


UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF <u>DELAWARE</u>		PROOF OF CLAIM
Name of Debtor Fleming Companies, Inc.		Case Number 03-10945 (MFW)
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) W.S. Enterprises, LLC	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent P.O. Box 9753 Green Bay WI 54308-9753	<div style="font-size: 2em; transform: rotate(-15deg); opacity: 0.5;">REC'D JUN 05 2003</div>	
Telephone number 920-965-6565		
Account or other number by which creditor identifies debtor Lease - Main Street - De Pere	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated _____ <input type="checkbox"/> amends	
1 Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Lease (see attached)</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS # _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center; font-size: small;">(date) (date)</div>		
2 Date debt was incurred <u>12/23/92</u>	3 If court judgment, date obtained	
4 Total Amount of Claim at Time Case Filed \$ <u>161,244.00</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5 Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____	6 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other. Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> RECEIVED / FILED MAY 27 2003 U.S. BANKRUPTCY COURT DISTRICT OF DELAWARE Fleming Companies Claim  <small>00690</small> </div>
8 Supporting Documents Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 5/1/03	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). Robert W. Bielefeldt Vice President	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

CREDITOR W S ENTERPRISES, LLC (Assignee of The White
Store of Green Bay, Inc)

DEBTOR FLEMMING COMPANIES, INC (Assignee/Successor of
Gateway Foods, Inc)

DATE OF LEASE 12/23/92

TERM 15 YEARS (7/1/93 to 6/30/08)

MONTHLY RENT \$ 11,331 (triple net)
 x 12
 \$135,972

RE TAX 21,402

COMMON AREA

MAINTENANCE 3,870
 \$161,244 PER YEAR *

- - - - -

* (161,244 - 12) x 63 months = \$846,531
 15%
 \$126,979*

Per §502(b)(6), claim submitted for 1 year of rent, RE taxes, and
Common Area Maintenance

Save

Exp 6/30/08

COPY

RETAIL BUILDING LEASE

THIS LEASE, entered into this 23 day of December, 1992, by and between THE WHITE STORE OF GREEN BAY, INC., a Wisconsin corporation, ("Lessor"), and GATEWAY FOODS, INC., a Wisconsin corporation, ("Lessee").

W I T N E S S E T H:

1. DEFINITIONS.

- 1.1 Leased Building. That certain retail supermarket located on the Real Property and described on the Site Plan attached hereto as Exhibit "A," consisting of approximately 25,180 square feet.
- 1.2 Real Property. That certain Real Property more particularly described on Exhibit "B" attached hereto.
- 1.3 Leased Space. The Leased Building, the Real Property, and all appurtenances thereto.

2. **PREMISES.** In consideration of the covenants and agreements hereinafter set forth, Lessor does hereby lease, demise, and let unto Lessee the Leased Space/premises, together with non-exclusive rights to the easements, entrances, parking areas, approaches, and exits appurtenant to the Leased Space/premises.

3. **TERM.** The Initial Term of this Lease shall run and extend for fifteen (15) years from and after the commencement date as set forth below, unless sooner terminated as herein provided or unless extended or renewed upon the terms hereinafter stated (the "Initial Term").

- 3.1 Commencement Date. The Initial Term of this Lease shall commence on the date Lessee opens for business in the Leased Space ("Commencement Date"). In the event Lessee fails to open for business by July 1, 1993 due to reasons other than force majeure as defined in paragraph 23.11 or Lessor's inability to satisfy the contingencies set forth in paragraphs 5.4, 6.1 and 6.9, Lessee shall be obligated to pay Lessor the minimum rental payments commencing on July 1, 1993. When the Commencement Date of the Initial term has been so ascertained it shall be set forth in an Addendum to Lease in the form of Exhibit "C" attached hereto which shall be executed in the same manner as this Lease and shall be attached to this Lease as a part hereof.

- 3.2 Renewal of Lease. This Lease shall be extended automatically under the same terms, conditions, and

covenants herein contained, except rental, for two (2) separate additional terms of five (5) years each ("Extended Terms") each Extended Term to begin at the expiration of the preceding Initial Term or Extended Term, as the case may be, unless at least four (4) months prior to the expiration of the then current Initial Term or Extended Term, Lessee shall notify Lessor that it intends not to renew the Lease.

4. **RENTAL.** Lessee agrees to pay Lessor as rental for the Leased Space the following:

4.1 **Minimum Rental.** An Annual Minimum Rental for the Leased Space per Lease Year payable in accordance with the rate schedule indicated below in equal monthly installments payable in advance beginning on the Commencement Date and continuing thereafter on the first day of each calendar month for the Initial Term and any Extended Term of the Lease.

- (i) **Lease Years 1-15.** One Hundred Thirty Five Thousand Nine Hundred Seventy-two and 00/100 Dollars (\$135,972.00) per Lease Year payable at the rate of Eleven Thousand Three Hundred Thirty-one and 00/100 Dollars (\$11,331.00) per month.
- (ii) **Lease Years 16-20.** One Hundred Fifty-one Thousand Eighty and 00/100 Dollars (\$151,080.00) per Lease Year payable at the rate of Twelve Thousand Five Hundred Ninety and 00/100 Dollars (\$12,590.00) per month.
- (iii) **Lease Years 21-25.** One Hundred Sixty-one Thousand One Hundred Fifty-two Dollars (\$161,152.00) per Lease Year payable at the rate of Thirteen Thousand Four Hundred Twenty-nine and 33/100 Dollars (\$13,429.33) per month.

4.2 **Percentage Rental.** Lessee shall pay to Lessor, as additional rent, percentage rent ("Percentage Rental") in the amount and upon the conditions as follows:

- (1) One percent (1%) of Gross Retail Sales in any Lease Year in excess of TEN MILLION AND 00/100 DOLLARS (\$10,000,000.00).

4.2.1 **Gross Retail Sales.** The term "Gross Retail Sales" shall mean the aggregate amount of the gross and total sales made by Lessee at, from, and through its store and business located and conducted upon the Leased Space to its retail customers. The term Gross Retail Sales as used herein shall not include any of the

following: (a) credits, coupons, or refunds to customers for merchandise returned or exchanged, (b) the cost or value of any trading stamps, (c) any sales taxes or other taxes imposed or based upon gross receipts of Lessee or on the sales or sales price of merchandise which are collected by Lessee and actually paid by Lessee or are payable by Lessee, (d) returns of merchandise, (e) sales of beer, wine and alcoholic products, (f) sales of tobacco and tobacco products, (g) sale of lottery tickets or any proceeds from winning tickets, (h) sale of items for charitable purposes, (i) any services provided by Lessee to its customers, including but not limited to any financial services and/or electronic fund transfer services, (j) sale of Lessee's fixtures after use thereof, (k) rentals or sales of video tapes and related equipment, (l) cash redemption on bottle or can returns, and (m) bulk sales of inventory not in the ordinary course of business. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deductible from gross receipts. Any processing expense incurred by Lessee peculiar to credit card and charge card sales shall be deducted from sales in determining Gross Retail Sales.

4.2.2 Lease Year. The term Lease Year shall mean the period of twelve (12) consecutive months commencing with the Commencement Date, as hereinabove defined, or any succeeding twelve (12) month period during the term of this Lease.

4.2.3 No Representation. Lessee has made no representations or warranties with respect to the level of Gross Retail Sales from the Leased Space and expressly disclaims any representations or warranties regarding Gross Retail Sales volume. However, Lessee agrees to operate its business from the Leased Space in good faith and consistent with Lessee's reasonable corporate objectives. The foregoing shall not in any way restrict or modify Lessee's rights under Subparagraph 15.3.

4.2.3 Payment of Percentage Rental. If Percentage rental is determined to be due for any Lease Year of this Lease, it shall be payable sixty (60) days after the end of such Lease Year. Lessee agrees to furnish to Lessor, as soon as reasonably possible after the end of each Lease year (and in no event later than sixty (60) days after the end of each Lease Year), a statement certified by a Certified Public Accountant, showing the amount by months of such Gross Retail Sales of Lessee during the preceding Lease Year. Lessee agrees that once each year, Lessor, or its duly appointed accountant, at Lessor's expense, may inspect the books and records of Lessee's

store business conducted in the Leased Space in order that Lessor may ascertain and verify the amount of Lessee's sales, but Lessor's right to inspect Lessee's records for any Lease Year shall expire two (2) years after the end of such Lease Year. If such inspection of Lessee's books and records discloses a discrepancy in gross sales in excess of two percent (2%), then the cost of such audit shall be borne by Lessee, however, such cost shall not exceed Five Hundred and 00/100 Dollars (\$500.00). Lessor agrees to use its best efforts not to disclose any information obtained in such audit to any third parties except to the extent reasonably required in connection with Lessor's sale, leasing, operating or financing of the Leased Space.

5. CONSTRUCTION OF LEASED SPACE. The improvements on the Leased Space shall be constructed in accordance with the following:

5.1 Approval of Construction Plans. Within sixty (60) days after execution of this Lease, Lessee shall deliver the plans and specifications for the construction of the improvements on the Leased Space (the "Construction Plans") to Lessor for Lessor's approval, which approval shall not be unreasonably withheld or delayed, provided that Lessor's approval shall not be required to the extent the Construction Plans to not affect the structural integrity of the Leased Space. The Construction Plan shall include the installation of a replacement roof on the building currently located on the Leased Space; without limiting Lessor's right to approve the Construction Plans, Lessor specifically reserves the right to review and approve that portion of the Construction Plans pertaining to replacement of said roof. Lessor shall review the Construction Plans and respond to Lessee in writing within thirty (30) days after receipt thereof. If Lessor requires changes to the Construction Plans, Lessee shall have thirty (30) days to make such changes and return the revised Construction Plans to Lessor. Lessee shall have fifteen (15) days to then approve the revised Construction Plans. Lessor's consent to the Construction Plans shall be deemed to have been given if Lessor does not respond within the time periods set forth above. Upon approval of the Construction Plans by Lessor, the Construction Plans shall be attached to this Lease as Exhibit "D."

5.2 Cost of Construction. "Costs of Construction" is defined as follows: All amounts paid to the prime contractor pursuant to the prime construction contract and all amounts paid to other contractors pursuant to contracts not covered by the prime construction contract, architectural and engineering fees, any permits or fees

required to be paid, the cost of any performance bond, utilities during construction, any other fees and expenses incurred as a result of compliance with requirements imposed by the City of De Pere, and any other ordinary and necessary expenses incurred by Lessee in connection with the Construction, including the cost of an Environmental Report. The Costs of Construction shall not include any costs incurred by Lessor under subparagraph 6.9.1 or 6.9.2. Lessor shall be responsible for all Costs of Construction up to a maximum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). Lessor shall not be responsible for any Costs of Construction in excess of Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

5.3 Commencement and Completion of Construction. Lessee agrees to commence to construct the improvements as set forth in the Construction Plans (the "Construction") as soon as reasonably practicable after any environmental cleanup work which may be required to be done by Lessor is substantially completed in the manner required by subparagraph 6.9.1. For purposes of this subparagraph only, such cleanup work shall be deemed to be substantially completed only if any unfinished and ongoing work will not materially interfere with the Construction or with Lessee's operations on the Leased Space after the completion of the Construction. Notwithstanding any of other provisions of this Lease, Lessee shall have the right to terminate this Lease if the foregoing contingency remains unsatisfied on February 15, 1993. Lessee shall substantially complete the Construction within five (5) months following the date on which it is commenced, subject to the force majeure as defined in paragraph 23.11. In the event Lessee is delayed in performing its obligations due to force majeure, the date of substantial completion set forth herein and the Lease Commencement Date will be extended accordingly. In the event of a dispute over whether the Construction has been substantially completed, the decision of an independent architect reasonably acceptable to Lessor and Lessee shall be conclusive and binding on both parties.

