

ORIGINAL

REC'D JUN 26 2003

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----: Bankruptcy Number: 03-10945 (MFW)  
IN RE: : Chapter 11  
FLEMING COMPANIES, INC., et. al, : (Jointly Administered)  
Debtor\$, :  
-----:

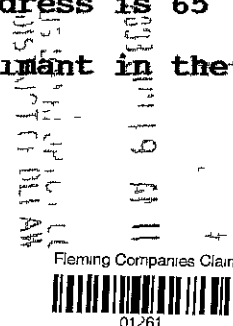
AMENDED PROOF OF CLAIM

1. This Proof of claim is being amended to clarify the name of the claimant herein. The original Proof of Claim is dated June 16th, 2003 and this Amended Proof of Claim replaces the said original Proof of Claim.

2. The official name of the claimant is COLUMBUS WAVERLY SQUARE, LLC which is a Limited Partnership duly organized and existing under the laws of the State of Mississippi; the claimant is also colloquially known as WAVERLY SQUARE LIMITED PARTNERSHIP.

3. The matters presented in this proof of claim are set forth on information and belief based upon documentary and other evidence presented by the undersigned signatory to this proof of claim by the partners of the claimant herein.

4. All matters related to this Proof of Claim and the payment thereof should be sent to BADER and BADER, whose present address is 65 Court Street White Plains NY 10601, who represents said claimant in the above-entitled Bankruptcy Proceeding.



5. There is no other person, firm, corporation or association to the best knowledge of the undersigned who has filed a Proof of Claim in this case other than the original Proof of Claim dated June 16th, 2003 set forth above which the within Proof of Claim amends.

6. The undersigned has filed a Notice of Appearance in this Bankruptcy Proceeding in behalf of the claimant herein.

7. This is now the Proof of Claim filed by the claimant herein in this proceeding.

BASIS FOR THIS CLAIM

8. This claim is made by reason of the rejection by the debtor of a certain lease made by MALONE & HYDE, whose relationship to the debtor will be set forth hereinafter. It is classified as an "other" type of claim in the Official Claim form utilized by this Court.

9. The date of the occurrence of the obligation set forth in this claim and the other relevant circumstances related to this claim will be set forth hereinafter in this Proof of Claim.

10. No Court Judgment has been rendered to date on this claim.

11. The priority of this claim depends upon the status of MALONE & HYDE. INC, a Delaware Corporation, with respect to the debtor which will be set forth in this Proof of Claim. If, in fact, the assets of MALONE & HYDE, a Delaware Corporation, the original lessee on the lease herein, were properly included in its merger with the debtor then this claim is a

General Creditor unsecured non subordinated claim in this case. If, however the assets of MALONE & HYDE, a Delaware Corporation, can be traced and applied by the claimant to this claim, then this claim is entitled to some priority over that of a general creditor claim.

12. The following details are set forth in connection with this Proof of Claim:

a. On December 9, 1987 a lease was entered into between COX & Associates, Inc., as landlord, and Malone & Hyde, Inc. as tenant covering certain property located in Columbus, Mississippi. A copy of this lease agreement is set forth as "EXHIBIT THREE" herein.

b. The said lease was to run until November 19, 2008 and provided for a monthly rental of \$ 34,823.14.

c. The said lease also provided for the tenant to pay 80% of the insurance and taxes on the property and these present amounts are \$ 3,083.33 for insurance per month and \$ 2,561.21 for taxes per month making the total monthly liability of MALONE & HYDE \$ 40,467.68.

d. The said lease was duly assigned to the claimant herein and acknowledgment of said assignment was previously duly made by Malone & Hyde by letter dated March 28, 1994 as set forth in Exhibit Two set forth in this Proof of Claim.

e. The legal existence of the plaintiff is set forth herein in this Proof of Claim in Exhibit One annexed to this Proof of Claim.

f. It is contended by the debtor that Malone & Hyde was duly merged into the debtor and that the obligations of the said lease were then assumed by the debtor. Investigation by the claimant appears to show that the State of Incorporation of the Malone & Hyde, Inc. who executed the said lease agreement was Delaware. Under Delaware Law while a merged corporation assumes the assets and liabilities of the corporations constituting the merger the assets of the non surviving corporation can be followed with respect to its liabilities if the assets of the merged corporation are insufficient to do so. Thus full proof of the assets and liabilities of Malone & Hyde, a Delaware Corporation, at the time of its merger with the debtor must be explored to determine the facts involved and to determine if a priority to the present claim should be given by this Court.


g. On or about in April 2003 the debtor herein, applying its Bankruptcy Rights in this case, rejected the lease herein and thus converted the right of the claimant herein to a claim in this Bankruptcy Proceeding.

DETAILS OF THE DAMAGES CLAIMED BY THE CLAIMANT

13. The damages sought by the claimant pursuant to this claim are normally computed under normal contract law provisions which are governed by the term of this lease. The unexpired term of this lease runs from May 2003 to November 2008. The total rent lost from May 2003 to November 2008 is five years and six month or a total of sixty-six months. The total monthly rent provided under the terms of this lease is \$ 40,467.68. The loss to the claimant (assuming that the rented premises remain vacant for the remainder of the unexpired term of the lease) is \$ 2,670,866.88. Because the gross amount of these damages are not paid immediately an additional amount for such interest as may be allowable should be added to this claim.

14. Obviously the claimant has an obligation to minimize its damages and therefore has an obligation to attempt to re-rent the property. The amount received for such re-rental less the cost of modifying the leased premises for such re-rental would be a set-off against the gross amount of the said claim.

Dated: June 18th, 2003

  
I. Walton Bader  
BADER and BADER  
Attorneys for Claimant  
65 Court Street  
White Plains NY 10601  
Telephone: 914-682-0072  
Fax : 914-779-1344

Certificate of Formation

The undersigned, pursuant to Senate Bill No 2395, Chapter 402, Laws of 1994, hereby executes the following document and sets forth:

1. Name of the Limited Liability Company

Columbus Waverly Square, LLC

2. The future effective date is  
(Complete if applicable)

3. Federal Tax ID

4. Name and Street Address of the Registered Agent and Registered Office is

Name

Dewitt T Hicks, Jr.

Physical  
Address

710 Main Street, AmSouth Bank, Third Floor

P O. Box

Post Office Box 1111

City, State, ZIP5, ZIP4

Columbus

MS

39703 -

5. If the Limited Liability Company is to have a specific date of dissolution, the latest date upon which the Limited Liability Company is to dissolve

6. Is full or partial management of the Limited Liability Company vested in a manager or managers? (Mark appropriate box)

☒

Yes

☐

No

7. Other matters the managers or members elect to include




This page conforms with the duplicate original filed with the Secretary of State  
*Eric Clark*  
Secretary of State



**MALONE & HYDE INC**  
One of the Fleming Companies

March 28, 1994

1991 Corporate Avenue  
PO Box 1719  
Memphis Tennessee 38101  
(901) 395 8000



Dear Lessor:

Waverly Square Limited Partnership  
P. O. Box 23309  
Jackson, MS 39225

With reference to the following property:

Sack & Save  
Highway 45 & Waverly Road  
Columbus MS 39701

Notice is hereby given that this regional office of Fleming Companies, Inc., formerly the Malone & Hyde corporate office, is closing on April 1, 1994. Anything pertaining to your lease (or sublease) should be addressed to

Fleming Companies, Inc.  
6301 Waterford Blvd.    
P. O. Box 26647  
Oklahoma City, OK 73126-0647  
tel. 405-840-7200

~~Ed Saunders 601-342-4222~~

~~Allen Robert Glem~~

Please see that a copy of this notice is attached to your lease document. Thanks.

Malone & Hyde, Inc.  
1991 Corporate Ave.  
Memphis, Tenn.

/cl

Some Fleming Foods Distribution Center addresses are:

Geneva - P. O. Box 398, Geneva, AL 36340 / tel. 205-684-3631  
Memphis - P. O. Box 149, Southaven, MS 38671 / tel. 601-342-4100  
Miami - P. O. Box 520427, Miami, FL 33152 / tel. 305-591-8970  
Nashville - P. O. Box 448, Goodlettsville, TN 37072/  
tel. 615-859-4171  
Sikeston - P. O. Box 988, Sikeston, MO 63801 / tel. 314-471-2262  
Tupelo - P. O. Drawer 869, Tupelo, MS 38801 / tel. 601-842-6851;  
or contact Memphis at the address above.

EXHIBIT TWO

NY CITY TELEPHONE  
AREA CODE 212 532 6860  
WESTCHESTER TELEPHONE  
AREA CODE 914 682 0072

FACSIMILE 914 779 1344

LAW OFFICES  
**BADER AND BADER**

65 COURT STREET  
WHITE PLAINS NY 10601

DR MAXIMILIAN BADER (1920 1978)  
MILTON BADER (1938 1979)  
DR I WALTON BADER JD  
BENEDICT BADER (MASS BAR & MARYLAND BAR ONLY)

WASHINGTON D C OFFICE  
11120 MOUNTAIN VIEW LANE  
JAMSVILLE, MARYLAND 21754

June 18th, 2003

Re: Fleming Corporations, Inc.

Clerk US Bankruptcy Court  
District of Delaware  
824 Market Street  
Wilmington Delaware 19801


ATTENTION CLAIMS DEPARTMENT

We enclose original and one copy of an Amended  
Proof of Claim in the above-entitled Bankruptcy Proceeding.

Please file the within Amended Proof of Claim in  
your office.

IWB/cp

Respectfully,

  
\_\_\_\_\_  
I. Walton Bader

REC'D JUN 26 2003



COPY

Waverly Square Shopping Center  
Schedule of Leases  
July 17, 1997

<u>TENANT</u>	<u>TAB</u>
Fleming Companies, Inc , formerly Malone & Hyde, Inc	A
F Wayne Jenkins, D/B/A Movie World Plus	B
Pump & Save, Inc	C
Rent-A-Center, a division of THORN Americas, Inc	D

EXHIBIT THREE

LEASE AGREEMENT

THIS LEASE AGREEMENT made this December 2, 1987, by and  
and between COX & ASSOCIATES, INC. hereinafter called "Landlord", and  
MALONE & HYDE, INC., a Delaware Corporation, hereinafter called  
"Tenant."

