UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

RECEIVED
AUG 04 2003
BY

548222
Bar Date Ref # 2-NVM-6383

In re
Fleming Companies, Inc

Case Number
03-10945 (MFW)

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C § 503

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if this address differs from the address on the envelope sent to you by the court

If you have already filed a proof of claim with the Bankruptcy Court or BMC you do not need to file again

Name of Creditor and Address

0354653548222

Bruce P Styza Companies
PO Box 966
2727 N Grandview Blvd Ste 100
Waukesha WI 53187 0966

Creditor Telephone Number (414) 276-5800 (Attorney)

CREDITOR TAX I D #

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here if this claim ☐ replaces or ☐ amends a previously filed claim dated _____

1 BASIS FOR CLAIM

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☒ Other (describe briefly)
See attached
☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed from _____ (date) to _____ (date)

2 DATE DEBT WAS INCURRED See attached

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE

$ See attached (unsecured) $ _____ (secured) $ _____ (unsecured priority) $ _____ (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 SECURED CLAIM

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☐ Other _____

Value of collateral $ _____

Amount of arrearage and other charges at time case filed included in secured claim above if any $ _____

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor s business whichever is earlier 11 U S C § 507(a)(3)

☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)

☐ Up to $2 100 of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)

☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)

☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)

☐ Other Specify applicable paragraph of 11 U S C § 507(a) _____

Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 SUPPORTING DOCUMENTS *Attach copies of supporting documents,* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available explain If the documents are voluminous attach a summary

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self addressed stamped envelope and an additional copy of this proof of claim

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4 00 p m , September 15, 2003, Pacific Daylight Time

BY MAIL TO
Bankruptcy Management Corporation
P O BOX 900
El Segundo CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo CA 90245

THIS SPACE FOR COURT USE ONLY

FILED
SEP 12 2003
BMC

Fleming Companies Claim
11706

DATE SIGNED
9/11/03

SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

Debra A Slater, Esq
Weiss Berzowski Brady LLP, Attorney

Penalty for presenting fraudulent claim is a fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 AND 3571

See Other Side For Instructions

In re

Fleming Companies, Inc
Case No 03-10945 (MFW)
Proof of Claim – Bruce P Styza Companies, Creditor

1 Basis for claim At the time of the filing of its petition under chapter 11 of the Bankruptcy Code, the debtor was and still is the creditor's tenant under a Shopping Center Lease dated December 21, 1998 {A true and correct photocopy of the lease is attached to this proof of claim and incorporated herein by this reference } The lease provides for an initial lease term of 20 years The bankruptcy court has granted the debtor extensions by which it is to decide whether to assume or reject the lease The debtor has not yet decided whether to assume or reject the lease If the debtor rejects the lease, this creditor will be injured and will have a claim against the debtor for its rejection of the lease

2 Date debt was incurred Under 11 U S C § 502(g), a claim arising from the rejection of an unexpired lease is determined as if the claim arose before the filing of the petition

3 Total amount of claim Under 11 U S C § 502(b)(6), the creditor is limited to the rent reserved in the lease for the greater of one year, or 15% not to exceed 3 years of the remaining term of the lease This claim is made for this amount

SHOPPING CENTER LEASE

THIS LEASE, entered into this 21 day of December, 1998, which is the date of this Lease, by and between **MEADOWBROOK, LLC** , a Wisconsin limited liability company (hereinafter referred to as "Landlord"), and **FLEMING COMPANIES, INC** , an Oklahoma corporation (hereinafter referred to as "Tenant")

W I T N E S S E T H

1 **DEFINITIONS**

1 1 **Leased Space** That certain retail store building space which includes approximately 49,968 ground floor square feet located on the Real Property (as hereinafter defined) (the "Leased Space") and designated as "Sentry Food Store" on the Shopping Center drawing attached hereto as Exhibit "A" (the "Site Plan"), which Shopping Center is now or is hereafter to be located on the Real Property

1 2 **Real Property** That certain real property located in Waukesha, Wisconsin, more particularly described on Exhibit "B-1" attached hereto