5.4 Delivery of Possession. Lessor agrees that on or before February 15, 1993, Lessor shall deliver to Lessee actual and exclusive possession of that portion of the Real Property consisting of approximately 34,975 square feet as crosshatched in red in the Survey Map attached hereto as Exhibit "A-1." Lessee agrees and acknowledges that Lessor shall have the right to use and occupy the balance of the Leased Building consisting of approximately 8,000 square feet as outlined in black in the Survey Map, until

March 15, 1993. During this period, Lessee agrees that all reasonable steps will be taken by Lessee, its agents, contractors and subcontractors to minimize any interference or impairment to Lessee's business, which may be occasioned by Lessee's construction. Lessor agrees that on March 15, 1993, Lessor shall deliver to Lessee actual and exclusive possession of the balance of the Leased Building, except for the removal of Lessor's furniture, fixtures, equipment and inventory; Lessor further agrees that Lessor shall remove all of its furniture, fixtures, equipment and inventory from the Leased Building no later than March 21, 1993. Notwithstanding any other provision of this Lease, Lessee shall have the right to terminate this Lease if the foregoing contingencies have not been satisfied by the dates indicated above.

- 5.5 Changes. Lessee agrees that the Construction will be carried on in a workmanlike manner and that no changes will be made in the Construction Plans that affect the structural integrity of the Leased Space without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessor will be deemed to have given its consent to any request for a change in the Construction Plans if Lessor does not respond to any such request made in writing by Lessee within ten (10) working days after receipt thereof by Lessor.
- 5.6 Insurance. During the period of construction, Lessee shall obtain and maintain (or cause the contractor(s) under the construction contract(s) to obtain and maintain) public liability insurance of not less than One Million Dollars (\$1,000,000.00) for bodily injury per person, Three Million Dollars (\$3,000,000.00) bodily injury coverage for more than one person in one occurrence, and Five Hundred Thousand Dollars (\$500,000.00) property damage. Said liability insurance shall name Lessor as a co-insured with Lessee. The Lessee shall also take out and maintain (or cause the contractor(s) under the construction contract(s) to take out and maintain) builder's risk insurance to the full insurable value of improvements constructed and materials stored at the Leased Space. Said builder's risk insurance shall name both Lessor and Lessee as additional insured.
- 5.7 Reimbursement. Upon the substantial completion of the Construction, but in no event prior to the lease commencement date, Lessee shall furnish Lessor with a certificate signed by one of its officers, stating that all contractors, subcontractors, laborers, materialmen

and suppliers performing any labor or furnishings any services or material in connection with the applicable part of the Construction have been paid all amounts to which they are entitled (taking into account any retainage) for the performance of such labor or the furnishing of such services and materials, and the Lessee has in its possession construction, mechanic's or materialmen's lien waivers (as the case may be) for all such labor, services and materials. Lessee shall also provide invoices, proof of payment for all such labor services and materials, and copies of all lien waivers. Within ten (10) days after receipt of such certificate, invoices, proof of payment and copies of all lien waivers, Lessor will reimburse Lessee accordingly, provided, however, that Lessor shall not be required to reimburse Lessee for any Costs of Construction in excess of Five Hundred Thousand Dollars (\$500,000.00). If Lessor fails to so reimburse Lessee as provided herein, all amounts owed shall bear interest at an annual rate equal to eighteen percent (18%), determined initially from the date the reimbursement is due Lessee until paid. Lessee may withhold or deduct from payments due under this Lease all amounts owed by Lessor to Lessee for such reimbursement. The foregoing shall not preclude Lessee from proceeding by any other means to collect amounts owed to it by Lessor.

6. **LESSOR'S COVENANTS AND REPRESENTATIONS.** In addition to all other covenants and agreements by Lessor found in this Lease, the Lessor hereby specifically covenants and represents as follows:

6.1 **Quiet Enjoyment.** The Lessor has good and marketable indefeasible fee simple title to the Leased Space and warrants there are no encumbrances or liens thereon other than those acceptable to Lessee as disclosed in writing by Lessee to Lessor. Lessor has full authority to execute this Lease and further warrants to the Lessee that it shall have, hold and enjoy the Leased Space and its rights hereunder during the term hereof. Prior to or within thirty (30) days after execution of this Lease, Lessor, at its expense, shall deliver to Lessee an ALTA commitment for Leasehold Title Insurance ("Commitment"), covering Lessee's interest in the Leased Space, which binds the title insurance company to issue on or before the Commencement Date a leasehold title insurance policy to Lessee based on such commitment, showing that Lessor has good and marketable indefeasible fee simple title to the Leased Space, free and clear of any and all encumbrances, or liens and containing no exclusions or exceptions unacceptable to Lessee, except mortgages by Lessor which are subject to the "Subordination and Non-Disturbance" provisions of paragraph 22, below. If the

commitment is not delivered to Lessee within the aforesaid thirty (30) day period, Lessee, at its option, may terminate this Lease or give Lessor additional time by written extension within which to deliver the commitment. Furthermore, if such commitment contains any statements, requirements, exceptions, or exclusions ("Defects"), other than the mortgages herein referred to, which are unacceptable to Lessee then Lessee at its option may (i) terminate this Lease, with no liability to Lessor, by written notice to Lessor or (ii) allow lessor, at its expense, to cure such Defects within a reasonable time period satisfactory to Lessee pursuant to a written extension. Lessor has full authority to execute this Lease and further warrants to the Lessee that it shall have, hold, and enjoy the Leased Space and its rights hereunder during the term hereof. Lessor warrants and represents that the Leased Space are presently free from obnoxious fumes, odors, and unsanitary conditions. Lessor shall not permit the emanation of any undue noise, obnoxious fumes, or odors, or any other nuisance from any property or building adjacent to or near the Leased Space, which is owned or controlled by Lessor.

- 6.2 Use of Leased Space and Adjacent Real Property. As further evidenced by the "Declaration of Restrictive Covenants," to be executed and recorded in the form substantially similar to Exhibit "H," which is attached hereto and made a part hereof, no portion of the Leased Space and no portion of the real property described as: Lot 2, Volume 4 Certified Survey Maps, page 505, except that part thereof described in Jacket 1838, Image 24, and in Volume 7, Certified Survey Maps, page 409, Brown County Records (the "Adjacent Real Property") shall be used for a theater, bowling alley, cafeteria, bingo hall, flea market, billiard parlor, night club, or any operation selling alcohol for on-site consumption, a video arcade, physical fitness center, or other place of recreation or amusement, auto service station, or a video tape rental or sale business, unless approved in writing by Lessee. The foregoing restrictions shall not be construed to prohibit Lessee from subleasing a portion of its store to a video rental store or pharmacy. Neither Lessor nor any affiliate or related party shall, without Lessee's prior written consent, own, operate, or grant any lease or permit any assignment or sublease for a store (or any portion of a store) located within one (1) mile of the Leased Space which permits a tenant under such lease to sell or offer for sale groceries, meats, poultry, seafood, dairy products, vegetables, baked goods, or floral products. Notwithstanding the foregoing, Lessee acknowledges that Lessor currently leases a portion of the adjacent property to a tenant who

operates a retail liquor store (package goods/carry-out). This tenant does now, and from time to time while this Lease is in effect, may continue to sell items incidental to the operation of said liquor store, such as soda pop, food snack items, and the like. Provided that no more than twenty percent (20%) of the retail floor area leased to this tenant is devoted to the sale of such incidental items (which could be interpreted to be "grocery items") such use shall not be deemed in violation of the limitations and restrictions set forth in this paragraph. In the event of any violation of the terms of this subparagraph 6.2, which is not corrected by Lessor as provided in subparagraph 16.4, all rental obligations under this Lease shall be abated during the period of such violation, and Lessee shall not be in default for failure to pay any rental. Lessor agrees that the foregoing use restrictions will be included in all conveyances, leases, subleases, licenses and assignments affecting the Adjacent Real Property. The parking areas of any parcel of Adjacent Real Property shall be independently sufficient to satisfy all applicable zoning requirements, without using any of the parking areas located on the Leased Space.

- 6.3 Site Plan. The Site Plan attached hereto as Exhibit "A" is an accurate representation of the Leased Space and no changes shall be made to such Site Plan without the prior written consent of Lessee and Lessor. There shall be no buildings erected on the Leased Space except those shown on the Site Plan. The sight lines shown on Exhibit "A" shall not be obstructed.
- 6.4 Access Areas and Parking Area. Lessor shall provide parking areas during the term of this Lease in the amount, location and configuration shown on the Site Plan, together with satisfactory and adequate roadways and access thereto. Such parking spaces shall be used for the parking of private vehicles of customers, subtenants, employees and invitees and for no other purpose. Parking areas on the Site Plan shall not be altered. Further, Lessor hereby grants and conveys a non-exclusive access and parking easement upon, over and across the driveways, sidewalks, and parking areas now or hereafter constructed or laid out on Lot 2, Volume 4, Certified Survey Map, page 505, except that part thereof described in Jacket 1838, Image 24, and in Volume 7, Certified Survey Maps, page 409, Brown County Records, said parcel being adjacent to and easterly of the Leased Space ("Lot 2 Parcel") for the benefit of Lessee, its successors and assigns and its employees, invitees, and customers to allow them the right of ingress and egress to and from Eight Street across the Lot 2 Parcel to the

Leased Space, and the right to park non-commercial vehicles on the Lot 2 Parcel subject to the provisions set forth in the Cross Easement Agreement substantially in the form attached hereto as Exhibit "E" which shall be executed in the same manner as this Lease and subsequently recorded in the office of the Brown County Register of Deeds. Likewise, Lessee hereby grants and conveys a non-exclusive access and parking easement upon, over and across the driveways, sidewalks and parking areas now or hereafter constructed or laid out on the Leased Space for the benefit of Lessor, its successors and assigns and its employees, invitees and customers to allow them the right to ingress and egress to and from Main Street across the Leased Space to the Lot 2 Parcel and the right to park non-commercial vehicles on the Leased Space subject to the provisions of the aforementioned Cross Easement Agreement.

- 6.4 Access Areas/Parking Area. The access areas and parking area shall remain as shown on the Site Plan throughout the primary term and any extension of this Lease, and Lessee and its employees, agents, officers, invitees, and customers shall have unrestricted access thereto and the non-exclusive right to use any additional access areas and parking areas as the same currently exist on Lot 2, Volume 4 Certified Survey Maps, page 505, said parcel being adjacent to and easterly of the Leased Space. Tenants, owners, occupants, or others users of Lot 2, Volume 4 Certified Survey Maps, page 505, shall be allowed access to, from, or across the Leased Space (other than that which is occupied by a structure/building) and use of the parking lot shown on the Site Plan, or any other parking lot hereinafter added to the Leased Space.
- 6.5 Utilities. Lessor, at its own cost, shall furnish, install and maintain adequate utility lines and services to serve the Leased Space. Lessee shall pay for the separately metered utility services which it uses at the Leased Space.
- 6.6 Compliance with Laws. Lessee agrees to make, at Lessee's own cost and expense, all necessary changes, additions, alterations, and improvements to the Leased Space and appurtenances thereto, that may be required at any time during the term hereof to make the Leased Space comply with all laws, ordinance, rules, and regulations of all duly constituted city, county, state, or federal authorities.
- 6.7 Impositions. At all times during the term hereof:

6.7.1 Payment of Impositions. Except as may be otherwise provided herein, Tenant agrees to pay or cause to be paid in the name of Lessor as additional rent, all real estate taxes assessed with respect to the Premises and all personal property taxes assessed with respect to the Premises or personal property located on the Premises, assessments, water and sewer rates and levies, and other governmental charges, including but not limited to assessments for public improvements or benefits (all of which taxes, assessments, water and sewer rates or charges, levies and other governmental charges excepting only the "Rent Tax" hereinafter defined, levied or assessed against Lessor or Lessee, are herein referred to as "Impositions"), which are assessed, levied confirmed, imposed against or become a lien upon the Premises and become payable during the Lease Term, except as otherwise provided for in this Section 6.7.

