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Eugene "Gene" Moore Fee: \$38.50  
Cook County Recorder of Deeds  
Date: 10/16/2003 12:17 PM Pg: 1 of 8



Prepared By                       
Upon Recording Return To:  
Darren M. Baird, Esq.  
c/o Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, Massachusetts 02111

## FIRST AMENDMENT TO COLLATERAL ASSIGNMENT OF LEASES AND RENTS

Cook County, Illinois

THIS FIRST AMENDMENT TO COLLATERAL ASSIGNMENT OF LEASES AND RENTS ("First Amendment") is made as of the 26<sup>th</sup> day of September, 2003, by and between 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 (the "Assignor"), and Congress Financial Corporation (New England), a Massachusetts corporation, having a place of business at One Post Office Square, Suite 3600, Boston, MA 02109, in its capacity as Agent (hereinafter called the "Lender"), for the lenders now or hereafter party to the A&R Loan Agreement (as defined below).

For the purposes of this Amendment, unless otherwise defined herein, capitalized terms used herein shall have the same meaning as that contained in the Mortgage or the Amended and Restated Loan Agreement (as defined below).

### WITNESSETH

WHEREAS, Mortgagor entered into that certain Loan and Security Agreement (the "Loan Agreement") with Congress Financial Corporation (New England), in its individual capacity as lender ("Congress"), dated February 19, 2002, in which Congress agreed to make loans in certain amounts to Mortgagor;

WHEREAS, pursuant to the Loan Agreement, Congress issued certain loans to Mortgagor (the "Loans");

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WHEREAS, as security for the Loans, Mortgagor granted to Congress (i) that certain Leasehold Mortgage and Security Agreement and Fixture Filing (the "Mortgage"), dated February 19, 2002, which Mortgage was recorded with the Cook County Recorder as Document Number 0020216493; and (ii) that certain Collateral Assignment of Leases and Rents (the "Collateral Assignment") dated February 19, 2002, and recorded with the Cook County Recorder as Document Number 0020216494, which Mortgage and Collateral Assignment affect its leasehold interest in and to that certain property more particularly described on Exhibit A, hereto;

WHEREAS, Congress assigned all of its right, title in interest in and to the Loan Agreement to Mortgagee;

WHEREAS, pursuant to the above assignment of the Loan Agreement, Congress assigned the Mortgage and the Collateral Assignment to Mortgagee by virtue of that certain Assignment of Leasehold Mortgage and Security Agreement and Fixture Filing and Assignment of Leases and Rents dated of even date herewith and recorded with the Cook County Recorder herewith (the "Assignment");

WHEREAS, Mortgagor and Mortgagee have entered into that certain Amended and Restated Loan and Security Agreement (the "A&R Loan Agreement"), which, among other things, increases the total maximum indebtedness owed by Mortgagor to Mortgagee to \$105,000,000.00; and

WHEREAS, the Assignor and Lender desire to amend the Mortgage in order to secure the Obligations due and owing under the A&R Loan Agreement, which amended Mortgage shall retain the first-priority position currently occupied by the Mortgage, and, in connection with the amendment of the Mortgage, each party desires to amend the Collateral Assignment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby amend the Collateral Assignment as follows:

1. The parenthetical appearing at the end of the Preamble is hereby deleted in its entirety and replaced with the following language:

“(hereinafter the "Lender,” which terms shall include (i) Congress Financial Corporation (New England), as Agent for itself and other Lenders (as defined in the A&R Loan Agreement ) and any and all Lenders for whom Congress Financial Corporation (New England) acts as Agent, and (ii) wherever the context permits, its successors and assigns as the holder for the time being of this Assignment and the Obligations secured hereby).”

2. Each party executing this First Amendment represents and warrants that it has the full power and authority to execute this First Amendment.

3. The Recitals contained above are hereby incorporated herein by reference and made a part of this First Amendment.

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4. Except as specifically provided herein, all other terms and conditions of the Mortgage shall remain in full force and effect.
5. The covenants, agreements, terms and conditions of this First Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

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IN WITNESS WHEREOF, the undersigned have executed this instrument under seal as of the date first above written.

**ASSIGNOR:**

**FARLEY'S & SATHERS CANDY COMPANY, INC., a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

**LENDER:**

**CONGRESS FINANCIAL CORPORATION (NEW ENGLAND), a Massachusetts corporation, as Agent**

By: \_\_\_\_\_  
Name: JOHN E. HUSSON  
Title: SENIOR VICE PRESIDENT  
Hereunto Duly Authorized


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IN WITNESS WHEREOF, the undersigned have executed this instrument under seal as of the date first above written.

**ASSIGNOR:**

**FARLEY'S & SATHERS CANDY COMPANY, INC., a Delaware corporation**

By:   
Name: Donald C. Stanners  
Title: LFO  
Hereunto Duly Authorized

**LENDER:**

**CONGRESS FINANCIAL CORPORATION (NEW ENGLAND), a Massachusetts corporation, as Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

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STATE OF New York

County of New York, ss.

September 25, 2003

Then personally appeared the above-named Donald E. Stammers, the CEO of Farley's & Sathers Candy Company, Inc., and acknowledged the foregoing to be his/her free act and deed and the free act and deed of said Farley's & Sathers Candy Company, Inc., for the purposes therein stated before me,

Patricia Peterson  
\_\_\_\_\_, Notary Public  
My Commission Expires:

**PATRICIA PETERSON**  
Notary Public, State of New York  
No. 01PE4978514  
Qualified in New York County  
Commission Expires March 4, 2007

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## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

September 25, 2003

Then personally appeared the above-named John D. Hannon the  
John D. Hannon of Congress Financial Corporation (New England), and  
acknowledged the foregoing to be his/her free act and deed and the free act and deed of said  
Congress Financial Corporation (New England), for the purposes therein stated before me,

Constance M. Michael  
Constance M. Michael, Notary Public

My Commission Expires: 10/24/08

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## EXHIBIT A

### Legal Description

All of Mortgagor's right, title and interest in and to that certain Lease Agreement dated as of December 23, 1996, by and between David E. Babiarz, an individual, as Lessor, and D.J. Acquisition Corp., an Illinois Corporation, as Lessee, as evidenced by a Memorandum of Lease recorded with the Cook County Recorder on January 29, 1997, as Document No. 97065832, as affected by the certain Assignment of Lease dated November 18, 1999, by and between Favorite Brands International, Inc., a Delaware corporation, as successor in interest by merger to Farley Candy Company, a Delaware corporation, as successor in interest by merger to Dae-Julie, Inc. f/k/a D.J. Acquisition Corp., an Illinois Corporation, which Lease affects certain property more particularly described and bounded as follows:

#### LEGAL DESCRIPTION:

That part of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  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  $\frac{1}{2}$ ; thence South 1,196.048 feet along the East line of said West  $\frac{1}{2}$ ; thence West along a line parallel with the North line of said West  $\frac{1}{2}$ , 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  $\frac{1}{2}$ ) and parallel with the North line of said West  $\frac{1}{2}$ ; 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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