1 3 **Shopping Center** All the Real Property and improvements now or hereafter located on the Real Property known as Meadowbrook Shopping Center

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, and the denominator of which is the leasable area of the buildings located in the Shopping Center (including buildings constructed on outlots), which shall not be less than as shown on the Site Plan regardless of whether the actual leasable area of the Shopping Center is less than shown on the Site Plan Tenant's initial Proportionate Share shall be thirty-nine percent (39%) subject to reduction if the leasable area of the Shopping Center increases and subject to increase if the Leased Space is expanded as provided herein As used herein, "leasable area" is the first floor area of a building measured to the outside plane of the exterior wall The leaseable area of the Shopping Center may increase as outlots are improved and may decrease if outlots are sold by Landlord and do not continue to be maintained by Landlord, however, to the extent that an outlot owner or its permitees continue to use the Common Areas within the Shopping Center for access, ingress, egress or parking, then such outlot shall continue to be counted as part of the leaseable area of the Shopping Center for purposes of determining Tenant's Proportionate Share as defined herein

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 "Pre-Lease" term of this Lease commenced on December 14, 1998, when Tenant obtained possession of the Leased Space in order to commence construction of the Leased Space as provided herein The parties anticipate that the "Pre-Lease" term will continue for approximately ten (10) months thereafter The Initial Term of this Lease shall run and extend for twenty (20) years from and after the Commencement Date as set forth below and shall end on the last day of the month preceding the month in which the Commencement Date occurs twenty (20) years hence (hereinafter the "Termination Date") unless sooner terminated as herein provided (the "Initial Term")

3 1 **Commencement Date** The Initial Term of this Lease shall commence on the earlier of (i) the first day of the first month after the expiration of sixty (60) days after Tenant has commenced fixturing of the Leased Space or (ii) the date on which Tenant makes its first retail sale in the Lease Space or (iii) December 1, 1999, provided, however, that notwithstanding any other term or condition hereof to the contrary, Tenant shall not be obligated to commence its transaction of business on the Leased Space or commence the Initial Term of this Lease (a) until Landlord has reimbursed Tenant for the construction costs incurred by Tenant as provided herein (provided Tenant is not in default of this Lease), and (b) until Landlord has substantially completed all of Landlord's Work, as hereinafter defined, provided the acceleration and deceleration lanes to be constructed by Landlord and at least one access point from each street and roadway adjacent to the Shopping Center have been completed to the extent required by governmental authorities and are open for public use

3 1 1 **Commencement Date Acknowledgment** When the Commencement Date of the Initial Term has been so ascertained, it shall be set forth in a commencement date acknowledgment in the form of Exhibit "C" attached hereto which shall be executed in the same manner as this Lease and shall be attached to this Lease as a part hereof

3 2 **Tenant's Construction of Leased Space and Installation of Fixtures and Equipment** Landlord hereby acknowledges approval of MSI General Corporation Proposal #6659A dated October 26, 1998 for Meadowbrook Shopping Center (the "Construction Documents") Tenant may not begin construction of the Leased Space until (i) all applicable governmental permits have been obtained and (ii) Landlord has been provided with a certificate of insurance for Builder's Risk as provided in the Construction Documents in an amount not less than $2,648,129 00 At any time after fulfillment of the above mentioned conditions, Tenant shall be permitted to enter the Leased Space for the purpose of constructing the Leased Space, storing and/or installing fixtures and equipment, receiving merchandise and preparing for opening its store Tenant's obligation to pay for utility services at the Leased Space shall commence upon the date that the utility meters in the Leased Space shall be first read Landlord and Tenant each hereby agree the neither they nor their employees, agents, contractors or subcontractors shall interfere with or cause damage to each other's Work as provided herein Each party shall indemnify, defend and