If by law, any such imposition is payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments as the same respectively become due. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time before or after the Lease Term, shall be adjusted as between Lessor and Lessee, so that Lessor shall pay that proportion of such Imposition which that part of such fiscal period included in the period of time before or after the Lease Term bears to such fiscal period and Lessee shall pay the remainder thereof.

With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid in installments, Lessor shall pay the installments thereof which become due and payable before or after the Lease Term, and Lessee shall pay those installments which become due and payable during the Lease Term.

6.7.2 Rent Tax. If at any time during the Lease Term, a tax or excise on rents or income or other tax however described (herein called "Rent Tax") is levied or assessed by the State of Wisconsin or any political subdivision thereof on account of the rents hereunder or the interest of Lessor under this Lease, and if such Rent Tax is in lieu of or as a substitute for, in whole or in part, real estate taxes, Lessee covenants to reimburse Lessor on account thereof to the extent to which such

real estate taxes would have been classified as Impositions hereunder and to the extent herein otherwise provided. In no event shall Lessee be obligated to pay for any year, any greater amount by way of such Rent Tax than would have been payable by Lessor had the rentals paid under this Lease, upon which such Rent Tax is imposed, been the sole taxable income of Lessor for the year in question or to pay or to reimburse Lessor for any tax of any kind assessed against Lessor on account of any such Rent Tax reimbursement.

6.7.3 Lessee Not to Pay Certain Taxes. Except to the extent provided in Section 6.7.2 hereof, nothing in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Lessor or any income, excess profits, or revenue tax or any other tax, assessment, charge or levy upon the rent payable by Lessee under this Lease, and all such taxes shall be paid or discharged by Lessor.

6.7.4 Right to Contest Taxes. Lessee shall have the right to diligently contest the amount or validity of any Imposition upon the Premises or any part thereof, by appropriate legal proceedings, but exercise or existence of such right shall not in any way modify Lessee's covenant to pay such Imposition at the time and in the manner as in this section provided, unless (i) the legal proceedings shall, in the Lessor's reasonable judgment, operate to prevent the collection of the Imposition so contested and the sale of the Premises, or any part thereof, to satisfy the same, and (ii) Lessee (unless said Impositions have been paid in full under protest) shall deposit with Lessor any amount of money sufficient to pay such Impositions, together with all estimated interest and penalties in connection therewith, and all charges that may be assessed in said legal proceedings against or may become a charge on the Premises or any part thereof.

6.7.5 Taxes Contested in Lessor's Name. Any such contest relating to the Premises may be made in the name of Lessor, and Lessor agrees to cooperate reasonably with Lessee in any such contest but without expense to Lessor. If Lessee shall not be in default under this Lease, Lessee shall be entitled to any refund of any Imposition and penalties or interest thereon which have been paid by or on behalf of Lessee and which relate to the Premises and the Lease Term or which have been paid by Lessor and for which Lessor has been fully reimbursed.

6.8 Survey. Lessee agrees, at its expense, within thirty (30) days after the execution of this Lease, to furnish

Lessor a survey showing a metes and bounds legal description of the Leased Space, and the location of any rights of way, easements or encroachments or flood plains, if any.

- 6.9 Hazardous Substances. Lessor represents and warrants that it has no knowledge of any hazardous, toxic or dangerous waste, substance, (including but not limited to hydraulic fluid and any petroleum derivative substances), or material defined as such in (or for purposes of) any state, federal or local environmental laws, regulations, decrees or ordinances, in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or in any so called state or local "Super Fund," "Super Lien," or "Cleanup Lien" law or any other federal, state or local regulation, order or decree relating to or imposing liability or standards of conduct concerning any such substances or material or any amendments or successor statutes thereto ("Contaminants"), having been discharged, disbursed, released, generated, disposed or allowed to escape on, under, or from the Leased Space. Lessor further represents and warrants that it has no knowledge of any asbestos or asbestos containing materials or any polychlorinated biphenyls or any underground storage tanks having been installed, used, incorporated into or disposed of or abandoned at, on or under the Leased Space. Lessor agrees that such representations and warranties shall survive any termination of the Lease.

6.9.1 Removal of Contaminants. Lessor, at Lessee's expense, shall authorize DPRA, Inc. to conduct certain environmental tests on the Leased Space. A copy of the environmental property assessment report prepared by DPRA Inc. shall be incorporated by reference herein as Schedule 6.9.1 (the "Report"). Lessor agrees to undertake promptly to commence and complete the removal of any Contaminants identified in the Report, and any additional testing as may be requested in the Report at Lessor's sole expense. Lessor also agrees to remove any underground storage tanks which may be located on the Leased Space, at Lessor's sole expense. To the extent that applicable law would allow such tanks to be abandoned in place, Lessor may, at its expense, nonetheless remove the same if such removal is required by applicable authorities under any laws or regulations hereafter in effect or at Lessor's discretion, provided that such removal can safely be conducted without materially affecting the stability of the Leased Space. Lessor, at its expense, shall also promptly commence and complete the removal of any Contaminants discovered on the Leased Space and not identified in the Report, it

being the intention of Lessor and Lessee that Lessor shall be responsible for removing all Contaminants from the Leased Space that were not caused by Lessee whether or not the presence of such Contaminants is identified in the Report. As soon as possible after the execution of this Lease, to the extent available, Lessor shall provide Lessee with a release from the Wisconsin Department of Natural Resources ("DNR") stating to Lessee's satisfaction that Lessee has no liability with regard to any Contaminants released or discovered on the Leased Space and not caused by Lessee, and that no action will be taken against Lessee in regard to any such Contaminants. Upon completion of the cleanup work by Lessor, Lessor shall provide Lessee with an environmental property assessment of the Leased Space showing that all underground storage tanks, if any, have been removed from the Leased Space (or, in the case of underground storage tanks, abandoned in place as provided for herein) and that all Contaminants have been removed from the Leased Space to the extent required by the DNR and any other appropriate agency. Notwithstanding any other provisions of this Lease, Lessee will furnish Lessor with a true and correct copy of the Environmental Report on or before January 15, 1993; if the estimated cost of removal of any contaminants identified in the Report together with the estimated cost of any additional testing as may be requested in the Report, exceeds \$25,000.00, then Lessor may, at its sole option, declare this Lease void ab initio; and if Lessor exercises its option to terminate the Lease it will furnish written notice of such intent by January 20, 1993 and will reimburse Lessee for all reasonable expenses incurred by Lessee in the preparation of the Lease, Site Plan, and Construction Plans.

6.9.2 Lessor's Indemnification. Lessor hereby agrees to reimburse upon demand, defend (with counsel reasonably satisfactory to Lessee), indemnify and hold harmless Lessee from and against all liability, costs, expenses, claims, fines, penalties and damages arising during or after the term of this Lease out of or in any way related to the presence of any underground storage tanks or any Contaminants on the Leased Space which are not caused or permitted by the activities of Lessee, its employees, agents, contractors, sublessees or assigns (including, without limitation, those listed on Schedule 6.9.1) or out of a breach of the foregoing warranties, including, without limitation, court costs and attorney's fees in any suit, action or administrative proceeding or negotiations resulting therefrom, and including costs of remediation, cleanup and the detoxification of the Leased Space and the environment. The foregoing indemnification shall survive the expiration or termination of this Lease

and the transfer of all or any portion of the Leased Space.

6.9.3 Lessee's Indemnification. Lessee hereby agrees to reimburse upon demand, defend (with counsel reasonably satisfactory to Lessor), indemnify and hold harmless Lessor from and against all liability, costs, expenses, claims, fines, penalties and damages arising during or after the term of this Lease out of or in any way related to the presence of any underground storage tanks or any Contaminants on the Leased Space that are caused or permitted by the activities of Lessee, its employees, agents, contractors, sublessees or assigns, including court costs and attorney's fees in any suit, action or administrative proceeding or negotiations resulting therefrom, and including, without limitation, costs of remediation, cleanup and the detoxification of the Leased Space and the environment. The foregoing indemnification shall survive the expiration or termination of this Lease and the transfer of all or any portion of the Leased Space.

6.9.4 Rights to Terminate. Lessor understands that Lessee is specifically relying upon the representations of this subparagraph 6.9 in entering into this Lease agreement and therefore, in addition to any other remedies set forth herein, in the event any representation or warranty made by Lessor in this subparagraph 6.9 is false, misleading or erroneous in any material respect, or if the environmental condition of the Leased Space is not acceptable to the DNR and any other appropriate agency after the completion of the work required to be done by Lessor pursuant to this subparagraph, then Lessee shall have the option of declaring this Lease void ab initio.

7. MAINTENANCE RESPONSIBILITY. The Lessor and Lessee shall have the following responsibilities for maintenance of the Leased Space, provided that any obligation or liability not specifically covered by the terms of this Lease shall be considered an obligation of the Lessee.

7.1 Maintenance by Lessor. Lessor, at its sole cost and expense, shall keep and repair and/or replace as necessary the foundation and exterior walls of the Leased Building, except those constructed by Lessee as hereinabove provided. Lessor shall also, at its sole cost and expense, keep and repair the roof of the Leased Building; Lessee to cause any warranty with respect to the roof to be issued or assigned to Lessor. Lessor, under this paragraph, shall not be required to paint or otherwise perform "cosmetic" maintenance, rather,

Lessor's obligation shall be limited to the structural aspects of the items referred to in this paragraph.

