



**Stearns & Bagley Common Area Maintenance 2002**  
**9468 Root Road**  
**North Ridgeville, OH 44039**  
**(440-748-4204)**

**Hirn Foods dba Shaker's IGA SuperCenter**  
**27091 Bagley Road**  
**Olmsted Twp , OH 44138**

	31440 Sq Feet		according to lease
	57 46%	billed	they pay
Insurance		\$1,516 44	\$1,496 31
Real Estate Tax		\$44,549 28	\$43,960 13
Landscaping & Snowplowing		\$1,917 72	\$1,914 90
Security Lights		\$1,615 20	\$1,465 31
Septic Tank		\$1,223 88	\$1,207 71
Repairs & Maintenance		\$4,350 12	\$3,483 42
Water		\$2,818 32	\$2,781 06
Accounting		\$356 28	\$0 00
<b>Total</b>		<b>\$58,347.24</b>	<b>\$56,308 84</b>
CPI 2002 1 60%		\$933 56	\$0 00
<b>Grand Total</b>		<b>\$59,280 80</b>	<b>\$56,308.84</b>
		<b>-\$23,506 68</b>	<b>-\$23,506 68</b> paid wrth rent 2002
		<b>\$35,774 12</b>	<b>\$32,802 16</b> balance due

**Stearns & Bagley Common Area Maintenance 2003 Thru 7/31/03**  
**9468 Root Road**  
**North Ridgeville, OH 44039**  
**(440-748-4204)**

**Hirri Foods dba Shaker's IGA SuperCenter**  
27091 Bagley Road  
Olmsted Twp , OH 44138

31440 Sq Feet per month  
57 46% \$2,733 51

**Total**  
\$19,134 57

Less Charges for April, May, June and July, 2003

- \$10,934 04

TOTAL

\$ 8,200 53

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## SHOPPING CENTER LEASE

THIS LEASE, entered into this 12th day of JULY, 1999, which is the date of this Lease, by and between **STEARNS & BAGLEY PLAZA ASSOCIATES, LLC**, an Ohio limited liability company (hereinafter referred to as "Landlord"), and **FLEMING COMPANIES, INC.**, an Oklahoma corporation (hereinafter referred to as "Tenant")

## WITNESSETH

### 1 DEFINITIONS

1.1 **Leased Space** That certain retail store building space which includes approximately 34,000 ground floor square feet located on the Real Property and designated as "Supermarket" on the Shopping Center drawing attached hereto as Exhibit "A" (the "Site Plan") together with any other space added to the Leased Space pursuant to Subparagraph 6.4, which Shopping Center is located on the Real Property

1.2 **Real Property** That certain real property located in Olmsted Township, Ohio, more particularly described on Exhibit "B" attached hereto

1.3 **Shopping Center** All the Real Property and improvements now or hereafter located on the Real Property known as Stearns & Bagley Plaza

1.4 **Proportionate Share** The term "Proportionate Share" shall mean a fraction (expressed as a percentage), the numerator of which is the area of the Leased Space, as shown on the Site Plan, together with any other space added to the Leased Space pursuant to Subparagraph 6.4, and the denominator of which is the leasable area of the Shopping Center as shown on the Site Plan. Tenant's initial Proportionate Share shall be 57.46%, subject to increase or reduction if the leasable area of the Shopping Center or Leased Space increases or decreases

2 **PREMISES** In consideration of the covenants and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Leased Space, together with non-exclusive rights to the easements, entrances, parking areas, approaches and exits appurtenant to the Leased Space

3 **TERM** The Initial Term of this Lease shall run and extend for ten (10) years commencing July 12, 1999, (the "Commencement Date") and expiring at 11:59 p.m. on July 11, 2009, unless sooner terminated as herein provided (the "Initial Term")

3 1 **Renewal of Lease** This Lease shall be extended automatically at the rental set forth in Subparagraph 4 1 and otherwise under the same terms, conditions and covenants herein contained for four (4) separate additional terms of five (5) years each ("Extended Terms"), each Extended Term to begin at the expiration of the preceding Initial Term or Extended Term, as the case may be, unless (i) Tenant is then in default in the performance of any of its obligations under this Lease beyond any applicable cure period or (ii) at least six (6) months prior to the expiration of the then current Initial Term or Extended Term, Tenant shall notify Landlord in writing that it intends not to renew the Lease

3 2 **Environmental Report Expense** On or within ten (10) days after the date of this Lease, Landlord shall pay Tenant the sum of One Thousand Five Hundred Dollars (\$1,500), representing the cost of Tenant's consultant reviewing the studies and reports provided pursuant to Subparagraph 5 10 12 If such amount is not timely paid as aforesaid, Tenant shall have the right to deduct such amount from the rental due hereunder

4 **RENTAL** Tenant agrees to pay Landlord as rental for the Leased Space the following

4 1 **Minimum Rent** An annual Minimum Rent for the Leased Space in the following amounts

4 1 1 Lease Years 1 through 5 Two Hundred Sixty Thousand Dollars (\$260,000) per Lease Year, payable at the rate of Twenty-One Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$21,666 67) per month,

4 1 2 Lease Years 6 through 10 Two Hundred Seventy-Six Thousand Two Hundred Fifty Dollars (\$276,250) per Lease Year, payable at the rate of Twenty-Three Thousand Twenty and 83/100 Dollars (\$23,020 83) per month,

4 1 3 First Extended Term Two Hundred Ninety-Two Thousand Five Hundred Dollars (\$292,500) per Lease Year, payable at the rate of Twenty-Four Thousand Three Hundred Seventy-Five Dollars (\$24,375) per month,

4 1 4 Second Extended Term Three Hundred Eight Thousand Seven Hundred Fifty Dollars (\$308,750) per Lease Year, payable at the rate of Twenty-Five Thousand Seven Hundred Twenty-Nine and 17/100 Dollars (\$25,729 17) per month,

4 1 5 Third Extended Term Three Hundred Twenty-Five Thousand Dollars (\$325,000) per Lease Year, payable at the rate of Twenty-Seven Thousand Eighty-Three and 33/100 Dollars (\$27,083 33) per month,

4 1 6 **Fourth Extended Term** Three Hundred Forty-One Thousand Two Hundred Fifty Dollars (\$341,250) per Lease Year, payable at the rate of Twenty-Eight Thousand Four Hundred Thirty-Seven and 50/100 Dollars (\$28,437 50) per month,

4 1 7 **Payment of Minimum Rent** Minimum rent shall be payable in advance without demand or offset except as allowed herein beginning on the Commencement Date and continuing thereafter on the first day of each calendar month during the Initial Term and any Extended Term (unless otherwise abated pursuant to any provision of this Lease) Minimum rent for any partial month shall be prorated and paid on a per diem basis

4 1 8 **Lease Year** The term Lease Year shall mean the period of twelve (12) consecutive months commencing with the Commencement Date and each succeeding twelve (12) month period during the term of this Lease If mutually agreed by Landlord and Tenant, "Lease Year" may mean a calendar year

5 **LANDLORD'S COVENANTS AND REPRESENTATIONS** In addition to all other covenants and agreements by Landlord found in this Lease, Landlord hereby specifically covenants and represents as follows

5 1 **Zoning** The Real Property is zoned "Local Business" under the applicable zoning ordinances and such zoning is appropriate for the Shopping Center as presently operated

5 1 1 **Flooding** The floodplain status of the Real Property is as stated on the survey described in Subparagraph 5 9

5 2 **Quiet Enjoyment** Landlord has good and marketable indefeasible fee simple title to the Real Property and warrants there are no encumbrances or liens thereon other than as set forth on attached Schedule 5 2 (the "Permitted Encumbrances") Prior to the date of this Lease, Landlord, at its expense, shall deliver to Tenant an ALTA commitment for Leasehold Title Insurance ("Commitment"), in the amount of Two Million Dollars (\$2,000,000) and otherwise in form reasonably acceptable to Tenant covering Tenant's interest in the Shopping Center, which binds the title insurance company to issue on or before the Commencement Date a leasehold title insurance policy to Tenant based on such Commitment showing that Landlord has good and marketable indefeasible fee simple title to the Real Property, free and clear of any and all encumbrances or liens other than Permitted Encumbrances Landlord shall pay the premium for such title insurance policy If such Commitment contains any statements, requirements, exceptions or exclusions ("Defects") which are unacceptable to Tenant, as solely determined by Tenant, Tenant at its option may (i) not execute this Lease, with no liability to Landlord, by written notice to Landlord or (ii) allow Landlord, at its expense, to cure such Defects within a reasonable time period

satisfactory to Tenant pursuant to a written extension. Landlord has full authority to execute this Lease and further warrants to Tenant that it shall have, hold and enjoy the Leased Space and its rights hereunder during the term hereof, free from any interference by Landlord or any parties claiming by or through Landlord. Landlord agrees to reasonably cooperate with Tenant and join in a complaint, at Tenant's expense, filed in a court, or with a law enforcement agency to prohibit individuals who may be loitering, cruising, picketing, handbilling or distributing literature, from interfering with Tenant's conduct of business. Landlord warrants and represents that the Leased Space is and will be free from obnoxious fumes, odors and unsanitary conditions other than as caused by Tenant, its employees or invitees. Landlord shall not permit the emanation of any undue noise, obnoxious fumes or odors, or any other nuisance from any property or building adjacent to or near the Leased Space, which is owned or controlled by Landlord.

