UNITED STATES BANKRU FOR THE DISTRICT OF I		PRO	OOF C	F CLAIN	4	206491
In re		Case N	lumber	***	7	
FLEMING COMPANIES, INC ,	ET AL	03-10	945		_	
NOTE This form should not be used to mal expense ansing after the commencement of of an administrative expense may be filed pu	the case A "request" for	payment	aware that	box if you are anyone else has if of claim relating to		
Name of Creditor and Address				Attach copy of giving particulars		
STARMOUNT SHOPPING CENTER	0354668006	291		box if you have ived any notices		
C / O Fife M Whiteside PO Box 5383			from the bankruptcy court in this case			
Columbus GA 31906				box if this address		
Conditor Talanhana Number ()				ent to you by the	If you have already	filed a proof of claim with the
Creditor Telephone Number () CREDITOR TAX I D # AC	COUNT OR OTHER NUMBE	D BY WHI	`Н Т			or BMC you do not need to file again
58-0941239	REDITOR IDENTIFIES DEBTO		Che	colors []	eplaces or a previou mends	sly filed claim datedn/a
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Check this box if claim includes interest or o	ther charges in addition to th	ie principal	amount of t	he claim Attach i	temized statement o	f all interest or additional charges
5 SECURED CLAIM	6			RITY CLAIM		
Check this box if your claim is secured by a right of setoff)	y collateral (including	Check	this box if	you have an uns	ecured pnority clair	n/a
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7 CREDITS The amount of all payments of SUPPORTING DOCUMENTS Attach running accounts contracts court judgments if the documents are not available explain 9 DATE-STAMPED COPY To receive a	copies of supporting docu- s mortgages security agre- if the documents are volur	<i>iments,</i> s eements a minous at	such as pro and eviden tach a sum	missory notes p ce of perfection of imary	urchase orders inv of lien DO NOT S	voices itemized statements of END ORIGINAL DOCUMENTS
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Bankruptcy Management Corpo P O BOX 900 El Segundo, CA 90245-0900	pration	1330 E		nagement Corp klin Avenue v 90245	oration	BMC
DATE SIGNED SIGN and print the	e name and title frany of the	creditor or o	other person	authonzed to	1_	Fleming Companies Claim
September 4,2003	n (attach copy of bower of atto			M Whitesi ey for Cre		
Penalty for presenting fraudulent claim is a fine of u	to \$300 000 or imprisonment	for up to 5	years or bot	h 18USC §§1	52 AND 3571	

LEASE ASSIGNMENT AND CONSENT

Macon Road

THIS LEASE ASSIGNMENT AND CONSENT ("Lease Assignment") made and entered into as of the 9th day of October, 2000, by and among LEWIS JONES FOOD MARKET, INC ("Assignor"), FLEMING COMPANIES, INC ("Assignee"), and STARMOUNT SHOPPING CENTER, INC ("Landlord")

WITNESSETH

WHEREAS, Assignor represents and warrants to Assignee that (a) Assignor has leased from Landlord certain premises ("Premises") in a lease agreement, more particularly described in Exhibit A attached hereto (the "Lease"), a copy of said Lease being attached hereto as Exhibit "B" and made a part hereof, (b) said Lease is in full force and effect, and no default exists thereunder, and no party thereto has given any notice of default or termination thereunder, (c) said Lease sets forth the entire agreement between Landlord and Assignor, and said Lease has not been modified or amended in any manner except as described herein, (d) no party other than Assignor has any right to possession of the premise demised pursuant to said Lease, and (e) Assignor has not assigned, sublet or transferred said Lease, and

WHEREAS, Assignor desires to assign all of Assignor's right, title and interest in and to said Lease to Assignee, and Assignee desires to accept said assignment from Assignor, and Landlord desires to consent to said assignment and to the sublease of the Premises by Assignee to ASR Enterprises, Inc., an Arkansas corporation ("ASR"), on and subject to the terms and conditions set forth herein,

NOW, THEREFORE, for and in consideration of the sum of Ten (\$1000) Dollars, each to the other paid, and the mutual covenants flowing between the parties hereto the

EXHIBIT

A

1086464_2 DOC

receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and Landlord do hereby covenant and agree as follows

- Assignment and Assumption (a) Assignor does hereby assign all of Assignor's right, title and interest in and to said Lease to Assignee, effective October 9, 2000, subject to all terms and conditions of such Lease, and Assignor shall deliver possession of the Premises to Assignee on such date
- (b) Assignee assumes Assignor's obligations as the "Tenant" under said Lease effective as of October 9, 2000, and Assignee covenants and agrees to perform and observe each and every covenant and obligation of Assignor therein contained which accrue from and after such date
- 2 <u>Condition of Premises</u> Assignee accepts the Premises in their existing condition, without representation or warranty, express or implied, in fact or by law, and no representation, statement or warranty, express or implied, has been made by or on behalf of Landlord as to such condition, or as to the use that may be made of said Premises
- Consent Landlord hereby consents to the within Lease Assignment, provided that no further assignment of said Lease shall or may be made, except in compliance with the Lease, without the express prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed Landlord hereby releases Assignor from any liability or obligation to Landlord under the Lease, arising on or after October 9, 2000 Landlord further consents hereby to the sublease of the Premises by Assignee to ASR
- 4 Third Party Consents Landlord hereby represents and warrants to Assignee that it is the sole owner of the Premises and the sole owner of the Landlord's interest under the Lease and that, except as to the interest of Southtrust Bank, such ownership interest has

not been assigned, transferred or sold in any manner (whether by mortgage, deed of trust or otherwise), and no consents or approvals from any third party are necessary for the assignment of the Lease or the Sublease to ASR Landlord further agrees to indemnify and defend Assignee from and against any and all actions, claims, damages, expenses or losses incurred as a result of Landlord's breach of the foregoing representation and warranty. Assignor hereby represents and warrants to Assignee that it is the sole owner of the Tenant's interest under the Lease and that such ownership interest has not been assigned, transferred or sold in any manner (whether by mortgage, deed of trust or otherwise), and no consents or approvals from any third party are necessary for the assignment of the Lease Assignor further agrees to indemnify and defend Assignee from and against any and all actions, claims, damages, expenses or losses incurred as a result of Assignor's breach of the foregoing representation and warranty

- 5 Entire Agreement This Lease Assignment contains the entire agreement between the parties hereto, and no representations, warranties, inducements, promises or agreements, oral or written, between the parties with regard to the Assignment of the Lease not embodied herein shall be of any force or effect
- 6 Successors The within Lease Assignment shall inure to the benefit of the parties hereto, and their respective successors and assigns
- 7 Counterparts This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Counterparts may be delivered by facsimile and any such executed counterpart delivered by facsimile shall be deemed an original.