- 7.2 Maintenance by Lessee. Except as provided in Section 7.1, Lessee shall keep and maintain in good order, condition, and repair (including replacement of parts and equipment if necessary) the Leased Space and every part thereof and any and all appurtenances thereto wherever located including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, walls, floors, ceilings, parking lot, plumbing, sewage facilities, heating and air conditioning and electrical systems, and all other work performed by Lessee.
- 7.3 Sharing of Expenses. Lessee acknowledges that Lessor is the owner of property adjacent to the premises (Lot 2, Volume 4 Certified Survey Maps, page 505) and the improvements thereon and that the parking lot for such adjacent property abuts the parking lot located on the Leased Space. Without relieving Lessee of its responsibility under this Lease, the parties may mutually agree to utilize the services of the same individual for maintenance of the parking lot (seal coating, striping, and the like) and snow removal and share the expenses thereof.
- 7.4 Remodeling at Lessee's Expense. During the term hereof, or any extension thereof, Lessee and its successors and assigns, shall have the right and the privilege to perform nonstructural redecoration and remodeling to the interior of the Leased Building from time to time as it shall see fit and to install lights, partitions, fixtures, signs and other improvements in, upon and about the Leased Space as in Lessee's judgment may be necessary or desirable in the conduct of its business and to change the same in its sole discretion.
- 7.5 Lessee's Expansion. Lessee shall have the right to expand the Leased Building, at its sole cost and expense, into such location and to such size and according to a plot plan all as mutually determined and mutually agreed to by Lessee and Lessor. Lessee will provide Lessor with a full and complete set of sepia and blue line design drawings, including but not limited to, the architectural, mechanical, electrical, plumbing, gas and sprinkler drawings regarding such expansion, which drawings shall be subject to Lessor's approval.
- 7.6 Lessor's Failure to Make Repairs. Except in the case of an emergency repair, if Lessee notifies Lessor in writing of any needed repair(s) for which Lessor is responsible

hereunder, Lessor shall commence said repair(s) within thirty (30) days from the date of said notice in which case Lessor shall be in compliance with its repair obligations hereunder. If such repair(s) cannot be reasonably commenced within said thirty (30) days period, Lessor shall commence said repair(s) as soon as practicable and diligently pursue such repair(s) to completion. In the event of emergency repairs ("emergency" being defined as an imminent danger to Lessee, to Lessee's property or to Lessee's business or to the general public), Lessee may immediately make such emergency repairs without written notice, so long as Lessee has used reasonable effort to contact Lessor or Lessor's representatives by telephone at telephone numbers designated in writing by Lessor. Lessee shall have the right to make non-emergency repairs if Lessor has failed to make such repairs or failed to commence and diligently pursue such repairs within thirty (30) days from the date of Lessee's notice, that this shall be deemed to be a failure to commence and diligently pursue a repair obligation of Lessor. Upon Lessee's completion of any of Lessor's repair obligations, Lessee shall send to Lessor statements setting forth the cost of such repairs and Lessor shall pay said statement within ten (10) days after receipt of same. If Lessor fails to pay such statement within said ten (10) day period, Lessee shall have the right to pay such statement and to deduct the amount of such statement from the next following rental payment or payments and from any other amounts due under this Lease plus eighteen percent (18%) interest thereon until reimbursed in full.

8. **ADVERTISING SIGNS.** On or after March 15, 1993, Lessee may erect a sign on the Leased Space announcing the future opening of Lessee's store. In addition, Lessee may erect its standard signs on the exterior of the Leased Space in a manner and location satisfactory to Lessee. Lessee shall install such signs at its own expense and may remove them at the termination of this Lease. Any damage to the building as a result of removal of Lessee's signs shall be repaired at the expense of Lessee. Lessee shall be solely responsible for compliance with all local, county, or state regulations pertaining to the size, location, and erection of such signs.

9. **COVENANTS OF LESSEE.** Lessee agrees that it shall, at its expense:

9.1 **Lessor's Access.** Give Lessor, its agents, employees, mortgagees and any other person or persons authorized by Lessor, access to the Premises at all reasonable times without charge or diminution of rent, to enable them to

examine the Premises and to make such repairs, additions and alterations as Lessor may deem advisable, or to enter, view, show and inspect the Premises, provided it is done, if possible, in a manner so as not unduly to interfere with the conduct of Lessee's business.

- 9.2 Removals by Lessee. Lessee shall have the right at any time prior to or upon termination or expiration of this Lease to remove any and all of its merchandise, machinery, equipment, counters, shelving, signs, light fixtures, and other trade fixtures (regardless of the manner in which any of said items have been attached or fastened to the Leased Space) which it owns and has placed in, upon or about the Leased Building, as well as any and all personal property located in said Leased Building and owned by Lessee at such time. In removing such personal property, Lessee shall not materially injure or damage the Leased Building and any such material damage resulting shall be repaired at the expense of Lessee. It is understood that a bona fide dispute between Lessor and Lessee as to rental claim to be due shall not operate to prevent removal of property by Lessee pursuant to this paragraph, but in such event Lessee shall have the right to remove the same as if no rental were then due. Lessor hereby waives all claims, right or liens including without limitation, security interest or any Landlord's liens, whether by statute or common law in Lessee's personal property.

10. INSURANCE. Lessee, during the term of this Lease shall maintain, at its sole cost and expense:

- 10.1 Liability Insurance. Lessee shall, during the entire term hereof, keep in full force and effect a policy of comprehensive general liability and property damage insurance with respect to the Leased Space, and the business operated by Lessee and any subtenants of Lessee in the Leased Space, including steam boiler insurance if applicable, in which the limits of liability shall be not less than Three Million (\$3,000,000.00) Dollars per occurrence and in which the limit of property damage liability shall not be less than One Million (\$1,000,000.00) Dollars.

10.2 Property Insurance.

- (i) Lessee agrees, during the term hereof, to carry insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a standard extended coverage

endorsement insuring the Building to its full replacement value.

- (11) Lessee agrees to carry, at its expense, insurance against fire, vandalism, malicious mischief, and such other perils as are from time to time included in a standard extended coverage endorsement, insuring Lessee's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Lessee located on or within the Premises, in an amount equal to not less than eighty percent (80%) of their full replacement value.

10.3 Requirements of Lessee's Insurance. All policies of insurance to be carried by Lessee under this Lease shall name Lessor, any other parties in interest designated by Lessor, and Lessee as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Lessor thirty (30) days' prior written notice. Such insurance may be furnished by Lessee under any blanket policy carried by it or under a separate policy therefore. The insurance shall be with an insurance company authorized to do business in the State of Wisconsin and a copy of the paid-up policies evidencing such insurance or certificates of insurers certifying to the issuance of such policies shall be delivered to Lessor prior to commencement of the Lease Term and upon renewals not less than 30 days prior to the expiration of such coverage.

11. WAIVER AND SUBROGATION. Notwithstanding anything in this Lease to the contrary, neither Lessor nor Lessee shall be liable to the other for loss arising out of damage or destruction of the Premises, the Building or other improvement, or personal property or contents therein if such damage or destruction is caused by peril included within a standard form of fire insurance policy, with full extended coverage endorsement added, as from time to time issued in Wisconsin. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Lessor or Lessee, or their respective officers, employees, agents or customers. It is the intention and agreement of Lessor and Lessee that each party shall look to the insurer for reimbursement of any loss, and further that the insurer involved shall have no subrogation rights against the other party. Lessee shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of any right of subrogation by the insurer against the other party.

12. DAMAGE OR DESTRUCTION. In case of damage to the Premises or the Building by fire, vandalism, malicious mischief or any other

casualty, Lessor shall (unless this Lease shall be terminated as hereinafter provided) diligently proceed to make all the repairs necessary to restore the Premises (excluding any property of Lessee or improvements installed by Lessee) and the Building to the condition in which they existed immediately prior to such destruction or damage subject to delays beyond the reasonable control of Lessor. To the extent that the Premises are rendered untenable, the Rent shall proportionately abate. Notwithstanding the above, if in the expert opinion of an architect retained by Lessee, restoration of the Premises will require in excess of 120 days, including time required to settle or adjust the loss with insurers, Lessee may terminate this Lease by giving written notice thereof to the Lessor within 60 days of the date of such damage; whereupon this Lease shall terminate as of the date of such damage, the Rent shall be adjusted to the date of such damage and Lessee shall promptly vacate the Premises.

13. **INDEMNIFICATION.** Lessee covenants and agrees to protect, indemnify and save the Lessor harmless from and against any and all claims, and against any and all loss, cost, damage or expense, including without limitation, reasonable attorney's fees, arising out of the use of the Premises by the Lessee or of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof. Lessor agrees to defend and indemnify, and shall hold Lessee harmless against all liability, claims, judgments and demands of any person or persons whomsoever on account of injuries or accidents occurring in, on, or about the Leased Space or Adjacent Real Property as a result of willful or negligent acts or omissions of Lessor, its tenants, employees, agents or representatives, including but not limited to, sidewalks and parking areas and Lessor shall carry, at its expense, public liability insurance on the Leased Premises and Adjacent Real Property stipulating limits of not less than \$3 million for each occurrence and \$1 million for property damage. Certificates of such insurance shall be furnished to the Lessee, and Lessor shall have all such policies of insurance name Lessee as an additional insured.

14. **EMINENT DOMAIN.** The Lessor and Lessee agree as follows:

14.1 **Eminent Domain Affecting Leased Space.** In the event any part of the Leased Space should be taken by any public authority under the power of eminent domain or by transfer in lieu thereof, then the terms of this Lease shall cease as to the part of the Leased Space so taken on the date of condemnation or transfer in lieu thereof, and the rent shall be paid up to that day, and from that day, the Annual Minimum Rental shall be reduced in proportion to the value of the Leased Space taken to the total value of the Leased Space prior to such taking; provided, however, that should ten percent (10%) or more of the building located on or to be constructed on the Leased

Space be taken by the power of eminent domain or transfer in lieu thereof, Lessor shall give Lessee immediate written notice thereof and Lessee shall have the option, to be exercised within sixty (60) days after receipt of written notice, to cancel this Lease and declare the same null and void effective on the date such option is exercised. If Lessee should not elect to cancel this Lease, Lessor shall, at its sole cost, build on the new building line a wall, or front, similar to the one removed. It is understood and agreed that any and all condemnation awards or payments shall be paid to and retained by Lessor, except that Lessee shall be entitled to any award or payment made for damage to fixtures, equipment and merchandise owned by Lessee (including costs of removal of same), loss of Lessee's business and moving expense.

- 14.2 Eminent Domain Affecting Parking Area. In the event fifteen percent (15%) or more of the parking area located on the Leased Premises or the parcel adjacent thereto and owned by Lessor (Lot 2, Volume 4 Certified Survey Maps, page 505 except that part thereof described in Jacket 1838, Image 24, and in Volume 7, Certified Survey Maps, page 409, Brown County Records) should be taken by the power of eminent domain or transfer in lieu thereof, upon notice given to Lessor within sixty (60) days after such taking or transfer in lieu thereof, Lessor shall give Lessee immediate written notice thereof and Lessee shall have the option to cancel this Lease and declare the same null and void effective thirty (30) days after such notice.

15. ASSIGNMENT, SUBLETTING, AND DISCONTINUANCE OF OPERATIONS.

- 15.1 Assignment and Subletting. Lessee shall have the right to assign this Lease or to sublease the Leased space or any part thereof without the consent of Lessor, provided that no part of the Leased Space may be assigned or sublet to any person, firm, or corporation if the business of the assignee or sublettee or the use of the assigned or sublet space would be competitive with or substantially similar to a business which, as of the date of execution of this Lease is operated on or from the adjacent property as more specifically described in subparagraph 6.2. Notwithstanding the foregoing, Lessor acknowledges that Lessee, as an incidental aspect of Lessee's operation of a grocery store/supermarket may offer for sale beer and wine; so long as not more than 500 square feet of the retail floor area of the Leased Building is devoted to the sale of beer and wine, then Lessee shall not be deemed in violation of the restrictions or limitations of this paragraph. Lessor's

consent will be required for any other assignment or subletting, such consent not to be unreasonably withheld or delayed. Any assignee or sublessee hereunder shall be entitled to all the benefits due or accruing to Lessee under this Lease, and Lessor agrees to accept the performance of Lessee's obligations hereunder from any such assignee or sublessee. Regardless of any assignment or subletting by Lessee, Lessor shall not change, modify or amend this Lease without the prior written consent of Lessee. No such assignment or subletting shall relieve Lessee of any liability under this Lease.

15.2 Payment of Percentage Rental. In the event of any assignment or sublease, the computation of Percentage Rental shall be based upon the Gross Retail Sales of such assignee or sublessee.

15.3 Discontinuance of Operations. Lessee shall have the right to discontinue its operations in the Leased Space without the consent of Lessor. In the event the business operation in the Leased Space is discontinued, no Percentage Rental will be due.