5.3 **Use of Real Property** The Real Property shall be used for the sole purpose of promoting and operating a retail Shopping Center, and there shall be no buildings erected on the Real Property except those shown on the Site Plan. Subject to uses allowed under those leases set forth on attached Schedule 5.3 (the "Existing Uses"), no portion of the Real Property shall be used for a bowling alley, skating rink, theater, cafeteria, bingo parlor, flea market, billiard parlor, night club, or any operation selling alcohol for on-site consumption, a video arcade, physical fitness center or other place of recreation or amusement, auto service station, medical center or clinic, training or educational facility or any other non-retail use (the "Restricted Uses") unless designated on the Site Plan or approved in advance in writing by Tenant. In the case of any request for approval for the operation of any of the Restricted Uses within that area shown on the Site Plan as "Protected Area," Tenant's consent may be withheld by Tenant in its sole discretion. Otherwise, Tenant's consent shall not be unreasonably withheld, conditioned or delayed. Landlord agrees it shall not amend any of those leases described on Schedule 5.3 to allow any of the uses otherwise restricted by this subparagraph. Without limiting Tenant's right to use the Leased Space as allowed by this Lease, the foregoing restrictions shall not be construed to prohibit Tenant from subleasing a portion of its store to a video rental store, pharmacy, in-store banking facility or any other in-store department. Neither Landlord nor any affiliate or related party shall, directly or indirectly, own, operate or grant any lease or permit any assignment or sublease for, a store (or any portion of a store) in the Shopping Center or on any real estate owned by Landlord and located within two (2) miles of the Shopping Center (the "Restricted Area") which permits the sale or offering for sale of groceries, including, without limitation, food products, dry groceries, and other items typically and primarily sold in supermarkets, meats, poultry, seafood, dairy products, fruits, vegetables or baked goods (the "Restricted Products"). The foregoing will not prohibit the sale of Restricted Products by any business within the Restricted Area if the Restricted Products are displayed for sale in an area not exceeding the lesser of 1,500 square feet or 10% of the floor area of such business. In the event of any willful violation of the terms of this Subparagraph 5.3, by Landlord, which violation Landlord fails to cure in accordance with Subparagraph 12.2, all rental obligations under this Lease shall be abated during the period of such violation, and Tenant shall not be in default.

for failure to pay any rental allocated to such period. Landlord agrees that the foregoing use restrictions will be included in all conveyances, leases, subleases, licenses and assignments affecting the Real Property or within the Restricted Area. Concurrently with the execution of this Lease, Landlord will execute and record in the real estate records of Cuyahoga County, Ohio, a Declaration of Restrictions and Easements in substantially the form of Exhibit "C" attached hereto on all property owned by Landlord within the Restricted Area. Landlord shall also record such Declaration against any property within the Restricted Area acquired by Landlord after the date hereof.

5.4 **Site Plan** The Site Plan is an accurate representation of the Shopping Center and the Leased Space and no changes shall be made to the Site Plan. No building located in the Shopping Center, other than the Leased Space, shall exceed one (1) story in height or exceed the height of the Leased Space.

5.5 **Use of Common Areas of Shopping Center** The access areas, parking area and all common areas and facilities of the Shopping Center ("Common Areas") shall remain as shown on the Site Plan throughout the Initial Term and any Extended Terms, and Tenant and its employees, agents, officers, invitees and customers shall have unrestricted access thereto and to any additional access areas, parking areas and other common areas now or hereafter located on the Real Property, in common only with other tenants of the Shopping Center. Without limiting the generality of the foregoing, Tenant specifically shall have the right to locate vending machines on the sidewalks adjoining the Leased Space, use the parking areas adjoining the Leased Space for seasonal promotions, and use the sidewalks adjoining the Leased Space for the display and sale of merchandise, to the extent and only to the extent such uses of Common Areas do not interfere with the use and enjoyment of the Common Areas by other tenants and are in compliance with all applicable laws. Landlord represents and covenants that throughout the term of this Lease, the number, size and configuration of striped parking spaces in the Shopping Center shall be as shown on the Site Plan. Such minimum parking requirement shall be complied with in the event the Shopping Center is expanded onto adjoining property. No other parties shall be allowed access to, from or across the Real Property or use of the parking lot shown on the Site Plan, or any other parking lot hereafter added to the Real Property, without the prior written consent of Tenant, which consent may be withheld until reciprocal access and parking agreements have been effected in a manner satisfactory to Tenant. Landlord shall not change or reconfigure the parking or access areas as shown on the Site Plan without Tenant's prior written consent. Tenant's consent to any proposed change or reconfiguration of the parking or access areas within the Protected Area may be withheld in Tenant's sole discretion. Otherwise, Tenant's consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall keep the parking lot lights and other Common Area lights on each day from dusk until at least one (1) hour after Tenant closes for business (or continuously if Tenant is open for business twenty-four (24) hours a day), provided that the foregoing shall not be construed as giving Landlord the right to govern Tenant's business hours.



5 6 **Utilities** Landlord, at its cost, shall furnish, install and maintain adequate utility lines and services to serve the Leased Space, which utilities shall be separately metered to the Leased Space. Tenant shall pay for the utility services which it uses at the Leased Space.

5 7 **Compliance With Laws** Landlord represents and warrants to Tenant that, to the best of its knowledge, the Shopping Center, including the Leased Space and all Common Areas complies in all material respects with all applicable federal, state and local laws, ordinances and regulations, including without limitation, all building codes and The Americans with Disabilities Act. In addition, Landlord agrees to make, at Landlord's cost and expense, all necessary changes, additions, alterations and improvements to the Shopping Center and appurtenances thereto, that may be required at any time during the term hereof to make the Shopping Center and, except as set forth below, the Leased Space comply with all laws, ordinances, rules and regulations of all duly constituted city, county, state or federal authorities. Tenant agrees to make, at its sole expense, any changes, additions, alterations and improvements to the Leased Space required at any time during the term hereof to make the Leased Space comply with all applicable laws, ordinances and regulations due to Tenant's specific use of the Leased Space as a supermarket.

5 8 **Taxes** At all times during the term hereof, all ad valorem taxes, real estate taxes and similar taxes, special assessments and any other taxes levied or assessed against the Shopping Center or any part thereof by reason of the ownership thereof shall be paid and discharged by Landlord before becoming delinquent. Tenant shall pay to Landlord its Proportionate Share of all such taxes that are due and payable during any calendar year containing any portion of a Lease Year as provided herein. All such taxes for which Tenant is liable hereunder for the calendar years of commencement and termination of this Lease shall be prorated from the Commencement Date and to the termination date of the term of the Lease. Such taxes shall be paid to Landlord within thirty (30) days after the calculation of its share of such taxes based on paid receipts for such taxes, which receipts shall be delivered by Landlord to Tenant. This Subparagraph 5 8 shall not be deemed or construed to require Tenant to pay or discharge any tax which may be levied upon the income, profits or business of Landlord or any personal property, franchise, inheritance or estate taxes which may be levied against Landlord or any tax of the same nature as any tax heretofore mentioned in this sentence, even though such taxes may become a lien against the Real Property. Notwithstanding anything contained in this Subparagraph 5 8 to the contrary, Tenant shall have no obligation to pay any taxes under this Subparagraph 5 8 the statement for which shall have been received by Tenant more than 180 days after the due date for such taxes. In regard to any special assessments or other taxes payable in installments, Landlord shall elect to pay such special assessments or taxes over the maximum allowable term.

5 8 1 **Special Assessments** Notwithstanding the above Paragraph 5 8, Tenant shall not be required to pay any portion of (i) any special assessments that have been levied prior to the Commencement Date, or (ii) any installments of special

assessments due and payable after the expiration of the term of this Lease. In addition, in the case of any special assessments payable only in a lump sum, Tenant shall only be responsible for its Proportionate Share of the amount of such assessment multiplied by a fraction, the numerator of which is the number of years remaining in the then current term of the Lease and the denominator of which is the useful life of the improvement against which the special assessment is made. Such useful life shall be determined in accordance with generally accepted accounting principles.

**5 8 2 Tax Dispute** In the event Tenant disputes in good faith the computation or allocation of any taxes, Tenant shall have no obligation to pay such taxes until such dispute is resolved unless required to do so by law or by any mortgage affecting the Leased Space. Landlord shall cooperate with Tenant in any such dispute. It is agreed, however, that Tenant, at its sole cost and expense, may dispute and contest such taxes, in its name or in the name of Landlord, or in the name of both, as it may deem appropriate. At the conclusion of such contest, Tenant will pay the charge contested to the extent it is held valid, together with all attorney's fees, court costs, interest, penalties and other expenses relating thereto. Should any dispute result in a reduction or a refund of any taxes, Tenant shall first be entitled to receive its expenses incurred in such contest and Tenant shall then be entitled to receive its proportionate share of any refund.

**5 9 Survey** Landlord agrees, at its expense, prior to the execution of this Lease, to furnish Tenant a survey reasonably satisfactory to Tenant, showing a metes and bounds (not a lot and block) legal description of the Real Property and the location of any rights of way, easements, encroachments or flood plains, if any, and the location of all buildings, malls, striped parking, underground utility lines and storm water drainage systems or floodplains, if any. The legal description of the Real Property shall be in detail sufficient to allow for the tracking of the boundary of the Real Property.

**5 10 Responsibility for Hazardous Material and Underground Storage Tanks**

**5 10 1 Definitions** As used in this paragraph, the following terms shall have the following meanings:

(a) "Hazardous Material" means any substance, material or waste which is or at any time hereafter becomes regulated as "hazardous," "toxic" or under any other similar designation by any local, state, or federal government authority. Such term includes, without limitation, (i) asbestos, (ii) any petroleum products, (iii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004

of the Resource Conservation and Recovery Act (42 U S C § 6901, et seq ), (iv) any material, substance, or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U S C § 9601, et seq ) or (v) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U S C § 6991, et seq )

(b) "Tenant Indemnified Person" means Tenant, any sublessee holding an interest in the Leased Space or any portion thereof, any director, officer, employee, or agent of Tenant or of any such sublessee, and any person claiming under or through Tenant or any such sublessee "Landlord Indemnified Person" means Landlord, any director, officer, employee or agent of Landlord, and any person claiming under or through Landlord

**5 10 2 Representations and Warranties** Landlord represents and warrants to Tenant that to the best of its knowledge and belief (i) no handling, transportation, storage, treatment or usage of Hazardous Material has occurred on the Real Property, (ii) no leak, spill, release, discharge, emission or disposal of any Hazardous Material has occurred on or affected the Real Property, (iii) the Real Property is free of any Hazardous Material and will be free of any Hazardous Material throughout the term of this Lease, and (iv) there are no underground storage tanks located on the Real Property, and there will be no underground storage tanks located on the Real Property during the term of this Lease Tenant represents and warrants to Landlord that Tenant, in its use of the Leased Space, shall comply with all local, state and federal laws, rules and regulations governing environmental matters or otherwise regulating the use and/or disposal of Hazardous Material The foregoing representations and warranties shall survive the termination of this Lease

**5 10 3 Indemnification** Landlord hereby agrees to indemnify, defend and hold each Tenant Indemnified Person harmless from and against any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of (i) the presence, suspected presence or release at any time of any Hazardous Material in, on or from the Real Property, regardless of the source of such Hazardous Material (except as set forth below), (ii) the presence at any time of any underground storage tank on the Real Property other than as installed any Tenant Indemnified Person, or (iii) the inaccuracy or breach of any of its representations or warranties set forth in this Paragraph 5 10 Tenant hereby agrees to indemnify, defend and hold each Landlord Indemnified Person harmless from and against any and all loss, costs, damage and expense that arises during or after the term of this Lease as a result of (iv) the presence, suspected presence or release at any time of any Hazardous Material in, on or from the Real Property caused by any Tenant Indemnified Person, (v) the inaccuracy or breach of any of the representations or warranties of Tenant set forth in this Paragraph 5 10 The costs covered by such indemnification include,

without limitation, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, costs and expenses incurred by Landlord or Tenant in exercising any of their rights under this Paragraph 5 10 and any damages suffered as a result of any termination of this Lease in accordance with Subparagraph 5 10 6 hereof