hold the other harmless from and against any and all claims arising out of their respective Work or relating to damage done to the other party's Work Tenant shall not permit any mechanic's, laborer's or materialmen's lien to be filed at any time against the Premises or any part thereof or the Shopping Center or any part thereof by reason of work performed by or on behalf of Tenant or any agent or contractor or anyone holding the Premises through or under Tenant If any such lien shall be filed, Tenant, upon notice thereof, shall, within ten (10) days of the date of receipt of notice of such filing, notify Landlord and shall, within thirty (30) after receipt of notice of such filing if occurring during the Pre-Lease Term and within sixty (60) days after receipt of notice of such filing if occurring subsequent to the Pre-Lease Term, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and Tenant shall give Landlord prompt notice of such discharge If Tenant shall fail to cause such lien to be so discharged, then in addition to any other right or remedy which Landlord may have, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of any action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances Any amount so paid by Landlord and all costs and expenses (including reasonable counsel fees) incurred by Landlord in connection therewith, together with interest thereon at the Default Rate, as herein defined, from the date of Landlord's making of the payment or incurring of the cost or expense, shall be promptly paid to Landlord by Tenant upon demand

3 3 **Renewal of Lease** If this Lease is in full force and effect and Tenant is not in default under any of the terms of this Lease, Tenant shall have the option to extend this Lease 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 at least one hundred eighty (180) days 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

4 **RENTAL** Except as otherwise provided herein, Tenant agrees to pay Landlord, as determined herein, as rental for the Leased Space the following

4 1 **Pre-Lease Rent** Prior to the Commencement Date during Tenant's construction of the Leased Space, a monthly rent for the Leased Space of Seven Thousand One Hundred Sixty-Seven Dollars ($7,167 00)

4 2 **Post Construction Minimum Rent** From and after the Commencement Date, an annual Minimum Rent for the Leased Space of Four Hundred Ninety-Four Thousand Three Hundred Seventy-Five Dollars ($494,375 00) per Lease Year payable

at the rate of Forty-One Thousand One Hundred Ninety-Seven Dollars and Ninety-Two Cents ($41,197 92) per month in advance beginning on the Commencement Date without set-off or deduction (other than as specifically provided in Sections 6 3, 6 8, 6 10 6 1, 6 10 6 2, 6 10 10, 9 3, 10 1 2, 13 3 and 20 hereof) and continuing thereafter on the first day of each calendar month during the Initial Term Should Tenant exercise its option to extend this Lease, Tenant agrees to pay Landlord as rental for the Leased Space during the applicable Extended Term, if any, the following

DATE	ANNUAL RENT	MONTHLY RENT
12/1/18-11/31/23	$501,678 00	$41,806 50
12/1/23-11/31/28	$509,174 00	$42,431 17
12/1/28-11/31/33	$516,669 00	$43,055 75
12/1/33-11/31/38	$524,164 00	$43,680 33

4 3 **Percentage Rent** Percentage rent ("Percentage Rent") shall be paid by Tenant in the amount of one percent (1%) of Gross Retail Sales in any Lease Year in excess of the following annual Gross Retail Sales for the applicable periods

LEASE PERIOD	GROSS RETAIL SALES
12/1/98-11/31/18	$49,437,500 00
12/1/18-11/31/23	$50,167,800 00
12/1/23-11/31/28	$50,917,400 00
12/1/28-11/31/33	$51,666,900 00
12/1/33-11/31/38	$52,416,400 00

Tenant makes no representations or warranties with respect to the level of such Gross Retail Sales and expressly disclaims any representation or warranty regarding Gross Retail Sales volume The dates contained in Subparagraphs 4 2 and 4 3 above are illustrative only and will be adjusted to and be based on the actual Commencement Date, when same is determined as provided herein

4 3 1 **Gross Retail Sales** The term "Gross Retail Sales" shall mean the aggregate amount of the sales made by Tenant at, from and through its store and business located and conducted upon the Leased Space to its retail customers The term Gross Retail Sales as used herein shall not include any of the following