16. DEFAULT BY LESSEE AND RIGHTS OF LESSOR, AND DEFAULT BY LESSOR.

16.1 Bankruptcy and Insolvency. If at the Lease Commencement Date or at any time during the term of this Lease there shall be filed by or against Lessee in any court pursuant to any statute either of the United States or of any state of petition in bankruptcy or insolvency or for liquidation, reorganization or involuntary dissolution or for the appointment of a receiver or trustee of all or a portion of Lessee's property (which petition is not released within 60 days), or if Lessee makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with creditors, this Lease, at the option of Lessor, exercised within a reasonable time after notice of the happening of any one or more of such events, may be cancelled and terminated and in which event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of any court shall be entitled to possession or to remain in possession of the Premises but shall forthwith quit and surrender the same, and Lessor, in addition to the other rights and remedies Lessor has by virtue of this Lease or any statute or rule of law, may retain as security for its damages any Base Rent, Additional Rent, or monies received by Lessor from Lessee or others on behalf of Lessee.

16.2 Other Defaults. If Lessee either (i) fails to pay any installment of Rent or other charges due hereunder within 10 days after the same shall be due, or (ii) fails to perform any other covenant, term, agreement or condition of this Lease within 30 days after written notice from Lessor (provided, however, that if the nature of such default other than for nonpayment is such that the same cannot reasonably be cured within such 30-day period, Lessee shall not be deemed in default if Lessee shall commence such cure within said 30-day period and thereafter diligently prosecute the same in completion), or (iii) vacates or abandons the Premises for a period in excess of 30 consecutive days, then, in any of such cases, Lessor, in addition to all other rights and remedies available, to Lessor by law or by other provisions hereof, may, without process, immediately re-enter the Premises and remove all persons and property, and at Lessor's option, terminate this Lease as to all future rights of Lessee. Lessee further agrees that in case of any such termination Lessee will indemnify Lessor against all loss and other damage which Lessor may incur by reason of such termination, including, but not limited to, reasonable costs of restoring and repairing the Premises and putting the same in rentable condition, costs of renting the Premises to another occupant, loss or diminution of Rent and other damage which Lessor may incur by reason of such termination. Lessee hereby agrees to pay Lessor and to indemnify Lessor for all reasonable attorney's fees and expenses incurred in enforcing any of the terms of this Lease or any other rights or remedies of Lessor. Neither acceptance of Rent or other charges by Lessor, with or without knowledge of breach or default, nor failure of Lessor to take action on account of any breach or default hereof or to enforce its rights hereunder shall be deemed a waiver of any breach or default, and absent specific written notice or consent to the contrary, said breach or default shall be a continuing one.

16.3 Right of Lessor to Cure Defaults. If Lessee shall default in the observance or performance of any term or covenant on its part to be observed or performed under or by virtue of any of the terms and provisions in any section of this Lease, or if Lessee shall fail to pay any sum of money, other than Base Rent and Additional Rent, required to be paid by Lessee hereunder, Lessor may, but shall not be obligated to, and without waiving or releasing Lessee from any obligations to make any such payment or perform any such other act on Lessee's part to be made or performed as provide din this Lease, remedy such default for the account and at the expense of Lessee, immediately and without notice in case of

emergency, or in any other case only upon Lessee's failure to remedy such default within ten days after the expiration of any applicable cure period. If Lessor make any expenditures or incurs any obligations for the payment of money in connection with Lessee's default including, but not limited to, attorney's fees in instituting, prosecuting or defending any action or proceeding, Lessee shall pay to Lessor as Additional Rent such sums paid or obligations incurred, with costs and interest at the rate of 18% per year. In any event, Lessor shall have (in addition to any other right or remedy of Lessor) the same rights and remedies in the event of the nonpayment of sums due under this section as in the case of default by Lessee in the payment of Base Rent or Additional Rent.

- 16.4 Lessor's Default. Should Lessor default in fulfillment of any of the covenants or agreements of this Lease and fail to correct such within thirty (30) days from receipt of written notice from Lessee of such default, (except for failure to make emergency repairs as set forth in subparagraph 7.6 hereof which shall not require thirty (30) days written notice), Lessee, at its option, may (i) correct such default and deduct any and all cost as a result of such correction, together with interest thereon at an annual rate of eighteen percent (18%), from rentals due or becoming due until Lessee shall be reimbursed in full for cost of such correction plus the aforementioned interest, or (ii) Lessee shall have the right, so long as default shall continue, to terminate this Lease.

17. SALE OR MORTGAGE OF LESSOR'S INTEREST.

- 17.1 Conveyance of Lessor's Interest. Lessor may sell, assign or otherwise transfer, in whole or in part, its interest in this Lease and its reversion hereunder. Lessor shall require the transferee to accept the interest transferred subject to this Lease. The transfer shall release Lessor from any further liability to Lessee hereunder and, after any such transfer, Lessee shall look solely to the transferee for the performance of the obligations of the party who from time to time is the landlord under this Lease.
- 17.2 Estoppel Certificate. Within ten (10) days after written request from Lessor, Lessee shall execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the dates to which rent and any other charges payable by Lessee

hereunder are paid in advance, (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder of specifying such defaults if any are claimed, and (iii) in case of a transfer of Lessor's interest, attorning to the transferee. Lessee hereby acknowledges that prospective purchasers and encumbrancers of the Premises (or of property of obligations or extend credit in reliance upon the representations of Lessee contained in such statement. Lessee's failure to deliver such statement to Lessor within said ten (10) day period shall conclusively evidence Lessee's representation and agreement that: this Lease is in full force and effect, without modification, except as Lessor may represent; there are no uncured defaults in Lessor's performance hereunder; and Lessee has not paid more than one month's rent in advance nor made a Security Deposit in excess of one month's rent.

18. **HOLDING OVER.** in the event the Lessee should remain in possession of the Leased Space after expiration of this Lease, without the execution of a new Lease, Lessee shall be deemed to be occupying the Leased Space as a tenant from month to month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month to month tenancy.

19. **NOTICES.** All notices required or options granted under this Lease shall be given or exercised in writing, and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, or (ii) sent by receipted overnight delivery service, or (iii) personally delivered to the address hereinafter identified. Except as herein otherwise specifically provided to the contrary, the effective date of such notice or exercise of any option shall be the date which is stamped by the United States Post Office Department on the envelope enclosing same, the date of the receipt for the overnight delivery or the date on which personal delivery is made. The parties hereto shall not refuse to accept delivery of said notices.

19.1 **Addresses.** Until changed by written notice from the appropriate party to the other, the addresses of the parties are and shall be:

LESSOR: The White Store of Green Bay, Inc.
2241 Main Street
P.O. Box 2416
Green Bay, WI 54302
ATTENTION: Steven G. Bielefeldt, President

LESSEE: Gateway Foods, Inc.
1637 St. James Street
P.O. Box 1957

La Crosse, WI 54602-1957
ATTENTION: Division President

COPY TO: Gateway Foods, Inc.
Corporate Offices
201 Main Street, Suite 1000
La Crosse, WI 54601
ATTENTION: Legal Department

4/05 841-8435
PAY 405 840-7235

Fleming Co Inc
Att Rhonda Ross
PO Box 26647
Oklahoma City OK 73126

- 19.2 Rental Payment Address. Until appropriately changed by thirty (30) days written notice to Lessee, rental payments hereunder shall be made to Lessor either by mail or otherwise as follows:

LESSOR: The White Store of Green Bay, Inc.
2241 Main Street
P.O. Box 2416
Green Bay, WI 54302
ATTENTION: Steven G. Bielefeldt, President

In the event the rental payment address is changed in connection with the transfer of beneficial interest in the Leased Space, Lessee shall not be required to comply with such notice unless the same is accompanied by evidence satisfactory to Lessee of such change of ownership, and any payments made by Lessee prior to receiving such satisfactory evidence shall be deemed properly paid.

20. AUTHORITY. Each party hereto affirms and states that it has full right and authority to enter into and perform this Lease Agreement.

21. MEMORANDUM OF LEASE. The Lessor agrees that it will not record this Lease, but contemporaneously herewith, will execute a Memorandum of Lease, in the form of Exhibit "F" attached hereto, which will set forth a legal description of the real property, and term of the Lease and any other provisions hereof as Lessee may request, and Lessee may, at its option, record such Memorandum of Lease in the real property records of the county in which the real property is located.

22. SUBORDINATION AND NON-DISTURBANCE. Lessee agrees that it will obtain execution of a Subordination and Non-Disturbance Agreement in the form of Exhibit "G" attached hereto which will subordinate Lessee's interest hereunder to the interest of any mortgagee holding a mortgage lien on the Leased Space, if the mortgage requires such a subordination; provided, however, such subordination shall be subject to the non-disturbance provisions contained therein. Prior to or within ten (10) days of the execution of this Lease, Lessor shall provide to Lessee a fully executed Non-Disturbance Agreement from each existing mortgagee of

the Leased Space, which Non-Disturbance Agreement shall be in the form of Exhibit "F" attached hereto.

23. MISCELLANEOUS.

- 23.1 Modifications to Lease. Lessor and Lessee agree that no alterations, changes or modifications of this Lease shall be effective unless made in writing and executed in the same manner as is this present instrument and specifically agreed that no verbal or oral changes are effective.
- 23.2 Partial Invalidity. Should any clause of provision of this Lease be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect.
- 23.3 Descriptive Headings. The descriptive headings of the paragraphs of this Lease are for convenience only and shall not be used in the construction of the contents hereof.
- 23.4 Binding Effect. It is covenanted between the parties hereto that all covenants and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the parties hereto. The covenants and agreements contained herein shall run with the land and continue for the term of this Lease and any extension thereof.
- 23.5 Non-Waiver. Any assents, expressed or implied, by Lessor or Lessee to any breach of any specific covenant or condition herein contained, shall not be construed as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof.
- 23.6 Lessee' Use. Lessee may use the Leased Space for any lawful purpose. "Retail Purpose" shall be deemed to include any banking operation provided that such operation does not occupy more than one thousand five hundred (1,500) square feet of floor area of the Leased Space.
- 23.7 Choice of Law. This Lease shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- 23.8 Multiple Originals. This Lease is executed simultaneously in triplicate originals, each of which shall be deemed an original, without the production of the other such originals.

- 23.9 Remedies Cumulative. No remedy conferred under this Lease shall be exclusive of any other remedy, and each remedy shall be cumulative and in addition to every other remedy provided now or hereafter existing at law, in equity, herein or otherwise. The election of any one or more remedies by a party hereto shall not be deemed, and shall not constitute a waiver of that party's right to pursue any other available remedy or remedies.
- 23.10 Mechanic's or Materialmen's Liens. If any mechanic's or materialmen's lien is filed against the Leased Space by reason of any work, labor, services or materials performed at or furnished on the Leased Space at the request of Lessor, Lessor shall cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, but Lessor shall have the right to contest any and all such liens. If any mechanic's or materialmen's lien is filed against the Leased Space by reason of any work, labor, services or materials performed at or furnished on the Leased Space at the request of Lessee, Lessee shall cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, but Lessee shall have the right to contest any and all such liens provided Lessee posts an adequate bond or other acceptable security.
- 23.11 Force Majeure. The time within which either of the parties hereto shall be required to perform any act or acts under this Lease (other than payment of rent after the Commencement Date) shall be extended to the extent that the performance of such acts or acts shall be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, labor disputes, delays or restrictions by governmental bodies, inability to obtain or use necessary materials, or any cause beyond the reasonable control of such party, other than lack of monies or inability to procure monies to fulfill its commitments or obligations under this Lease; provided, however, that the party entitled to such extension hereunder shall give prompt notice to the other party of the occurrence causing such delay. Force majeure shall be deemed to include any material interference with the Construction, the installation of Lessee's fixtures or equipment, or the commencement of operations by Lessee caused by the removal or other remediation of the Contaminants from the Leased Space.
- 23.12 Broker. Lessor and Lessee represent and warrant to the other that there are and will be no claims for brokerage commissions or finders fees in connection with the execution of this Lease, and each agrees to indemnify the

IN WITNESS WHEREOF, the Lessor and Lessee have executed and delivered this Lease on the date first above written.