5 10 4 **Notices** Landlord and Tenant agree to promptly notify the other in the event such party becomes aware of the presence of any Hazardous Material or any underground storage tank on the Real Property

5 10 5 **Development of Remedial Plan** If, at any time during the term of this Lease, Tenant becomes aware of the presence, suspected presence or release of any Hazardous Material in, on, or from the Real Property or becomes aware of any pendency or threatened action by any federal, state or local governmental authority with respect thereto, Tenant may so notify Landlord and request that Landlord institute remedial action. Tenant and Landlord shall confer on what remedial action may be appropriate and within a reasonable period of time under the circumstances not exceeding ninety (90) days of Landlord's receipt of such notice, Landlord shall deliver to Tenant a written plan describing in detail the proposed remedial action. If, at any time during the term of this Lease, Tenant becomes aware of any underground storage tank located on the Real Property, Tenant may so notify Landlord and request that Landlord institute remedial action. Tenant and Landlord shall confer on what remedial action may be appropriate, and within a reasonable period of time under the circumstances not exceeding ninety (90) days of Landlord's receipt of such notice Landlord shall deliver to Tenant a written plan describing in detail the remedial action which is necessary to (i) remove any risk of any present or future leakage of substances from the tank, and (ii) eliminate the possibility that the presence of such tank may, at anytime during the term of this Lease, pose a threat to health or safety or may, at any time during the term of this Lease, require such maintenance, repair or other work so as to interfere with the conduct of business in the Leased Space. Any plan developed pursuant to this subparagraph shall, without limitation of the foregoing, cause the Real Property to comply in all material respects with all applicable federal, state and local laws, ordinances and regulations and shall be sufficient to abate any pending or threatened action with respect to the Real Property by any federal, state or local governmental authority

5 10 6 **Termination** If Tenant reasonably determines that the actual presence of Hazardous Material has had or may have a material adverse effect on the business conducted from the Leased Space or that the implementation of a remedial plan may have such an effect, Tenant may, by notice to Landlord within (20) days of Tenant's receipt of such plan (or, if Landlord fails to provide such plan, within (20) days of the expiration of the time for Landlord to provide such plan) terminate

this Lease, such termination to be effective as of the date to be specified in such notice

5 10 7 **Implementation of Plan** Landlord will commence action necessary to implement the plan and diligently pursue such action to completion. Except to the extent caused by any Tenant Indemnified Person, any work required hereunder will be at Landlord's sole expense without any reimbursement from any Tenant Indemnified Person and will be performed strictly in accordance with the plan and in accordance with all applicable laws, ordinances and regulations governing such work

5 10 8 **Performance by Tenant** If Landlord fails to deliver a plan for remedial action within the time prescribed above and Tenant does not terminate this Lease, or if Landlord fails to undertake such work as is required hereunder and diligently pursue such work to completion, Tenant may, but shall not be required to, take such remedial action as it deems necessary and Landlord shall promptly reimburse Tenant for all costs incurred in such action

5 10 9 **Termination** Notwithstanding any other provision herein, in the event of any breach of Landlord's representations and warranties set forth above or in the event Landlord fails to undertake remedial or maintenance work required of it hereunder and diligently pursue such work to completion, Tenant may, by notice to Landlord, terminate this Lease as of the date to be specified in such notice

5 10 10 **Offset** Tenant shall be entitled to offset against rent payable hereunder any loss, cost, damage or expense covered by the Landlord's indemnification set forth in Subparagraph 5 10 3

5 10 11 **Nonexclusive Remedies** Tenant shall be under no obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice any other remedy available hereunder or under law. The remedies provided herein shall not be considered exclusive or preclude any claim for damages or any other remedy which may be available under this Lease or under law

5 10 12 **Environmental Studies and Reports** Landlord represents to Tenant that it has heretofore provided to Tenant full, accurate and complete copies of any and all reports, studies, and other information in its possession relating to the issue of the presence or suspected presence of any Hazardous Material on the Real Property and agrees that it will, promptly following its receipt thereof, furnish to Tenant full, accurate and complete copies of any such reports, studies and other information hereafter obtained by Landlord. Without limitation of the foregoing, Landlord represents and warrants to Tenant that it has received and reviewed

Tenant's environmental site assessment guidelines and that it has provided Tenant with an environmental report materially complying with such guidelines

5 10 13      **Tenant's Use** Tenant shall not use the Leased Space for the production, sale or storage of any Hazardous Materials, shall not use any Hazardous Materials in the Leased Space, and shall not permit any Hazardous Materials to be disposed of from, in or on the Leased Space or the Shopping Center, unless said Hazardous Materials are of the type normally produced, sold, stored, used or disposed of in connection with the ordinary course of Tenant's business, and are produced, sold, stored, used and disposed of in strict accordance with all such laws, statutes, ordinances, codes, rules and regulations which are applicable to the Leased Space

6      **MAINTENANCE RESPONSIBILITY** Landlord and Tenant shall have the following responsibilities for maintenance of the Shopping Center

6 1      **Maintenance and Replacements by Landlord** Landlord, at its sole cost and expense and without charging Tenant any direct or indirect management fees or charges of any nature whatsoever, shall keep in repair and shall replace as necessary all of the exterior of the Leased Space and the Shopping Center, specifically including, but not limited to, the roof, foundation, downspouts, gutters, sidewalks and walls, and shall be responsible for all interior and exterior repairs of a structural nature or arising out of structural defect, of which plastered surfaces and floors shall be considered a part

Landlord shall also be responsible for all maintenance of, and repairs and replacements to, the Common Areas, including, without limitation, the following keeping the parking area repaired, adequately drained, lighted to a minimum level of five (5) foot candles throughout the Common Areas, striped, cleaned and free of all debris, ice, snow and/or repaired and replaced as necessary and available at all times as a free parking lot for all customers of the Shopping Center, keeping the landscaping on the Shopping Center and all other Common Areas clean, lighted and in good repair, and keeping all sidewalks and Common Areas clean and free of all debris, ice and snow Tenant shall be responsible for its Proportionate Share of the following Common Area costs only ("Common Area Maintenance Costs") costs of cleaning, lighting, repairing and maintaining (but not replacing except as set forth herein) all common area improvements, (except to the extent proceeds of insurance or condemnation awards or other reimbursements are available therefor), snow removal, removal of litter, parking lot repaving and striping, replacing parking lights and light standards, landscaping (including any replacements), common area liability insurance, operating equipment rental and repairs and the cost of those utilities servicing the Shopping Center Common Areas only which are not directly metered into the Leased Space and separately billed and paid for by Tenant pursuant to Subparagraph 6 6 hereof Common Area Maintenance Costs shall be reasonable and shall not include (i) any direct or indirect management or administrative fees or charges, (ii) any charge for

Landlord's overhead or profit, (iii) depreciation, (iv) employee benefits of maintenance personnel, (v) any environmental clean-up, (vi) any expenses related to off-site maintenance or managerial personnel or facilities, or (vii) any charge for any item of equipment or any repair or improvement that is considered a capital expense under generally accepted accounting principles. Tenant's Proportionate Share of Common Area Maintenance Costs shall be paid in monthly installments on the first (1st) day of each month, the amount to be reasonably estimated by Landlord. Within sixty (60) days following the end of the period used by Landlord in estimating Landlord's costs, Landlord shall furnish to Tenant a detailed certified statement of the actual amount of such Common Area Maintenance Costs for such period supported by reasonably detailed statements, along with invoices or such other documentation supporting such costs as Tenant requests. Within fifteen (15) days thereafter, Tenant shall pay to Landlord or Landlord shall credit against Tenant's next rent payment to Tenant (or refund to Tenant if the Lease has terminated), as the case may be, the difference between the estimated amounts paid by Tenant and the actual amount of Tenant's Common Area Maintenance Costs for such period as shown by such statement. Notwithstanding anything contained in this Subparagraph 6.1 to the contrary, Tenant shall have no obligation to make any such payment pursuant to this Subparagraph 6.1 the statement for which shall have been received by Tenant more than one hundred eighty (180) days after the end of the Lease Year. Upon at least ten (10) days' written notice, Tenant, or its duly authorized representatives, shall have access to Landlord's records regarding Common Area Maintenance Costs at all reasonable times for the purpose of examining and, if Tenant so elects, auditing the same.

**6.2 Maintenance by Tenant** Tenant, at its cost, shall keep the interior of the Leased Space in good condition and repair, including plumbing, heating and air conditioning units exclusively serving the Leased Space, storefronts, windows and other glass, exterior window and door frames and door closers, except for reasonable wear and tear, damage by casualty, provided, that Tenant shall be entitled to all parts and service guaranties and any warranties in effect on equipment which it is responsible for maintaining under the terms hereof.

**6.3 Remodeling at Tenant's Expense** During the term hereof, or any extension thereof, Tenant and its successors and assigns, shall have the right and the privilege to perform nonstructural redecoration and remodeling to the interior of the Leased Space from time to time as it shall see fit and to install lights, partitions, fixtures, signs and other improvements in, upon and about the Leased Space as in Tenant's judgment may be necessary or desirable in the conduct of its business and to change the same in its sole discretion. Tenant shall also have the right to construct structural improvements and alterations to the Leased Space after obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any work performed hereunder by Tenant shall be in accordance with all applicable laws, rules and regulations and also in accordance with Subparagraph 20.10 hereof. Tenant shall not be required to

remove any such alterations or additions or to restore the Leased Space to its original condition at the termination of this Lease

6 4 **Tenant's Expansion and Right of First Refusal** Tenant shall have the right to expand the Leased Space into the expansion area set forth on the Site Plan (the "Expansion Area") at any time in Tenant's sole discretion and without Landlord's consent and at Tenant's sole cost and expense, provided that Tenant will provide Landlord with a full and complete set of sepia and blue line design drawings, including but not limited to, the architectural, mechanical, electrical, plumbing, gas and sprinkler drawings regarding such expansion. Any work performed hereunder by Tenant shall be in accordance with all applicable laws, rules and regulations and also in accordance with Subparagraph 20 10 hereof. Tenant shall not be required to remove any such addition or to restore the Leased Space or Expansion Area to its original condition upon the termination of this Lease

In addition to the above, Tenant shall have the right to lease the space adjoining the Leased Space on the opposite side from the Expansion Area at any time during the term of this Lease that such space is not under lease to another tenant. If such space becomes available, Landlord shall so notify Tenant in writing and Tenant shall have thirty (30) days after receipt of such notice to elect to lease such space at a rental rate per square foot equal to the rate paid by the vacating tenant and otherwise on the same terms and conditions as provided herein and coterminous with the term of this Lease. Tenant shall have the right, at its cost, to alter such space so leased by Tenant in order to integrate the same as a part of the Leased Space. If Tenant does not elect to lease such space within the time allowed, Landlord shall have the right to lease the same to a third party and any right of Tenant to lease such space shall terminate until such time as such space is again vacant.