WITNESSETH;

COVENANTS. The parties hereto agree that this Lease sets forth all  
agreements, covenants and conditions express or implied between the  
parties, and supersedes any prior oral or written agreements between  
the parties with respect to the premises hereinafter described. The  
following exhibits are attached to this lease and made a part hereof:

Exhibit "A" - Legal Description  
Exhibit "B" - Plot Plan  
Exhibit "C" - Title Exceptions  
Exhibit "D" - Minimum Basic Building Requirements  
(Specifications)

PREMISES. Landlord hereby leases to Tenant and Tenant hereby hires  
from Landlord the premises located at Highway 45 and Waverly Road,  
Columbus, Mississippi and more particularly described as Demised  
Premises in Exhibit "A" and shown outlined on Exhibit "B", together  
with all improvements now or hereafter erected thereon and all rights  
and appurtenances thereunto belonging. The building erected or to be  
erected upon Demised Premises is herein called "The Building".

TERM AND COMMENCEMENT. The term of this Lease ("The Term") shall  
commence on the same date as provided in Section "MINIMUM RENT" for the  
commencement of payment of the monthly rent and shall end upon the  
expiration of twenty (20) Years less one (1) day after such  
commencement date, at midnight, unless sooner terminated or extended as  
herein provided. Upon commencement of The Term the parties will  
execute a memorandum setting forth the commencement and termination  
dates.

RENEWAL OPTIONS. Landlord grants to Tenant four (4) separate  
options to extend the Term for four (4) separate, consecutive  
additional periods (hereinafter called "Renewal Periods") of five (5)

years each on the same terms and conditions as set forth in this Lease for the Term. Each option shall be automatically exercised by Tenant unless Tenant shall give notice to Landlord at least three (3) months before the expiration of the Term or Renewal Period then in effect of Tenant's desire to terminate said Lease and upon such automatic renewal, the Renewal Period shall become part of the Term.

USE. Tenant may use Demised Premises for any lawful retail purpose. Tenant shall indemnify and hold Landlord harmless of and from all fines or penalties imposed by law arising by reason of the violation by Tenant of any laws, rules, ordinances or regulations relating to the conduct of business in Demised Premises issued by any governmental authority having jurisdiction over Demised Premises.

\* MINIMUM RENT. Tenant agrees to pay to Landlord the monthly sum of Twenty-Five Thousand Eight Hundred Thirty-Three and 34/100ths (\$25,833.34) Dollars (unless such rent shall be abated or diminished as in this Lease elsewhere provided) (hereinafter called "Minimum Rent") in advance, on the first day of each calendar month, commencing with the first day of the month next following the earlier of (a) the opening by Tenant of its complete store in the Demised Premises for business with the public, or (b) the expiration of sixty (60) days after delivery by Landlord to the Tenant of the Demised Premises in accordance with the provisions of this Lease. All payments of rent shall be made to Landlord at P. O. Box 12462, Jackson, Mississippi 39236 or to such other person or corporation or at such other place as shall be designated by Landlord, in writing, delivered to Tenant at least ten (10) days prior to the next ensuing rent payment date.

\* The rental specified is based on one-twelfth of an annual rent of \$6.20 per square foot multiplied by the ground floor area of Fifty Thousand square feet in the leased premises. If the completed ground floor area differs from 50,000 square feet, the rental set forth in this paragraph shall be increased or decreased at the rate of <sup>56,247</sup> <sub>29,609</sub> one-twelfth (1/12) of an annual rental of \$6.20 for each additional or lesser square foot of ground floor area. In the event a mezzanine area is to be included in the original construction, the Tenant may elect one of the following alternatives:

(a) The Landlord shall construct the mezzanine area and the minimum annual rent shall be increased in the amount of \$6.20 times the square footage of the mezzanine, or;

(b) Tenant may construct the mezzanine at its own expense and there shall be no increase in the annual rent for said mezzanine.

Unless Tenant informs Landlord, in writing, which alternative it chooses within 60 days of the execution of this lease, Alternative (a) shall automatically be elected.

PERCENTAGE RENT. (a) On or before sixty (60) days following the end of each Lease Year of the Term, Tenant agrees to mail or to deliver to Landlord a statement showing the gross sales made by Tenant during such Lease Year, computed as hereinafter provided. The term "Lease Year" when used herein shall mean the twelve (12) month period beginning with the commencement date and terminating one year thereafter during each year of the Lease Agreement or any renewal thereof.

(b) Tenant shall pay to Landlord as Percentage Rent (hereinafter called "Percentage Rent") under this Lease a sum equal to two-thirds ( $\frac{2}{3}$ ) of one percent (1%) of such gross sales during each month, less the Minimum Rent and additional rent payable for that month. Percentage Rent shall be due and payable at the time of the submission of the statement required to be submitted under the provisions of Section "PERCENTAGE RENT (a)" hereof.

(c) In computing its gross sales, the Tenant shall take the total amount of all sales of merchandise made by it in the ordinary course of business in Demised Premises and exclude or deduct therefrom the following:

- (j) All credits and refunds made to customers for merchandise returned or exchanged;
- (ii) All receipts from weighing machines, lockers, public telephones, public toilets and other coin-operated service facilities;
- (iii) All receipts from vending machines, except such portion thereof as may be retained by Tenant (provided, however, that if receipts from vending machines shall exceed five percent (5%) of Tenant's total gross sales, all such excess receipts shall be included in gross sales);
- (iv) All sums and credits received in settlement of claims for loss or damage to merchandise;
- (v) All sales made to employees at a discount;
- (vi) All sales taxes, excise taxes or similar taxes imposed under any existing or future rules, regulations, laws or ordinances;
- (vii) All service or interest charges on credit sales and charges for delivery of any merchandise to customers;
- (viii) All sales of cigarettes;
- (ix) All sales of store fixtures and equipment;
- (x) All transfers of merchandise between Demised Premises and other stores or warehouses operated by Tenant or its affiliates, not made to consummate a sale made at Demised Premises.

(d) Landlord or its agents may (on 20 days prior written notice to Tenant) make an inspection of Tenant's records of gross sales made in the Demised Premises for any reporting period, at the Demised Premises location, provided that such inspection is made within ninety (90) days

after Tenant's statement of sales for such period is mailed or delivered to the Landlord and is limited to the period covered by such statement. Unless Landlord shall file with Tenant a written claim challenging any statement of gross sales within ninety (90) days after the mailing or delivery thereof, said statement shall be deemed to have been accepted by Landlord as fully and correctly setting forth the facts therein contained. Landlord shall hold in confidence all gross sales figures and other information obtained from Tenant's records.

(e) Tenant makes no representations or warranties as to its expected gross sales. Nothing in this Lease shall be deemed to create a relationship between the parties other than that of Landlord and Tenant. Landlord shall not be deemed a partner or co-venturer with Tenant, and Tenant shall not pledge the credit of Landlord. Tenant may operate its business on Demised Premises, subject to the terms of this Lease, as Tenant deems best and there shall be no restrictions upon Tenant or upon the operation of its business. Tenant may discontinue the operation of its business at any time during the Term if, in its opinion, it is not economically feasible to continue the operation of its business in the Demised Premises, but shall remain liable for the performance of the terms and conditions of this Lease.

LANDLORD'S TITLE. (a) Landlord covenants that Landlord has fee simple title to the premises described on Exhibit "A" hereof and full right and authority to make this Lease; that said premises are free and clear of and from all liens, restrictions, leases and encumbrances (except as set forth in Exhibit "C"); and that there are no laws, ordinances, governmental rules or regulations or title restrictions or zoning or other matters which will restrict, limit or prevent Tenant's operation of a food supermarket or any department thereof in Demised Premises. Landlord covenants that so long as Tenant is not in default hereunder, Tenant shall have quiet and peaceful possession and enjoyment of Demised Premises and of all rights and appurtenances thereunto belonging.

(b) Concurrently with the execution of this Lease, Landlord and Tenant have executed a Short Form Lease. Landlord agrees at its own cost and expense to record said Short Form Lease with the proper office

or department in the state, county or municipality in which Demised Premises is located. If Landlord fails to record said Short Form Lease and submit to Tenant a certified copy of the recorded Short Form Lease within thirty (30) days after Tenant executes this Lease, Tenant may record such Short Form Lease and charge the cost of recording to Landlord. Any amounts expended by Tenant to record this Lease shall be payable by Landlord to Tenant on demand and if not paid to Tenant, Tenant may, without limiting Tenant's other remedies, withhold any rent or other sums thereafter due or to become due under this Lease.

(c) Landlord agrees (at its own cost and expense) to furnish to Tenant proof satisfactory to Tenant of Landlord's title to Lease Premises. Landlord shall also furnish an agreement in form satisfactory to Tenant executed by any mortgagee or any holder of any lien prior to the Lease subordinating each such mortgage or lien affecting the premises described on Exhibit "A" of this Lease, unless such mortgagee or the holder of such lien executes a non-disturbance provision pursuant to the terms of Section "SUBORDINATION AND NON-DISTURBANCE". Wherever reference is made to a mortgage or Mortgagee in this Section, such reference shall be deemed to include a deed of trust or the holder of a deed of trust.

(d) Landlord represents, warrants and agrees this Lease is upon the express condition that Landlord shall at all times during the term of this Lease or any extension or renewal thereof maintain a Parking Area as shown on Exhibit "B" annexed hereto, to furnish parking space without charge to all customers of Tenant seeking parking, so that there shall be maintained at all times a ratio of at least three (3) square feet of parking space for each square foot of floor area.