ATTEST:

By: Steven G. Bielefeldt
Steven G. Bielefeldt, President

ATTEST:

Terrance V. Helz,
Assistant Secretary

By: Rudolph A. Comchoc
Rudolph A. Comchoc, President

STATE OF WISCONSIN)) SS
COUNTY OF BROWN)

Gary A. Wickert, Notary Public
Brown County, Wisconsin
My Commission is permanent.

STATE OF WISCONSIN)
)SS
COUNTY OF LA CROSSE)

On this 23 day of December, 1992, before me, a notary public in and for said county, personally appeared Rudolph A. Comchoc and Terrance V. Helz, to me personally known, who being by me duly sworn did say that they are the President and Assistant Secretary, respectively, of The White Store of Green Bay, Inc., that the seal affixed to said instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said Rudolph A. Comchoc and Terrance V. Helz acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Christopher A. Butler
Notary Public
La Crosse County, Wisconsin
My Commission: _____

CHRISTOPHER A BUTLER
NOTARY PUBLIC
STATE OF WISCONSIN
MY COMMISSION IS PERMANENT

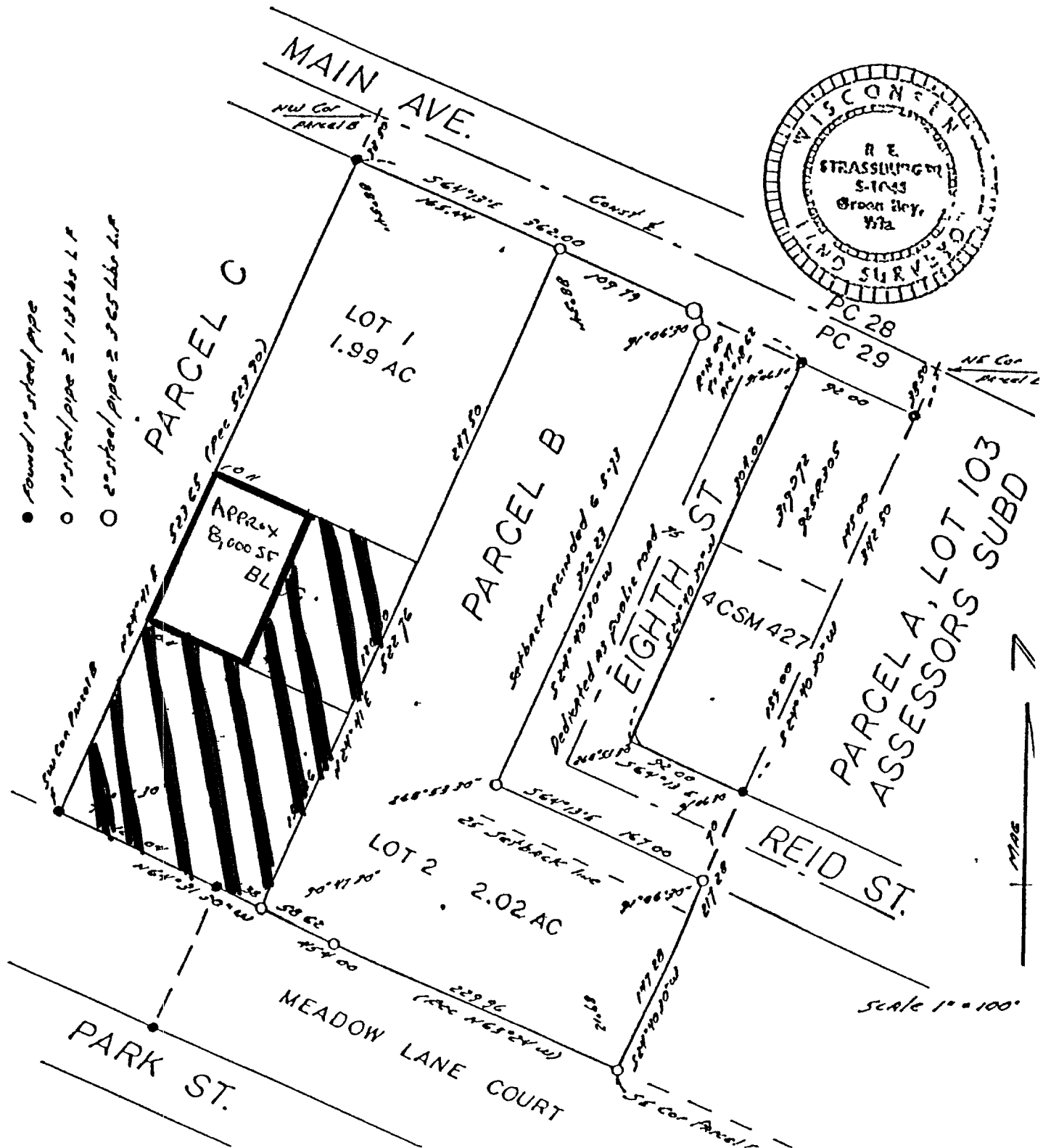
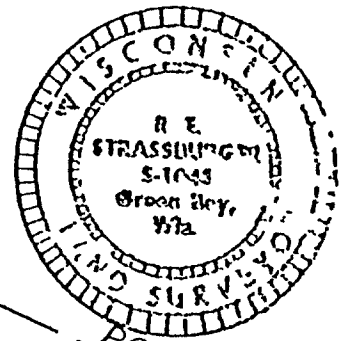
EXHIBIT LISTING

- Exhibit "A" - Site Plan
- Exhibit "A-1" - Survey Map
- Exhibit "B" - Real Property Legal Description
- Exhibit "C" - Addendum to Lease
- Exhibit "D" - Construction Plans
- Exhibit "E" - Cross Easement Agreement
- Exhibit "F" - Memorandum of Lease
- Exhibit "G" - Subordination and Non-Disturbance Agreement
- Exhibit "H" - Declaration of Covenants and Restrictions

EXHIBIT "A"

Site Plan

Each of the parties acknowledge receipt of a copy of the Site Plan prepared by SPECS, 1515 East Excelsior Avenue, Hopkins, Minnesota, dated December 18, 1992. A reduced copy (8½ X 11) will be inserted in this Lease when same is available.



KEY

= PORTION OF BUILDING TO BE DELIVERED TO GATEWAY BY 2/15/93

= PORTION OF BUILDING TO BE DELIVERED TO GATEWAY BY 3/15/93

EXHIBIT "A-1"

EXHIBIT "B"

Real Property Legal Description

811 Main Avenue, De Pere, Wisconsin, more particularly described as:

Lot One (1), Volume Four (4), Certified Survey Maps, page 505, Brown County Records.

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE, entered into this 19 day of July, 1993, by and between THE WHITE STORE OF GREEN BAY, INC., a Wisconsin corporation, hereinafter referred to as "Lessor" and GATEWAY FOODS, INC., a Wisconsin corporation, hereinafter referred to as "Lessee".

W I T N E S S E T H

WHEREAS, the Lessor and the Lessee have previously entered into a certain Retail Building Lease, dated December 23, 1992 (the "Lease"), covering Leased Premises located on the Real Property more particularly described on Exhibit "A" attached hereto, and

WHEREAS, by this instrument and pursuant to the terms of Paragraph 3.1 of the Lease, the Lessor and the Lessee desire to set forth in a written document the Commencement Date of the term of the Lease.

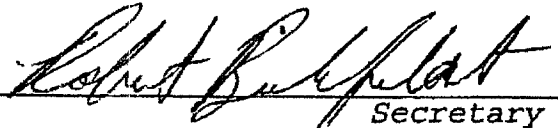
NOW, THEREFORE, for valuable consideration and in consideration of the terms and covenants herein contained, the Lessor and Lessee agree as follows.


1 COMMENCEMENT DATE The Commencement Date of the primary term of the Lease shall be at 12:01 A.M. on the 1st day of July, 1993

2. TERMINATION. The Termination Date of the primary term of the Lease shall be at 12:00 P.M. on the 30th day of June, 2008, provided, however, the Lessee has the option to extend the term of the Lease for two (2) additional term(s) of five (5) year(s).

3 EFFECT This Addendum to Lease is executed pursuant to the terms of Paragraph 3.1 of the Lease and in no way alters, modifies or amends the Lease, and the Lease continues uninterrupted, unabated and in full force and effect.

IN WITNESS WHEREOF, the Lessor and Lessee have executed and delivered this Addendum to Lease on the day, month and year first above written.

LESSOR.
ATTEST:

[SEAL] Secretary

THE WHITE STORE OF GREEN BAY, INC.
a Wisconsin corporation
By: 
Stephen G. Bielefeldt, President
Steven
(SB)

ATTEST:

LESSEE.

GATEWAY FOODS, INC
a Wisconsin corporation

Terrance V. Helz
Terrance V. Helz, Secretary
[SEAL]

By: Rudolph A. Comchoc
Rudolph A. Comchoc, President

STATE OF WISCONSIN)
) ss.
COUNTY OF BROWN)

On this 19 day of July, 1993, before me, a notary public in and for said county, personally appeared ^{STEVEN} Stephen G. Bielefeldt, to me personally known, who being by me duly sworn did say that he is the President of The White Store of Green Bay, Inc, that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors and the said ^{STEVEN} Stephen G. Bielefeldt acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

Patricia R. Niles
Notary Public PATRICIA R. NILES
BROWN County, Wisconsin
My Commission: 10-23-94

STATE OF WISCONSIN)
) ss
COUNTY OF LA CROSSE)

On this ____ day of July, 1993, before me, a notary public in and for said county, personally appeared Rudolph A. Comchoc, to me personally known, who being by me duly sworn did say that he is the President of Gateway Foods, Inc., that the seal affixed to said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors and the said Rudolph A. Comchoc acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed.

Shirley Steek
Notary Public
La Crosse County, Wisconsin
My Commission: expires 6-11-95

This instrument was drafted by
Christopher A. Butler
Attorney at Law
201 Main Street, Suite 1000
La Crosse, WI 54601

EXHIBIT "D"
CONSTRUCTION PLANS

[TO BE FURNISHED BY LESSEE]

EXHIBIT "E"

CROSS EASEMENT AGREEMENT

THIS CROSS EASEMENT AGREEMENT is entered into this ____ day of December, 1992 by and between GATEWAY FOODS, INC., a Wisconsin corporation, ("Gateway") and COMMISSION COURT CORPORATION, a Wisconsin corporation ("Commission Court"), which is a wholly owned subsidiary of The White Store of Green Bay, Inc., a Wisconsin corporation.

