candy Company, Inc. a Delaware corporation, having an address at c/o One Sather Plaza, P.O. Box 28, Round Lake, MN 56167 (hereinafter called "Assignor", and the term Assignor shall include, wherever the context permits, its successors and assigns) to Congress Financial Corporation (New England), a Massachusetts corporation, having a place of business at One Post Office Square, Boston, Massachusetts 02109 (hereinafter called "Lender" and the term Lender shall include, whenever the context permits, its successors and assigns as the holder of this ASSIGNMENT and the Obligations secured hereby).

WITNESSETH THAT:

1. Grant of Assignment.

Reference hereby is made to that certain Ground Lease and recorded Memorandum thereof made between David E Babiarz ("Ground Lessor") and D.J. Acquisition Corp., an Illinois corporation, Lessee, dated January 27, 1997 recorded January 29, 1997 as Document Number 97065832, as assigned pursuant to that certain Assignment of Lease by and between Favorite Brands International, Inc., a Delaware corporation (successor by merger to Farley Candy Company, a Delaware corporation, successor by merger to Dae-Julie, Inc., formerly known as D.J. Acquisition Corp., an Illinois corporation), assignor, and Nabisco, Inc., n/k/a Kraft Foods North America, Inc., assignee, dated November 18, 1999 and recorded December 21, 1999 as

Lawyers Title Insurance Corporation

Document Number 09184694 as further assigned pursuant to that certain Assignment of Lease by and between Kraft Foods North America, Inc., assignor and Mortgagor, assignee, of even date herewith, assigning the above lease ("Ground Lease");

This ASSIGNMENT is granted pursuant to the terms, provisions and conditions of the agreement captioned "Loan and Security Agreement" dated as of even date herewith between Assignor and Lender ("Loan Agreement"). Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, transfers and assigns to Lender, and grants to Lender a continuing pledge of and security interest in, the entire present and future interest of Assignor in, to and under: (a) the Ground Lease and all leases, subleases, rental agreements or other occupancy agreements ("Leases", which term shall not include the Ground Lease) now or hereafter in existence, with respect to all or any portion of the real property which is leased by Borrower pursuant to the Ground Lease located within Cook County, Illinois, ("Property"); (b) all rents, income and profits of any kind arising from such interests in the Leases and the Ground Lease and any renewals or extensions thereof for the use and occupation of all or any portion of the Property; (c) all guaranties of and security for the Leases and the Ground Lease; and (d) all proceeds of the foregoing.

Assignor is the owner of the Property. A legal description of the Property is annexed hereto as Exhibit A. Exhibit B which is annexed hereto identifies the Leases which are presently in effect.

2. Obligations Secured. THIS ASSIGNMENT is made for the purpose of securing the Obligations, including without limitation the following:

- (a) The payment of the principal sums, additional interest on interest, charges and indebtedness evidenced by the Loans;
- (b) The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Assignor under and pursuant to this Assignment, the Mortgage and Security Agreement of even date from Assignor to Lender in connection with the Property ("Mortgage"), the Loan Agreement and the other Financing Agreements referred to in, or executed in connection with, the Loan Agreement;
- (c) The payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender's rights or remedies under this Assignment, the Mortgage, the other Financing Agreements or any other instrument, agreement or document which evidences or secures any other

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Obligations or collateral therefor, whether now in effect or hereafter executed; and

- (d) The payment, performance, discharge and satisfaction of all other liabilities and obligations of Assignor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation express or implied upon the generality of the foregoing, each such liability and obligation of Assignor under any one or more of the Financing Agreements and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

3. Warranties and Representations. ASSIGNOR WARRANTS AND REPRESENTS that it is and shall be in the future the sole owner of the entire interests described in Section 1 above and that no rent reserved in the Leases has been or will be in the future otherwise assigned or anticipated, and that no rent for any period subsequent to the date of this Assignment will be collected more than one (1) month in advance except for security deposits and last month's rents taken in the usual course of business.