IN WITNESS WHEREOF, the undersigned have caused this Lease Assignment to be executed by their duly authorized officers, as of the day and year first above written

ASSIGNOR

LEWIS JONES FOOD MARKET, INC Signed, sealed and delivered, in the presence of Notary Public State of County of Y Comm Exp NOTARY PUBLIC OFFICIAL SEAL MUSCOGEE COUNTY GEORGIA (Notarial Seal) **ASSIGNEE** MY COMMISSION EXPIRES MARCH 8 2001 FLEMING COMPANIES, INC Signed, sealed and delivered, in the presence of Karen McWi Notary Public State of Oklahom County of Oklay Comm Exp _

(Notarial Seal)

LANDLORD

STARMOUNT SHOPPING CENTER, INC

Signed, sealed and delivered, in the presence of

Notary Public

State of Georgia

County of Muscogee CARLA RHODES Comm Exp_

NOTARY PUBLIC MUSCOGEE COUNTY, GA

OFFICIAL SEAL (Notarial Seal)

MY COMMISSION EXPIRES 07/11/2002

EXHIBIT A

LEASE

Lease Agreement dated November 1, 1995 between STARMOUNT SHOPPING CENTER, INC as lessor and LEWIS JONES FOOD MARKET, INC as lessee, as amended by Addendum to Rental Agreement dated January 17, 1997 and as further amended by SECOND AMENDMENT TO LEASE AGREEMENT, dated October 9, 2000

EXHIBIT B COPY OF THE LEASE

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement ("Second Amendment") is made and entered into this 9th day of October, 2000, by and netween STARMOUNT SHOPPING CENTER INC (Landlord'), and LEWIS JONES FCOD MARKET, INC a Georgia comporation ("Tenant")

WITNESSETH

WHEREAS Landlord and Tenant have previously entered into a Lease Agreement dated November 1, 1995, as amended by an Accendum to Rental Agreement, dated January 17, 1997 (the Lease), by which Landlord leased to Tenant real estate and premises located at 3465 Macon Road Columbus, Georgia (the Premises) as more particularly described in the Lease, and

WHEREAS, said Lease provided for an original term ending on October 31, 2000 and four additional extended terms of five years each, and

WHEREAS, Tenant has entered into an Asset Purchase Agreement ("Purchase Agreement") with ASR Enterprises, Inc., an Arkansas corporation (ASR), dated the 4th day of October 2000, by which certain assets used in connection with the operation of the retail grocery store located on the Premises will be transferred by Tenant to ASR, and

WHEREAS, as a part of the transaction contemplated in the Purchase Agreement Flerring Companies, Inc., an Oklahoma corporation (Fleming), is providing financing to ASR to enable ASR to fulfill its obligations under the Purchase Agreement, and

WHEREAS, Fleming's loan to ASR is conditioned upon Tenant assigning the Lease to Fleming, and Fleming subleasing the Premises to ASR, and

WHEREAS, Tenant has requested that Landlord consent to this Second Amendment to the Lease to facilitate the above described transaction and Landlord has agreed to consent to this Second Amendment, subject to the execution by Fleming of an assignment of the Lease and the execution by ASR of a sublease of the Lease from Fleming

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Landlord and Tenant agree that, effective as of the above date, the Lease is amended as follows, subject to Landlord's receipt of a fully executed original Assignment and Sublease, executed by Tenant, Fierling ASR and Landlord

I Term The initial term of this Lease as set forth in Paragraph I of the Lease shall be extended for seven (7) years from the da e hereof and end at midnight on September 30 2007

2 Percentage Rent The first sentence of Paragraph 3 of the Lease is deleted and replaced by the following sentence

"The term "lease year" shall mean each consecutive twelve month period contained within the Lease term and any extensions thereof, each lease year commencing on October 1 and ending on September 30"

- 3 Assignment and Subletting Paragraph 11 of the Lease is deleted in its entretv and replaced by the following paragraph
 - (a) Except as provided in subparagraph (b) of this Paragraph 11, Tenant may not assign this Lease or sublet a . or any portion of the premises without the prior written consert of Landlord which consent shall not be unreasonably withheld or delayed. Landlord and Tenant hereby acknowledge and agree that the primary factors which are relevant to Landlord in making its decision to grant or withhold consent hereunder are as follows (1) the financial strength and creditworthiness of a proposed assignee, and (ii) the availability of historical data on the operation of other grocery stores by the proposed assignee indicating that such other locations are operated, maintained and repaired in a manner consistent with the operation, maintenance and repair of the premises by the Tenant during the term of this Lease Consent to one assignment or sublease shall not destroy or waive this provision, and all later assignments and subleases shall likewise be made only upon such prior written consent of Landlord No consent to any assignment or sublease shall relieve Tenant of liability under this Lease In addition to the restrictions on assignment and subletting described in this Paragraph 11, Landlord reserves the right, on any such assignment to modify Paragraph 45 of this Lease to include, in addition to the late charges described therein, additional late charges in the amount of \$20 00 per day for each day following the 10th day after the due date of the rental due until such rental is paid
 - (b) Tenant shall have the right to enter into one or more "store space leases" or subleases for the purpose of operating a bank, floral, photo processing or other department within the premises upon the written consent of Landlord, provided that such consent shall not be unreasonably withheld unless the proposed "store space lease" or sublease would violate an exclusive" provision expressly provided for in the lease of another tenant in the Shopping Center"
- 4 <u>Use of Premises</u> The first sentence of Paragraph 12 of the Lease is delered and replaced by the following

"The premises are currently being used as a retail grocery store. If Tenant ceases to operate a retail grocery store in the premises, and proposes to assign or sublease the premises for a non-grocery store use according to Paragraph 11 of this Lease, such assignment or sublease shall require the consent of Landlord as provided in Paragraph 11 (a) of this Lease. If Landlord refuses to grant such request, Tenant shall remain hable for all of its obligations under this Lease during the remainder of the then existing term but shall not be required to operate any business in the premises.

- Default of Tenant In the tenth and eleventh line of Paragraph 22 of the Lease the words "or in the event Tenant vacates the rented premises or abandons same" are deleted in the first and second lines of the third paragraph of Paragraph 22, the words "In the event of Tenant's vacating or abandoning the rented premises during the term of this Rental Agreement or" are deleted and replaced by the word "If"
- 6 Subordination and Attornment In the second sentence of Paragraph 24 of the Lease the word and numeral "fifteen (15)" is deleted and replaced by 'thirty (30)"
- 7 Evidence of Term and Rent In the first sentence of Paragraph 26 of the Lease the word and numeral "fitteen (15)" is deleted and replaced by 'thirty (30)" The last sentence of Paragraph 26 is deleted
- 8 Operating Costs In the first line of Paragraph 28 of the Lease, the words and numeral "five (5) year" is deleted
- 9 Operation of Business Paragraph 30 of the Lease is deleted and replaced by the following paragraph

"Tenant shall not be obligated to conduct operations in the premises If Tenant does conduct operations, Tenant shall have the continuing fight to discontinue its operations in the premises without the consent of Landlord Provided, however, if Tenant is operating a retail grocery store in the premises, Tenant shall conduct such operations during reasonable business hours. In the event that operations in the premises are not conducted or are discontinued, Tenant shall continue to pay Fixed Minimum Rent during the remainder of the term, but no imputed percentage rent will thereafter be due If Tenant discontinues or does not conduct the operation of a retail grocery store in the premises (except during periods of rebuilding or repairing by Landlord pursuant to Paragraph 18 of this Lease) for either (1) ninety (90) consecutive days or (11) two periods of sixty (60) consecutive days each during any term of this Lease, Landlord may terminate this Lease Tenant shall, upon the termination of this Lease peacefully quit, surrender and deliver up to Landlord, its successors or assigns, the premises in the condition required by Paragraph 10 of this Lease with the exception of usual wear and tear. In regard to such redelivery, Tenant shall not be required to restore or alter the premises to allow for any particular use."