SUBORDINATION AND NON-DISTURBANCE. If any Mortgagee (as hereinafter defined) so requests, this Lease shall be subject and subordinate to a first mortgage or first deed of trust covering Demised Premises and to all renewals, modifications, consolidations, replacements and extensions thereof, provided such mortgage complies with the following provisions:

(a) the mortgagee or holder of such first deed of trust ("Mortgagee") shall be a recognized financial institution such as a

bank, savings and loan association, college or university, pension, retirement or trust fund, or insurance company; and

(b) the Mortgagee shall agree to non-disturbance provisions in favor of Tenant substantially as follows:

"So long as Tenant continues to pay the rent reserved in Lease and otherwise complies with the terms and provisions thereof, Mortgagee shall not disturb the rights of possession of Tenant in Demised Premises as set forth in this Lease, notwithstanding any foreclosure or proceedings in lieu thereof affecting Demised Premises whether or not Tenant is made a party thereto. If the Building is damaged or destroyed by casualty or by the exercise of any right of eminent domain, the proceeds of any insurance or condemnation award relating thereto shall be made available for the purpose of repair or restoration thereof as provided in this Lease, subject to protective provisions required by such Mortgagee. Upon passing of title to Demised Premises to Mortgagee or to any other party in any foreclosure or proceedings in lieu thereof, the party acquiring such title shall thereupon, by virtue of such acquisition of title and without the execution of any further instruments or documents be deemed to be the Landlord for all purposes of Lease and be deemed to have assumed the full and complete performance of all the obligations of Landlord as therein set forth.

POSSESSION. (a) Upon commencement of The Term the covenant of Landlord set forth in Section "LANDLORD'S TITLE (a)" shall be in force except for matters junior to this Lease and Demised Premises shall be unoccupied. At such time The Building and any other improvements erected upon Demised Premises shall be in full compliance with all laws, ordinances and regulations relating to the use, occupation and construction thereof.

(b) Tenant agrees to deliver to Landlord physical possession of Demised Premises upon the termination of The Term in good condition excepting, however, ordinary wear and tear, damage by fire, or any other casualty insured against under policies maintained or required to be maintained by Landlord, or damage from any other cause unless such other cause is solely attributable to the negligence of Tenant.



ASSIGNMENT AND SUBLETTING. Tenant may not assign or sublet this Lease for any non-grocery use without the prior written consent of Landlord, which will not be unreasonably withheld. Notwithstanding Landlord's permission to any such subletting or any such assignment, Tenant shall remain primarily liable for the performance of all the terms and conditions of this Lease.

PROTECTIVE COVENANT. In order to induce Tenant to enter into this Lease, Landlord agrees for itself, its heirs, successors and assigns, that none of the foregoing shall use, suffer, permit or consent to the use or occupancy as a supermarket or for the sale of food or food products intended for off-premises consumption any other premises now or hereafter owned or controlled by Landlord or any of the above described parties adjacent to Demised Premises, except for a drug store or any other store in the entire premises containing not more than 2,000 square feet.

LANDLORD'S REPAIRS. (a) Landlord shall maintain the exterior portions and structural elements of Demised Premises or the building of which Demised Premises is a part and the appurtenances thereto and any improvements outside of Demised Premises erected by Landlord for Tenant (including without limitation the roof, roof structures and supports, foundation and structural supports, walls, sub-floor, conduits embedded in the floors, gutters, downspouts, streets, parking lot, curbs, sidewalks, and utility lines servicing Demised Premises to the extent not maintained by public utility companies, and exterior doors) in good and usable repair during The Term. Landlord shall also make and pay for all other repairs to the interior of Demised Premises necessitated by (i) Landlord's failure to make any repairs required of it hereunder, or (ii) defective workmanship or materials in the original construction of Demised Premises or of any other improvements outside of Demised Premises erected by Landlord for Tenant for a period of one (1) year from the delivery of the Demised Premises to Tenant.

(b) In the event it becomes necessary to re-surface the parking lot and drives as shown on Exhibit "B", the expense of such re-surfacing shall be borne and paid by Landlord.

(c) Anything in this Lease to the contrary notwithstanding, Landlord agrees that if, in an emergency, it shall become necessary to

make any repairs hereby required to be made by Landlord, Tenant may without notice otherwise required by Section "RESPONSIBILITY OF LANDLORD" hereof proceed forthwith to have such repairs made and pay the cost thereof. Landlord agrees to pay Tenant the cost of such repairs on demand, and Landlord further agrees that if it fails so to pay Tenant, Tenant may deduct the amount so expended by it from rent or any other payment due or to become due.

(d) If Tenant is deprived of the use of any portion of Demised Premises for a period of more than seven (7) days during the making of any repairs, improvements or alterations by Landlord under any provisions of this Lease, then so long as Landlord does not proceed diligently to remedy such condition all rent and other sums payable hereunder shall abate for such period as Tenant is deprived of such use.

(e) Landlord agrees to indemnify and save Tenant harmless from and against all loss to merchandise, fixtures and equipment occasioned by Landlord's failure within ten (10) days after receipt of notice of necessity therefor, to commence and thereafter proceed diligently with any repairs required of Landlord hereunder.

TENANT'S REPAIRS AND ALTERATIONS. (a) Subject to Landlord's obligations under Section "LANDLORD'S REPAIRS", Tenant shall make and pay for all ordinary non-structural repairs to the interior of Demised Premises arising from Tenant's operation of business therein not occasioned by ordinary wear and tear, fire or other casualty. Tenant may make and shall pay for any alterations and improvements to Demised Premises as Tenant deems desirable and Tenant agrees that all such alterations and improvements shall be made in a good and workmanlike manner and in such fashion as not to diminish the value of Demised Premises or in any way compromise or interfere with the structural integrity of the Building and its foundation. Tenant may paint, erect or authorize the installation of signs (which Tenant deems necessary to the operation of its business) in, on or about the Demised Premises and may at any time remove therefrom any such signs. On surrendering possession of Demised Premises to Landlord at the expiration or sooner termination of this Lease, Tenant shall not be required to restore the same to the condition existing at the commencement of The Term and

Landlord agrees to accept the Demised Premises with all alterations and improvements made by Tenant.

COMPLIANCE WITH LAWS. Tenant shall make and pay for non-structural improvements and alterations to comply with all laws, ordinances, rules or regulations of any governmental authority promulgated after the commencement of The Term applying to the physical condition of Demised Premises and arising from Tenant's conduct of business in Demised Premises. Any improvements installed by Tenant under the terms of this Section shall be deemed trade fixtures under the terms of Section "TENANT'S FIXTURES" of this Lease. Landlord agrees to make and pay for all other repairs, improvements or alterations to Demised Premises required by any such authority.

TENANT'S FIXTURES. Tenant may install in Demised Premises such fixtures (trade or otherwise) and equipment as Tenant deems desirable and all of said items shall remain Tenant's property whether or not affixed or attached to Demised Premises. Tenant may remove said fixtures and equipment from Demised Premises at any time and from time to time during The Term. Landlord shall not mortgage, pledge or encumber said fixtures, equipment or improvements. Tenant shall, within thirty (30) days after expiration of The Term, repair any damage to Demised Premises caused by Tenant's removal of any such fixtures or equipment.

UTILITIES. The Landlord shall provide to the Demised Premises throughout The Term such sewer facilities and such utilities (including, without limitation, water, electric power and gas) as the Tenant may require and shall supply and maintain adequate separate meters for the purpose of measuring all such utilities consumed by Tenant in Demised Premises. Tenant agrees to pay for all such utilities consumed by Tenant in Demised Premises, during The Term, as evidenced by readings taken from said meters.

PUBLIC LIABILITY INSURANCE. (a) Throughout The Term or any extensions thereof, Tenant shall maintain insurance against public liability for injury to person (including death) or damage to property occurring within the Demised Premises arising out of the use and

occupancy thereof by Tenant. Such insurance shall be with minimum single limits of \$1,000,000.00 for personal injury, death or property damage and Landlord shall be named as additional assured under the policy. Upon request of Landlord, Tenant shall deliver to Landlord a certificate of such insurance naming Landlord as an additional assured and an agreement by the insurer that said policy may not be cancelled without ten (10) days prior written notice delivered to Landlord.

(b) Throughout The Term or any extensions thereof, Landlord shall maintain insurance against public liability for injury to person (including death) or damage to property arising out of the acts or omissions of Landlord or arising out of the use of common facilities as defined in this Lease by Tenant or its licensees, employees, invitees or customers. Such insurance shall be with minimum single limits of \$1,000,000.00 for personal injury, death or property damage and Tenant shall be named as additional assured under the policy. Upon request of Tenant, Landlord shall deliver to Tenant a certificate of such insurance naming Tenant as an additional assured and an agreement by the insurer that said policy may not be cancelled without ten (10) days prior written notice delivered to Tenant.

DAMAGE BY CASUALTY. (a) If Demised Premises is damaged or destroyed by fire, the elements, subsidence of sublateral or subjacent support or other casualty, Landlord shall promptly and diligently repair and restore that portion of the Demised Premises or that portion of any such other store except for such portion of the Demised Premises or such other store which was constructed at Tenant's cost and expense as Tenant's work, to its condition just prior to the damage

(b) If Tenant is not actually open for business during all or any part of the period ("Restoration Period") from the date of such damage or destruction as aforesaid until the date Demised Premises is redelivered to Tenant in accordance with the terms of this Lease, all rent or other sums payable hereunder shall abate for such period as Tenant is not open for business. If Tenant is actually open for business during the Restoration Period, the rent and other sums payable hereunder shall abate in proportion to the usable space; provided,

however, that if Landlord does not proceed diligently with restoration of Demised Premises all rent and other sums payable hereunder shall abate.

(c) If any other building, erected on Entire Premises but not required for Principal Tenants or in Section "CONSTRUCTION AND DELIVERY" of this Lease, is damaged or destroyed by fire, the elements, subsidence of sublateral or subjacent support or other casualty, Landlord shall promptly and diligently either

- (i) repair and restore such other building to its condition just prior to the damage, or
- (ii) level such other building to the ground and clean up all debris therefrom, or
- (iii) put such building in a clean and safe condition.

(d) Landlord agrees to keep in effect on Demised Premises and on all other buildings erected on Entire Premises, fire insurance with extended coverage endorsement in an amount not less than eighty percent (80%) of the full, fair insurable value of the buildings and improvements thereon. Landlord and Tenant shall obtain from their respective insurers endorsements whereby the insurers agree to waive any right of subrogation against Landlord or Tenant, as the case may be, in connection with fire or other risks or casualties covered by said insurance. Landlord shall furnish a certificate of such insurance to Tenant. Landlord agrees that it shall make no claim nor authorize any claim to be made against Tenant, its employees, servants or agents in connection with or as a result of fire, explosion or other casualty damaging Demised Premises. Tenant agrees that it shall make no claim nor authorize any claim to be made against Landlord, its employees, servants or agents in connection with or as a result of fire, explosion or other casualty damaging the contents or fixtures installed in Demised Premises, excepting, however, such claims as may be permitted pursuant to the terms of Section "LANDLORD'S REPAIRS" hereof by reason of Landlord's failure to make repairs to Demised Premises.