ASSIGNOR FURTHER WARRANTS AND REPRESENTS that as of the date hereof: (a) the Leases identified on Exhibit B hereto are in full force and effect and true and complete copies thereof together with all amendments and modifications have been previously delivered to Lender; (b) no default exists on the part of any of the lessees or tenants or of Assignor as lessor in the performance on the part of either of the terms, covenants, provisions or agreements in the Leases contained; (c) Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the lessees or Assignor under the Leases; and (d) no security deposit or advance rental payment has been made by any lessee under the Leases except as may be shown on Exhibit B, or as may be specifically designated in the copies of the Leases previously furnished to Lender.

4. Covenants. Except as may be otherwise provided for or permitted by the Loan Agreement, ASSIGNOR COVENANTS with Lender: (i) to observe and perform all the obligations imposed upon the lessor under every such Lease and as lessee under the Ground Lease and not to do or permit to be done anything to impair the security thereof; (ii) not to collect any of the rent, income and profits arising or accruing under the Leases or from the Property more than one (1) month in advance of the time when the same shall become due; (iii) not to execute any other assignment of lessor's interest in the Leases or lessee's interest in the Ground Lease or assignment of rents arising or accruing from the Leases or from the Property; (iv) not to alter, modify or change the terms of the Leases or the Ground Lease, or cancel or terminate the same, or accept a surrender thereof without the prior written consent of Lender in each instance; (v) not to subordinate any Lease or the Ground Lease to any mortgage or other encumbrance, or

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permit, consent or agree to such subordination, without Lender's prior written consent in each instance; (vi) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or the Ground Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder or the landlord under the Ground Lease; (vii) not to alter, modify or change the terms of any guaranty of any Lease or the Ground Lease, or any security for any Lease or the Ground Lease, or cancel or terminate any such guaranty, or release or reduce any such security, without the prior written consent of Lender in each instance; (viii) not to consent to any assignment of or subleasing under any such Lease or the Ground Lease, unless in accordance with its terms, without the prior written consent of Lender in each instance; (ix) not to enter into any future Leases of all or any part of the Property without Lender's prior written consent in each instance; (x) at Lender's request, furnish to Lender true and complete copies of all Leases and the Ground Lease and amendments thereto; and (xi) at Lender's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Lender any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Lender all such further assurances and assignments in the Property as Lender in good faith shall from time to time require.

5. Further Terms, Covenants and Conditions. THIS ASSIGNMENT is made on the following terms, covenants and conditions.

5.1. Prior to Default. So long as (i) no Event of Default exists and (ii) no default has occurred and is continuing uncured beyond the applicable notice and grace period, if any, in the performance of any obligation, covenant or agreement herein, or in the Loan Agreement, other Financing Agreements, or in the Leases or in the Ground Lease, contained and on the part of Assignor to be performed (collectively, a "Continuing Default"): Assignor shall have the right and license to manage and operate the Property and to collect at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Financing Agreements, to retain, use and enjoy the same.

5.2. After Default. At any time when a Continuing Default exists, Lender, without in any way waiving such default, may at its option, to the extent permitted by applicable law, without notice, and without regard to the adequacy of the security for the Obligations revoke the right and license granted above to Assignor and:

- (i) Authorize and direct the lessees named in any existing Leases or any other or future lessees or occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Loans and the Mortgage and that a Continuing Default exists thereunder, to pay over to Lender all rents, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Lender. Assignor agrees that every lessee and occupant shall have the right to rely upon any such statement and request

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by Lender that lessee or occupant shall pay such rents to Lender without any obligation or right to inquire as to whether such Continuing Default actually exists notwithstanding any notice from or claim of Assignor to the contrary and that Assignor shall have no right or claim against lessees or occupants for any such rent so paid by lessees or occupants to Lender after such notice to the lessee or occupant by Lender;

- (ii) Either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Lender; and
- (iii) Apply such rents, income and profits to the payment of:
- (a) all reasonable expenses of managing the Property including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable, and all expenses of operating and maintaining the Property, including without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance which Lender may deem necessary or desirable, the payment or refund of security deposits, or interest thereon, and the cost of all improvements, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and
  - (b) all sums which Assignor is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees, in such order of priority as to any of the items mentioned in this clause (iii), as Lender in its sole discretion may determine, custom, or use to the contrary notwithstanding.



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The exercise by Lender of the option granted it in this Section 5.2 and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver by Lender of any Event of Default under the Mortgage, the Loan Agreement, the other Financing Agreements, the Leases or this Assignment.