- Memorandum of Lease At Tenan's request, Landlord and Tenant shall execute a memorandum of lease in form and substance reasonably acceptable to Tenant and Landlord which shall specify the premises, the announcement and expiration of the current term of the rental agreement, the potential expansion terms, the subordination and attornment prousions the fact that the interest of Tenant under the rental agreement is a usuffuct, notice prousion and governing law provision of the Lease Tenant may record the memorandum of lease in the records of the Clerk of the Superior Court of Miscogee County Georgia
- Detault Rent and Additional Charges Landlord and Tenant agree that the tollowing lacts are true and correct as of the date of this Second Amendment
- a To Landlora's actual knowledge, Tenant is not in default nor has Tenant done or failed to do any act which would constitute a default with notice or the passing of time, or both, and
 - b Tenant has paid rent through the month of September, 2000 and
- c All additional charges owed by Tenant payable under the Lease have been baid through September, 2000, and
 - d Tenant has not paid any rent in advance
- Ratification As modified by this Second Amendment, all of the terms and provisions of the Lease shall remain in full force and effect and the Lease is hereby ratified
- Section Headings Section headings are for convenient reference only and shall not in any way affect the meaning or interpretation of this Second Amendment

IN WITNESS WHEREOF, the parties hereto have agreed to the above and foregoing in its entirety as of the day and year first above written, and have executed this instrument on the day and year set forth in the acknowledgements below

[signatures on following page]

	By Galley R Carter			
	Name Bobbie R. Carter			
•	Title: President			
Signed sealed and delivered, in the presence of				
Locational Witness				
Noran Public				
State ofGeorgianl. A. RHODES County ofMuscoNOTARY PUBLIC Comm ExpMUSCOGEE COUNTY GA OFFICIAL SEAL MY COMMISSION EXPIRES 07/11/2002				
'TENANT"	LEWIS JONES FOOD MARKET, INC, an Georgia corporation			
	By tag A Joses Name (Aky Joses Title V. P See.			
Signed, sealed and delivered,				
In the presence of Aldlowd Wrong				
Xotary Public	•			
State of Storgin Country of Musicages Comm Exp				
NOTARY PUBLIC OFFICIAL SEAL				

MY COMMISSION EXPIRES MARCH 8 2001

The undersigned consents to this Second Amendment to Lease Agreement

SOUTH TRUST BANK	,
C.1//	_/.
By KMCM	$/\sim$
Name ADUNCANU	aw
Title- Vice Mend	cus

6

Sigged sealed and delivered,

DEBBIE P BECKON-NOTARY PUBLIC -- OFFICIAL SE MUSCOGEE COUNTY, GA

-ily Commission Expires October 18, 200 i

in me presence of

Notary Public

County of_ Comm Exp_

RENTAL AGREEMENT

THIS RENTAL AGREEMENT (nereinafter referred to as the "Rental Agreement" or "Lease"), made and entered into as of the first day of November, 1995 by and between STARMOUNT SHOPPING CENTER, INC , hereinafter designated "Landlord", and LEWIS JONES FOOD MARKETS, INC , hereinafter designated "Tenant",

UITNESSETH THAT.

Landlord and lenant, in consideration of the nutual, several and reciprocal covenants herein expressed do agree as follows

1 Term and Rented Premises Landlord hereby rents to Tenant for a term of five (5) years, beginning on the 1st day of November, 1995, and ending at midnight on the 31st day of October, 2000, the following described premises in the city of Columbus, Musfagee County, Georgia, Lo-wil

All that certain area in the shopping center, Columbus, Muscogee County, Georgia more particularly described on that certain plat February 26, 1975 and revised March 7, 1975, prepared by Ennis and Company, Inc., civil engineers hereinafter referred to as the "Property", designated as Number 3465. Macon Road, Columbus, Georgia, outlined in "red" on the plan of the buildings of said Shopping Center located on the Property actached herein are Entire "A" and nade a part hereof (containing approximately 25,520 square feet of containing approximately 25,520 square feet of space) hereinafter referred to as the "rented premises". Said area (containing approximately 25,520 square feet of space) hereinafter referred to as the "rented premises".

As long as Tenant shall not be in default under this Pental Agreement, Tenant shall have the option to e tend the term of this Pental Agreement beyord the initial term for four (*) periods of five (5) years each. Tenant shall exercise said options to e tend this Rental greement by giving Landlord, in each case, written notice not later than one hundred eighty (180) days prior to the expiration of the then current term of this Rental Agreement. Such extension period shall begin immediately upon the empiration of the piecedim, term or the Pental Agreement and failure to exercise any such option to extend shall void all subsequent options to extend. The terms and conditions of this Rental greement shall apply during such extension terms.

- 2 Fixed Minimum Rent Tenant shall pay to Landlord at Landlord's principal office set forth above, or at such other place as Landlord may designate from time to time in writing, without demand, deduction or set off, rental of Seventy Si/Thousand Five Hundred Si ty and 00/100 (\$76,560 00) Dollars per year (herein called "Fixed Minimum Rent") Fixed Minimum Rent shall be payable in twelve (12) equal monthly installments of Si> Thousand Three Hundred Eighty and 00/100 (\$6,380 00) Dollars each, payable punctually in advance on the first day of each calendar month. A prorata monthly installment shall be due for the first month of the Term if the Term begins on a day other than the first day of a calendar month, and for the last month of the Term if the Term ends on a day other than the last (ay of a calendar month
- 3 Percentage Rent As used herein, the term "lease year" shall mean each consecutive twelve (12) month period contained within the Lease term and any extensions thereof, with the first such lease year commencing on hovember 1, 1995 and ending on October 11, 1996. Tenant agrees to pay to Landlord, in addition to the fixed rent stated in Paragraph 2 above and all other sums specified herein and in part of the total rent to be paid, percentage rent in the amounts and in the manner set forth below.
- (a) Tenant that pay to landload, as percentage rent for each lease year or part thereof contained within the Lease term a sum equal to the amount, if any, by which one percent (1%) of the "gross sales" (as that term is hereinatter defined) exceeds the fixed minimum rent phyable hereunder with respect to such period
- (b) Each such lease year or part thereof shall be considered as an independent accounting period for the purpose of computing the percentage rent, if any payable hereunder, and the amount of gross sales for any one such period shall not be carried over into any other such period



- (c) Within sixty (60) days after the end of each lease year or part thereof which is entirely or partially contained within the Lease term, or any extension thereof (hereinafter collectively referred to as the "Lease Term"), and within thirty (30) days after the end of the Lease Term, Tenant shall deliver to Landlord a written statement, certified as hereinafter set forth, showing the total gross sales for the applicable period, together with payment to Landlord, of the percentage rent described above in this paragraph Provided, however, that from and after the initial lease year hereof, Tenant shall pay to Landlord on the last day of each calendar month, in arrears, an estimated monthly percentage rental payment which shall be equal to one-twelfth (1/12) of the total amount of the percentage rent paid for the prior lease year /t the time Tenant shall deliver to Landlord the written statement described in the first sentence of this (c), Tenant shall deliver payment of the underpayment, if any, of the percentage rent equal to the amount of the total percentage rent due for such lease year, minus the estimated percentage rent previously paid during the lease year. In the event that such estimated percentage rent payments result in an overpayment by Tenant, such excess shall be refunded by Landlord to Tenant
- Definition of Gross Sales The term "gross sales" is hereby defined to mean the dollar aggregate of all sales of Tenant and all licensees, concessionaires and tenants of Tenant, from all business conducted upon or from the rented premises by Tenant and all others, and whether such sales be evidenced by check, credit charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise and for services performed on or at the rented premises, together with the amount of all orders taken or received at the rented premises or sales completed by delivery at the rented premises, whether such orders be filled from the rented premises or elsewhere, and whether such sales be made by means of mechanical or other vending devices in the rented premises. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in gross sales for the purpose of fixing the percentage rent pavable hereunder all the gross sales of such departments or divisions, whether such sales be made at the rented premises or elsewhere, in the same manner and /ith the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Cross sales shall not include sales of prescription drugs, sales of merchandise for which call has been refunded or allowances made on merchandise claimed to be defective or unsati factory, to the extent of such refunds or allowances There shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of nerchandise delivered to the customer in eychange shall be included in gross Gross sales shall not include the exchange of merchandise with other stores of lenant if such e change is made for convenience and not for the purpose of consummating a sale which otherwise would have been included in gross sales Gross sales shall not include the amount of any sales, use or gross receipts tay imposed by any federal, state, municipal, or governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by the Tenant to such governmental authority No franchise or capital stock tay and no income or similar tay based upon income or profits as such shall be deducted from gross sales in any event whatever Each charge or sale upon installment or credit shall be treated as a sale for the full price in the lease year during which such charge or sale shall be made, irrespective of the time when Fenant shall receive payment (whether full No deductions shall be allowed for uncollected or or partial) therefor uncollectible installment or credit accounts
- 5 Tenant's Records Tenant agree to prepare and maintain, in Columbus, Georgia, for a period of not less thin three (3) years tollowing the end of each lease year or part thereof contained in the free leam, Georgia cales tay returns with respect to each such lease year
- Tenant's Reports Tenant shall submit to Landlord on or before the sixtieth (60th) day following the end of each lease year during the Lease Terr (and on or before the sixtieth (60th) day following the end of the Lease Term) a written statement signed by Tenant and certified by an officer of Tenant to be true, correct, and complete, showing in reasonably accurate detail satisfactory in scope to Landlord the amount of gross sales during the preceding lease year (or other period to which such statement relates), which statement shall be accompanied by copies of the Georgia Sales Tay Returns for the rented premises for such lease year