6 5 **Landlord's Failure to Make Repairs** If Tenant notifies Landlord in writing of any needed repair(s) for which Landlord is responsible hereunder, Landlord shall commence such repairs within ten (10) days from the date of said notice and diligently pursue such repair(s) to completion. In the event of emergency repairs ("emergency" being defined as an imminent danger to Tenant, to Tenant's property or to Tenant's business or to the general public), Tenant may immediately make such emergency repairs without written notice to Landlord, so long as Tenant has used reasonable efforts to contact Landlord or Landlord's representatives by telephone at telephone numbers designated in writing by Landlord. Tenant shall have the right to make non-emergency repairs if Landlord has failed to make such repairs or failed to commence and diligently pursue such repairs within ten (10) days from the date of Tenant's notice to Landlord. (Landlord agrees that in the event Landlord has not entered into a contract to cause repairs to be made within ten (10) days from the date of Tenant's notice that this shall be deemed to be a failure to commence and diligently pursue a repair obligation to Landlord.) Upon Tenant's completion of any of Landlord's repair obligations, Tenant shall send to Landlord statements setting forth the reasonable cost of such repairs and Landlord shall pay said statement within thirty (30) days after receipt of the same. If Landlord fails to pay such statement within said thirty (30) day



period, Tenant shall have the right to pay such statement and to deduct the amount of such statement from the next following rental payment or payments and from any other amounts due under this Lease plus eighteen percent (18%) interest thereon at an annual rate equal to the prime rate of interest published in the Wall Street Journal plus four percentage (4%) points (the "Default Rate") until reimbursed in full

7     **ADVERTISING SIGNS**     Tenant may erect its standard signs on the exterior of its Leased Space in a manner and location satisfactory to Tenant. Should Landlord allow any other tenants in the Shopping Center to erect signs in the parking area or other common areas, it shall also allow Tenant the same privilege. Tenant shall install its signs at its own expense and may remove them at the termination of this Lease. Any damage to the building as a result of the removal of Tenant's signs shall be repaired at the expense of Tenant. All signs installed by Tenant shall be consistent with the overall appearance of the Shopping Center and in compliance with all applicable laws, rules and regulations. Tenant shall be responsible for obtaining all required permits for the installation of any such signs.

7.1     **No Other Signs on Leased Space**     Landlord shall not erect, nor permit to be erected, any signs on the Leased Space other than those of Tenant.

7.2     **Shopping Center Sign**     Landlord agrees to furnish within the Shopping Center one or more signs advertising the entire Shopping Center, and said signs shall be kept in good order and repair and lighted during the evening hours of Tenant's operation during the Initial Term and each Extended Term of this Lease. The cost of repairing and lighting such sign shall be included in Common Area Maintenance Costs. Landlord may not place or permit to be placed on any such sign the names of other tenants in the Shopping Center unless Tenant's name is also placed thereon in a position and with lettering greater in size, type and prominence to that of any other tenant.

7.3     **Special Sales Promotions**     Notwithstanding any provisions in this Lease to the contrary, Tenant may, from time to time, place special sales promotion signs on the parking area light poles and may string pennants and streamers around the parking area in that area shown on the Site Plan.

8     **EMINENT DOMAIN, RESTRICTION OF ACCESS, CASUALTY LOSS**  
Landlord and Tenant agree as follows:

8.1     **Eminent Domain Affecting Leased Space**     In the event any part of the Leased Space should be taken by any public authority under the power of eminent domain or by transfer in lieu thereof, then the terms of this Lease shall cease on that part on the date of condemnation or transfer in lieu thereof, and the rent shall be paid up to that day, and from that day the Minimum Rent shall be reduced in proportion to the amount of the Leased Space taken, provided, however, that should five percent (5%) or more of the Leased Space be taken by the power of eminent domain or by transfer in lieu thereof, Landlord shall give

Tenant immediate written notice thereof and Tenant shall have the option, to be exercised within sixty (60) days after receipt of written notice, to cancel this Lease and declare the same null and void effective on the date such option is exercised. If Tenant should not elect to cancel this Lease, Landlord shall, at its sole cost, build on the new building line a wall, or front, similar to the one removed. In the event any portion of the Shopping Center shall be taken by any public authority under the power of eminent domain or by transfer in lieu thereof, it is understood and agreed that Tenant shall share in the award of damages as the parties may agree and, failing such agreement, as the disbursing court may determine, including, but not limited to, any award or payment made for damage to fixtures, equipment and merchandise owned by Tenant (including costs of removal of same), loss of Tenant's business and moving expenses. Tenant shall be entitled to apply to the condemning authority directly for payments provided by the statutes, ordinances or rules of the condemnor for moving, relocation and other losses arising from the taking.

8 2 **Eminent Domain Affecting Shopping Center and Parking Area** In the event (i) ten percent (10%) or more of the Shopping Center, (ii) any portion of the parking area shown on the Site Plan as "Protected Parking", or (iii) ten percent (10%) or more of any other parking or common area of the Shopping Center should be taken by the power of eminent domain or transfer in lieu thereof, and, in the case of (i) and (ii), Tenant's business in the Leased Space is adversely affected as a result, Landlord shall give Tenant immediate written notice thereof and Tenant shall have the option to cancel this Lease and declare the same null and void effective thirty (30) days after such notice.

8 3 **Restriction of Access** If any public roadway abutting the Shopping Center is not completed or closed so that access to the Leased Space is limited, restricted or prohibited for a period in excess of thirty (30) days, rent payable hereunder shall abate proportionately with the impact on Tenant's business. If such condition continues for at least nine (9) months, Tenant shall have the option to terminate this Lease upon thirty (30) days' prior written notice to Landlord.

8 4 **Destruction of Leased Space** In the event less than twenty percent (20%) of the floor area of the Leased Space should be rendered unusable (as reasonably determined by Tenant) as a result of fire or other casualty, regardless of the cause, Landlord shall, at its sole cost and expense, promptly, and in any event within sixty (60) days, commence to rebuild or replace the same in as good condition as prior to such casualty, which rebuilding or replacement shall be completed within six (6) months following such casualty. In the event twenty percent (20%) or more of the floor area of the Leased Space should be rendered unusable (as reasonably determined by Tenant) as a result of fire or other casualty, regardless of the cause, or if the Leased Space should be rendered untenable and unfit for occupancy, Tenant may, at Tenant's sole option, expressed to Landlord in writing within fifteen (15) days of such occurrence, (i) require Landlord to promptly, and in any event within thirty (30) days of such notice from Tenant, commence to rebuild or replace the same as aforesaid, which rebuilding and replacement shall be completed within nine (9) months following such

casualty, or (11) terminate this Lease, effective on the date of such casualty. Monthly Minimum Rents shall abate proportionately to the loss of use during the period of repair. Landlord shall have no interest or claim to any portion of the proceeds of any insurance carried by Tenant on Tenant's personal property and shall have no obligation to rebuild or replace any improvements constructed by Tenant. Tenant shall have no interest in or claim to any portion of the proceeds of any fire and extended insurance policy or policies carried by Landlord.

8.5 **Destruction of Shopping Center** In the event all or any part of the Shopping Center (other than the Leased Space) should be destroyed partially or substantially as a result of fire or other casualty, regardless of cause, and Landlord should fail to begin restoration within two (2) months after the date of such destruction, or fail to have the same fully repaired or rebuilt to the condition existing before such damage within nine (9) months from the date of such destruction, Landlord shall be in default, and Tenant shall have the right, so long as this default shall continue, to discontinue the payment of Minimum Rent. At any time after Minimum Rent shall have been discontinued for sixty (60) days, and while Landlord shall remain in default, Tenant may cancel this Lease by a thirty (30) day written notice to Landlord.

8.6 **Destruction During Final Three Lease Years** Anything herein contained to the contrary notwithstanding, if such damage, loss or destruction as described in the third sentence of Subparagraph 8.4 or 8.5 shall take place during the final three (3) Lease Years, Tenant shall have an option to declare this Lease ended and terminated, and notice of this election shall be given in writing by Tenant to Landlord within thirty (30) days from the date of such loss or destruction. In addition, Landlord shall have an option to terminate this Lease unless Tenant elects to extend the term hereof by exercising the next available option for an Extended Term within thirty (30) days following receipt of Landlord's notice of its intention to terminate this Lease. Landlord's notice of its intention to terminate this Lease shall be given, if at all, in writing, to Tenant within thirty (30) days from the date of such loss or destruction.

## 9 **FIRE AND CASUALTY INSURANCE**

9.1 **Landlord's Insurance** At all times during the term of this Lease, Landlord shall insure the Shopping Center against any loss or damage due to fire or other casualty or occurrence in an amount sufficient to prevent any coinsurance and in any event not less than the Full Insurable Value of the Shopping Center as determined from time to time. Such insurance shall be written by a financially responsible insurer duly authorized to do business in the State of Ohio. Tenant shall pay to Landlord its Proportionate Share of such premiums as provided herein. All insurance premiums for which Tenant is liable hereunder for the calendar years of commencement and termination of this Lease shall be prorated from the commencement date and to the termination date of the term of the Lease. Such insurance premiums shall be paid to Landlord within thirty (30) days after Tenant's receipt of paid

receipts for such premiums, which receipts shall be obtained and delivered by Landlord. Notwithstanding anything contained in this Subparagraph 9.1 to the contrary, Tenant shall have no obligation to pay any insurance premiums under this Subparagraph 9.1, the statement for which shall have been received by Tenant more than one hundred eighty (180) days after the insurance premiums shown on such statement have become due. Landlord shall provide Tenant with reasonably satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Tenant. In the event Tenant is able to locate insurance coverage comparable to the insurance maintained by Landlord at a lower rate than the rate charged by Landlord, Tenant shall provide to Landlord reasonable data supporting the availability of such insurance and Tenant's obligation under this subparagraph shall be based upon such lower rate.