WITNESSETH

WHEREAS, pursuant to a lease with The White Store of Green Bay, Inc. (the "Lease"), Gateway leases certain property located in the City of De Pere, Brown County, Wisconsin, the legal description of which is attached hereto as Exhibit "A" and is incorporated herein by this reference (the "Gateway Parcel"); and

WHEREAS, Commission Court owns certain property immediately adjacent to the Gateway Parcel, the legal description of which is attached hereto as Exhibit "B" and is incorporated herein by this reference (the "Commission Court Parcel"); and

WHEREAS, the parties have agreed that it is in their best interest to grant and acquire mutual non-exclusive driveway, access and parking easements for their use and the use of the present and future owners, tenants, employees, customers and invitees of and on their respective parcels.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the above recitals, and the covenants of the parties contained herein, the parties hereto agree as follows:

1. Gateway hereby grants and conveys a non-exclusive access and parking easement upon, over and across the driveways, sidewalks and parking areas now or hereafter constructed or laid out on the Gateway Parcel for the benefit of Commission Court and the present and future occupants, tenants, employees, invitees, and customers of retail businesses located on the Commission Court Parcel, to allow them the right of ingress and egress to and from Main Avenue and across the Gateway Parcel to the Commission Court Parcel, and the right to park non-commercial vehicles on the Gateway Parcel, subject, however, to the provisions hereof including, specifically, paragraph 5 hereof.

2. Commission Court hereby grants and conveys a non-exclusive access and parking easement upon, over and across the driveways, sidewalks and parking areas now or hereafter constructed or laid out on the Commission Court Parcel for the benefit of Gateway, its successors and assigns, and its employees, invitees and customers to allow them the right of ingress and egress to and from Eighth Street across the Commission Court Parcel to the Gateway Parcel, and the right to park non-commercial vehicles on the Commission Court Parcel, subject, however, to the provisions hereof including, specifically, paragraph 5 hereof.

3. Each of the parties expressly reserves the right to limit and regulate driving, walking or parking in a commercially reasonable manner to designated sidewalks, lanes or areas and to alter or reconfigure such driveways, sidewalks and parking lanes and areas in such commercially reasonable manner as may be determined by such party from time to time to be appropriate; provided, however, that neither party shall unreasonably interfere with or impair the other party's right hereunder.

4. Each party hereby agrees and covenants that it shall (i) keep the driveways, sidewalks and parking areas on its property reasonably clean and free from ice and snow, (ii) arrange for periodic striping thereof, (iii) provide its own signage for driveways and parking areas, and (iv) repair and maintain the driveways, sidewalks and parking areas on its parcel in a commercially reasonable manner, reasonably free from potholes and other obstructions to the use thereof contemplated hereby.

5. The easements for parking purposes granted hereby are intended for the sole use of the customers and invitees of the respective benefited parties and not for employee parking or for truck, service or delivery vehicle parking. This Agreement is not intended, nor shall it be construed, to create any rights in or for the benefit of the general public.

6. Each party agrees that it and its tenants (if applicable) will meet all applicable legal requirements regarding the number, size and configuration of parking places required for the use of such party's parcel independent from the rights conferred under this Agreement. Accordingly, for purposes of code and ordinance compliance, such codes and ordinances shall apply to each parcel as if this Agreement did not exist.

this Agreement are inconsistent with any such prior, unrecorded document. This Agreement may be modified, amended or terminated only by a written instrument executed on behalf of both parties in recordable form.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered by their respective officers duly authorized to do so, as of the day and year first above written.

GATEWAY FOODS, INC.

By: _____
Rudolph A. Comchoc, President

COMMISSION COURT CORPORATION

By: _____
Stephen G. Bielefeldt, President

STATE OF WISCONSIN)
) ss.
COUNTY OF LA CROSSE)

Personally appeared before me this ____ day of December, 1992, the above named Rudolph A. Comchoc, President of Gateway Foods, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

Notary Public
La Crosse County, Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally appeared before me this ____ day of December, 1992, the above named Stephen G. Bielefeldt, President of Commission Court Corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public
_____ County, Wisconsin
My Commission: _____

This instrument was drafted by.
Christopher A. Butler
Attorney at Law
201 Main Street, Suite 1000
La Crosse, WI 54601

EXHIBIT "A"

Lot One (1), Volume Four (4), Certified Survey Maps, page 505,
Brown County Records.

EXHIBIT "F"

MEMORANDUM OF LEASE

This Memorandum of Lease made and entered into the ____ day of December, 1992, by and between THE WHITE STORE OF GREEN BAY, INC., a Wisconsin corporation ("Lessor") and GATEWAY FOODS, INC., a Wisconsin corporation ("Lessee").

RECITALS

Lessor and Lessee have entered into a Lease dated December ____, 1992, (the "Lease"), covering premises located in the City of De Pere, County of Brown, State of Wisconsin, as described in Exhibit "A" attached hereto.

The parties desire to record a memorandum of said Lease in the office of the Register of Deeds of Brown County, State of Wisconsin.

NOW, THEREFORE, Lessor and Lessee hereby state the following for recording:

1. The term of said Lease is for a period of Fifteen (15) years, with two (2) Five (5) year options to extend.

2. The Lease contains provisions for payment of rent, for quiet possession and attornment and other provisions, all of which are incorporated herein by reference.

3. This Memorandum of Lease is solely for recording purposes and shall not be construed to alter, modify or supplement the Lease of which this is a Memorandum.

IN WITNESS WHEREOF, this Memorandum of Lease has been duly executed by the parties hereto as of the date first above written.

LESSOR: THE WHITE STORE OF GREEN BAY, INC.

By: _____
Stephen G. Bielefeldt, President

LESSEE: GATEWAY FOODS, INC.

By: _____
Rudolph A. Comchoc, President

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of December, 1992,
the above named Stephen G. Bielefeldt of The White Store of
Green Bay, Inc., to me known to be the person who executed the
foregoing instrument and acknowledged that he executed the same
for the said corporation by its authority.

Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF LA CROSSE)

Personally came before me this ____ day of December, 1992,
the above named Rudolph A. Comchoc, of Gateway Foods, Inc., to
me known to be the person who executed the foregoing instrument
and acknowledged that he executed the same for the said
corporation by its authority.

Notary Public, State of Wisconsin
My Commission: _____

This instrument was drafted by:

Christopher A. Butler
Attorney at Law
201 Main Street, Suite 1000
La Crosse, WI 54601

EXHIBIT "G"

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT made as of this ____ day of December, 1992, by and between VALLEY BANK, NORTHEAST, a Wisconsin corporation (hereinafter referred to as the "Mortgagee"), and GATEWAY FOODS, INC., a Wisconsin corporation (hereinafter referred to as the "Lessee"):

W I T N E S S E T H

WHEREAS, the Lessee has entered into a certain Lease dated December ___, 1992, (hereinafter referred to as the "Lease") with THE WHITE STORE OF GREEN BAY, INC., a Wisconsin corporation (hereinafter referred to as the "Lessor"), which Lease covers space known as 811 Main Avenue, De Pere, Wisconsin, more particularly described as Lot 1, Volume 4 Certified Survey Maps, page 505, Brown County Records (hereinafter referred to as the "Leased Space"); and

WHEREAS, the Lease is evidenced of record by a Memorandum of Lease dated December ___, 1992 and recorded on _____, 19____, in Docket _____, Records Image _____ as Document No. _____ of the records of Brown County, Wisconsin; and

WHEREAS, the Mortgagee is the holder of a certain Mortgage dated April 13, 1992, executed by Lessor, covering the Property, and recorded on April 22, 1992 in Jacket 18362, Records Image 50 as Document No. 1286093 of the records of Brown County, Wisconsin, and a certain Mortgage dated April 13, 1992 executed by Lessor covering the property and recorded on April 22, 1992 in Jacket 18362, Records Image 56 as Document No. 1286096, (hereinafter referred to as the "Mortgages"); and

WHEREAS, the Mortgagee has agreed to the extension of credit secured by the Mortgages provided that the Lease is subordinated to the lien of the Mortgages; and

WHEREAS, the Lessee desires to be assured of continued occupancy of the Leased Space under the terms of said Lease and subject to the terms of the Mortgages; and

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Said Lease is and shall be subject and subordinate to the Mortgages and the lien thereof as it affects the Property of which the Leased Space form a part, and to all renewals, modifications, consolidations, replacements and

extensions of such Mortgages, as fully and as if the Mortgages and all of its renewals, modifications, consolidations, replacements and extensions had been executed, delivered and recorded prior to execution of the Lease.

2. In the event of a foreclosure of the Mortgages, the Mortgagee thereunder will not join the Lessee under said Lease in foreclosure proceedings so long as: (a) the Lessee is not in default under any of the terms, covenants or conditions of said Lease, or (b) if default shall exist, so long as Lessee's time to cure such default has not expired.

3. It is the express intent of the parties hereto that a foreclosure of the Mortgages or the exercise of any other remedies provided therein, or provided in any other instrument securing the indebtedness secured by the Mortgages, or the delivery of a deed to the Property in lieu of foreclosure shall not, of itself, result in the termination of the Lease, but any purchaser or other grantee upon foreclosure of the Mortgages or conveyance in lieu of foreclosure shall thereby automatically succeed to the position of the Lessor under the Lease.

4. If, by disposition, foreclosure or otherwise, the Mortgagee, its successors or assigns, or any purchaser at a foreclosure sale, or otherwise, shall come into possession or become the owner of the Property, such person shall succeed to the interest of the Lessor under said Lease, and the Lease shall take effect as a lease of the Leased Space, together with all the rights and privileges therein contained, between such person and the Lessee for the balance of the term of the Lease between the Lessor and the Lessee; the Lessee agrees to attorn to and accept such person as Lessor under said Lease, and to be bound by and to perform all the obligations imposed by said Lease upon the Lessee therein, and the Mortgagee, its successors or assigns, or any purchaser at a foreclosure sale or otherwise, will not disturb the possession of the Lessee, and will be bound by all the obligations imposed by said Lease upon the Lessor therein.

5. Upon the written request of either Lessee or Mortgagee to the other given after a foreclosure of the Mortgages or conveyance in lieu of foreclosure, which covers the Leased Space, the said parties agree to execute a Lease of the Leased Space upon the same terms and conditions as said Lease between the Lessor and the Lessee, which Lease shall cover any unexpired term of said Lease existing prior to such foreclosure or conveyance in lieu of foreclosure.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

MORTGAGEE: VALLEY BANK, NORTHEAST
a Banking corporation

ATTEST:

Secretary

By: _____

[SEAL]

LESSEE: GATEWAY FOODS, INC.
a Wisconsin corporation

ATTEST:

Terrance V. Helz, Asst. Secy.

By: _____
Rudolph A. Comchoc, President

[SEAL]

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

On this _____ day of December, 1992, before me, a notary public in and for said county, personally appeared _____ and _____, to me personally known, who being by me duly sworn did say that they are the _____ and _____, respectively, of Valley Bank Northeast, that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed.

Notary Public
_____ County, Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF LA CROSSE)

On this _____ day of December, 1992, before me, a notary public in and for said county, personally appeared Rudolph A. Comchoc and Terrance V. Helz, to me personally known, who being by me duly sworn did say that they are the President and Assistant Secretary, respectively, of Gateway Foods, Inc., that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said Rudolph A. Comchoc and Terrance V. Helz acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed.

Notary Public
La Crosse County, Wisconsin
My Commission: _____

EXHIBIT "G"
Page 4 of 4 pages

EXHIBIT "H"

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION made and executed effective the ____ day of December, 1992 by THE WHITE STORE OF GREEN BAY, INC., a Wisconsin corporation (the "White Store"), THE COMMISSION COURT CORPORATION, a Wisconsin corporation and wholly owned subsidiary of The White Store (the "Commission Court") and GATEWAY FOODS, INC., a Wisconsin corporation ("Gateway").