- Right to Examine Records The acceptance by Landlord of payments of percentage rent shall be without prejudice to the right of Landlord to an examination of Tenant's books and records of its gross sales and inventories of merchandise at the rented premises, in order to verify or determine the amount of gross sales. At its option, Landlord may cause, at any reasonable time upon not less than forty-eight (48) hours prior written notice to Tenant, a complete audit to be made of Tenant's business books and records relating to the rented premises, and Tenant shall make all such books and records available for said audit at the rented premises. If the results of any such audit show that Tenant's statement of gross sales for any period has been understated by three (3%) percent or nore, then Tenant shall pay Landlord the cost of such audit in addition to any deficiency payment of percentage rent required. A report of the findings of Landlord's accountant shall be binding and conclusive upon Landlord and Tenant. The furnishing by Tenant of any statement of gross sales which understates the amount thereof by ten (10%) percent or more shall constitute a breach by Tenant of this Lease.
- 8 Title and Quiet Enjoyment Landlord hereby covenants, represents and warrants that Landlord is lawfully seized of the above-described rented premises, that Landlord has the full, unrestricted and e clusive right and power to rent the rented premises to Tenant for the term and upon the provisions contained in this Rental Agreement, and that at the commencement of the term of this Rental Agreement, Landlord will put, and vill thereafter keep, Tenant in quiet and peaceful possession thereof during the term of this Rental Agreement subject to Tenant's complying vith the provisions or this Rental Agreement on its part to be performed
- Gondition of Property/Landlord's Repairs Tenant hereby accepts the rented premises "as is" Landlord shall, at its own cost and expense, maintain and keep in good repair the foundations, roof, exterior walls (excluding all glass) and wiring enclosed in exterior valls, wiring enclosed in the central utility duct, plumbing and duct work located within the central utility duct, parking area, common walkvay, except that the cort of any such repairs which result from the negligence or willful act of the Tenant, its customers, licensees, agents, servants, employees or invitees shall be borne solely by Tenant. It is further agreed, as a condition precedent to the obligations of landlord to make the repairs aforesaid, that Tenant shall notify landlord in writing of the need of such repairs. Upon the failure of Landlord to perform the foregoing repairs following such notice, Tenant may, in its discretion, make such repairs to the rented premises and Landlord agrees to reimburse Tenant for the cost of such repairs upon demand. If Landlord fails to reimburse Tenant within thirty (30) days, Tenant has the right to deduct said cost from the next due rental payment.
- Tenant's Maintenance, Repair and Care of Premises Tenant agrees to accept the rented premises as delivered as suited for the intended use of Tenant and to keep and maintain the entire rented premises in good repair (except that specifically set forth in the immediately preceding paragraph) to include without limiting the generality of the foregoing, all electrical outlets, lighting fixtures, plumbing and plumbing fixtures, the central heating and air conditioning systems, all plate and other glass in the rented premises and the interior of the rented premises during the term of this Rental Agreement. Tenant agrees that it will surrender said rented premises to landloid in a, good a condition as the same existed at the commencement of the term hereof, ordinary wear and tear excepted Upon the failure of Tenant to keep the rented premises in good repair and to return same to Landlord as provided for herein, lindlord may, in its discretion, make such repair to the rented premises for and on behalf of Tenant, and Tenant agrees to pay Landlord the cost of such repairs upon demand

Jenant does further agree that it half maintain the rented premises in a clean and orderly manner and free from noxious odor, fumes or gases and smoke and shall not permit loud or disturbing noises or vibrations to emanate from the rented premises. Tenant further agrees to comply with all reasonable regulations adopted or which may be adopted by the Landlord with regard to sanitation, handling of trash and debris, loading and unloading trucks and other vehicles, safety and security against fire and theft, vandalism, personal injury and other hazards and for eliminating any unsightly and/or unsanitary accumulation of trash or other similar misuse of wallways, landscaping and loading areas. Tenant further agrees to maintain the rented premises free from rodents, insects and vermin. Landlord understands and agrees that femant's operation of its business



requires that trucks and other vehicles make deliveries to the rented premises other than during normal business hours and such actions shall not be deemed to violate this paragraph

- Tenant may not, without the prior written Assignment and Subletting consent of Landlord, which consent may not be unreasonably withheld, assign this Lease or any interest hereunder, or sublet the rented premises or any part thereof, or permit the use of the rented premises by any party other than Tenant, or permit this Lease to be assigned by operation of law Landlord and Tenant hereby acknowledge and agree that the primary factors which are relevant to Landlord in making its decision to grant or withhold consent hereunder are as follows (1) the financial strength and credit worthiness of a proposed assignee, and (11) the availability of historical data on the operation of other grocery stores by the proposed assigned indicating that such other locations are operated, maintained and repaired in a manner consistent with the operation, maintenance and repair of the rented premises by the Tenant during the term of this Lease Consent to one assignment or sublease shall not destroy or waive this provision, and all later assignments and subleises shall likewise be made only upon such prior written consent of Lanciold Subtenants or assignees shall become liable directly to Landlord for all obligations of Terant hereunder without relieving Tenant's liability, and notwithstanding any consent of Landlord to a sublease, any sublease of the rented premises shall include a clause which shall provide that the subtenant attorns girectly to the Landlord - No consent to any assignment or sublease shall relieve Tenant of liability under this Lease
- ln addition to the restrictions on assignment and subletting described hereinabove, Landlord reserves the right, on any such assignment, (1) to modify paragraph 30 hereinbelow by requiring such assignee or sublessee to operate the rented premises for a minimum of ten (10) hour per day, (1 (6) day, per vec), and (11) to modify Paragraph 15 hereof to include, in addition to the late charges described therein, additional late charges in the amount of twenty (\$20 00) dollars per day for each day following the tenth (10th) day after the due date of the rental due nereunder until such rental is paid
- Use of Premises Tenant agrees that withewrented premises herein described shall be used solely as grocery store and for no other purpose, without randword sprior written consent. The premises herein described shall not be used for any illegal purposes, and its use shall be conducted in full compliance with all laws, ordinances, orders and regulations of any lawful authority over the rented premises and in compliance with all rules or regulations adopted by Landford. Tenant further agrees not to use the rented premises in any manner so as to create a nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on the rented premises.
- Walkways and Parking Areas I andlord agrees that Tenant and its employees agents and customers shall have the nonexclusive right to use all streets, driveways, vallways, and parking areas adjoining the rented premises Tenant agrees to comply with all reasonable rules and regulations adopted or which may be adopted by Landlord in connection with the use of the parling areas and common facilities, which rules and regulations shall pertain to the safety, care, use, and cleanliness of such areas. Landlord agrees to maintain the parking area and common vallways on the exterior of the building premiles at its own cost and expense, provided, however, that Landlord shall not be required to make any repairs to such areas which are made necessary by any act or omission of Tenant or Tenant's employees, agents invitees, licenses or visitors
- Equipment, Installation, and Fixtures linear agrees that it shall make no strictural or nonstructural alteration, iddition or improvement to the rented premises without the prior witten concent of Individ, such concent not to be unreasonably withheld. It is agreed that any structural or nonstructural alteration, addition, or improvement mide to the rented premises till upon the termination of this Rental Agreement or the expiration of the term hereof become the property of Landlord.