(e) If any such damage or destruction shall occur within the last three (3) years of The Term, or of any Renewal Period, affecting more than fifty percent (50%) of the replacement value of Demised Premises, either party may terminate this Lease by notice to the other party

within thirty (30) days of the occurrence of such damage or destruction effective sixty (60) days after the date of such notice. If Landlord shall terminate this Lease as above provided, Tenant may, within thirty (30) days after receipt of notice thereof, extend the Term or Renewal Period to run for ten (10) years from the date of restoration and redelivery of Demised Premises to Tenant, whereupon Landlord's termination shall be void and Landlord shall restore Demised Premises in accordance with the terms of this Section. Tenant shall not have the right to void a termination by Landlord during the last renewal period. If this Lease is terminated as provided in this Section, both parties shall be relieved of any further liabilities hereunder except for obligations accrued at the date of such damage or destruction and any sums prepaid by Tenant shall be apportioned and appropriately refunded to Tenant.

INSURANCE. Tenant agrees to reimburse Landlord its prorata share of the cost of the annual premium paid by Landlord for liability insurance, flood insurance if any is required and fire and casualty insurance carried by Landlord covering the buildings in the Shopping Center. Tenant's prorata share of such cost shall be determined by multiplying the cost of such premium by a fraction, the numerator of which shall be the number of square feet of gross leasable area in the Demised Premises, and the denominator of which shall be the number of square feet of gross leasable area in all of the buildings in the Shopping Center. Landlord shall send Tenant a copy of such premium together with a computation of Tenant's prorata share, and Tenant shall within thirty (30) days from the receipt thereof pay Landlord such prorata share. Upon the expiration of the term of this Lease, or upon the cancellation or termination hereof (except by reason of default of Tenant), Landlord shall pay to Tenant the amount of any unearned premium for which Tenant has reimbursed Landlord pursuant to the provisions hereof. Landlord shall have Tenant listed as an additional insured on the fire and casualty insurance carried by Landlord on the Demised Premises.

EMINENT DOMAIN. (a) If (i) all or part of demised Premises, or (ii) any rights in Demised Premises, or (iii) so much of any rights in

Demised Premises shall be taken or appropriated under any right of eminent domain or under any other legal right whereby the taking authority is obligated to compensate Landlord therefor, so that there does not remain

(aa) parking area sufficient to accommodate a minimum of 285 standard sized American cars, or

(bb) one undivided shopping center, suitable in the opinion of Tenant for the operation of its business, or

(cc) direct access at grade level to all abutting streets, or

(dd) loading area as shown outlined on Exhibit "B",

Tenant may terminate and cancel this Lease as of the date on which the condemning authority takes physical possession upon giving to Landlord written notice of such election. Landlord agrees immediately after any notice of intended or actual taking or appropriation, to give Tenant written notice thereof, providing to Tenant full details of such taking or appropriation, including, without limitation, copies of all condemnation plans or surveys submitted to the condemning authority, a statement of the nature of the project to be conducted by the condemning authority, and such other information as might be necessary to enable Tenant to determine its future course of conduct.

(b) If this Lease shall be terminated and canceled as a result of any taking or appropriation, Tenant shall be released from any further liability and the rent and other sums for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any sums paid in advance. If at the time of such taking or appropriation, Tenant shall not have fully amortized expenditures which it might have made on account of any improvements or alterations made or erected on Demised Premises, the amount thereof shall be payable to Tenant out of any award, subject and subordinate to the right of any Mortgagee permitted under the terms of Section "SUBORDINATION AND NON-DISTURBANCE" of this Lease.

(c) Tenant may file such claims as are permitted by law for the loss of its leasehold interest, business dislocation damages, moving expenses, or other damages caused by such taking or appropriation. The Tenant's right to receive compensation or damages for its fixtures or its personal property shall not be affected in any manner by this Lease.

CONSTRUCTION AND DELIVERY.

(A) Tenant shall furnish to Landlord within forty-five (45) days from the execution of this Lease, a completed fixture plan after which Landlord shall construct on Entire Premises such of the following as do not presently exist;

(a) Retail store building or buildings with a minimum frontage of 250 lineal feet and a minimum ground floor area of 50,000 square feet with a mezzanine area not to exceed 2,000 square feet, to be located within the area shown as building area on Exhibit "B".

(b) The Building and appurtenances to be located on Demised Premises in accordance with plans and specifications prepared by Landlord therefor and approved in writing by the Office for Retailer Development of Tenant prior to commencement of construction, a copy of which shall be delivered by Landlord to his contractor prior to commencement of construction.

(c) Common Facilities as shown on Exhibit "B" including, without limitation:

(i) a Loading Area for Tenant's exclusive use to be located in the area shown as "Loading Area" on Exhibit "B" and a service drive with a minimum width of twenty (20) feet connecting Loading Area with a public street or highway;

(ii) parking areas as shown on Exhibit "B"; and

(iii) entrances and exits from and to public streets or highways as shown on Exhibit "B".

(B) All of said construction shall be done by Landlord at its own cost and expense in a good and workmanlike manner using first quality materials in full compliance with all laws, rules and regulations of all governmental authorities having jurisdiction thereof. Said Common Facilities shall be paved with concrete or asphalt and be adequate and serviceable in all respects for use by Tenant and its customers in accordance with the terms of this Lease.

(C) At least twenty (20) days prior to the Commencement of Construction, Landlord shall deliver to Tenant a construction schedule setting forth in detail the times for completion of the various portions of the work and the date on which construction will commence.



Commencement of Construction shall be within one hundred fifty (150) days after delivery by Tenant to Landlord of an executed copy of this Lease and Landlord shall proceed with diligence to completion thereof, using its best efforts to comply with the construction schedule as delivered to Tenant. For the purposes of this Lease the words "Commencement of Construction" shall mean the date on which Landlord or his contractors start the pouring of concrete for foundation. Upon completion of construction the location of the building and improvements and Common Facilities erected on Entire Premises and the grades of Entire Premises shall not differ materially from that depicted on Exhibit "B". Promptly after such completion Landlord shall, at its own cost and expense, obtain and deliver to Tenant three copies of an accurate survey of Entire Premises showing the exact location of Demised Premises, Common Facilities and other stores and buildings thereon; a set of "as built" drawings of Demised Premises, including "as built" drawings of all systems, and a statement showing the discharge of all liens affecting Entire Premises unless such liens are permitted pursuant to any of the terms of this Lease. The obligations of Landlord to construct Demised Premises shall be a personal non-transferable obligation of the Landlord named in this Lease and shall continue notwithstanding any sale or other transfer of title to Demised Premises or Entire Premises prior to completion of Demised Premises.

(D) Upon completion of construction required herein but not earlier than one hundred twenty (120) days after execution of this Lease, Landlord shall deliver Demised Premises to Tenant in accordance with the provisions of this Lease. If Demised Premises shall be delivered to Tenant during any period commencing October 1 and ending the next succeeding January 31, all rent and other sums payable hereunder shall abate until the earlier of

- (a) the next succeeding January 31, or
- (b) the date on which Tenant shall open its complete store in Demised Premises for business with the public, which shall be within sixty (60) days after delivery by Landlord to Tenant of the Demised Premises.

CANCELLATION. If

(a) Construction is not commenced as provided in Section "CONSTRUCTION AND DELIVERY" or diligently prosecuted by Landlord, or

(b) Demised Premises shall not be delivered to Tenant in accordance with the provisions of this Lease for any reasons whatsoever on or before eighteen (18) months following commencement of construction,

Tenant may at any time within one year thereafter or after any extensions thereof granted to Landlord by Tenant, terminate and cancel this Lease by written notice to Landlord whereupon this Lease shall thenceforth be null and void and of no further effect.

The foregoing rights of termination and cancellation shall not be exclusive of any other rights or remedies of Tenant for the enforcement of the obligations of Landlord under this Lease. If Demised Premises is not delivered to Tenant within five (5) years from date hereof this lease shall automatically terminate on the fifth anniversary of the date first above written. If Tenant terminates this Lease as permitted in this Section or if this Lease automatically terminates on the fifth anniversary of the date hereof, Landlord agrees that it will not for a period of three (3) years after such termination, permit, suffer, or consent to the use of Entire Premises or any part thereof as and for a supermarket or for the sale of food or food products intended for off-premises consumption, or any similar operations, and the provisions of this sentence shall survive any such termination and shall have the force and effect of covenants running with the land.

COMMON FACILITIES. (A) All those portions of Entire Premises shown on Exhibit "B" which are not designated Demised Premises or "Building Area" shall be Common Facilities for the exclusive joint use of all tenants of Entire Premises, their customers and invitees, and Landlord hereby grants to Tenant, its customers and invitees, the right to use in common with all other tenants of Entire Premises all of said Common Facilities (except that Loading Area described in Section "CONSTRUCTION AND DELIVERY (A)(c)(1)" of this Lease shall be reserved for Tenant's exclusive use), and any enlargement thereof for ingress and egress to

and from Demised Premises and the public streets and highways shown on Exhibit "B" and for the parking of motor vehicles in the areas designated as "Parking Area". Landlord agrees to maintain throughout The Term all Common Facilities in good repair, clean and clear of snow, ice, rubbish and debris, properly drained, striped and adequately lighted and safe-guarded and policed at all times when Demised Premises is open for business and for one-half hour after closing thereof.