9.1.1 **Full Insurable Value** The term Full Insurable Value shall mean actual replacement cost (exclusive of the cost of excavation, foundations and footings below the basement floor) without deduction for fiscal depreciation.

9.1.2 **Failure of Landlord to Insure** If Landlord shall fail, refuse or neglect to obtain such insurance or to maintain the same, and furnish Tenant with proof of the same upon demand, Tenant shall have the right to procure such insurance and to deduct the cost thereof from any rental or other sums payable under this Lease, and the amount thereof shall be payable to Tenant on demand together with interest at the Default Rate.

9.1.3 **Notice From Insurance Company** The insurance company will agree that Landlord and Tenant will be given ten (10) days advance written notice of any cancellation or reduction of insurance under such policy and that copies of all endorsements and notices issued after the date of such policy will be forwarded to Tenant.

9.1.4 **Other Tenants' Uses** Landlord agrees it shall not, and shall not allow any other tenant(s) in the Shopping Center, to keep anything within their leased premises or in the Shopping Center, or use their leased premises or the Shopping Center for any purpose that will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the Shopping Center or its contents by Landlord or Tenant.

9.2 **Tenant's Insurance** Tenant, at its own cost and expense, shall insure its fixtures, equipment and merchandise in the Leased Space against any loss or damage caused by fire or other casualty or occurrence. Such insurance shall be written by a financially responsible insurer authorized to do business in the State of Ohio. If Tenant so elects, Tenant may self-insure the foregoing. Tenant shall provide Landlord with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Landlord.

9 3 **Mutual Waiver** Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss or damage to the Shopping Center, Leased Space or the contents contained therein to the extent such loss or damage is or would be covered by the insurance required to be carried by each party hereunder, even if such coverage is not actually maintained. Such waiver shall also apply to the extent of any deductible maintained by either party under its insurance policies. It is understood that this waiver applies to any loss or damage regardless of the cause, including, without limitation, if caused by the negligence of Landlord, Tenant or their respective employees, agents, assigns or sublessees.

## 10 **ASSIGNMENT, SUBLETTING AND DISCONTINUANCE OF OPERATIONS**

10 1 **Assignment and Subletting** Tenant shall have the right to assign this Lease or to sublease the Leased Space or any part thereof without the consent of Landlord, provided that Tenant shall remain liable hereunder unless specifically released by Landlord. Regardless of any assignment or subletting by Tenant, Landlord shall not change, modify or amend this Lease without the prior written consent of Tenant.

10 2 **Discontinuance of Operations** Tenant shall have the continuing right to discontinue its operations in the Leased Space without the consent of Landlord. In the event Tenant voluntarily discontinues its operations in the Leased Space for a period of three (3) consecutive months (other than for purposes of altering, remodeling or restoring the Leased Space), Landlord shall thereafter have the right to terminate this Lease during the sixty (60) day period immediately following such three (3) month period by giving thirty (30) days advance notice to Tenant. No termination of this Lease shall affect the obligations of either party accrued prior to the date of termination. If Landlord does not so terminate this Lease during such sixty (60) day period, Landlord's right to terminate this Lease shall be extinguished until after any subsequent voluntary discontinuance of operations in the Leased Space for a period of three (3) consecutive months. Tenant shall not be deemed to have discontinued its operations in the Leased Space by virtue of assigning or subletting its interest therein.

11 **INDEMNITY AND PUBLIC LIABILITY INSURANCE** Subject to the waiver of subrogation provisions of Paragraph 9, Landlord and Tenant shall provide the following indemnification:

11 1 **Landlord's Indemnity** Landlord agrees to defend and indemnify and shall hold Tenant harmless against all claims, judgments, demands and expenses (including reasonable attorneys' fees) of any person or persons whomsoever on account of injuries or accidents occurring in, on or about the Real Property or the Shopping Center as a result of willful or negligent acts or omissions of Landlord, its employees, agents or representatives, and Landlord shall carry, at its expense (subject to reimbursement to the extent provided under Subparagraph 6 1), public liability insurance on the Shopping Center stipulating limits

of not less than \$3,000,000 for each occurrence for injury or death and \$1,000,000 for property damage. Certificates of such insurance shall be furnished to Tenant, and Landlord shall have all such policies of insurance name Tenant as an additional insured.

11.2 **Tenant's Indemnity** Tenant agrees to defend and indemnify and shall hold Landlord harmless against all claims, judgments, demands and expenses (including reasonable attorneys' fees) of any person or persons whomsoever on account of any injuries or accidents occurring in the Leased Space as a result of willful or negligent acts or omissions of Tenant, its employees, agents or representatives, and Tenant shall carry public liability insurance on the Leased Space stipulating limits of not less than \$3,000,000 for each occurrence for injury or death and \$1,000,000 for property damage. Certificates of such insurance shall be furnished to Landlord, and Tenant shall have all such policies of insurance name Landlord as an additional insured. If Tenant so elects, Tenant may self-insure the foregoing.

## 12 **DEFAULT**

12.1 **Tenant's Default** In the event Tenant should default in payment of rental, Landlord shall give Tenant written notice of such default by certified mail, and Tenant shall have ten (10) days from the date of receiving such notice to correct same. Should Tenant fail to correct such default in said ten (10) day period, Landlord may, in addition to all other rights available to Landlord under the laws of the state in which the Real Property is located, other than acceleration of future rent, which remedy shall not be available to Landlord, terminate this Lease, or without terminating this Lease, re-enter the Leased Space by summary proceedings or otherwise and dispossess Tenant accordingly. In addition, in the event of any such default by Tenant, all amounts owed to Landlord by Tenant shall bear interest at the Default Rate. In the event Tenant should fail to comply with any other of its obligations under this Lease, Landlord shall give Tenant written notice of such default by certified mail. Should such default continue to exist at the expiration of thirty (30) days from the date of receipt of such notice, and Tenant is not then engaged in diligent efforts to cure such default, Landlord shall then give Tenant a second written notice by certified mail, and, if such default is not cured within five (5) days from the receipt of such second notice, Landlord may, in addition to all other rights available to Landlord under the laws of the state in which the Real Property is located, other than acceleration of future rent, which remedy shall not be available to Landlord, terminate this Lease, or without terminating this Lease, re-enter the Leased Space by summary proceedings or otherwise and dispossess Tenant accordingly. Notwithstanding the foregoing, Landlord shall not have the right to repossess the Leased Space in the event of a bona fide dispute regarding Tenant's liability, if any, to make repairs to the Leased Space until after such liability has been finally judicially determined. Should Tenant correct its default within the time provided or correct such default by action commenced during such time period and prudently pursued thereafter, then Tenant's rights hereunder shall be re-established as though said default had not occurred.

In the event of a default by Tenant, Landlord shall have the affirmative obligation to mitigate its damages to the fullest extent reasonably possible

12.2 **Landlord's Default** Should Landlord default in fulfillment of any of its obligations under this Lease and fail to correct such default within thirty (30) days from receipt of written notice from Tenant of such default and Landlord is not then engaged in diligent efforts to cure such default (except for failure to make emergency repairs as set forth in Subparagraph 6.5 hereof which shall not require thirty (30) days written notice), Tenant, at its option, may (i) correct such default and deduct any and all reasonable cost as a result of such correction, together with interest at the Default Rate, from rentals due or becoming due until Tenant shall be reimbursed in full for the reasonable cost of such correction, or (ii) Tenant shall have the right, so long as default shall continue, to terminate this Lease. In the event of any dispute between the parties as to the right of Tenant to such deduction as provided above, Landlord covenants and agrees that Tenant will not be in default hereunder unless Tenant shall fail to pay to Landlord the amount of any such deduction within ten (10) days after receipt of notice by Tenant of a final and unappealable judgment with respect thereto in favor of Landlord.

13 **REDELIVERY OF LEASED SPACE** Tenant shall, at the termination of this Lease or any extension thereof, peacefully quit, surrender and deliver up to Landlord, its successors or assigns, the Leased Space in the condition required by Subparagraph 6.2, with the exception of ordinary wear and tear, fire, the elements, civil riot, war or other casualty. In regard to such redelivery, Tenant shall not be required to restore or alter the Leased Space to allow for any particular use.

14 **HOLDING OVER** In the event Tenant should remain in possession of the Leased Space after expiration of this Lease, without the execution of a new Lease, Tenant shall be deemed to be occupying the Leased Space as a tenant from month to month, terminable upon sixty (60) days' written notice by either party, subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month to month tenancy.

15 **REMOVALS BY TENANT** Tenant shall have the right at any time prior to or upon termination or expiration of this Lease to remove any and all of its merchandise, machinery, equipment, counters, shelving, light fixtures, signs and other fixtures (regardless of the manner in which any of said items have been attached or fastened to the Leased Space) which it owns and has placed in, upon and about the Shopping Center, as well as any and all personal property located in the Leased Space and owned by Tenant at such time. Any damage resulting from such removal shall be repaired at the expense of Tenant. It is understood that a bona fide dispute between Landlord and Tenant as to rental claimed to be due shall not operate to prevent removal of property by Tenant pursuant to this paragraph, but in such event Tenant shall have the right to remove the same as if no rental were then due. Landlord hereby waives all claims, rights, including without limitation security interests or any "Landlord's Lien", whether by statute or common law, in Tenant's personal property.

16 **NOTICES** All notices required under this Lease shall be given in writing, and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, or (ii) sent by receipted overnight delivery service, or (iii) personally delivered to the address hereinafter identified. Except as herein otherwise specifically provided to the contrary, the effective date of such notice or exercise of any option shall be the three (3) days after the date which is stamped by the United States Post Office Department on the envelope enclosing same, the date of the receipt for the overnight delivery or the date on which personal delivery is made. The parties hereto shall not refuse to accept delivery of said notices.