Tenant shall install in the rented premises all trade fixtures, furnishings and equipment necessary for the operation of its business office. All such trade fixtures, furnishings and equipment shall be of first quality and commensurate in appearance and in keeping with buildings of which the rented premises are part and Tenant throughout the term of this Rental Agreement shall maintain same in good order, condition and repair at its own expense. It is further agreed that all



urnishings, trade fixtures, and equipment used in said rented premises by Tenant, hall be removed at the expiration of this lease. Tenant agrees that it shall, it its own expense, repair all damage to the rented premises resulting from the emoval of such furnishings, trade fixtures, and equipment.

All property of Tenant remaining on the rented premises after expiration of he term hereof shall be deemed concluively abandoned and shall, at Landlord's ption, become the sole property of Landlord Provided, however, that such roperty may be removed and/or stored by Landlord and Tenant shall reimburse andlord for the cost of removing and/or storing the same

- 15 <u>Signs</u> Tenant shall erect a sign, at fenant's expense, identifying enant's business, which sign shall conform with the architectural design of the uilding, provided, however, Tenant shall not erect or install any sign on the xterior of the rented premises or upon any part of the buildings of which the ented premises are a part to include any glass or plateglass area) without andlord' prior written consent, such consent not to be unreasonably withheld enant further agrees to maintain all signs according to the rules and regulations f the property
- 16 Indemnification by Tenant Tenant shall indemnify and hold harmless inclord from and against
- (a) any and all claims, demands, losses, liabilities, damages, suits, occedings, actions, causes of action, responsibilities, judgments and executions sereinafter "claims") by any third party for any injury to or death of any person persons or any damaged property in any way arising out of or connected with the indition (except as to repairs to be made by Landlord which Landlord has been stifled of as provided in Paragraph 9 above), use or occupancy of the rented emises by the Tenant, its assigns, ublessees, or their respective agents, iployees, licensees, or concessionaires in the rented premises or the common eas
- (p) any and all costs, attorney's fives, expenses and liabilities incurred in innection with the above-described claims or any action or proceedings brought ereof

Provided, however, that Landlord shall indemnify and save Tenant harmless om any such claims or damages, in the common areas or otherwise, caused by ndlord's sole negligence or willful or wanton misconduct or breach of Landlord's ligations under Paragraph 9 above. Provided further, however, that the regoing shall not be construed or interpreted to affect, change, modify or herwise restrict the waiver by Tenant and waiver of subrogation referenced in e last subparagraph of Paragraph 17 hereinbelow. The obligations of Tenant and addord under this Paragraph 16 arising by reason of any occurrence taking place ring the term of this Rental Agreement shall survive any termination of this ntal Agreement.

Insurance Tenant agrees for the entire term of this Rental Agreement its own expense to obtain and maintain general liability insurance with a mpany or companies authorized to do business in the State of Georgia insuring lant and Landlord against any and all liability for injury or claims of injury, or death of, a person or persons and damage or claims of damage to property the in, on or about the rented premises or appurtenances thereof or occasioned or arising out of the condition of the rented premises or the use or occupancy the rented premises, and shall insure any claim a described in Paragraph if we against which Tenant is required to indemnity Landlord. Said insurance till be maintained with minimum limits of \$1,000,000 00 with respect to personal furies, death or damage to property are independent of any one occurrence, with an pregate limit of not less than \$2,000,000 00. Such limits shall be increased Tenant as may be reasonably indicated by circum tances from time to time string.

Tenant agrees at its own cost and expense to keep and maintain during the m of this Agreement "plateglass insurance" on all plateglass on the rented mises to the extent of the replacement value thereof. Tenant agrees at its own t and expense to maintain and keep in force during the term of this Rental element insurance on all trade fixtures, other fixtures, furnishings, equipment entory, personal property, and any leasehold alternations and improvements



(whether in, on or about the rented premises) to the extent of the full replacement value thereof against loss or damage by fire to include extended coverage

Tenant agrees that if its use of the rented premises in any way directly results in the increase of the rate of fire insurance upon the rented premises or upon the buildings of which the rented premises are a part, over the rate existing for the same amount of coverage to Landlord as of the date of this Rental Agreement, or the same rate existing at any time during the term hereof for the same amount of coverage to Landlord without the Tenant's specific use of the rented premises then Tenant agrees, upon receipt of written notice thereof from Landlord, to pay Landlord as additional rental a sum equal to the increase in the annual premium of such insurance

fenant agrees at all times at its expense to keep its merchandise, trade flytures, flytures, furnishings, equipment, inventory and personal property located within the rented premises insured against fire, with extended coverage, in an amount equal to the full replacement value thereof. If the Landlord elects to rebuild and repair the damaged or destroyed rented premises as described in Paragraph 18 herein below, the proceeds of this insurance maintained by Tenant shall be used for the repair or replacement of such merchandise, trade fixtures, fixtures, furnishings, equipment, inventory and personal property located in the rented premises

lemant agrees to furnish Landlord copies of said insurance policies within thirty (30) days of the commencement date of this Rental Agreement and whenever reasonable required by Landlord and said insurance shall not be canceled or altered without twenty (20)-days prior written notice to Landlord

fandlord shall, during the term of this Rental Agreement, maintain fire and extended coverage insurance on the buildings located with the Shopping Center, including the building which includes the rented premises

All fire and extended coverage insurance maintained by Landlord or Tenant covering losses arising out of the destruction of or damage to the rented premises or its contents or to other portions of the Shopping Center shall, to the extent reasonably obtainable, provide for a waiver of subrogation against Landlord, Tenant and the other tenants in the Shopping Center, on the part of the insurance carriers. Evidences of the exitence of such waivers shall be furnished by either party to the other party prior to the commencement date of the Rental Agreement and whenever reasonably required by any party hereto

In addition, notwithstanding anything to the contrary in this Rental Agreement, Landlord and Teant hereby varve and release each other, their respective officers, directors, agents and employees, of and from any and all rights of recovery, claims, actions or causes of action against each other, their officers, directors, agents and employees for any injury or death or any loss or damage that may occur to the Rented Premises, the Snopping Center, any improvements thereto or any of the contents thereof, to the extent that such loss or damage would be covered by the insurance required to be carried by Landlord and Tenant hereunder regardless of whether such insurance is actually carried, and regardless of cause or origin including, but not limited to, negligence of Landlord or Tenant or their officers, directors, agents and employees

18 Fire or Other Casualty (a) Ten nt shall give immediate written notice to Landlord of any danage by fire or other casualty to the rented premises or the contents thereof. Except as provided in subparagraph (b) hereinbelow, in the event the rented premises are destroyed as damaged by fire or other casualty, Tenant shall have the option to exercic the net evallable five (5) year option extension period as described in Paragraph 1 hereinabove, and in such event upon the exercise of said option, Landlord hill proceed with reasonable diligence at its sole cost and expense to rebuild and repair the rented premises, provided, however, that Landlord's obligation to rebuild and repair the rented premises shall be limited to restoring the rented premises to substantially the condition in which the same existed prior to such casualty. In the event Landlord repairs or rebuilds the rented premises, Tenant agrees that it shall proceed with reasonable diligence and at its sole cost and expense to repair or rebuild Tenanc's trade fixtures, fi tures, furnishings, equipment, inventory and personal property to the condition in which the same existed prior to such casualty.