(B) Throughout the Term, the Common Facilities shall contain a parking area with a minimum of three square feet for each square foot of floor area erected within Entire Premises. If at any time during The Term, such parking area shall be reduced below the minimum area above set forth by reason of a taking or appropriation under any power of eminent domain and if Tenant does not then terminate this Lease as permitted in Section "EMINENT DOMAIN", the rent payable pursuant to Section "RENT" of this Lease shall abate in the same proportion that the parking area so taken bears to the minimum parking area above set forth. If, at any time during The Term, Landlord by its acts or omissions permits a reduction of the parking area of Common Facilities below the above minimum or if the Landlord changes the location and arrangement of the parking area, the minimum rent payable pursuant to the terms of Section "RENT" of this Lease and all other charges payable under the terms of this Lease shall abate except that Tenant shall nevertheless remain liable to pay to Landlord a percentage rent under the terms of Section "PERCENTAGE RENT" computed as though the minimum rent and such other payments had been paid. If the use of any premises adjoining Entire Premises shall, in the opinion of Tenant, harmfully affect the use of the parking areas of Common Facilities, Landlord shall upon request from Tenant erect a barrier between Entire Premises and such adjacent premises, and if Landlord fails to erect such barrier Tenant may do so and charge Landlord therefor, such sum to be payable upon demand, Tenant reserving the right to deduct any amounts not so paid by Landlord to Tenant from rent and any other sums due or becoming due under the terms of this Lease.

COMMON FACILITIES MAINTENANCE. (A) Notwithstanding any of the provisions of Section "COMMON FACILITIES" to the contrary and in

consideration of Landlord's performance of its obligations therein set forth, Tenant shall pay to Landlord as additional rent, upon receipt of bills therefor, Tenant's proportionate share of the Landlord's cost of maintaining the Common Facilities. For the purposes thereof, Tenant's proportionate share shall be determined on the ratio that the street level floor area of The Building bears to the total floor area of all structures erected within Entire Premises. Tenant shall make monthly payments to Landlord, based upon the estimated annual cost of operation and maintenance (\$.50 per square foot for the first year) subject to adjustment after the end of the year on the basis of the actual cost for such year.

(B) Within sixty (60) days after the expiration of each Fiscal Year of The Term hereof, Landlord shall deliver to Tenant a statement setting forth in detail satisfactory to Tenant the total costs expended by Landlord in maintaining the Common Facilities, and setting forth Tenant's proportionate share thereof. Landlord herewith grants to Tenant the right to audit Landlord's books and records to ascertain the correctness and propriety of such charges.

(C) If Tenant disputes any such charge, Tenant shall notify Landlord thereof and Landlord shall correct the billing therefor before any amount shall be due and payable.

(D) Tenant's liability pursuant to this Section shall in no event exceed Fifty Thousand and 00/100ths dollars (\$50,000) for any Fiscal Year.

TENANT ATTORNEY FOR LANDLORD. Landlord hereby appoints and constitutes Tenant, Landlord's true and lawful attorney in fact, in Landlord's name, to apply for and secure from any governmental authority having jurisdiction any permits or licenses which may be necessary in connection with any construction, alterations, improvements and repairs permitted under this Lease, and Landlord agrees upon request of Tenant to execute or join in the execution of any application for such permits and licenses.

USE OF PREMISES BEFORE TERM COMMENCES. Tenant may enter Demised Premises at any time prior to the commencement of The Term and install therein fixtures and equipment and receive and store therein

merchandise and other property at Tenant's own risk, free from rent, provided that such entry does not interfere unreasonably with the work being done in or to the building by Landlord. Such entry into Demised Premises shall not be construed as an acceptance of delivery thereof under the terms and provisions of this Lease or as a waiver of any of the provisions of this Lease.

TRANSFER OF TITLE. If there shall be any change in or transfer of title of Landlord in or to Demised Premises or any part thereof, Tenant may withhold payments thereafter accruing until notified in writing by Landlord of such change in title and until given satisfactory proof whereupon Tenant shall submit such payment to the party properly entitled to receive it.

TENANT'S DEFAULT IN RENT. If Tenant shall default in the payment of the rent herein reserved, when due, Landlord shall forward written notice of such default to Tenant, and the failure of Tenant to cure such default within fifteen (15) days after the date of receipt of such notice shall at the option of Landlord work as a forfeiture of this Lease.

OTHER DEFAULTS BY TENANT. If Tenant shall default in the performance of any of the terms or provisions of this Lease other than the payment of rent, and if Landlord shall give to the Tenant written notice of such default and if Tenant shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such a character as to require more than thirty (30) days to cure, then, if Tenant shall fail to use reasonable diligence in curing such default, Landlord may cure such default for the account of and at the cost and expense of Tenant and the sum so expended by Landlord shall be deemed to be Additional Rent and on demand shall be paid by Tenant on the day when rent shall next become due and payable. In no event, however, shall any default under the terms of this Section be the basis of a forfeiture of this Lease or otherwise result in the eviction of the Tenant or the termination of this Lease.

REMEDIES IN THE EVENT OF DEFAULT. In the event of the occurrence of any event of default by Tenant as stated above Landlord shall have the option to pursue any one of the following remedies:

A. Landlord, may terminate this Lease at the expiration of any notice period hereinabove required; and, thereupon, this Lease and the term hereof granted, shall wholly cease and expire and become void; and, Tenant shall then immediately quit and surrender to Landlord the Demised Premises, including any and all buildings and improvements thereon, and Landlord may enter into and repossess the Demised Premises, by Summary proceedings, detainer, ejectment or otherwise, and remove all occupants thereof, any property thereon, without being liable to indictment, prosecution or damages therefor.

B. Without terminating this Lease, Landlord may (but is not obligated to) lease the Demised Premises to any other person upon such terms as Landlord shall deem reasonable in Landlord's discretion for the term of this lease; and Tenant shall remain liable for any loss in rent for the balance of the then current Term together with any and all expenses or costs incurred by Landlord in re-renting the Demised Premises, including but not limited to the payment of commissions, reasonable costs of leasing same, and otherwise. In addition, Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any termination effected pursuant to this subsection B; said loss and damage to be determined by either of the following alternative measures of damages:

(1) Until Landlord is able, through reasonable efforts, the nature of which efforts shall be at the sole discretion of Landlord, to relet the Demised Premises, Tenant shall pay to Landlord on or before the first day of each calendar month, the monthly rentals and other charges provided in this lease. After the Demised Premises have been relet by Landlord, Tenant shall pay to Landlord on the 20th day of each calendar month the difference between the monthly rentals and other charges provided in this lease for the preceding calendar month and that actually collected by Landlord for such month. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have a right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or

deficiencies. Any amount collected by Landlord from subsequent tenants for any calendar month, in excess of the monthly rentals and other charges provided in this lease, shall be credited to Tenant in reduction of Tenant's liability for any calendar month for which the amount collected by Landlord will be less than the monthly rentals and other charges provided in this lease; but Tenant shall have no right to such excess other than the above described credit.

*PS  
law* ~~(11) When Tenant desires, Tenant may demand a final settlement. Upon demand for a final settlement, Tenant shall have a right to, and Landlord hereby agrees to pay, the difference between the total of all monthly rentals and other charges provided in this lease for the remainder of the term and the reasonable rental value of the Demised Premises for such period, such difference to be discounted to present value at a rate of seven percent (7%) per annum.~~

C. In the event of a breach or threatened breach by Tenant of any of the agreements, conditions, covenants or terms hereof, Landlord shall have the right or injunction to enjoin the same and the right to invoke any remedy allowed by law or in equity (or both) whether or not other remedies, are herein provided.

D. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and that none of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others.

E. If Landlord or Tenant files a suit against the other which is in any way connected with this Lease, the unsuccessful party shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgement.

RESPONSIBILITY OF LANDLORD. If Landlord fails to pay any installment of taxes or assessments or any interest, principal, costs or other charges upon any mortgage or mortgages or other liens and encumbrances affecting Demised Premises when any of the same become due, or if Landlord fails to make any repairs or to complete any work required of it under the provisions of this Lease, or if Landlord in

any other respect fails to perform any covenant or agreement in this Lease contained on the part of Landlord to be performed, Tenant after the continuance of any such failure or default for thirty (30) days after written notice thereof is given by Tenant to Landlord, may pay said taxes, assessments, interest, principal, costs and other charges or cure such defaults on behalf of and at the expense of Landlord, and do all necessary work and make all necessary payments in connection therewith including, without limitation, the payment of any counsel fees, costs and charges of or in connection with any legal action which may be brought and Tenant may further take such other proceedings at law or in equity as Tenant deems necessary, notwithstanding any other remedy herein provided; and Landlord agrees to pay to the Tenant any amount so paid by Tenant, and agrees that Tenant may withhold any and all rental payments and other sums due and becoming due after the expiration of the aforesaid notice period to the Landlord pursuant to the provision of this Lease and may apply the same to the payment of such indebtedness of the Landlord until such indebtedness is fully paid. In addition to the foregoing, Tenant may proceed in equity to enjoin any breach by Landlord or by any other party of any provision of this Lease, and in such an action, Landlord hereby waives any defense that Tenant has an adequate remedy at law. Nothing herein contained shall preclude the Tenant from proceeding to collect the amount so paid by it as aforesaid without waiting for rental offsets to accrue and if at the expiration of the Term there shall be any sums owing by Landlord to Tenant this Lease may at the election of Tenant be extended and continued in full force and effect until the last day of the month following the date when the indebtedness of Landlord to Tenant shall have been fully paid. If any alleged default is of such a nature that it cannot be completely remedied or cured within the thirty (30) day period above provided, then notwithstanding the provisions of this Section to the contrary, Tenant shall not have a right to enforce any of the remedies herein set forth if Landlord shall commence curing such default within such thirty (30) day period and shall proceed with reasonable diligence in good faith to complete the curing thereof.

TAXES. (A) Tenant shall be liable for all taxes levied against



personal property and trade fixtures placed by Tenant in the Demised Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Demised Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

(B) Subject to the terms and conditions herein contained, Tenant shall pay to Landlord Tenant's prorata share of the real estate ad valorem taxes assessed against the Shopping Center during the term hereof, computed by multiplying the total amount of such taxes by a fraction, the denominator of which shall be the aggregate square feet of gross leasable area in the Shopping Center (whether or not leased) and the numerator of which shall be the total number of square feet of gross leasable area in the Demised Premises. In the event the commencement of the term of this Lease does not coincide with the tax year of the taxing authority, Tenant's prorata share of taxes for the first and last years of the Term hereof shall be prorated so that Tenant shall be charged only for that portion of the tax year during which this Lease is in effect.

(C) Landlord shall at the end of each tax year furnish Tenant a copy of the paid tax bills for such tax year and a copy of the assessments on which such tax bills are based and all facts, data and information needed to calculate Tenant's prorata share of the ad valorem taxes. Payment from Tenant shall be due thirty (30) days thereafter.