RECITALS

WHEREAS, the White Store and Gateway entered into a Retail Lease Agreement dated as of December ____, 1992 (the "Lease") covering certain real property located in the City of De Pere, Wisconsin, County of Brown, State of Wisconsin, legally described as Lot 1, Volume 4 Certified Survey Maps, page 505, as shown in the drawing attached hereto as Exhibit "A" (the "Gateway Parcel");

WHEREAS, the Commission Court owns certain real property immediately adjacent to the Gateway Parcel, legally described as Lot Two (2), Volume Four (4), Certified Survey Maps, page 505, except that part thereof described in Jacket 183, Image 24 and in Volume 7 Certified Survey Maps, page 409, Brown County Records ("Burdened Parcel");

WHEREAS, the parties desire to declare, grant and create certain restrictive covenants as hereinafter described, which will burden the Burdened Parcel for the benefit of Gateway as long as the Lease is in effect;

WHEREAS, in exchange for the restrictive covenants on the Burdened Parcel, Gateway is willing to restrict itself under the Lease;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the undersigned the White Store and Commission Court hereby state, grant and declare for the benefit of Gateway as long as the lease is in effect, there shall exist restrictions and covenants as follows:

1. Restrictions on Use. The White Store and the Commission Court hereby declare and state that the Burdened Parcel is subject to the following restrictions on use:

(a) For so long as a grocery or supermarket store is operated pursuant to the Lease, no portion of the Burdened Parcel may be used, leased, subleased, licensed or utilize for the purpose of a retail food store, which sells or offers for sale groceries, meats, poultry, seafood, dairy products, vegetables, baked goods or floral products, or a movie theater, bowling alley, cafeteria, bingo hall, flea market, billiard parlor, night club, or any operation selling alcohol for on-site consumption, a video arcade, physical fitness center or other place of recreation or amusement, auto service station or a video tape rental or sales business. Furthermore, neither the White Store nor the Commission Court nor any affiliate or related party shall own, operate, lease, sublease, license, or utilize for the purpose of a store located within one (1) mile of the Burdened Parcel which sells or offers for sale groceries, meats, poultry, seafood, dairy products, vegetables, baked goods or floral products.

2. Benefited Party. The restrictions set forth in Paragraph 1 hereof are for the sole benefit of Gateway, its successors and assigns as tenant under the lease.

3. Covenants Run with the Land. The restrictions of paragraph 1 of this Declaration run with the land and shall inure to the benefit and shall be binding upon the Burdened Parcel to the extent set forth in this Declaration.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the undersigned Gateway hereby states, grants and declares for the benefit of the liquor store located on the Burdened Parcel as long as the liquor store is in operation, there shall exist restrictions and covenants against Gateway and the Gateway Parcel as follows:

4. Restrictive Use Under the Lease in Favor of the Burdened Parcel. The White Store and Gateway hereby declare and state that the Lease and Gateway under the Lease is subject to the following restrictions on the Leased Premises:

(a) For so long as the Lease is in effect and so long as the liquor store is in operation on the Burdened Parcel, the Gateway Parcel shall not be used for the sale of liquor, wine, or beer products, provided that as an incidental use to the main business of Gateway, not more than 500 square feet of floor space may be used for the sale of beer and wine products.

5. Benefited Party. The restrictions set forth in paragraph 4 hereof are for the sole benefit of the Commission Court, its successors and assigns as owners of the Burdened Parcel.

6. Covenants Run with the Land. The parties mutually agree that all of the foregoing shall be subject to and be benefited by the following provisions:

7. Binding Effect. The terms and conditions of this Declaration shall be binding upon the parties and their successors and assigns.

8. Enforcement.

(a) Injunctive Relief. In the event of any violation or threatened violation of any of the restrictions provided herein, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

(b) Attorneys' Fees. In the event that any suit is brought for enforcement of any provision of this Declaration or as the result of any alleged breach thereof or is for the declaration of rights and duties hereunder, the successful party or parties of such suit shall be entitled to collect reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first above written.

THE COMMISSION COURT
a Wisconsin corporation

ATTEST:

[SEAL] By: Stephen G. Bielefeldt, President

GATEWAY FOODS, INC.
a Wisconsin corporation

ATTEST:

[SEAL] By: Rudolph A. Comchoc, President
Terrance V. Helz, Asst. Secy.

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

On this ____ day of December, 1992, before me, a Notary Public in the State of Wisconsin, personally appeared Stephen G. Bielefeldt, to me personally known, who, by me duly sworn, did say that he is the President of The Commission Court, a Wisconsin corporation, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Stephen G. Bielefeldt acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

County, Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF LA CROSSE)

On this ____ day of December, 1992, before me, a Notary Public in the State of Wisconsin, personally appeared Rudolph A. Comchoc, to me personally known, who, by me duly sworn, did say that he is the President of Gateway Foods, Inc., a Wisconsin corporation, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Rudolph A. Comchoc acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
La Crosse County, Wisconsin
My Commission: _____

This instrument was drafted by:
Christopher A. Butler
Attorney at Law
201 Main Street, Suite 1000
La Crosse, WI 54601

I, R. E. STRASSBURGER, REGISTERED LAND SURVEYOR, hereby certify that I have surveyed and divided that part of Parcel "B" of Assessor's Subdivision 1925 of Lot 103 of Assessor's Subdivision of Nicolet, City of DePere, Brown County, Wisconsin, described as follows:

Commencing at the Northeast corner of said Parcel "B"; thence S 24° 40' 30" W along the East line of said Parcel "B" 342.50 feet to the point of beginning; thence continuing S 24° 40' 30" W along said East line 217.28 feet to the Southeast corner of said Parcel "B"; thence N 64° 31' 30" W along the South line of said Parcel "B" 454.00 feet to the Southwest corner of said Parcel "B"; thence N 24° 41' E along the West line of said Parcel "B" 523.65 feet (recorded as 523.90 feet); thence S 64° 13' E along the South line of Main Avenue 362.00 feet; thence S 24° 40' 30" W along the EAST line of Eight Street 304.00 feet; thence S 64° 13' E along the NORTH line of Reid Street 92.00 feet to the point of beginning.

That I made such survey and division of land under the direction of the White Store of Green Bay, the owner of the land surveyed; that the map hereon drawn is a part of and contained within the Deed recorded in 802 R 407, Brown County Records and is a correct representation of the land surveyed; that I have complied with the Subdivision Regulations of the City of DePere, and with Section 236 34 Revised Statutes of the State of Wisconsin in surveying, dividing, and mapping the same.

Dated this 30th day of October, 1973.

R. E. Strassburger
R. E. Strassburger
S - 1043

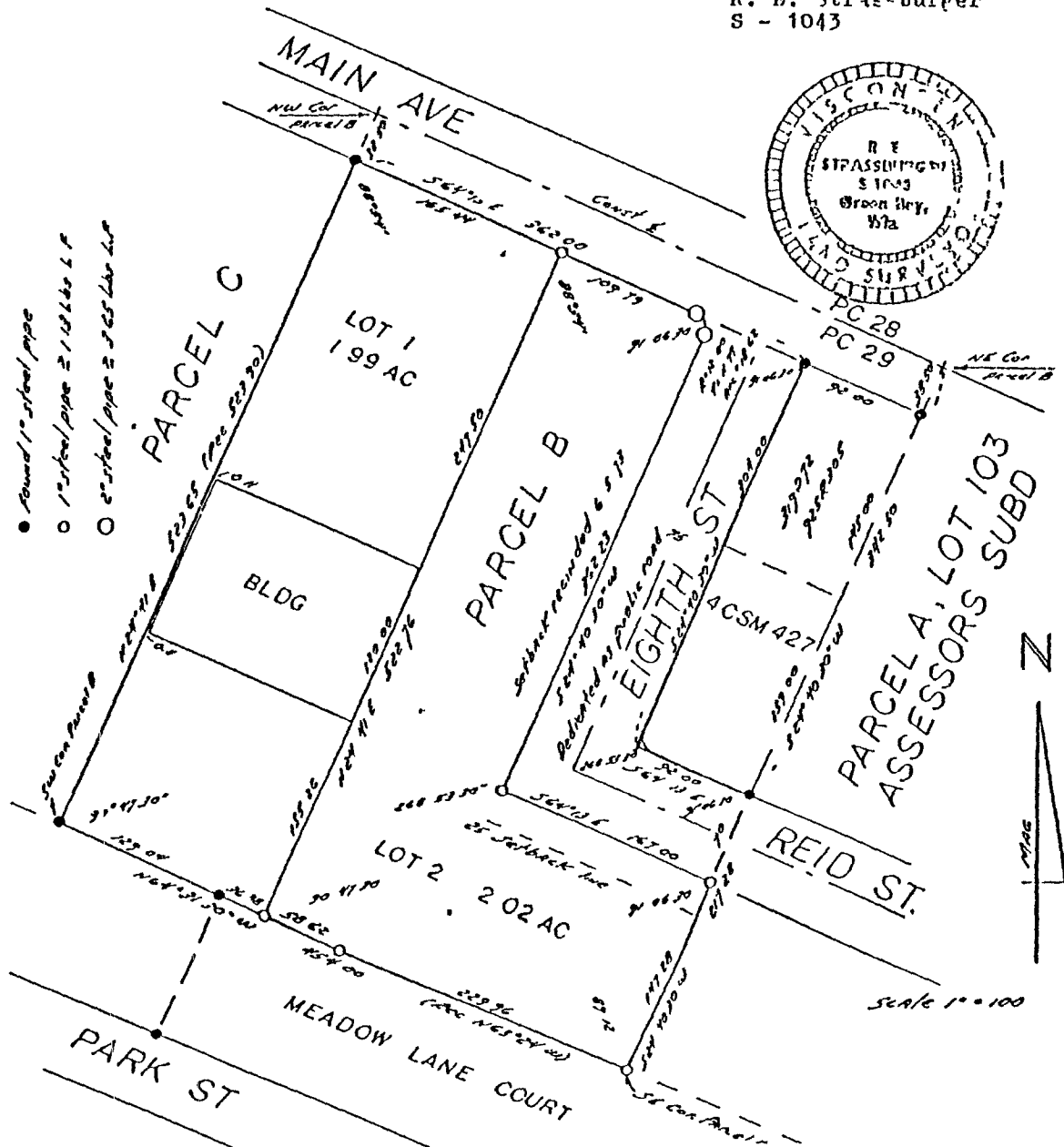


EXHIBIT "A"

GARY A. WICKERT, S.C.

Attorney and Counselor at Law

801 E WALNUT • P O BOX 1656

GREEN BAY, WISCONSIN 54305

Gary A Wickert

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May 5, 2003

Office of the Clerk
Bankruptcy Court
Cleb Boggs Federal Courthouse
844 King Street
Wilmington DE 19801

Re Flemming Companies, Inc
Case No 03-10945 (MFW)

Dear Clerk

Enclosed for filing in the captioned matter is a Proof of Claim, the same being filed on behalf of WS Enterprises, LLC Attached to the Proof of Claim is a computation showing how the amount of the claim was determined Also attached are copies of the underlying lease (and related documents) which is for the basis of the Claim

I am also enclosing an extra copy of the Proof of Claim (without exhibits) attached to a return postage paid envelope Would you please indicate acknowledgement of filing on the copy and return it to me

Thank you for your assistance in this matter

Very truly yours,

GARY A WICKERT, S C



Gary A Wickert

GAW prn

Enclosure

cc Steve Bielefeldt (w/o enc)
Robert Bielefeldt (w/o enc)

