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Prepared by and after recording
return to:

Christopher White
Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

Property Address:

1665 East Birchwood Avenue
Des Plaines, Illinois 60018

Permanent Index Number:

09-28-300 021

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Eugene "Gene" Moore Fee: \$40.50
Cook County Recorder of Deeds
Date: 08/19/2003 01:34 PM Pg: 1 of 9

LEASE SUBORDINATION, NON-DISTURBANCE OF POSSESSION AND ATTORNMENT AGREEMENT

This Lease Subordination, Non-Disturbance of Possession and Attornment Agreement (the "Lease Subordination, Non-Disturbance of Possession and Attornment Agreement" or "Agreement") dated effective as of the 13th day of August, 2003, among Nationwide Life Insurance Company, an Ohio corporation (the "Lender"), having a place of business at One Nationwide Plaza, Columbus, Ohio 43215, BARK Properties, L.L.C. (the "Landlord" or "Borrower"), an Illinois limited liability company having a place of business at 1887 East Bellevue Avenue, Suite 1250, Englewood, Colorado 80011, and Farley's & Sathers Candy Company, Inc., f/k/a FS Acquisition Corp. (the "Tenant") whose address is c/o One Sather Plaza, P.O. Box 28, Round Lake, MN 56167.

Introductory Provisions

A. Lender is relying on this Agreement as an inducement to Lender in making and maintaining a loan (the "Loan") secured by, among other things, a Mortgage and Security Agreement dated of even date herewith (the "Mortgage") given by Borrower covering property commonly known as and numbered, The Farley's & Sathers Candy Company Facility, 1665 East Birchwood Avenue, Des Plaines, Cook County, Illinois, (the "Property"). Lender is also the "Assignee" under an Assignment of Leases, Rents and Profits (the "Assignment") dated as of August 13, 2003 from Borrower with respect to the Property.

B. Tenant is the successor-in-interest to the tenant under that certain lease (the "Lease") dated December 23, 1996, made with Landlord's predecessor-in-interest; covering certain premises (the "Premises") at the Property as more particularly described in the Lease.

C. Lender requires, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that its rights under the Assignment be recognized.

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D. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

E. Lender, Landlord, and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that Lender shall rely hereon in making and maintaining the Loan, Lender, Landlord, and Tenant agree as follows:

1. Subordination. The Lease and the rights of Tenant thereunder (including purchase options, rights of first refusal or similar rights, if any) are subordinate and inferior to the Mortgage and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease.
2. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the material terms, covenants or conditions of the Lease on Tenant's part to be performed or observed: (a) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extensions or renewals thereof made in accordance with the terms of the Lease, and (b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.
3. Attornment and Certificates. In the event Lender succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale under the Mortgage, Tenant shall attorn to Lender, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, within ten (10) days after Lender's or such purchaser's written request, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect): (i) that the Lease is in full force and effect, (ii) the date through which rentals have been

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paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. Limitations. If Lender exercises any of its rights under the Assignment or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Lender, or to such purchaser, have the same remedies against Lender, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Lender or such purchaser had not succeeded to the interest of Landlord. Provided, however, that in the case of the exercise by Lender of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, Lender's liability, of any, for the acts and omissions of any prior landlord (including Landlord) shall be determined in accordance with the Lease, including, without limitation, Section 4.3 thereof, and all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be: (a) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including Landlord); or (b) bound by any amendment or modification of the Lease, or any consent to any assignment or sublease, made without Lender's prior written consent; or (c) bound by or responsible for any security deposit not actually received by Lender; or (d) liable for any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise, including without limitation, any warranties or representations respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability and/or fitness for any purpose, or possession; or (e) liable for consequential damages.
5. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of: (a) Landlord under the Lease, or any subsequent Landlord, against Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the

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terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) Tenant to pursue claims under the Lease against any prior landlord (including Landlord) in the event of any default by prior landlord whether or not such claim is barred against Lender or a subsequent purchaser.

6. Notice and Right to Cure. Tenant agrees to provide Lender with a copy of each notice of default given to Landlord under the Lease at the same time such notice of default is given to Landlord.

7. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (a) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (b) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Lender: Nationwide Life Insurance Company
One Nationwide Plaza
Columbus, Ohio 43215
Attention: Real Estate Investments

To Landlord: BARK Properties, L.L.C.
7887 East Belleview Avenue, Suite 1250
Englewood, Colorado 80011
Attention: _____
(Title)

To Tenant: Farley's & Sathers Candy Company, Inc.
c/o Insight Holdings
90 New Montgomery Street, Suite 1020
San Francisco, California 94105
Attention: Donald Stanners, Secretary
(Title)

or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

8. No Oral Change. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.
9. Payment of Rent To Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender as part of the

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security for the obligations secured by the Mortgage. In the event Lender notifies Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, or Lender's designated agent, until otherwise notified in writing by Lender. Landlord unconditionally authorizes and directs Tenant to make rent payments directly to Lender following receipt of such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage or the Assignment and that Landlord shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender following receipt of such notice.

10. No Amendment or Cancellation of Lease. So long as the Mortgage remains undischarged of record, Tenant shall not amend, modify, cancel or terminate the Lease, or consent to an amendment, modification, cancellation or termination of the Lease, or agree to subordinate the Lease to any other mortgage, without Lender's prior written consent in each instance.
11. Options. With respect to any options for additional space provided to Tenant under the Lease, Lender agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Lender succeeds as landlord under the Lease by virtue of foreclosure or deed in lieu of foreclosure or Lender takes possession of the Premises.
12. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
13. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.
14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.
15. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and assigns; provided, however, reference to successors and assigns of Tenant shall not constitute a consent by Landlord or Lender to an assignment or sublease by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.
16. Purchase Option\Right of First Offer. Tenant acknowledges and agrees that the Property is encumbered by and subject to the Mortgage. Notwithstanding anything

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contained in this Agreement or the Lease to the contrary, in the event Lender takes title to or succeeds to Landlord's interest in the Property or the Premises, or should Lender take possession of the Property or succeed to Landlord's interest in the Lease, as Mortgagee in possession, or otherwise, or foreclose on the Mortgage, or take a deed in lieu of foreclosure, or otherwise, Tenant agrees that such foreclosure or succession in interest shall not constitute a sale of the Property giving rise to Tenant's right of first offer under Section 11.3 of the Lease. Notwithstanding the foregoing, Lender, Landlord and Tenant agree that all of Tenant's rights and obligations under the Lease, including, without limitation, Tenant's rights and obligations relating to the right of first offer and option to purchase under Sections 11.1, 11.2 and 11.3 shall not be abridged or limited hereby.

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

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LENDER:

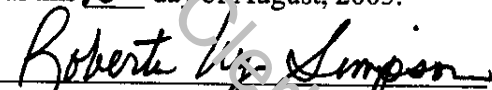
NATIONWIDE LIFE INSURANCE COMPANY, an Ohio corporation

By 
 Name TODD A. HARROP
 Title ASSOCIATE VICE PRESIDENT
MORTGAGE LOAN ACQUISITIONS

THE STATE OF OHIO §
 COUNTY OF FRANKLIN §

I, Roberta Lynn Simpson, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Todd A. Harrop, as Assoc. Vice President of Nationwide Life Insurance 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 Assoc. Vice President of said corporation, 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 13th day of August, 2003.


 NOTARY PUBLIC ROBERTA LYNN SIMPSON
 NOTARY PUBLIC, STATE OF OHIO
 MY COMMISSION EXPIRES 12-08-05

(printed name)

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TENANT:

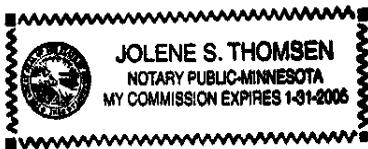
FARLEY'S & SATHERS CANDY COMPANY,
INC., f/k/a FS ACQUISITION CORP.

By *[Signature]*
Name Donald C. Stanners
Title Chief Financial Officer

THE STATE OF Minnesota §
COUNTY OF Haskell §

I, *Jolene S. Thomsen*, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that *Donald Stanners*, as *Chief Fin. Officer* of FS Acquisition Corp., a *Delaware* corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such *Chief in Officer* of said corporation, 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 *15* day of August, 2003.



Jolene S. Thomsen
NOTARY PUBLIC
Jolene S. Thomsen
(printed name)