(D) Tenant shall have the right in the name of Landlord, but at Tenant's expense, to take whatever action (including litigation) Tenant deems necessary to contest the validity or amount of the assessed valuation of the Demised Premises or of the Shopping Center or of the ad valorem tax for any tax year, and Tenant at its cost and expense may undertake by appropriate proceedings in the name of Landlord, or Tenant, to contest or effect a review of the validity or amount of the assessed valuation of the ad valorem tax for any tax year. Any

documents required to enable Tenant to prosecute any such proceedings shall be executed and delivered by Landlord within a reasonable time after demand therefor.

(E) Real estate ad valorem taxes for the purpose of Paragraph (B) of this Section shall not include assessments for public improvements.

(F) If there is any remission or refund of all or any part of Tenant's tax payment for any tax year for which Tenant's tax payment has been paid, Tenant shall be entitled, without demand, to an appropriate prorata refund for such taxes.

(G) Landlord agrees to promptly notify Tenant in writing should Landlord receive from any taxing authority any notice that such taxing authority proposes to substantially increase, modify or change any of the ad valorem tax assessments.

(I) Landlord agrees that Tenant may at its expense actively participate in any hearing before any taxing authority, including, without limitation, the tax assessor, board of equalization or other public authority, relative to any modification or change of assessments or rate of taxation. Landlord further agrees not to enter into any agreement or understanding with respect to any increase in, or change or modification of, the ad valorem taxes without having first secured the written consent of Tenant.

(J) If at any time during the primary Term of this Lease or any renewal or extension thereof a tax or excise on rents, or other tax however described (except any franchise, estate, inheritance, capital stock, income or excess profits tax imposed upon Landlord) is levied or assessed against Landlord by any lawful taxing authority on account of Landlord's interest in this Lease or the rents or other charges reserved hereunder, as a substitute in whole or in part, or in addition to the general taxes described in Section 32 (B) above, Tenant agrees to pay to Landlord upon demand, and in addition to the rentals and other charges provided in this Lease, the amount of such tax or excise. In the event any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require.

(K) In the event any possible percentage rent shall be payable to Landlord for any lease year, all sums paid by Tenant under this section (excluding personal property taxes) shall be considered "Additional Rent" and shall be deducted from the percentage rent otherwise payable to Landlord.

TELECOMMUNICATIONS. Tenant shall be allowed access, either underground or aerial as required by the telecommunications supplier, to all telecommunications lines and facilities, including the right to install at Tenant's expense on an exterior wall or roof area, a digital communications reflector no larger than two meters in diameter, complete with attached cable to leased premises, and Tenant may offer access to telecommunications services to other tenants.

NOTICE. All notices or demands required or permitted to be given or served pursuant to this Lease shall be deemed to have been given or served only if in writing, forwarded by certified or registered mail, postage prepaid and addressed as follows:

Landlord:

Cox & Associates, Inc.  
Post Office Box 12462  
Jackson, Mississippi 39236

Tenant:

M&H Food Companies, Inc.  
Real Estate, Retail Dvlpmnt.  
3030 Poplar Ave.  
P. O. Box 1719  
Memphis, TN 38101  
ATTN: J. Lester Crain  
(copy to Ed Saunders)

Such addresses may be changed from time to time by either party by serving notice as above provided.

GENERAL PROVISIONS. (a) Landlord shall pay all fees and commissions for bringing about the execution and delivery of this Lease and shall indemnify and hold Tenant harmless of and from any and all claims for such fees and commissions by any broker or agent with whom Landlord has dealt.

(b) The captions of this Lease are inserted for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

(c) If more than one person or corporation is named as Landlord in this Lease and executes the same as Landlord, then the word "Landlord" wherever used in this Lease shall refer to all such persons or

corporations, and the liability of such persons or corporations for compliance with or for the performance of all the terms, covenants and provisions of this Lease shall be joint and several.

(d) All the provisions of this Lease shall be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof, and all the provisions hereof shall bind and inure to the benefit of all the parties hereto, their respective heirs, legal representatives, successors and assigns.

(e) No amendment or modification of this Lease shall be effective unless in writing, executed by Landlord and Tenant.

(f) The sections of this Lease are intended to be severable. If any section or provisions of this Lease shall be held to be unenforceable by any court of competent jurisdiction, this Lease shall be construed as though such section had not been included in two constructions, one of which would render such section or provision invalid, then such section or provisions shall be given that construction which would render it valid.

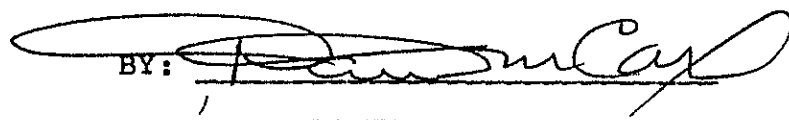
NO OPTION. The submission of this Lease for examination does not constitute a reservation of or option for the Demised Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by Landlord and Tenant.

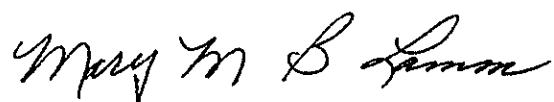
Tenant will furnish to Landlord such financial information reasonably required by Landlord's construction and permanent lender in order to assist Landlord in obtaining construction and permanent financing.

This Lease Agreement is contingent upon Landlord being able to obtain a satisfactory loan commitment for construction and permanent financing within sixty (60) days from the date of this Agreement.

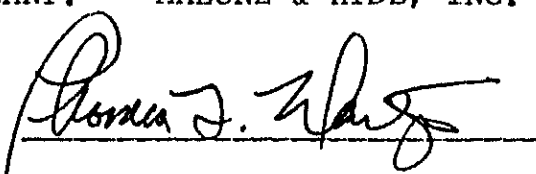
IN WITNESS WHEREOF, the parties hereto have executed this Agreement  
the day and year first above written.

LANDLORD: COX & ASSOCIATES, INC.

BY:   
DAVID M. COX

ATTEST: 

TENANT: MALONE & HYDE, INC.

BY: 

ATTEST: 

EXHIBIT "A"

Parcel "A"

That certain tract or parcel of land in the Southeast Quarter of the Southeast Quarter of Section Eight (8), Township Eighteen South (18), Range Eighteen West (18), more particularly described, and enclosed by a line run, as follows:

Beginning at the point of intersection of the north line of the Old Waverly Road and the West line of the Old Aberdeen Road, which said point is thirty-three (33) feet due West of an iron pin at the Southeast corner of said Section Eight (8), and from said point run thence North, along a fence on the west boundary line of said Old Aberdeen Road, a distance of four hundred eighty nine and three-tenths (489.3) feet to the center line of a ditch, the initial point of this description; from said initial point run thence North eighty-six (86) degrees, five (5) minutes west, along the center line of said ditch, a distance of six hundred six feet to the east boundary line of the Friday Pope Road; run thence due North a distance of one hundred ninety seven (197) feet, run thence South eighty-six (86) degrees 0 minutes east a distance of five hundred eighty-eight (588) feet to the East right of way line of U.S. Highway No. 45; run thence in a southerly direction a total distance of one hundred ninety-seven (197) feet, along the west right of way line of U.S. Highway No. 45 to a common point on the west boundary line of the Old Aberdeen Road and thence along the west boundary line of said Old Aberdeen Road to the initial point of this description.

Parcel "B"

3.3 acres, more or less situated in the Southeast Quarter of Section 8, Township 18, Range 18 West, lying north of Waverly Road as said road is now laid out and in use, East of First Street, South of the south property line of the Martine M. Atkins property and West of Highway 45.

## EXHIBIT "D" PART ONE-SPECIFICATIONS

These specifications are written specifically for the architect for use in formulating the plans and specifications for the building design, and are intended to cover interior finishes, the mechanical and electrical equipment necessary, and to specify such items required in the building for the operation of our business.

It is not our intent to dictate specifications for the specific design of the front or such items as the foundations, structural systems, roof, and walls of the building; however, we do reserve the right of approval of the finishes on all exterior parts of the building such as the canopy, store fronts, and parapet walls above the canopy.

### 1. REQUIREMENTS.

These specifications cover the minimum requirements, and any part of the building which exceed these requirements will be between the Architect and the Landlord. We reserve the right to require certain changes if we deem the plans submitted are radical departure from the design indicated on the lease plan.

### 2. DEFINITIONS.

The term "Tenant" refers to M&H FOOD COMPANIES, INC., or its subsidiary; and its approving agent for all plans and specifications is \_\_\_\_\_.

The term "Landlord" and "Owner" will be considered as one and the same.

The term "Architect" refers to the individual or firm employed by the Owner, or his agents, for the preparation of plans and specifications.

### 3. APPROVAL OF PLANS

All plans and specifications prepared by the Architect relative to that portion of the building to be occupied by Tenant and the plans and specifications setting out the existing and finished grades of the site, the light fixtures for lighting the parking lot, the hard surfacing of the parking lot, the striping and arrangement of the cars in the parking lot, service areas, alleys, entrances and exits, must be approved by the Tenant before being submitted to General Contractors for bids. Landlord shall furnish three copies each of the above accepted plans and specifications to Tenant, prior to commencement of construction.

Tenant will provide store layout showing locations of all electrical outlets in floor, locations of plumbing, electrical lighting, curtain walls and any other information necessary for the completion of Architect's plans. Tenant's plans are not intended to be used for construction; Tenant's plans only show Tenant's interior requirements.

Landlord's architect shall be responsible for adhering to Tenant's plans, which plans shall be furnished to architect for preparation of the final plans. Landlord and/or his architect shall be held responsible for any change and/or deviation from Tenant's plans unless each such change and/or deviation is approved in writing by Tenant's approving agent. A general approving of the architects plans and specifications by Tenant's approving agent shall not relieve Landlord and/or his architect from strict adherence to Tenant's plans and specifications.

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All correspondence relative to the construction of the building should be directed to the approving agent and any agreements or changes in construction must have the agent's written approval. Claim of approval by any other person will not be recognized by Tenant.

#### 4. SUPERVISION OF CONSTRUCTION.

If the building construction is supervised by the Architect, Tenant is to have the right to work directly with the Architect in correcting any differences that might occur between the plans and specifications and actual construction.

