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Cook County Recorder of Deeds
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Cook County, Illinois

COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE

by

HEARTLAND ILLINOIS FOOD CORP.,
Lessee,

to

ING CAPITAL LLC,
Administrative Agent

Relating to Premises in: Cook County, Illinois
Lease Recorded at Doc # 0716434110

DATED: as of December 28, 2006

FILE SECOND

Second Lien

This instrument was prepared by
and after recording should be
returned to:

Virginia M. McGuffey, Esq.
King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309

Store Number: 4293

25806-1 (r)

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THIS COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE IS SUBJECT TO (A) THE INTERCREDITOR AGREEMENT DATED AS OF DECEMBER 28, 2006 AMONG THE PARTIES HERETO, AND ING CAPITAL LLC, AS FIRST LIEN ADMINISTRATIVE AGENT, AND BURGER KING CORPORATION, AS SET FORTH IN SECTION 16 HEREOF AND (B) THE SECOND LIEN INTERCREDITOR AGREEMENT DATED AS OF DECEMBER 28, 2006 AMONG THE PARTIES HERETO.

COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE

(SECOND LIEN)

THIS COLLATERAL ASSIGNMENT OF RIGHTS IN LEASE (this “Assignment”) is made as of the 28th day of December, 2006 by **HEARTLAND ILLINOIS FOOD CORP.**, a Delaware corporation (“Assignor”), to **ING CAPITAL LLC**, having an address of ING Capital LLC, 1325 Avenue of the Americas, New York, New York 10019, acting in its capacity as Administrative Agent pursuant to the Credit Agreement described below (in such agency capacity, together with its successors, the “Agent”) for the Lenders (as defined in the Credit Agreement referred to below).

RECITALS:

A. Assignor is the lessee under the lease described in Exhibit B attached hereto and incorporated herein by reference (said lease, as amended from time to time, being hereinafter referred to as the “Lease”) between Assignor and the lessor thereunder (“Lessor”), pertaining to the premises described therein, being a lease of building and improvements located on the real property legally described in Exhibit A attached hereto and incorporated herein by reference (the “Premises”).

B. The parent of Assignor, Heartland Food Corp., a Delaware corporation (the “Borrower”), Agent and Lenders have entered into that certain Second Lien Credit Agreement dated December 28, 2006 (as extended, amended, modified, supplemented or amended and restated from time to time, the “Credit Agreement”) together with any and all other notes, loan and security documents and agreements now or hereafter related thereto (the Credit Agreement, the Guaranty as hereinafter described, and each such note, loan and security document or agreement, as extended, amended, modified, increased, supplemented or amended and restated, collectively, the “Loan Documents”) by and among Borrower, certain affiliates of Borrower, Agent and Lenders. Assignor has guaranteed the obligations of the Borrower pursuant to that Second Lien Guaranty Agreement by and among the Agent and the Guarantors party thereto (as extended, amended, modified, supplemented or amended and restated from time to time, the “Guaranty”). As a condition to Agent and Lenders agreeing to make loans and other financial accommodations and extensions of credit to Borrower and its affiliates, Agent and Lenders require, among other things, liens on all of the Assignor’s personal property located on the Premises and that Assignor enter into this Assignment and grant a collateral assignment of the

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Lease in favor of Agent for the benefit of itself, the Lenders and any Affiliate of any Lender party to a Related Credit Arrangement (collectively, the “**Secured Creditors**”).

C. Assignor has agreed to collaterally assign the Lease to Agent for the benefit of itself and the Secured Creditors as additional security for all of the Obligations (as defined in the Credit Agreement) and for all of Assignor’s obligations and the obligations of the Loan Parties (as defined in the Credit Agreement) to Agent and the Secured Creditors arising under or in connection with the Loan Documents (collectively, the “**Secured Obligations**”).

NOW THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Assignment that are defined in the Credit Agreement shall have the meanings ascribed to such terms in the Credit Agreement.