5.3. Continuing Effect. Upon indefeasible payment in full to Lender of the principal sum, interest, indebtedness and other Obligations secured hereby and by the Mortgage, this Assignment shall become and be void and of no effect. The discharge of record of the Mortgage shall constitute a discharge of this Assignment and a release of Lender's interest in the Leases and rents assigned hereby and the reassignment thereof (without recourse to Lender) to Assignor and all those claiming of record by, through or under Assignor.

5.4. No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies hereunder, under the Loan Agreement or under any one or more of the other Financing Agreements, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of any of the other Financing Agreements. The right of Lender to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

5.5. No Liability. Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Property after default or from any other act or omission of Lender in managing the Property after default unless such loss is caused by the gross negligence or willful misconduct of Lender, as determined under the terms of the Loan Agreement. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Lender for, and to defend and hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any ground lease. Should Lender incur any such liability under the Leases or the Ground Lease or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and Assignor shall reimburse Lender therefor immediately upon demand and upon the failure of Assignor so to do, Lender may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by tenants or any other parties, or for any dangerous or defective

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condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

5.6. Effect of Foreclosure Deed. Unless Lender otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Lender and its successors and assigns as its agent and attorney in fact to execute all instruments or assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

5.7. Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that, if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, in each instance, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Lender. Assignor hereby assigns any such payment to Lender for application as payment on the Obligations and further covenants and agrees that upon the request of Lender, Assignor will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Lender and its successors and assigns as its attorney-in-fact to so endorse any such checks if Assignor does not do so.

5.8. Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Financing Agreement. In the event of any conflict between this Assignment and any of the other Financing Agreements, Lender shall have the right from time to time to determine which provisions shall govern.

5.9. Notices. Any notice or communications in connection herewith shall be sufficient if given in the manner provided for in the Loan Agreement.

6.0. Governing Law. This Assignment shall be governed by and controlled in accordance with the laws of the State of Illinois.

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IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered at GREENWICH, Connecticut as a sealed instrument as of the date first above written.

FARLEY'S & SATHERS CANDY COMPANY, INC.  
(the "Assignor"):

By: [Signature]  
Name: CRAIG SAKIN  
Title: PRESIDENT

STATE OF CONNECTICUT  
COUNTY OF Fairfield

February 19, 2002

Then personally appeared the above-named CRAIG SAKIN,  
PRESIDENT of FARLEY'S & SATHERS CANDY COMPANY, INC., and  
acknowledged the foregoing instrument to be the free act and deed of said corporation, for the  
purposes therein stated before me,

[Signature]  
Dorothy M. Foster, Notary Public  
My commission expires:  
MY COMMISSION EXPIRES JUNE 30, 2006

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EXHIBIT A ANNEXED TO AND MADE A PART OF THE  
COLLATERAL ASSIGNMENT OF LEASES AND RENTS  
GIVEN BY FARLEY'S & SATHERS CANDY COMPANY, INC  
LEGAL DESCRIPTION

LEGAL DESCRIPTION

0020216494

Title to the Leasehold Estate described as follows:

That part of the West ½ of the Southwest ¼ of Section 28, Township 41 North, Range 12 East of the Third Principal Meridian, described as follows: Commencing at the Northeast corner of said West ½ ; thence South 1,126.048 feet along the East line of said West ½; thence West along a line parallel with the North line of said West ½, 723.98 feet to the point of beginning of the following tract of land; thence continuing West along said parallel line 450.0 feet; thence North perpendicularly to said parallel line to a point on a line 756.066 feet South of (as measured along the East line of said West ½) and parallel with the North line of said West ½; thence East along the last described parallel line 450.0 feet; thence South to the herein described point of beginning, all in Cook County, Illinois.

Permanent Index Number: 09-28-300-021-0000

Property Address: 1665 East Birchwood Avenue, Des Plaines, Illinois, 60018

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EXHIBIT B ANNEXED TO  
COLLATERAL ASSIGNMENT OF LEASES AND RENTS  
GIVEN BY FARLEY'S & SATHERS CANDY COMPANY, INC

0020216494

LEASES PRESENTLY IN EFFECT

None

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