(a) credits, coupons or refunds to customers for merchandise returned or exchanged, (b) the cost or value of any trading stamps, (c) any sales taxes or other taxes imposed or based upon gross receipts of Tenant or on the sales or sales price of merchandise which are collected by Tenant and actually paid by Tenant or are payable by Tenant, (d) returns of merchandise, (e) sale of lottery tickets or any proceeds from winning tickets, (f) sale of items for charitable purposes, (g) any services provided by Tenant to its customers, including but not limited to any financial services and/or electronic fund transfer services, the sale of postage stamps and money orders, and any receipts from any banking transactions, (h) sale of Tenant's fixtures after use thereof, (i) cash redemption on bottle or can returns, (j) bulk sales of inventory not in the ordinary course of business, (k) rental, license or concession fees received from any subtenant, licensee or concessionaire of Tenant, (l) any "slotting allowances," promotional allowances or similar incentives received by Tenant, and (m) any receipts from vending machines, game machines and coin telephones No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deductible from gross receipts Any processing expense incurred by Tenant peculiar to credit card, debit card and charge card sales shall be deducted from sales in determining Gross Retail Sales

4 3 2 **Lease Year** The term Lease Year shall mean the period of twelve (12) consecutive months commencing with the Commencement Date, as hereinabove defined, or any succeeding twelve (12) month period during the term of this Lease If mutually agreed by Landlord and Tenant, "Lease Year" may mean a calendar year

4 4 **Payment of Percentage Rent** Tenant agrees to furnish to Landlord, as soon as reasonably possible after the end of each Lease Year (and in no event later than sixty (60) days after the end of each Lease Year), a statement certified by the accounting department of Tenant, showing the amount by months of such Gross Retail Sales of Tenant during the preceding Lease Year If any percentage rent shall be due to Landlord with respect to such Lease Year, Tenant shall pay to Landlord such amount as may be due to Landlord at the time such yearly statement is rendered Tenant agrees that once each year, Landlord, or its duly appointed accountant, at Landlord's expense, may inspect the books and records of Tenant's store business conducted in the Leased Space solely for the purposes of ascertaining and verifying the amount of Tenant's sales, but Landlord's right to inspect Tenant's records for any Lease Year shall expire one (1) year after the end of such Lease Year If such inspection of Tenant's books and records discloses a discrepancy in gross sales in excess of two percent (2%), then the reasonable cost of such audit shall be borne by Tenant Landlord agrees not to disclose any information obtained in such audit to any third parties In the event the Leased Space is operated by a subtenant or assignee of Tenant, Landlord's right to inspect books and records under this subparagraph shall only extend to the books and records of such subtenant or assignee

4 5 **Late Payment of Rent** If any Minimum Rent or Percentage Rent is not paid within ten (10) days after the due date provided herein, Tenant shall also pay to Landlord a late fee in the amount of ten percent (10%) of any such late payment

5 **CONSTRUCTION** Tenant shall be solely responsible for constructing the Leased Space at its own expense in accordance with the Construction Documents and all applicable laws, codes, ordinances, rules and regulations of all applicable authorities ("Tenant's Work") Any costs incurred in so constructing the Leased Space shall be the sole responsibility of Tenant With the approval of the Construction Documents by Landlord as provided herein, the Construction Documents are incorporated herein and are a part of the Lease Within forty-five (45) days after Tenant receives a permanent Certificate of Occupancy for the Leased Space , Landlord shall reimburse Tenant for all construction costs incurred by Tenant in the amount of Three Million Eight Thousand Seven Hundred Thirty Nine Dollars ($3,008,739 00) Provided Tenant is not in default hereunder, Tenant shall have no obligation to commence the payment of Minimum Rent unless and until Landlord has reimbursed Tenant for its construction costs as provided herein, and until such reimbursement is received by Tenant, Tenant shall continue to pay Landlord the "Pre-Lease" Rent Upon the substantial completion of the Leased Space, Tenant shall apply for and, upon issuance, provide Landlord with a certificate of occupancy and a certificate of substantial completion for the Leased Space All lien waivers for the Tenant's Work will be provided to Landlord at the time of Landlord's reimbursement of Tenant's construction costs