2. The Assignment. In order to induce Agent and the Secured Creditors to make the loans, advances and/or other financial accommodations to Borrower and its affiliates and as additional security for the payment of the Secured Obligations and for the performance and observance of all the agreements contained herein and in the Loan Documents, Assignor does hereby presently, irrevocably, absolutely and unconditionally assign, set over and transfer to Agent for the benefit of itself and the Secured Creditors, and its successors and assigns, upon the terms and conditions hereinafter contained, and grants to Agent for the benefit of itself and the Secured Creditors a continuing security interest in, the Lease, together with all the right, title and interest of Assignor therein and thereto (including without limitation all purchase options, renewal options and any other options), to have and to hold the same unto Agent for the benefit of itself and the Secured Creditors, its successors and assigns forever, or for such shorter period as hereinafter may be indicated, as additional security for the payment of the Secured Obligations and for the performance and observance of all the agreements contained herein and in the Loan Documents. Lessor, Agent and Assignor have entered into that certain Lessor Consent and Subordination among the Lessor, Assignor and the Agent dated on or about the date hereof (the “**Lessor Consent**”) in connection with this assignment. The Agent’s remedies under this Assignment are subject to the Lessor Consent, as set forth in Section 7 below.

3. Warranties, Representations and Covenants. Assignor hereby covenants, represents, warrants and agrees as follows:

(a) The Lease is, to the best of Assignor’s knowledge, in full force and effect, and represents the valid and binding obligation of Assignor enforceable in accordance with its terms except as limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor’s rights generally, and has not been amended or modified except as described herein or therein; Assignor is the lessee under the Lease hereby assigned, is the sole owner of the entire interest of the lessee under the Lease and has good right and authority to collaterally assign its interest in the same, and no other person, firm or corporation has any right, title or interest therein; and Assignor has not previously sold, assigned, transferred, mortgaged, pledged, granted

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a security interest in or otherwise encumbered its interest in the Lease to any other person or entity.

(b) Assignor will notify Agent promptly of any material default by any party with respect to the Lease, and Assignor will notify Agent promptly of the giving of any notice by the Lessor to Assignor of any default by Assignor in the performance or observance of any of the terms, covenants or conditions of the Lease on the part of Assignor, as tenant under the Lease, to be performed or observed and promptly deliver to Agent a true copy of each such notice.

(c) Assignor shall observe, perform and discharge, duly and punctually, all and singular, all material obligations, terms, covenants, conditions and warranties of the Lease, on the part of Assignor to be kept, observed and performed, and shall give prompt notice to Agent of any failure on the part of Assignor to observe, perform and discharge same, and shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Lease, or the obligations, duties or liabilities of Assignor and/or the Lessor thereunder, and, upon request by Agent will do so in the name and behalf of Agent but at the expense of Assignor, and shall pay all costs and expenses of Agent, including reasonable attorneys' and paralegals' fees in any action or proceeding in which Agent may appear.

(d) Assignor hereby agrees that neither Agent nor any Secured Creditor shall be deemed to have assumed any obligation, duty or liability under the Lease by reason of this Assignment.

(e) Assignor shall indemnify the Agent and each Secured Creditor (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Assignor, the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Assignment, the performance by the parties hereto of their respective obligations hereunder, the enforcement of any remedies upon default hereunder, the enforcement of any remedies upon default hereunder or the consummation of the transactions contemplated hereby, (ii) any actual or alleged presence or release of Hazardous Materials on or from the Premises or on or from any property owned or operated by the Assignor, Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Assignor, Borrower or any of its Subsidiaries, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Assignor, the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Assignor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Assignor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

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(f) The failure of Agent to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not be construed or deemed to be a waiver by Agent or any Secured Creditor of any of its rights and remedies hereunder. The rights and remedies of Agent and the Secured Creditors under this Assignment are and shall be cumulative and in addition to any and all rights and remedies available to Agent and the Secured Creditors under the Loan Documents.

(g) Upon payment in full of all of the Secured Obligations, termination of all the obligations of Agent and the Secured Creditors under the Credit Agreement and the occurrence of the Facility Termination Date, or the satisfaction of the conditions set forth in the Credit Agreement for release of this assignment, this Assignment shall be terminated and shall be of no further effect, and Agent shall, upon demand by Assignor, execute a release to be filed of record at Assignor's sole cost and expense.