If the construction is not supervised by the Architect, Tenant is to have the right to work directly with the General Contractor, or Sub-Contractors, in order to carry out the requirements of these specifications. If Tenant deems the specifications given to the General Contractor are not sufficient to carry out these requirements, Tenant reserves the right to leave a set of these specifications with the General Contractor or any Sub-Contractor whose work is covered by same.

#### 5. SPECIFICATIONS.

Any substitution for the finishes, materials or equipment covered by these specifications must in each instance be approved by the Tenant.

#### 6. DEVIATIONS.

Any deviation from Tenant's Requirement Drawings is to be corrected at the expense of the Landlord. Should any part of the plans or specifications appear impractical or not in compliance with city - state ordinances and/or codes, Landlord or its agents will so advise Tenant, requesting confirmation in writing of changes necessary, before proceeding with the construction.

#### 7. GENERAL.

Unless specifically excepted below as an item to be furnished or installed by Tenant, Landlord shall furnish and install at its expense, any and all items required on these specifications and those shown on the Tenant's Requirement Drawings, and what is called for on one shall be binding as if called for on both.

Unless otherwise specifically provided for in specifications, all workmanship, equipment, materials and articles should be of the best grade of their respective kinds for the purpose. Where equipment, materials, articles, etc., are referred to as "equal", Tenant shall have the right of approval. All equipment is to be installed in a good workmanship-like manner and in compliance with all applicable and existing ordinances and/or codes. If there are no local building codes, Landlord and his Contractor shall follow the BOCA Basic Building Code.

Should the construction of the building not be started within a period of six months from the date of the signing of the lease contract, Tenant at its option may revise the plans and specifications.

The building is to be constructed per dimensions shown on Tenant's Requirement Drawings. The structural details are to be left to the Architect designing the building, except that all column spacing, if necessary, on the sales floor must be approved by Tenant.



## 8. ROOF.

The roof construction is to be designed by Architect to meet all local codes. All waterproofing on the roof must be of pitch and gravel equivalent to a twenty-year bonded roof. Burglar bars must be provided in all roof openings over 12 inches in diameter for air ducts, ventilators, etc.. Gutters and downspouts shall be furnished and installed by Landlord, on all areas of the roof from which water might drain.

## 9. CEILING.

The ceiling of the sales floor is to be suspended accoustical tile using a mechanical suspension system with 24-inch by 48-inch exposed "T" grid. All exposed parts shall be white. Accoustical panels shall be high density "miniboard" as manufactured by Armstrong Cork Company, or equal, carrying fire underwriters label. Ceiling insulation above the meat preparation room is to be nominal 6-inch thick 24-inch by 48-inch batt blankets of fiberglass. Ceiling height shall be as shown on Tenant's plan. Ceiling in meat preparation room must have non-porous, washable surface or 3/32 glasbord 2' x 4' panels and Kemlite sanigrid T bar system.

## 10. WALLS.

### (A) Sales Area:

All walls in the sales area are to be covered with 1/2 inch sheetrock or 1/4 inch paneling as shown on Tenant's Requirement Drawings furnished by the Tenant to the Landlord. All sheetrock walls shall be taped, filled and sanded smooth. Sheetrock shall then be painted with a sealer and one coat of flat latex paint as shown on Tenant's Requirement Drawings.

### (B) Meat Preparation Room:

Meat preparation room and sales area wall behind meat cases shall be covered with 1/4 inch mariite paneling or 3/32 inch or 1/8 inch glasbord as shown on Tenant's plans. Partition walls around Meat Prep Room shall be insulated with 3 inch fiberglass.

### (C) Stock Room & Lounge Areas:

All partition walls in these areas which are exposed shall be covered with 3/4 inch plywood, to a height of 8 feet 0 inches above the finished floor. The wall surfaces above the plywood shall be covered with sheetrock of the same thickness with joints filled and taped. The exposed surface of the plywood shall be "B" grade, suitable for a paint finish.

### (D) Toilets:

All the walls in the toilet areas shall be concrete block, painted with epoxy paint, or 3/8 inch plywood "AD" grade painted with epoxy paint.

### (E) Office:

The partition walls in the office area shall be painted sheetrock and all joints must be filled, taped and sanded; or 1/4 inch plywood paneling may be used in lieu of sheetrock (see Room Finish Schedule on Tenant's Requirement Drawings).

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**(F) Exterior:**

All exterior walls shall be full thickness (12-inch) blocks. The front wall shall be brick veneer to include a return around one corner of the building front for a distance of at least 10 feet. All concrete block walls shall be sealed on exterior and interior. Color of sealer shall be approved by Tenant. Brick shall be selected by Tenant.

All perimeter walls are to be built to roof. No pilasters extending into the sales floor will be permitted.

**(G) Behind Sinks:**

The area behind any common sink area, mop sink or other general purpose sink, not in the Toilet Area or Meat Preparation Room (which is covered herein), shall have a wainscot of water proofed material (such as epoxy painted exterior plywood) extending 2 feet 0 inches on each side and above the sink.

**11. SPRINKLER SYSTEM.**

The building covered under these General Specifications shall contain a sprinkler system. System must meet necessary requirements to obtain maximum available credits on Tenant's contents insurance rates as a fully sprinklered building. Any waiver or special condition concerning this provision must have Tenant's written approval prior to commencement of construction. Sprinkler System Plan shall be supplied to Tenant for approval, prior to commencement of construction. Location of risers and sprinkler valves shall be approved by Tenant.

**12. FLOORS.**

**(A) Sales Area and Toilet Areas:**

All floors in the Sales Area and Toilet Areas are to be Terrazzo tile of uniform thickness of 5/8" with expansion joints at each expansion joint in the concrete slab. The tile is to be cleaned, sealed, waxed and polished immediately after laying, according to manufacturer's specifications.

**(B) Stockroom Area:**

All floors in the stockroom area shall be concrete with a smooth trowel finish. Dust seal as manufactured by A. C. Horn Company, or approved equal, shall be applied to all concrete floors.

**(C) Meat Preparation Room:**

All floors in the meat preparation room and in those coolers and other areas shown on Tenant's Requirement Drawings shall be covered with stonehard or equivalent epoxy material. All corners shall be bullnose and all base shall be sanitary cove.

### 13. DOORS.

#### (A) Front Entrances:

The front entrance doors are to be aluminum frame construction as manufactured by Besam or equal with concealed inhead electric operators. Doors are to be supplied with thresholds, finger guards and guide rails. See details on Tenant's Requirement Drawings for sizes and design. The locks on all doors are to be maximum security, extra long throw, heavy duty and keyed alike. Any other make hardware or doors must be approved by Tenant, in writing.

#### (B) Rear Door:

The rear doors shall be metal-clad doors, 7 feet 6 inches or 8 feet 0 inches high by 1-3/4 inches thick by the width shown on plans, with steel frames, and fitted with dead-lock, key cylinders on both sides. There shall be a steel bar so installed that door may be barred from inside. Where local codes require that rear entrance doors swing "out" and must be unlocked during business hours, doors must be equipped with safety alarm locks #11 and #33 panic bar extension as manufactured by Alarm Lock Corporation, 33 Powerhouse Road, Roslyn Heights, Long Island, New York.

#### (C) Interior Doors:

Interior doors are to be paint grade and are to be installed with lock sets and closers, except for those double-acting doors shown between the sales area and other areas, where Chase doors or equal will be used. All Chase door openings shall be 7 feet 6 inches high.

### 14. FRONT.

All glass is to be new 1/4 inch polished plate, not less than 6 feet in width and is to be set in metal setting. All store front metal is to be equal to PITTCO, as shown on plan. No ramps in excess of eight degrees (8 degrees) will be permitted in entrances. Landlord agrees Tenant may select the color of the face brick, and/or the color to be used on the parapet wall above the canopy. The store front canopy, which shall extend across entire store front and shall return down one side at least 10 feet, may be either self-supporting or supported on columns at the outer edge of the canopy. Fascia materials shall be aluminum, porcelain, or painted steel. Other finishes must be agreed upon. The canopy ceiling shall be plaster or metal. If canopy roof deck is used as ceiling, its finish and construction must be approved by Tenant. No lay-in system ceiling shall be permitted under the canopy. A sidewalk, at least one foot wider than canopy, shall extend across the entire front of store and down one side. A gutter and downspouts must be provided to prevent water from splashing onto sidewalk at canopy.

Please refer to the sign location information contained in Tenant's Requirement Drawings (if not shown on said drawings, confirm the location with the M&H store engineer) for the proper location of the sign on the store front. If not shown in Tenant's plans, verify location and method of attachment. Provide necessary structural support

for sign on leading edge of canopy or behind fascia material for mounting the sign. Tenant shall furnish detail on the mounting of the sign when required.

15. OFFICE.

An enclosed office is to be provided in accordance with Tenant's plans and specifications. The office is to be elevated above sales floor in accordance with Tenant's Requirement Drawings. Office must have a lookout window onto sales floor. Steps, air conditioning outlets, lighting and all electrical outlets shall be provided.

16. STOCKROOM.

Where stockroom is on the ground floor, a minimum height of fifteen (15) feet is required between the bottom of the roof joists and the floor; or from the finished ceiling of the stockroom to the floor, where the codes require the ceiling in the stockroom to be finished.

17. FREIGHT ENTRANCE.

Unless elsewhere herein specified or shown on Tenant's Requirement Drawings and specifications for Tenant's building,

(A) An outside dock of reinforced concrete (~~concrete block will not be accepted~~) shall be provided extending across the rear of the building with a canopy covering same. Canopy shall be 14 feet high from truck parking area.

(B) Dock height shall be 4' - 2" high dry grocery dock and 4' - 4" high perishable docks from the finished truck parking area and rubber dock bumpers shall be provided; and

(C) A concrete slab 6 inches thick, reinforced, with 6x6-#6 wire mesh will be provided along the entire dock area, extending a minimum of 50 feet from the dock edge. (Soil under slab must be compacted to 90% Proctor). The concrete slab will be level along the entire length of the dock, and there shall be no more than a 2% slope for drainage purposes.