- (b) In the event that such destruction or damage to the rented premises occurs during the last five (5) year option extension period described in Paragraph 1 hereinabove, Landlord may elect to terminate this Rental Agreement or to proceed to rebuild and repair the rented premises. Landlord shall give written notice to Tenant of such election within sixty (60) days after the occurrence of such casualty. In the event Landlord elects to terminate this Rental Agreement, then the Tenant shall surrender the rented premises to Landlord and the obligation of Tenant to pay rental hereunder shall terminate as of the day of such casualty
- (c) Tenant agrees that during any period of reconstruction or repair of the rented premises it will continue the operation of its business within the rented premises to the extent practicable. The payment of rent by Tenant shall be reduced and abated in proportion to the amount of the gross rentable floor area of the rented premises which is rendered untenantable as a result of such casualty from the time of the fire or other casualty until that portion of the rented premises are again leady and fit for occupancy and use for the business purpose intended
- Possession of Premises It is anticipated that Landlord will deliver 19 exclusive possession of the rented premises on the date shown at Paragraph 1 hereof for the beginning of the term of this Rental Agreement, if, however, Landlord is unable to furnish possession of same to Tenant on or before the date stated in Paragraph 1 hereof for the beginning of the term of this Rental Agreement, the commencement of the term hereof shall be postponed until possession is delivered, provided, however, if possession of the rented premises shall not be delivered to Tenant within thirty (30) days after the commencement date shown in Paragraph 1, Landlord and Tenant shall each have the option to terminate this Rental Agreement upon giving to the other notice to that effect, which notice shall be given not later that forty five (45) days ifter the commencement date shown in Paragraph 1 Landlord agrees to use its best efforts to deliver possession of the rented premises to Tenant in accordance with the provisions of this Rental Agreement, however, should this Rental Agreement be terminated on account of Landlord's inability to deliver possession of the above rented premises in accordance with the provisions hereof, the parties hereto shall each be released from any and all of the obligations or liabilities arising under the terms of this Rental Agreement and the option given bereunder to the lenant to terminate this Rental Agreement upon the failure of the Landlord to deliver possession of the rented premises to Tenant in accordance with the provisions hereof shall no limit Tenant's remedies against Landlord for its failure to deliver such premises as hereinabove set forth
- Condemnation (a) If (1) the whole of the rented premises, or such portions thereof as would make the rented premises or the buildings of which it is part unusable for the purpose for which said buildings are rented, or (11) or twenty-five (25%) of the parking spaces located within the Shopping Center, shall be appropriated, condemned or taken pursuant to a power of eminent domain by any public or quasi-public authority, then either Landlord or Tenant shall have the right to terminate this Rental Agreement by giving written notice to the other party hereto within thirty (30) days following the date such possession is taken and the parties hereto shall be released from any further liability under the terms of this Rental Agreement and the rental shall be computed between Landlord and Tenant as of such date
- (b) All damages awarded for the taking of any such parking spaces shall be payable to and shall be the sole property of Landlord. All damages awarded for the taking of said rented premises, or any part thereof, shall be payable to and shall be the sole property of Landlord, provided, however, that Tenant shall be entitled to seek from the cindemning authority damages for the cost of removal of stock, furniture or fixture owned by tenant or for the low of Penant's business or the leasehold interest, so long as Tenant's award does not result in a reduction of the damages payable to findloid
- Death, Bankruptcy or Insolvency of Tenant or Guarantor The term "Tenant" as used in this Paragraph 21 shall also include any Guarantor of this Rental Agreement. If at any time during the term of this Rental Agreement, Tenant is adjudicated as bankrupt or a petition for reorganization or arrangement under any of the laws of The United States or any states be filed by Tenant or against Tenant and shall not be dismissed within fifteen (15) days from the date of such filing, or if Tenant has filed a petition to be adjudicated as bankrupt, or if the assets of Tenant in the rented premises be taken over or sequestered by a trustee



or any person pursuant to judicial proceedings, or if Tenant makes an assignment for the benefit of creditors, then the occurrence of any such act shall be deemed, at the option of Landlord, to constitute a breach of this Rental Agreement by Tenant. In the event of the death of Tenant, Landlord, at its election, may terminate this Rental Agreement by giving not less than ten (10) days written notice there to Tenant, the administrator or executor of the estate of Tenant or the next of kin of tenant and Landlord may enter the rented premises and take possession of same. Such re-entry by Landlord shall not be construed as a waiver of any of its rights to rental which may be due or become due under the terms of this Rental Agreement.

- 22 <u>Default of Tenant</u> In the event lenant shall default on the payment of any rental or any other charges payable to Landlord hereunder, or any part thereof, or shall fail to comply with any of the rules or regulations promulgated by Landlord as provided for herein or the covenants and agreements herein specified to be fulfilled by Tenant, or if any waste be committed or damage be done upon or to said rented premises, and Tenant fails to make payment of said rent or other charges payable horounder to Landlord when due within ten (10) days after the due date thereof, or to cure any such default, other than payment of rent, within thirty (30) days after the date of written notice from Landlord of any such default, or in the event Tenant vacates the rented premises or abandons payment in Landlord may, at its option and without further notice
- same; then Landlord may, at its option and without further notice

 (a) without terminating this Rental Agreement enter into possession of said rented premises and re-let the rented premises at the best rental reasonably obtainable by Landlord for any term Landlord deems proper, and it is agreed that Tenant shall be and remain liable to Landlord for the difference, if any, in the rental received by Landlord as the result of such re-letting and the amount due hereunder for the balance of the term of this Rental Agreement, plu Landlord's cost to repair or make any minor alteration of the rented premises for the purpose of rental and Landlord's cost and expenses incurred in connection with the advertising and re-rental of the rented premises. The parties further agree that notwithstanding the foregoing, Landlord shall have the right to declare immediately due and payable all rental and other amounts due and coming due under this Rental Agreement for the entire remaining term hereof and in such event Tenant agrees to pay such amount, together with all other amounts previou ly due, immediately, provided, however, that such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of rental due hereunder for the remainder of the term hereof Upon making such payment, Tenant shall receive from Landlord, as received from Landlord, all rents received by Landlord from other tenants through its re-letting of the rented premises during the period which constitutes the remainder of the term hereof, provided that the total amount paid to Tenant over such period of time shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to the preceding sentence, less all costs, evpenses and attorney's fees incurred by Landlord in connection with Tenant's default hereof, the re-entry by Landlord and re-letting of the rented premises
 - (b) terminate this Rental Agreement by written notice to Tenant whereupon Tenant shall at once surrender possession of the rented premises to Landlord and Tenant shall remove all of Tenant's property therefrom, Landlord shall have the right to reenter said rented premises, repossess the same, remove all persons and property therefrom, without process of law No termination of this Rental Agreement prior to the normal expiration hereof shall effect Landlord's right to collect rental for the period prior to the termination hereof, and Landlord shall upon such termination be entitled to recover damages for such default in an amount equal to the amount of the rental reserved in this Rental Agreement for the remainder of the term hereof less the fair rental value of the rented premises for the remainder of the term hereof plus Landlord's coll to reprint or make any minor alteration of the rented premises for the purpose of re-rental and reasonable costs for the adverticing and rental of the rented premises