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

LANDLORD	STEARNS & BAGLEY PLAZA ASSOCIATES, LLC P O Box 38177 Olmsted Township, OH 44138 Attn: Fred Shaker
COPY TO	Stephen P. Owendoff, Esq. Hahn Loeser & Parks, LLP 3300 BP Tower Building 200 Public Square Cleveland, OH 44114-2301
TENANT	FLEMING COMPANIES, INC 6301 Waterford Boulevard Oklahoma City, OK 73118 Attn: Manager of Lease Administration
COPY TO	Fleming Companies, Inc 6301 Waterford Blvd Oklahoma City, OK 73118 Attn: Assistant General Counsel

16.2 **Rental Payment Address** Until appropriately changed by thirty (30) days written notice to Tenant, rental payments hereunder shall be made to Landlord either by mail or otherwise as follows:



Landlord

STEARNS & BAGLEY PLAZA  
ASSOCIATES, LLC  
P O Box 38177  
Olmsted Township, OH 44138  
Attn Fred C Shaker

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

17 **AUTHORITY** Each party hereto affirms and states that it has full right and authority to enter into and perform this Lease

18 **MEMORANDUM OF LEASE** Landlord agrees that it will not record this Lease, but contemporaneously herewith, will execute a Memorandum of Lease, in the form of Exhibit "D" attached hereto, which will set forth a legal description of the Real Property, the term of the Lease and any other provisions hereof as Tenant may request, and Tenant may, at its option, record such Memorandum of Lease in the real property records of the county in which the Real Property is located

19 **SUBORDINATION AND NON-DISTURBANCE** Tenant agrees that it will execute a Subordination and Non-Disturbance Agreement in the form of Exhibit "E" attached hereto which will subordinate Tenant's interest hereunder to the interest of any mortgagee holding a mortgage lien on the Shopping Center, if the mortgagee requires such a subordination, provided, however, such subordination shall be subject to the non-disturbance provisions contained therein. It is agreed that if Tenant shall incur any costs or expenses, including, but not limited to, attorneys' fees, as a result of or arising out of any demand by Landlord's mortgagee for payment of rent under any form of rental assignment executed by Landlord, which demand is then disputed by Landlord, then Tenant shall have the right to offset against rent due hereunder the amount of any such costs or expenses. Tenant shall not be in default hereunder if (a) Tenant shall deposit any rent due hereunder which is the subject of a dispute between the Landlord and Landlord's mortgagee with the court having jurisdiction over the dispute and/or (b) Tenant shall withhold the rent due hereunder pending receipt of a final, nonappealable order from a court of competent jurisdiction directing the payment of such rent. Prior to the execution of this Lease, Landlord shall provide to Tenant a fully executed Non-Disturbance Agreement from each existing mortgagee of the Shopping Center, which Non-Disturbance Agreement shall be in the form of Exhibit "F" attached hereto

20 **MISCELLANEOUS**

20.1 **Modifications to Lease** Landlord and Tenant agree that no alterations, changes or modifications of this Lease shall be effective unless made in writing and executed

in the same manner as is this present instrument and specifically agree that no verbal or oral changes are effective

20 2 **Partial Invalidity** Should any clause or provision of this Lease be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect

20 3 **Descriptive Headings** The descriptive headings of the paragraphs of this Lease are for convenience only and shall not be used in the construction of the contents hereof

20 4 **Binding Effect** It is agreed between the parties hereto that all covenants and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the parties hereto The covenants and agreements contained herein shall run with the land and continue for the term of this Lease and any extension thereof

20 5 **Non-Waiver** Any assents, expressed or implied, by Landlord or Tenant to any breach of any specific covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof

20 6 **Tenant's Use** Tenant may use the Leased Space for any lawful retail purpose

20 7 **Choice of Law** This Lease shall be governed by and construed in accordance with the laws of the State of Ohio

20 8 **Remedies Cumulative** No remedy conferred under this Lease shall be exclusive of any other remedy, and each remedy shall be cumulative and in addition to every other remedy provided or now or hereafter existing at law, in equity, herein or otherwise The election of any one or more remedies by a party hereto shall not be deemed, and shall not constitute a waiver of that party's right to pursue any other available remedy or remedies

20 9 **Multiple Originals** This Shopping Center Lease is executed simultaneously in multiple originals, each of which shall be deemed an original, without the production of the other such originals

20 10 **Mechanic's or Materialmen's Liens** If any mechanic's or materialmen's lien is filed against the Shopping Center or Leased Space by reason of any work, labor, services or materials performed at or furnished on the Shopping Center or Leased Space at the request of Landlord, Landlord shall cause the same to be discharged of record within thirty (30) days by payment, bond, order of a court of competent jurisdiction, or otherwise, but Landlord shall have the right to contest any and all such liens If any mechanic's or

materialmen's lien is filed against the Leased Space by reason of any work, labor, services or materials performed at or furnished on the Leased Space at the request of Tenant, Tenant shall cause the same to be discharged of record within thirty (30) days by payment, bond, order of a court of competent jurisdiction, or otherwise, but Tenant shall have the right to contest any and all such liens

20 11 **Entry by Landlord** Landlord shall have the right to enter the Leased Space at any reasonable time after reasonable notice for the purpose of inspecting the same or for the purpose of performing any act that may be required of Landlord hereunder. In addition, during the last three (3) months of the term of this Lease, Landlord may enter the Leased Space at all reasonable times after reasonable notice for the purpose of showing the same to a prospective tenant. No entry by Landlord shall materially interfere with the operation of Tenant's business in the Leased Space

20 12 **Relationship of Parties** Nothing contained herein shall be deemed or construed to create a joint venture or partnership relationship between Landlord and Tenant

20 13 **Submission of Lease** The submission of this Lease for examination does not constitute a reservation of, or option for, the Leased Space, and this Lease shall become effective only upon execution, delivery and receipt thereof by Landlord and Tenant

20 14 **Trash Removal** Each tenant in the Shopping Center shall pay for the removal of the trash generated by such tenant in the operation of its business, and such cost shall not be included in Common Area Maintenance Costs. Landlord shall ensure that all such trash is secured in appropriate containers behind the Shopping Center

20 15 **Additional Costs** In the event that a request is made by or on behalf of either party hereto that the other review and execute any documents (such as estoppel certificates or subordination agreements, but excluding the Construction Documents), whether such documents are for the benefit of the party making such request, or are for the benefit of a third party, the party making such request shall pay to the other all reasonable counsel fees and other costs and expenses incurred by the reviewing party in connection therewith, not to exceed \$500 in any single event

20 16 **Interpretation** This Lease shall be interpreted in a fair and impartial manner without regard to such factors as the party that drafted this Lease or the relative bargaining power of the parties

20 17 **Rules and Regulations** Tenant shall comply with all reasonable rules and regulations governing the operation of the Shopping Center as reasonably promulgated by Landlord from time to time, provided that such rules and regulations are uniformly enforced by Landlord against all tenants of the Shopping Center and do not conflict with the terms of this Lease

20 18 Contingency The effectiveness of this Lease is contingent upon the sale of the current business operated in the Leased Space by Shaker's Foods Inc to Hiri Foods Inc and the execution of a sublease for the Leased Space between Tenant and Hiri Foods Inc If both of the above conditions have not occurred by July 31, 1999, this Lease shall be void and of no force or effect

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease on the date first above written

LANDLORD

STEARNS & BAGLEY PLAZA  
ASSOCIATES, LLC, an Ohio limited  
liability company

Signed in the Presence of

Stephen P. Owenduff  
Print Name STEPHEN P OWENDUFF

By Fred C. Shaker  
FRED C SHAKER, MEMBER

Steven H. Sneiderman  
Print Name STEVEN H SNEIDERMAN

TENANT

FLEMING COMPANIES, INC.,  
An Oklahoma Corporation

Signed in the Presence of

\_\_\_\_\_  
Print Name \_\_\_\_\_

By \_\_\_\_\_


Title \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

[SEAL]

STATE OF OHIO )  
 ) ss  
COUNTY OF CUYAHOGA )

Personally came before me this 5th day of July, 1999, the above-named FRED C SHAREX, MEMBER of Stearns & Bagley Plaza Associates, LLC, known to me to be the person who executed the foregoing instrument and acknowledged the same in his capacity on behalf of the COMPANY

  
\_\_\_\_\_  
Notary Public, State of OHIO

My commission \_\_\_\_\_

STEVEN H. SNEIDERMAN Attorney At Law  
(Notary Seal)  
Notary Public, State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.

STATE OF OKLAHOMA )  
 ) ss  
COUNTY OF OKLAHOMA )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 1999, the above-named \_\_\_\_\_, \_\_\_\_\_ of Fleming Companies, Inc., known to me to be the person who executed the foregoing instrument and acknowledged the same in his capacity on behalf of the Corporation

\_\_\_\_\_  
Notary Public, State of Oklahoma

My commission \_\_\_\_\_

(Notary Seal)

**EXHIBIT "A"**

**SHOPPING CENTER DRAWING**

[To Be Attached]

EXHIBIT "B"

SHOPPING CENTER LEGAL DESCRIPTION

Situated in the Township of Olmsted, County of Cuyahoga and State of Ohio, and known as being part of Original Lot No 9 in Tract No 2 of Olmsted Township and being part of the land conveyed to Strike Zone Inc as recorded in Volume 87-1853 Page 36 of the Cuyahoga County Deed Records and the lands conveyed to Stearns and Bagley Plaza Assoc as recorded in Volume 85-2438, Pages 50 of Cuyahoga County Deed Records, said combined parcel being more definitely described as follows

Beginning at a monument box found set in the centerline of Stearns Road, South 0 deg 00' 00" East, a distance of 3 03 feet from a p k nail set at the intersection of the centerline of Stearns Road and the centerline of Bagley Road, thence North 0 deg 00' 00" West, a distance of 3 03 feet to said centerline intersection, said point is the principal place of beginning, thence North 89 deg 28' 30" East in the centerline of Bagley Road, a distance of 717 72 feet to a p k nailed set in the Northeasterly corner of Parcel No 1 conveyed to Stearns and Bagley Plaza Assoc recorded aforesaid, thence South 0 deg 31' 30" East in the Easterly line of said Parcel No 1 and Southerly extension thereof, said line being the Westerly line of land conveyed to Thomas M and Rose Marlene Rottel as recorded in Volume 11880, Page 263 of Cuyahoga County Deed Records, a distance of 352 09 feet to a 5/8" rebar set, said line passes through a 5/8" rebar set 30 00 feet Southerly from the centerline of Bagley Road and a rebar found set 327 09 feet Southerly therefrom thence South 89 deg 28' 30" West, a distance of 380 00 feet to a 5/8" rebar set, thence North 0 deg 31' 30" West, a distance of 25 00 feet to a 5/8" rebar set in the Southerly line of Parcel No 2 conveyed to Stearns and Bagley Plaza Assoc recorded as aforesaid, thence South 89 deg 28' 30" West on the Southerly line of said Parcel No 2, said line being the Northerly line of land conveyed to Strike Zone Inc recorded as aforesaid, a distance of 340 47 feet to a point in the centerline of Stearns Road, said line passes through a rebar found set 30 00 feet Easterly of the centerline of said road, thence North 0 deg 00' 00" West on the centerline of Stearns Road, a distance of 327.10 feet to the principal place of beginning and passing through a monument box found set 3 03 feet Southerly therefrom, surveyed by KS Associates, Inc, Engineers and Surveyors, in November of 1998 by David L Elwell, Registered Surveyor No 6333