4. Transfers, Modification, Surrender, Etc. Except to the extent permitted under **Section 7.05** of the Credit Agreement, Assignor shall not sell, assign, pledge, transfer, mortgage, grant a security interest in or otherwise encumber the Lease or Assignor's interest therein. Except for any termination, amendment or modification to the extent expressly permitted under **Sections 6.14** of the Credit Agreement, Assignor shall not terminate, cancel, subordinate, amend, supplement, extend or otherwise modify or surrender the Lease or the terms thereof or agree to any termination, cancellation, surrender, subordination, compromise or settlement or material amendment, supplement or other modification of any kind or nature of or with respect to the Lease or the terms thereof, or exercise any purchase option or option to extend any Lease without Agent's prior written consent, which consent will not be unreasonably withheld.

5. Power of Attorney. Assignor further irrevocably appoints Agent as Assignor's attorney in fact to exercise, upon the occurrence and during the continuance of an Event of Default hereunder, any or all of Assignor's rights in, to, and under the Lease and to do any or all other acts, in Assignor's name or in Agent's own name, that Assignor's could do under the Lease, with the same force and effect as if this Assignment had not been made. Third parties shall be entitled to rely on Agent's representation that an Event of Default has occurred and is continuing empowering Agent to exercise its rights and remedies contained herein.

6. Event of Default. The occurrence of an Event of Default under the Credit Agreement shall constitute an Event of Default ("**Event of Default**") hereunder.

7. Exercise of Rights. Agent, on behalf of itself and the Secured Creditors, hereby confers upon Assignor a license to possess and operate the Premises and to exercise the rights and remedies provided to Assignor under the Lease so long as there shall exist no Event of Default. Although it is the intent of the parties that this Assignment is a present assignment, it is expressly understood and agreed, notwithstanding anything to the contrary herein contained, that Agent shall not exercise any of the rights and powers conferred upon it hereunder unless and until there shall have occurred and be continuing an Event of Default hereunder. Assignor agrees, by executing this Assignment, that Agent does not assume any obligations of Assignor under the Lease unless and until Agent shall exercise its rights and remedies hereunder and take possession of the Premises. Subject to provisions set forth in the Lessor Consent, upon the occurrence of an Event of Default hereunder and during the continuation thereof, Agent, in its

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sole election and in its sole discretion, may do any one or more of the following, subject to the terms and conditions contained in the Lease:

(a) Enter upon, take possession of, manage and operate the Premises or any part thereof pursuant to the terms and conditions of the Lease, and Assignor agrees to surrender possession of the same to Agent.

(b) To the extent permitted by applicable law, foreclose this instrument as an assignment of an interest in real property in any court of competent jurisdiction.

(c) Exercise any and all rights and remedies afforded to Agent under the Loan Documents and the Uniform Commercial Code and any and all other applicable provisions of law, including the right to sell Assignor's interest in the Lease at a public or private sale.

In addition to the foregoing, and notwithstanding anything to the contrary in the other provisions of this Assignment or in the Loan Documents, in the event of the occurrence of a breach, default or event of default by Assignor under the Lease which has not been cured within any applicable cure period therefor, Agent may but shall not be required to, cure said breach, default or event of default under the Lease within the curative times provided in said Lease or pursuant to the terms and conditions agreed to by Lessor.

8. Nature of Remedies. The rights and remedies of Agent hereunder are cumulative and are in addition to, and not in lieu of, any rights and remedies that Agent may have under the Loan Documents, or at law or in equity, which rights and remedies may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken hereunder. The rights and remedies of Agent may be exercised from time to time and as often as such exercise is deemed expedient and the failure of Agent to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

9. No Mortgagee-in-Possession. It is understood and agreed that neither the assignment of the Lease to the Agent for the benefit of itself and the Secured Creditors nor the exercise by the Agent of any of its rights or remedies under this Assignment shall be deemed to make the Agent or any Secured Creditor a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Lease or the Premises or the use, occupancy, enjoyment or operation of all or any portion thereof except as provided in Lessor Consent, unless and until the Agent, in person or by its agent, assumes actual possession thereof, nor shall appointment of a receiver by any court at the request of the Agent or by agreement with Assignor or the entering into possession of the Premises or any part thereof by such receiver be deemed to make the Agent a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Lease, the Premises or the use, occupancy, enjoyment or operation of all or any portion thereof.