In-therevent it becomes necessary for Landlord to collect said rent by suit or through an attorney, Tenant agrees to pay to Landlord reasonable attorney's fees, together with all costs directly resulting from said collection. Tenant expressly valves all exemptions secured to Tenant under the laws of the State of Georgia or any state of the United States against collection of any debt herein or hereby incurred.



the term of this Rental Agreement, or after the expiration of the term of this Rental Agreement, or after the expiration of the term of this Rental Agreement, Tenant shall have left any property within the rented premises, Tenant shall be deemed to have abandoned same and Landlord shall have, upon its re-entry into the rented premises as provided for herein, the right to take possession of any and all property found within the rented premises and the risk to dispose of, sell or use any such property so abandoned by Tenant and to retain the proceeds thereof

Each and all of the remedies given Landlord in this Rental Agreement or by law shall be cumulative, and the exercise of one right or remedy by Landlord shall notibe construed as a waiver of its right to exercise any other right or remedy

Utilities Tenant agrees to pay all charges for utilities, including telephone, water and sewer, heating, gas, and electricity consumed or directly resulting from the use of the rented premises as said charges become due and payable, all said utility charges being separately metered to the rented premises Landlord agrees to pay for electricity for operating parling lot lights

Landlord shall in no way be liable for nor shall this Rental Agreement be terminable by reason of interruption in the supply of any utilities

- Subordination and Attornment This Rental Agreement at all times shall be subject and subordinate to any and all present or future mortgages, security deeds or encumbrances which may be placed by the Landlord on said rented premises or any part thereof, provided the holder of such instruments agree in writing that so long as Tenant shall faithfully discharge its obligations under this Rental Agreement, its possessions hereunder shall not be disturb. Subject to the acceptance of the non-disturbance provision in the previous sentence by the holder's of such instrument reference therein, Tenant agrees within fifteen (25) days of written notice from Landlord requesting the same to execute such subordination and attornment agreements as Landlord shall request, subordinating this Rental Agreement to the lien of any mortgage or mortgages, security deeds or encumbrances as shall be required by the Landlord and agreeing to attorn to the holder thereof as Landlord hereunder.

 25 Walver The failure of either party to insist upon strict performance of any of the covenants or conditions of this Rental Agreement or to exercise any
- 25 Waiver The failure of either party to insist upon strict performance of any of the covenants or conditions of this Rental Agreement or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver of relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect
- 26 Evidence of Term and Rent To the extent Tenant can truthfully state that the conditions listed hereinbelow are accurate at the time of centification, Tenant agrees to execute, acknowledge and deliver to Landlord, within frieder (15) days of written notice from Landlord, a statement in writing certifying
 - (a) that this Rental Agreement is in full force and effect,
 - (b) the commencement and termination dates of this Rental Agreement,
- (c) that this Pental Agreement has not been assigned, modified, supplemented or amended, except by such instruments as shall be identified therein,
- (d) that all conditions under this Rental Agreement to be performed by Landlord had been satisfied (except such conditions as shall be stated therein),
- (e) that there are no defenses or offsets against the enforcement of this Rental Agreement by Landlord (or stating those claimed by Linant),
 - (f) the amount of any security deposit held by Landlord, and
- (g) containing dates to which the rental charges of other money obligations of Tenant have been paid

Said statement will be addressed to Landlord, or at Landlord's option, to any proposed mortgagee or holder of security deed or purchaser as may be directed by Lardlord Tenant here irrevocably appoints Landlord as Tenant's Attorney-in-fact for the Tenant for the full power and authority to execute and deliver in the name

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of Tenant the instruments required herein upon Tenant's failure to execute and, deliver such instruments within fifteen (15) days after Landlord's written request thereof

- 27 Property Taxes Landlord shall be responsible for and shall pay all state, county, school district and any other ad valorem property taxes on the buildings and surrounding real estate of which the rented premises are a part as and when the same become due and payable. Tenant agrees that if the annual taxes levied or imposed upon the land and buildings of which the rented premises are a part shall be increased for any year during the term of this Rental Agreement over the amount of the annual taxes, levied or imposed thereon for the calendar year 1980 ("base year") Tenant shall pay to Landlord, as additional rental, an amount combuted by multiplying the excess amount of the taxes for the year in question over the amount of the base year's taxes times a friction, the numerator of which shall be the number of square feet contained in the rented premises and the denominator of which shall be the total number of rentable square feet contained in all of the buildings of the Property
- Operating Costs (a) During the initial flowers (5) pear term of this Lease and each five (5) year extension term hereof. Tenant agrees to pay to Landlord, in monthly installments, in advance, as additional rental due hereunder, as Tenant's share of the "Operating Costs" (as that term is hereinafter defined"), the amount obtained by multiplying twenty-two cents (\$0.22) by the total number of square feet of constructed floor near in the rested premises
- Control of Common Areas by Landlord (a) All Common Areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify, and enforce rules and regulations with respect to all Common Areas - Except as provided below, Landlord shall have the right to construct, maintain and operate lighting facilities in and on all Common Areas, to police the same, from time to time to change the area, level, location and arrangement of parling areas, driveways, sidewalks, sidewalk coverings and other facilities located in the Common reas and to remodel, recorstruct, rearrange and replace any and all of the components of the Common Areas, to restrict parking by tenants, their officers, agents, and employees, to employee parking areas, to close all or any portion of the Common were to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein, to close temporarily all or any portion of the parking areas or parking facilities, to discourage non-customer parling, and to do and perform such other acts in and to the Common Areas as, in the use of good business judgment Landlord shall determine to be desirable for the convenience and use thereof by the tenants of the Property, but nothing herein contained shall be construed to limit the right of Landlord to operate and maintain the Common Areas in such manner, consistent with this Lease, as Landlord in its sole discretion shall determine from time to time Notwithstanding anything contained herein to the contrary, Landlord shall not reduce the ratio of parling spaces in the Common Areas to the total number of square feet of constructed floor area in the buildings located on the Property below its present ratio
- (D) The term "Common Areas" as used herein means those areas of the Property from time to time provided by Inndlord for the common or joint use and benefit of all tenants of the Property, their employees, agents, customers and other invitees, m including, without limitation, all parking areas, access roads, drivelays, loading docks, stairs, sidevalls, signs advertising the Property, and landscaped areas
- Operation of Business Tenant shall continuously and without interruption occupy and operate all of the iented premise during the entire lease leim with due diligence and efficiency, and during the regular customary days and hours of Tenant's other grocely ctore, in Columbus, Georgia, unless prevented from so doing by causes beyond the control of Tenant Tenant shall be deemed in default under this Lease should lenant fail to maintain reasonable inventories, or abandon the rented premises, or should Tenant for any reason not beyond the control of Tenant fail to operate its business in the rented premises for more than ten (10) consecutive days. Tenant reserves the right to be closed on Sunday
- 31 Access by Landlord It is hereby agreed that Landlord its agents, representatives and employees, at all reasonable times, may enter the rented premises for inspection thereof, to make remains as provided under the terms