**EXHIBIT "C"**

**DECLARATION OF RESTRICTIONS AND EASEMENTS**

KNOW ALL MEN BY THESE PRESENTS, THAT

WHEREAS, **STEARNS & BAGLEY PLAZA ASSOCIATES, LLC** (the "Grantor") is the owner of certain tracts of real property (together, the "Property") located in Cuyahoga County, Ohio, and described on Exhibit "B" attached hereto and incorporated herein, and

WHEREAS, the Grantor desires to insure that the Property will at all times in the future be used as an integrated retail shopping center, notwithstanding any future separation of title to portions of the Property, and desires to establish certain rights to use and a plan for development of the Property for such use

NOW THEREFORE, for the purpose of providing for the continued use of the Property as a single integrated parcel of real estate for the mutual benefit of the Grantor, his legal representatives, successors, assigns, tenants, customers, invitees, employees and mortgagees, for the purpose of providing adequate financing for all phases of development of the Property, and in consideration of other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby, impose, establish and grant the restrictions, reservations, and easements hereinafter set forth on the Property. Said restrictions, reservations, and easements shall constitute covenants running with the land to benefit and burden all of the Property irrespective of the manner in which title to the Property may be subsequently divided. Any person or persons, corporation, trust, partnership or other legal entity whatsoever, hereafter becoming the owner either directly or indirectly through subsequent transfer or in any manner whatsoever of any portion of the Property and all tenants, customers, invitees, employees, and mortgagees shall take, hold and convey the same subject to the following

1 The owner or owners of any portion or portions of the Property and their respective heirs, successors, assigns, customers, invitees, employees, mortgagees, tenants, and tenants' customers, invitees, employees, servants and agents shall at all times have the right and privilege of use, both pedestrian and vehicular, for the purpose of ingress, egress, passage and parking in, to, upon and over any and all portions of the parking areas, driveways, approaches, entrances, sidewalks and other facilities providing ingress and egress (hereinafter called "Common Areas") substantially as the same are shown on the site plan attached hereto as Exhibit "A" (the "Site Plan"). The owner or owners of any portions of the Property shall have the right at any time to construct such permanent buildings as they may require on the portions of the Property owned by them, which permanent buildings shall not be deemed to encroach on the easements created by this instrument, provided that (i) a paved service drive a minimum of 30 feet in width shall at all times be maintained to allow for circular traffic around the buildings to be constructed on the Property, (ii) all buildings shall be located as set forth on the Site Plan, (iii) the owner of each portion of the Property shall at all times maintain the parking requirements set forth in paragraph 2 hereof, and (iv)

the buildings on any portion of the Property defined as outlots and designated as such on the Site Plan will comply with the requirements of paragraph 7 hereof

2 No owner of any portion of the Property shall at any time erect or permit to be erected any sign, fence, wall, pole, pipe, post, structure or other facility so as to prevent the free flow of traffic over and across the Common Areas maintained on the Property, provided that the construction of permanent buildings referred to in the preceding paragraph shall be permitted. The ratio of parking area to building space on each tract of the Property shall at all times be maintained at a level sufficient to meet the requirements of the Township of Olmsted, or other municipal or governmental authority having jurisdiction, provided that notwithstanding lesser requirements of any such governmental authority, the owner of each portion of the Property shall maintain those parking spaces as shown on the Site Plan. All parking stalls located on the Property shall be sufficient width for full sized American automobiles. The owner of any portion of the Property shall continuously maintain parking areas, entries, exits and driveways and other Common Areas reasonably necessary in connection with such portion of the Property.

3 No metered or other parking charge shall be assessed in connection with the parking use on the Property.

4 The owner of each portion of the Property (or the owner's lessee under any lease requirements with the owner) shall supervise, operate, manage, repair, replace and maintain all of the Common Areas lying within its particular portion. Each owner shall restripe and replace markings on the surface of the parking areas and driveways substantially in accordance with the plot plan attached hereto, and shall place or replace adequate exit and entrance and other traffic control signs to direct traffic in and out of the parking areas in each particular portion. Each owner shall maintain all buildings, improvements, and utilities located upon its respective tract in sound structural, operating conditions and shall maintain the exterior surfaces of such buildings in a state of good repair.

5 The owner or owners of any portion or portions of the Property and their respective heirs, successors, assigns, tenants and mortgagees shall at all times have the right and privilege of use for the purpose of the construction of footings, foundations, supports and walls in, to, upon, over and under those areas of the Property in which an improvement described on the Site Plan abuts the boundary line of any other portion or portions of the Property, at locations mutually acceptable to the owners of any other portion or portions of the Property.

6 So long as **FLEMING COMPANIES, INC** ("Fleming"), its successors, assigns or sublessees, is a tenant of the shopping center on the Property, subject to those leases described on Schedule 6, no portion of the Property shall be used for or occupied by any business which sells for groceries (including, without limitation, food products, dry groceries, and other items typically and primarily sold in supermarkets), meats, poultry, seafood, dairy products, fruits, vegetables or baked goods (the "Restricted Products") without the written permission of Fleming, its successors and assigns. The foregoing shall not prohibit the sale of any Restricted Products by

any business on the Property if such Restricted Products are displayed for sale in an area which does not exceed the lesser of 1,500 square feet or 10% of the floor area of such business. No building constructed on any of the Property shall be used as a bowling alley, skating rink, bingo or billiard parlor, nightclub or any operation selling alcohol for on-site consumption, flea market, auto service station, theatre, cafeteria, video arcade, physical fitness center or other place of recreation or amusement, auto service station, medical center or clinic, training or educational facility or any other non-retail use except as shown on the Site Plan and approved in advance by Fleming.

7 No building erected on any portion of the Property defined as outlots and designated on the Site Plan shall exceed 1 story or 18 feet in vertical height, and the gross square footage of all buildings erected on any of such portions of the Property shall not exceed 25% of the gross square footage of the land area of that portion of the Property on which such buildings are erected.

8 The owner of each portion of the Property shall maintain or cause to be maintained comprehensive public liability insurance, endorsed to cover personal injury and contractual liability, covering the Common Areas, issued by a company qualified to transact business in the State of Ohio, in the minimum amounts of (i) \$3,000,000 for an accident affecting more than one person in or resulting from one occurrence, and (ii) \$1,000,000 property damage for each occurrence. Each owner shall, upon request of any other owner, furnish certificates of such insurance at any time during the term hereof. Any policy required hereunder shall provide that such policy shall not be cancelable without at least ten (10) days' prior written notice to each owner of a portion of the Property. Each owner of a portion of the Property shall indemnify and hold harmless each other owner from and against all claims, actions, damages, liability and expenses in connection with bodily injury, death or property damage arising out of accidents occurring on such owner's portion of the Property occasioned wholly or in part by any negligent act or omission of its employees, agents or contractors. The comprehensive public liability insurance furnished by each owner shall include contractual liability coverage recognizing such indemnity.

9 The owner of each portion of the Property on which construction is being performed shall not permit any mechanics' or materialmen's liens, or other similar liens, to stand against or attach to any part of the Property. The owner performing or causing to be performed such construction may bond and contest the validity and amount of any such lien, but on final determination of the validity and amount of the lien, such owner shall immediately pay any judgment rendered, with all property costs and charges, and shall have the lien released at such owner's expense. The owner performing or causing to be performed such construction shall indemnify, defend and hold harmless each other owner and each other owner's portion of the Property from all loss, cost, damage, liability and expense (including attorney's fees) resulting from the assertion of any such liens.

10 The owner of each portion of the Property shall pay prior to the due date all taxes and assessments, the payment of which would be secured by a lien upon any portion owned

by such owner, and shall promptly, upon request of the owner of any other tract affected hereby, furnish to such owner tax receipts evidencing such payment

11 In the event of any destruction of, or damage to any improvements upon any portion of the Property, the owner of such portion of the Property shall at the owner's option, either (i) cause such improvements to be repaired, reconstructed and restored as nearly as practicable to the condition existing just prior to such damage or destruction, or (ii) cause other improvements to be constructed on the area covered by the destroyed or damaged improvements, which other improvements are similar to, compatible with and integrated with the remaining development, or (iii) cause the area covered by the destroyed or damaged improvements to be razed and the area then to be, at the owner's option, either (a) paved, marked, lighted and drained so as to provide additional parking facilities for the remaining development, or (b) covered with suitable ground cover, or (iv) cause any combination of the foregoing to occur; provided that notwithstanding anything contained in this paragraph 11 to the contrary, the terms of the first mortgage covering such portion of the Property shall govern the application of insurance proceeds which are received as a result of any such destruction of or damage to improvements. The provisions of this paragraph 11 are intended to provide for obligations of owners of the various portions of the Property, therefore, the requirements of any owner's mortgagee and such owner's lessee under the terms of the mortgages or leases executed by such owner shall not be diminished by the obligations of the owner created hereunder, it being acknowledged by each owner that the obligations of each owner hereunder shall be in addition to and complementary to the requirements of any owner's mortgagee or such owner's lessee under the terms of the mortgages or leases executed by each owner

12 Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever

13 The restrictions hereby imposed cannot be terminated, amended or changed in any manner without the express written consent of (i) all of the record owners of the Property, (ii) all mortgagees holding mortgages of record affecting any portion of the Property, and (iii) Fleming, provided that, if at any time Fleming, its respective successors and assigns shall no longer be a tenant in the improvements on the Property, its consent to a termination or modification of this Agreement shall no longer be required

14 No partnership or joint venture is created by this instrument, the Grantor is imposing the easements and restrictions contained herein on the Property for the purposes set forth above to benefit Grantor, its legal representatives, successors, assigns, tenants, customers, invitees, employees and mortgagees which may now or hereafter hold liens on the Property or any part hereof

15 In the event any portion of the Property is taken by condemnation proceedings or by deed in lieu thereof, the entire award or payment for such taking shall be the property of the owner, mortgagees and tenants of the tract so taken, as their interest may appear, and the owners, mortgagees and tenants of the balance of the Property shall have no claim or right to participate in any such award or payment by virtue of this instrument

17 This agreement shall be construed according to the laws of the State of Ohio. If any clause or provision of this agreement is illegal, invalid or unenforceable then, and in that event, it is the intention of the Grantor and that the remainder of this agreement shall not be affected thereby and it is also the intention of the Grantor that in lieu of each clause or provision that is illegal, invalid or unenforceable there shall be added as part of this instrument a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