(D) If Tenant's Requirement Drawings show hydraulic lifts rather than a dock, Landlord shall provide hydraulic lifts at the rear of the store as shown. Lifts shall be Techno Uni-Lift Model A400 as manufactured by Techno Truck Mfg. Co., 20850 St. Claire Ave., Cleveland, OH 44117 or approved equal.

18. PARKING.

The parking area, service areas, alleys, entrances and exits shall be paved and arranged as shown on Exhibit "B" Plot Plan, prepared by Tenant, and the approved Site Grading Plan, prepared by Landlord. Hard surface material is to be either concrete or asphalt with concrete curbs and gutters. If asphalt is used, it must be applied according to standard State Highway Department specifications applicable to the territory in which it is used. Paving sub-contractor shall provide written one (1) year guarantee on asphalt paving, providing patching and maintenance during guarantee at no cost to Tenant. Should asphalt topping be used, a minimum of 1 1/2 inch topping will be required over a compacted gravel base as required by said State Highway Department specifications. No gravel shall be permitted as a parking area, service area, truck parking area, alley, entrance or exit surface. Slope on parking lot shall have minimum 1' - 0" per 100' maximum 5' - 0" per 100'

Fixtures for lighting parking area, truck parking area, service areas, alleys, entrances and exits to Shopping Center (see Parking Area Illumination, page 8) and striping of the parking area are to be furnished and installed in accordance with the aforesaid prints and specifications covering the same, which must be approved by Tenant.

Landlord shall clean and remove all trash, ice, snow and other debris from the parking lot, truck parking area, service area, sidewalks, entrances and exits to the Center, and alleys before Tenant opens for business, or is required to pay rent.

#### 19. ELECTRICAL.

All electrical work is to conform with city and national codes. All electrical or telephone service wires must have a minimum clearance of fourteen feet (14') when located over the service or truck parking area. Landlord shall furnish and completely install, to include the actual electrical hook-up, all electrical components required to place all of Tenant's equipment and fixtures in working order.

##### (A) Floor Outlets:

Floor outlets are to be T&B #1703 Boxes, or equal, with 3/8 inch angle Greenfield connectors and four feet of 3/8 inch Greenfield flexible tubing for connection to Tenant's case boxes. The exact location of all floor outlets is shown on Tenant's fixture plan. All conduit to floor outlets shall be under the floor slab.

#### 20. LIGHT FIXTURES.

##### (A) Sales Area:

The light fixtures are to be continuous mounting, as shown on plan, using Lithonia slim line fixtures or equal with Cool white Lamp, and connected as shown on plan. Fixtures are to be mounted on hangers 1 1/2 inch to 2 inches below ceiling (mounting against the ceiling shall not be acceptable). At least three 3/4 inch knockouts are to be left open in top of fixture channel to allow ventilation of ballast.

##### (B) Stockroom Lights:

The stockroom lights are to be 8 feet - 2 tube T 12-96 Slim Line fixture with White Lamp GE 96 T 12.

#### 21. PARKING AREA ILLUMINATION.

A minimum amount of fixtures must be provided, in order to furnish an average of four (4) ft. candles of lighting over the entire parking area. These fixtures may make use of fluorescent, mercury vapor or other metal vapor or arc lamps. Manufacturers' specifications and prints of these fixtures must be sent to Tenant for approval, along with the complete plans as mentioned on Page 1. It will be necessary to show mounting height of luminaries.

## 22. SIGN OUTLETS.

The necessary sign outlets including wiring and circuitry, shall be provided on the canopy and/or walls and on the parking lot for Tenant's use by the Landlord, with specifications for the installation of the signs to be supplied by the Tenant. Sign installation will be made by the Tenant, electrical hook-up by Landlord.

## 23. PLUMBING.

Landlord is to furnish a complete hot and cold water system, as shown, and provide all fixtures of a quality equal to Crane Company's. The water heater(s) is (are) to be a size and detail as shown on plans. The lavatory fittings are to be a mixer type. All piping under slab is to be of copper. Service sink in produce preparation, meat cutting room and kitchen is to be Crane #7-563 with #8-929 rim guard, #8-101 supply, mixer-type fittings, and pail hook. All plumbing is to be in accordance with city and national codes.

Landlord is to furnish and install an electric-cooled drinking fountain with not less than eleven (11) gallons recovery capacity per hour, and is to be equal to Westinghouse #W-11D. Tenant shall furnish and install all stainless steel work sinks in the meat preparation room, produce preparation room, bakery and Deli-kitchen and other locations as shown on the Tenant's Fixture Plans. Said sinks shall be equal to those manufactured by Advance Food Service Equipment, Inc., 790 Summa Ave., Westbury, L. I., NY 11590, telephone (516) 333-6444.

All utilities servicing the Leased Premises shall be installed so that each will have separate meter and cut-off valve so they can be disconnected from the utilities servicing the balance of the Center. Landlord shall install gas lines and make necessary connections.

If it is necessary to use a septic tank for sewage disposal, Landlord is to provide and install same in accordance with local and state health codes. Landlord agrees to pay all costs of maintaining, repairing, cleaning and operating the septic tank.

## 24. HEATING AND AIR CONDITIONING.

Landlord is to furnish and install a complete summer and winter air conditioning and humidity control system for the sales, office, lounge and restroom areas. The meat market work area (Meat Cutting Room) and the produce work area refrigeration shall be furnished by the Tenant as part of the Trade Fixtures. The system is to be designed for both heating and cooling from the same duct system, using gas fired duct-type heaters in conjunction with a built-up central system of "packaged" cooling condensers. No cooling towers or evaporative condensers will be accepted.

The system's capacity is to be designed to maintain 76 degrees for cooling and 75 degrees for heating and a relative humidity of 55 percent against the design temperature for the area, as published in ASHVE guide. All cooling equipment is to be Trane or Carrier, at option of Tenant, or approved equal. The duct-type heater is to be Reznor or approved equal, with stainless steel heat exchanger. Electric strip heat shall be acceptable on systems having heat reclaim.

The duct work is to be sheet metal of proper size and gauges as recommended by ASHVE, and installed with not less than 1 inch fiberglass with vapor seal, duct board will not be accepted. The ceiling diffusers are to have anti-smudge rings as manufactured by Anemostat Corporation. The sidewall diffusers, if any, are to be as manufactured by Tuttle & Bailey, or equal. The location of any sidewall diffusers must be approved by Tenant.

The return air ductwork shall be located near the floor level or shall use the wall as a duct as shown on Tenant's plans.

Plans and specifications for the heating and air conditioning and humidity system must be shown on the plans submitted to Tenant for approval. "Roof-top units" which use combination supply and return through the same grille shall not be used.

Tenant reserves the right to install its own Heating, Air Conditioning and Humidity Control System. If Tenant desires to furnish and install the Heating, Air Conditioning and Humidity Control System, Landlord shall give Tenant full credit for the complete Heating, Air Conditioning and Humidity Control System hereinabove specified, including the electrical wiring, the duct work, humidity controls and all other portions of the Heating, Air Conditioning, and Humidity Control System. Landlord shall furnish necessary structural supports in the roof system, the necessary electrical requirements to and including the disconnect outside the main switch gear, and sufficient space above the ceiling for Tenant's ductwork.

**(A) Controls:**

Controls should consist of Trane environmental or equal low-voltage combination cooling and heating thermostats with 0412A sub-base to provide for "cooling", "Off", and "Heating"; and for the fan, "On" or "Automatic".

**(B) Guarantees:**

All air conditioning equipment is to be guaranteed for a period of one (1) year by the installing dealer; and the compressor section of the air conditioning equipment is to be guaranteed by the factory for an additional four (4) years; this must include the replacement of the compressor, and warranty certificates are to be furnished to Tenant when job is completed; and mechanical contractor and manufacturer's district engineer will complete a thorough test procedure of equipment, as per form furnished by Tenant, and certify that these tests are correct.

The Landlord is to furnish and install heater for the stockroom area. The size is to be shown on plan submitted to Tenant for approval. The heater is to be Reznor, or approved equal. Landlord shall furnish and install exhaust fans in all Toilet areas. Fans are to be controlled by the light switch in each Toilet.

25. FIRE WALLS, ETC.

In addition to the Sprinkler System as specified in Paragraph 11 above, the building covered under these specifications shall be maintained as a "Separate Fire Division" and shall be approved by the applicable Insurance Service Office (I.S.O.) as such. A fire wall or walls shall be constructed of the materials and thickness, and shall extend above the roof, as required by said I.S.O., in order to obtain maximum available credits on Tenant's contents insurance rates.

Any waiver or special condition concerning this provision must have Tenant's written approval prior to commencement of construction, and approval of plans (which do not include a firewall as herein specified) without specific waiver of the requirement for a fire wall shall not constitute approval by Tenant.

26. UTILITIES.

Landlord is to furnish adequate utilities within the construction site for use by the contractor and sub-contractors during the construction of the premises. Said utilities shall be made available to tradesmen who are installing Tenant's equipment and fixtures.

All utilities shall be changed over to the Tenant's account when the contractor and his sub-contractors have completed their work. It shall be the responsibility of the contractor to cause such change-over to be made, after giving the Tenant prior written notice that his work is completed and that he intends to make said change-over.

In accordance with the terms of the Lease Agreement as herein specified, Tenant shall have the right of moving into the building prior to completion of the construction, in order to install fixtures and equipment and to stock the store.

Tenant shall be responsible for utilities after the commencement date of the Lease Agreement, unless it has been mutually agreed, in writing, to change said utilities to the Tenant's account at an earlier date.

27. INSULATION.

All exterior walls shall be insulated by Landlord to achieve a "R" factor of .11 or better. Roof shall be insulated by Landlord to achieve a "R" factor of .20 or better.

28. Should there be any conflict between the specifications and plans, Landlord shall notify Tenant in writing and ask for a clarification.

APPROVED: Tenant



Landlord



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EXHIBIT "C"  
Title Exceptions

**Mortgages:**

(Landlord covenants that, prior to commencement of the term of this Lease, the Mortgages described below shall either be discharged of record or the mortgagees shall execute a subordinate agreement in accordance with Section in this Lease covering Subordination.)

**Easements:**

(Landlord warrants that none of the easements described below will affect or limit the use of Demised Premises by Tenant in accordance with the terms of this Lease.)

**Restrictions:**

**Other Matters:**