- hereof, to make repairs necessary to the maintenance and safety of the rented premises and the buildings of which the iented premises are a part and during a three (3) month period prior to the e piration of the term hereof, if Landlord and Tenant have not agreed to extend the term of this Pental Agreement, Landlord ma, exhibit the rented premises to prospective tenants and place upon the premises notices indicating that said rented premises are available for rental
- Notices All payments of rental or other charges or money obligations and notices required under the terms of this Rental Agreement to be paid or to be given to Landlord shall be given to Starmount Shopping Center, Inc., Post Office Boy 6949, Columbus, Georgia 31907, and all notices to be given to Tenant shall be given to Tenant at the address indicated hereinbelow, if any, or at the rented premises, or at such other address as the parties hereto may designate in writing It is agreed that notice shall be deemed given if (a) hand delivered, at the time of delivery, or (b) if mailed, at the time of mailing the same by certified mail, postage pre-paid, return receipt requested
- Miscellaneous The terms and provisions of this Rental Agreement constitute the entire agreement between the parties hereto and shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. This Rental Agreement shall not be amended except by a writing signed by the parties hereto. If any terms or provision of this Rental Agreement shall be invalid or unenforceable, the entiring terms of provisions hereof shall not be affected thereby. Time is of the essence of this Fencil greement.
- Successors and Assigns It is understood and agreed that the tern "Landlord" as used in this Rental Agreement means only the owner for the time being of the land and buildings of which the rental premies are a part so that in the event of any sale or sales of said property, the Landlord named herein shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing thereafter and it shall be deened without further agreement that the purchaser has assumed and agreed to carry out (i) any and all covenants and obligations of Landlord hereunder which accrued prior to the date of such transfer and which have not been performed by Landlord as of the date of such transfer and (ii) any and all covenants and obligations of Landlord hereunder during the period such party has possession of the land and buildings. Tenant shall be bound to any party succeeding as Landlord for all the terms, covenants and conditions hereof and shall e edute any attornment agreement not in conflict herewith at the request of any succeeding party Landlord
- 35 <u>Headings for Convenience Only</u> The headings or titles appearing in this Rental Agreement are for reference only and shall not be construed as a part of this Rental Agreement or in any way modify or amend the provisions nereof
- 36 <u>Special Provisions</u> Special provisions (if any) which are attached hereto as <u>Exhibit "B"</u> are specifically included in this Rental Agreement, and shall prevail over any conflicting provisions hereof
- Relationship of Parties This Rental Agreement shall create the relationship of Landlord and Tenant between the parties hereto, Tenant shall have only a usufruct hereunder which is not subject to levy and alle and no estate in land shall be construed to pass from Landlord to Tenant. Tenant shall have no interest in the land on which the Project is located.
- Release from Liability It is hereby agreed that in the event Landlord or Tenant is delayed or prevented from making repairs, rebuilding or restoring or furnishing any services or performing any other provision of this Rental Agreement, whether expressed herein of implied to be performed due to inability to obtain whatever kind of materials are necessary therefore or due to strike, lock-out, embargo, was, governmental orders or acts of God, or any other cause beyond Landlord or Tenant's control, then same shall not be liable for damages resulting therefrom Performance of such acts and the period of performance of such acts shall be extended for a period equal to the period of such delay. It is understood and agreed that these provisions shall not be construed to apply to the payment of rental or monies due hereunder.
- 41 <u>Holding Over</u> If Tenant remains in possession of the premises after the expiration of the initial term hereof and any extensions or renewals thereof, Tenant shall be deemed to be a tenant from month to month, at 150% of the rental



rate $_{\perp}n$ effect at the end of the term hereof, and there shall be no renewal of this Rental Agreement by operation of law

- 42 Parking Landlord shall provide to Tenant reasonable parking facilities in common with other tenants of Landlord. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of parking facilities. "Parking" as used herein means the use by Tenant's employees, its visitors, invitees, and customers for the parking of automobiles for such period of time as are reasonably necessary in connection with use of and/or visits to the rented premises. Landlord accepts no responsibility for theft or damage to any parked or towed vehicle.
- Licensure Commercial Real Estate Services of Columbus, Inc. is licensed by the Georgia Real Estate Commission and has acted as Agent for Starmount Shopping Center, Inc., Landlord, in this transaction and is to be paid a commission by Starmount Shopping Center, Inc. Commercial Real Estate Services of Columbus, Inc. has not acted as Agent in this transaction for the Tenant Tenant represents and warrants that there are no claims or rights to claims for brokerage commissions, finder's fees or similar compensation due from Landlord or Tenant in connection with this Rental Agreement (except as described in the preceding sentence) which arise or may arise out of any act or agreement of Tenant and Tenant agrees to indemnify Landlord against and hold Landlord harmless from any and all liabilities, claims and demands arising from any such claims, including reasonable attorneys fees
- 44 <u>Governing Law</u> The laws of the State of Georgia shall govern the enforcement of this Rental Agreement
- 45 <u>Late Charges</u> In the event that any installment of rental is not received on or before the tenth (10th) day following the due date thereof, Tenant shall pay to Landlord a late charge of One Hundred (\$100 00) Dollars
- 46 <u>Gender</u> The term "Tenant" and pronouns relating thereto, as used herein, shall include the male, lemale, singular and plural, corporation, partnership or individual a may fit the particular facts

IN WITNESS WHEREOF, the parties have caused this instrument to be executed and their names to be signed, under real, in duplicate, one executed copy being delivered to each party, the day and year first written above

LANDLORD

STARMOUNT SHOPPING CENTER, INC

By Saller Ch Carter Title President

Attest Robert Marten

(CORPORAT'L SIAL)

TENANT

Attest

LEWIS JONES/ TOOD MARKE/TS, INC

By ////// Dresident

Title Secretary

(CORPORATE SEAL)

itness

ADDENDUM TO RENTAL AGRECMENT

THIS AGREEMENT, made and entered into this 12 day of January 1997 by and between STARMOUNT SHOPPING CENTER, INC hereinafter designated 'Landlord," and LEWIS JONES FOOD MARKET, INC hereinafter designated "Tenant,"

WITNESSETH THAT

WHEREAS in November 1, 1995 Tenant entered into an Rental Agreement with Landlord covering premises at 3465 Macon Road, Columbus Muscogee County, Georgia and

WHEREAS the parties hereto are now desirous of amending said Rental Agreement

NOW, THEREFORE, for and in consideration of the mutual several, and reciprocal covenants herein expressed the parties do contract and agree as follows

1

During 1996 renovations 1.211 square feet of retail space was adoubt to the runted, remises. This brings the total square footage of the rented premises to 26.731

2

The fixed minimum rent shall be adjusted to Eighty Thousand One Hundred Ninetv Three and No One Hundredths (\$80 193 00) Dollars per year The monthly installments therefore are adjusted to Six Thousand Six Hundred Eighty Two and Seventy Five One Hundredths (\$6 682 75) Dollars

3

This Addendum shall become a part of the aforementioned idential Agreement, and, except as expressly provided in this Addendum shall be subject to all the terms and conditions of said Rental Agreement dated November 1 1995 as if the amended term were originally a part of said Rental Agreement

LANDLORD STARMOUNT SHOPPING CENTER, INC

Title Precident

Allest 1000

Title Secretary

IENANT

I EWIS JONI S/TOOD MARKET INC

Ву

Title President

Attest

Title Segrey

Witness

FIFE M WHITESIDE, P C

1124 Lockwood Avenue Columbus, Georgia 31906 Phone (706) 320-1215 Fax (706) 320-1217

Admitted Georgia and Mississippi

Mailing Address P O Box 5383 Columbus, GA 31906

September 4, 2003

VIA OVERNIGHT MAIL

Bankruptcy Management Corporation 1330 East Franklın Avenue El Segundo, CA 90245

> Re Fleming Companies, Inc, et al

Chapter 11, Case No 03-10945 (MFW)

(Proof of Claim/Starmount Shopping Center, Inc.)

Gentlemen

Enclosed is a Proof of Claim filed on behalf of Starmount Shopping Center, Inc A second copy of the Proof of Claim, without attachments, is enclosed for you to conform and return to me Please file this claim pursuant to the court's notice and order of July 28, 2003

Thanking you, I am

Very truly yours,

WHITESIDE

FMW/lm Encls

client cc