10. Notices. Any notice or other communication required or permitted to be given shall be in writing addressed and served as provided in the Credit Agreement.

11. Interpretation and Definitions. The captions and headings contained herein are for convenience only and are not intended, nor shall they be considered, to limit in any way the

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provisions hereof. Whenever herein the context so requires, the singular number shall be deemed to include the plural and vice versa and any gender herein shall be deemed to include the masculine, feminine or neuter.

12. Separability. Each provision of this Assignment shall be deemed to be separable, and if for any reason any one or more of the provisions hereof is determined to be invalid under any law or decision now or hereafter existing, such invalidity shall not impair the operation or effect of any provisions hereof.

13. Successors and Assigns. Whenever the term "Assignor" is used herein, it is hereby understood that the same includes and shall be binding on successors, assigns and legal representatives of Assignor, including successors by consolidation, and any party or parties holding title by, through or under Assignor. This Assignment shall be assignable by Agent and all of the representations, warranties, covenants, agreements, rights, powers, privileges and immunities herein contained or granted and assigned to Agent hereunder shall also inure to its successors, assigns and legal representatives.

14. Governing Law. This Assignment shall be governed and controlled in all respects by the internal laws and decisions of the State of New York without reference to principles of choice of law, except to the extent that it is mandatory that the laws of the respective states in which the Premises is located apply to the creation, priority, perfection and maintenance of the lien and security interest hereof and to the enforcement of the foreclosure remedies of Agent and any of its successors and assigns.

15. Waivers. To the fullest extent permitted by applicable Laws, Assignor hereby irrevocably and unconditionally WAIVES and RELEASES (a) all benefits that might accrue to Assignor by virtue of any present or future law exempting the Premises from attachment, levy or sale on execution or providing for any appraisal, valuation, homestead exemption, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) except as otherwise provided in the Loan Documents, all notices of any demand, presentment, Event of Default, intent to accelerate or acceleration or the election by Agent to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation. The Assignor expressly waives and relinquishes any right or remedy that it may have or be able to assert by reason of the provisions of the laws of the state in which the Premises is located pertaining to the rights and remedies of sureties.

16. Intercreditor Agreement. The security interest of Agent in favor of Lenders and the assignment granted hereunder and the rights of such parties in respect thereof shall be subject to and entitled to the benefits of the terms of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern. Prior to the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement), in the event that any obligation of Assignor hereunder conflicts with an obligation of Assignor under any Assignment of Leases (referred to in Article 1 of the First Lien Credit Agreement), Assignor will first comply with its obligation under any Assignment of Leases (referred to in Article 1 of the First Lien Credit Agreement), and then, to the extent possible, comply with its obligations hereunder and any

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failure to so comply hereunder, due to compliance with any Assignment of Leases (referred to in Article 1 of the First Lien Credit Agreement) shall not be a Default or Event of Default hereunder.

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UNOFFICIAL COPY**EXHIBIT "A"**

Legal Description

Lots 16 to 25, both inclusive in Block 17 in the resubdivision of Lots 1 to 24, inclusive, Block 17, Lots 1 to 21 both inclusive in Block 9, Lots 1 to 21 inclusive in Block 8, all of Block 19 in GRANT LAND ASSOCIATION, resubdivision of Section 21, Township 29 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PIN #s 16-21-432-015-0000
 16-21-432-016-0000
 16-21-432-017-0000
 16-21-432-018-0000
 16-21-432-019-0000
 16-21-432-020-0000
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 16-21-432-023-0000
 16-21-432-024-0000

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EXHIBIT B

- A. That certain Successor Lease or Sublease Agreement, dated July 1, 2000, by and between Burger King Corporation, a Florida corporation ("Lessor"), and Heartland Illinois Food Corp., a Delaware corporation ("Lessee"); a direct or indirect assignee of National Restaurant Enterprises, Inc., a Delaware corporation
- B. For a Term expiring on June 30, 2020 as now or hereinafter extended.

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