## GRANTOR

Signed in the Presence of

By \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

QBMKE\4374896 5

person who executed the foregoing instrument and acknowledged the same in his capacity on behalf of the \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission \_\_\_\_\_

(Notary Seal)

This instrument was drafted by  
and should be returned to

Michael D Zeka  
Quarles & Brady, LLP  
411 E Wisconsin Ave  
Milwaukee, WI 53202-4497

EXHIBIT B

Situated in the Township of Olmsted, County of Cuyahoga and State of Ohio, and known as being part of Original Lot No 9 in Tract No 2 of Olmsted Township and being part of the land conveyed to Strike Zone Inc as recorded in Volume 87-1853 Page 36 of the Cuyahoga County Deed Records and the lands conveyed to Stearns and Bagley Plaza Assoc as recorded in Volume 85-2438, Pages 50 of Cuyahoga County Deed Records said combined parcel being more definitely described as follows

Beginning at a monument box found set in the centerline of Stearns Road, South 0 deg 00' 00" East, a distance of 3 03 feet from a p k nail set at the intersection of the centerline of Stearns Road and the centerline of Bagley Road, thence North 0 deg 00' 00" West, a distance of 3 03 feet to said centerline intersection, said point is the principal place of beginning thence North 89 deg 28' 30" East in the centerline of Bagley Road, a distance of 717 72 feet to a p k nailed set in the Northeasterly corner of Parcel No 1 conveyed to Stearns and Bagley Plaza Assoc recorded aforesaid, thence South 0 deg 31' 30" East in the Easterly line of said Parcel No 1 and Southerly extension thereof, said line being the Westerly line of land conveyed to Thomas M and Rose Marlene Rottel as recorded in Volume 11880, Page 263 of Cuyahoga County Deed Records, a distance of 352 09 feet to a 5/8" rebar set, said line passes through a 5/8" rebar set 30 00 feet Southerly from the centerline of Bagley Road and a rebar found set 327 09 feet Southerly therefrom thence South 89 deg 28' 30" West, a distance of 380 00 feet to a 5/8" rebar set, thence North 0 deg 31' 30" West, a distance of 25 00 feet to a 5/8" rebar set in the Southerly line of Parcel No 2 conveyed to Stearns and Bagley Plaza Assoc recorded as aforesaid, thence South 89 deg 28' 30" West on the Southerly line of said Parcel No 2, said line being the Northerly line of land conveyed to Strike Zone Inc recorded as aforesaid, a distance of 340 47 feet to a point in the centerline of Stearns Road, said line passes through a rebar found set 30 00 feet Easterly of the centerline of said road, thence North 0 deg 00' 00" West on the centerline of Stearns Road, a distance of 327 10 feet to the principal place of beginning and passing through a monument box found set 3 03 feet Southerly therefrom, surveyed by KS Associates, Inc, Engineers and Surveyors, in November of 1998 by David L Elwell, Registered Surveyor No 6333

**EXHIBIT "D"**

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE**, entered into this \_\_\_\_ day of \_\_\_\_\_, 1999, by and between **STEARNS & BAGLEY PLAZA ASSOCIATES, LLC** having an address of P O Box 38177, Olmsted Township, Ohio 44138 (hereinafter referred to as "Landlord"), and **FLEMING COMPANIES, INC.**, an Oklahoma corporation, having an address of 6101 Waterford Boulevard, Oklahoma City, Oklahoma 73118 (hereinafter referred to as "Tenant"),

**WITNESSETH**

Upon commencement of the term of the Lease as hereinafter provided and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10 00) and other good and valuable consideration, the Landlord will demise, lease and let to the Tenant, certain improvements existing on the Real Property located in the County of Cuyahoga, State of Ohio, more particularly described on Exhibit "A" attached hereto (which improvements are more particularly described in the Lease hereinafter referenced), together with all the hereditaments, privileges, and appurtenances thereto belonging (hereinafter called the "Leased Space")

The Leased Space will be leased for a term of ten (10) years, commencing July 12, 1999, and Tenant shall have the option to extend the Lease for four (4) additional terms of five (5) years each, with each extended term beginning at the expiration of the preceding term, as provided under the terms and conditions of a certain Shopping Center Lease dated the date hereof, entered into by and between Landlord and Tenant (herein called the "Lease"), at the rentals and subject to the terms, covenants and conditions appearing in the said Lease between the parties hereto

The Lease further grants to Tenant certain easements and places certain use restrictions on the real property on which the Leased Space is located

The terms, covenants and conditions of the Lease are incorporated herein by reference with the same force and effect as though fully set forth herein

The purpose of this Memorandum of Lease is to give notice of the existence of such Lease, and it is understood this Memorandum of Lease shall not change, modify or amend the aforesaid Lease in any respect



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

**LANDLORD**

**STEARNS & BAGLEY PLAZA  
ASSOCIATES, LLC**

Signed in the Presence of

\_\_\_\_\_  
Print Name \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

**TENANT**

**FLEMING COMPANIES, INC ,  
An Oklahoma Corporation**

Signed in the Presence of

\_\_\_\_\_  
Print Name \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the above  
named \_\_\_\_\_, known to me to be the person who executed the foregoing  
instrument and acknowledged the same

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission \_\_\_\_\_

(Notary Seal)

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is the \_\_\_\_\_ of Fleming Companies, Inc , that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission \_\_\_\_\_

This document was drafted by and  
after recording should be returned to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

Situated in the Township of Olmsted, County of Cuyahoga and State of Ohio, and known as being part of Original Lot No 9 in Tract No 2 of Olmsted Township and being part of the land conveyed to Strike Zone Inc as recorded in Volume 87-1853 Page 36 of the Cuyahoga County Deed Records and the lands conveyed to Stearns and Bagley Plaza Assoc as recorded in Volume 85-2438, Pages 50 of Cuyahoga County Deed Records, said combined parcel being more definitely described as follows

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**EXHIBIT "E"**

**SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

THIS AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between \_\_\_\_\_ (hereinafter referred to as the "Mortgagee") and **FLEMING COMPANIES, INC**, an Oklahoma corporation (hereinafter referred to as the "Tenant"),

**WITNESSETH**

WHEREAS, the Tenant has entered into a certain Shopping Center Lease dated \_\_\_\_\_, 19\_\_ (hereinafter referred to as the "Lease") with \_\_\_\_\_ (hereinafter referred to as the "Landlord"), which Lease covers retail store space (hereinafter referred to as the "Leased Space") in the shopping center known as \_\_\_\_\_ which is located on the Real Property more particularly described on Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Property"), and

WHEREAS, the Lease is evidenced of record by a Memorandum of Lease recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the records of \_\_\_\_\_ County, \_\_\_\_\_, and

WHEREAS, the Mortgagee is the holder of a certain \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_, executed by Landlord, covering the Property, and recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the records of \_\_\_\_\_ County, \_\_\_\_\_ (hereinafter referred to as the "Mortgage"), and

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

WHEREAS, the Tenant desires to be assured of continued occupancy of the Leased Space under the terms of said Lease and subject to the terms of the Mortgage, and

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

1 Said Lease is and shall be subject and subordinate to the Mortgage and the lien thereof as it affects the Property of which the Leased Space forms a part, and to all renewals, modifications, consolidations, replacements and extensions of such Mortgage, as fully and as if the Mortgage and all of its renewals, modifications, consolidations, replacements and extensions had been executed, delivered and recorded prior to execution of the Lease Notwithstanding the above

subordination, Tenant's exercise of its rights under the Lease shall not be prohibited by any contrary terms of the Mortgage

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

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

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

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

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

MORTGAGEE

By \_\_\_\_\_, President

**FLEMING COMPANIES, INC ,**  
An Oklahoma Corporation

By \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is the \_\_\_\_\_ of \_\_\_\_\_, that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

E-3

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is the \_\_\_\_\_ of Fleming Companies, Inc , that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public \_\_\_\_\_  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission \_\_\_\_\_

This document was drafted by and  
after recording should be returned to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



EXHIBIT "F"

NON-DISTURBANCE AGREEMENT

THIS AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter referred to as the "Mortgagee"), and FLEMING COMPANIES, INC., an Oklahoma corporation (hereinafter referred to as the "Tenant"),

W I T N E S S E T H

WHEREAS, the Tenant has entered into a certain Shopping Center Lease dated \_\_\_\_\_, 19\_\_, (hereinafter referred to as the "Lease") with \_\_\_\_\_ (hereinafter referred to as the "Landlord"), which Lease covers retail store space (hereinafter referred to as the "Leased Space") in the shopping center known as \_\_\_\_\_, which is located on the Real Property more particularly described on Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Property"), and

WHEREAS, the Lease is evidenced of record by a Memorandum of Lease recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the records of \_\_\_\_\_ County, \_\_\_\_\_, and

WHEREAS, the Mortgagee is the holder of a certain \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_, executed by Landlord, covering the Property, and recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the records of \_\_\_\_\_ County, \_\_\_\_\_ (hereinafter referred to as the "Mortgage"), and

WHEREAS, the Tenant desires to be assured of continued occupancy of the Leased Space under the terms of said Lease,

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

1 In the event of a foreclosure of the Mortgage, the Mortgagee thereunder will not join the Tenant in foreclosure proceedings so long as the Tenant is not in default under any of the terms, covenants or conditions of said Lease, or, if default shall exist, so long as Tenant's time to cure such default has not expired

2 The terms of the Lease shall not be terminated or modified in any respect whatsoever nor shall the rights of the Tenant thereunder or the occupancy of the Leased Space thereby demised be affected in any way by reason of the Mortgage or any foreclosure action or other proceeding that may be instituted in connection therewith, provided the Tenant is not in default under any of the

terms, covenants or conditions of the Lease, or if a default shall exist, the applicable cure period provided for in the Lease has not expired

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

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

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

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

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

**MORTGAGEE**

\_\_\_\_\_  
A \_\_\_\_\_ Corporation

By \_\_\_\_\_  
\_\_\_\_\_, President

**TENANT**

**FLEMING COMPANIES, INC.,**  
An Oklahoma Corporation

By \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is the \_\_\_\_\_ of \_\_\_\_\_, that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, \_\_\_\_\_  
My Commission \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is the \_\_\_\_\_ of Fleming Companies, Inc , that the seal affixed to said instrument is the seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation by it voluntarily executed

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public \_\_\_\_\_  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission \_\_\_\_\_

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