5 1 **Construction Schedule** Landlord shall be solely responsible for constructing the Retail Space, parking areas, outlot building pads, acceleration/deceleration lanes and the Expansion Area as hereinafter defined ("Landlord's Work") at its own expense in accordance with the Site Plan and pursuant to the terms of that certain letter dated October 6, 1998, from Landlord to Tenant acknowledging the plans and specifications for the site improvements for the Shopping Center (the "Construction Letter") and all applicable laws, codes, ordinances, rules and regulations of all applicable authorities Any costs incurred in so constructing the Landlord's Work shall be the sole responsibility of Landlord Landlord and Tenant acknowledge that the construction of the Landlord's Work as shown on the Site Plan, excluding the Leased Space, began on October 14, 1998, and Landlord covenants and agrees that so long as Tenant has commenced and diligently proceeds with construction of the Leased Space, Landlord will be in default hereunder unless the Landlord's Work shall be substantially completed (as hereinafter defined) no later than December 1, 1999 (the "Substantial Completion Date") So long as Landlord has commenced and diligently proceeds with the construction of the Landlord's Work, Tenant covenants and agrees that the construction of Tenant's Work as shown on the Site Plan, shall begin not later fifteen (15) days after the date of Tenant's execution of this Lease, and shall be substantially completed no later than the earlier of (i) two hundred twenty-five (225) days thereafter, subject to force majeure or (ii) December 1, 1999 Tenant acknowledges and agrees that substantial completion of the Landlord's Work means that, in addition to the site improvements shown on the Site Plan (but only seeding on outlots as shown on Site Plan) and landscaping, the shell (foundation, floor,

walls, brick exterior, roof, utilities, entry doors and glass) of the Retail Space and the Expansion Area, as hereinafter defined, shall be completed, but not interior improvements thereof

5 2 **Quality of Construction** Landlord's Work and Tenant's Work shall each be constructed with materials of grade and quality and in a good and workmanlike manner by workmen skilled in the appropriate trades, in accordance with all applicable laws, ordinances, rules and regulations During construction of the Landlord's Work, Tenant has the right from time to time to have its representatives inspect the Landlord's Work for the purpose of observing the progress and quality of construction In the event Tenant observes any construction practices or the use of materials which are not as provided herein or any deviation from the Construction Letter, Tenant shall give prompt written notice of same to Landlord and the Landlord shall promptly correct any such problem In the event Landlord observes any construction practices or the use of materials in the Leased Space which are not as provided herein or any deviation from the Construction Letter, Landlord shall give prompt written notice of same to Tenant and the Tenant shall promptly correct any such problem

5 3 **Additional Retail Space** Landlord agrees that it will, with due diligence, cause to be constructed the shell (foundation, floor, walls, brick exterior, roof, utilities, entry doors and glass) of approximately twenty two thousand (22,000) square feet of retail space (the "Retail Space") and approximately nine thousand three hundred twelve (9,312) square feet of Expansion Area, as hereinafter defined, adjacent to the Leased Space, all as shown on the Site Plan attached hereto, Any costs in so constructing the Retail Space shall be the sole responsibility of Landlord All work required to be performed by Landlord hereunder shall be performed in a good workmanlike manner employing new materials of good quality and in accordance with working plans, drawings and specifications agreed upon by the parties hereto Landlord shall perform all work required hereunder in conformity with and pursuant to, all applicable requirements of law and of duly constituted governmental authority Notwithstanding any provision hereof to the contrary, Landlord may make such variations in the construction work to be performed by it as may be deemed necessary or appropriate by Landlord for the construction of the Retail Space and the Expansion Area, provided however, that the size of the Retail Space and Expansion Area may not be decreased and the location of the Retail Space and Expansion Area may not be altered

5 3 1 **Completion of Shopping Center/Retail Space** In the event that Landlord fails to substantially complete construction of the Landlord's Work by the Substantial Completion Date, and provided, Tenant is not in default under this Lease, Landlord hereby grants Tenant the right to (i) institute legal action against Landlord for specific performance to enforce the completion of the Landlord's Work as provided herein and/or (ii) not commence the payment of Minimum Rent, while continuing to pay "Pre-Lease" Rent until such time as Landlord substantially

completes Landlord's Work Time is of the essence with respect to the substantial completion of the Landlord's Work by Landlord, and Landlord is not entitled to the benefit of any delays as a result of force majeure with respect Landlord's obligations concerning the substantial completion of the Landlord's Work, unless the effects of such force majeure have also delayed Tenant's Work Tenant, in addition to the remedies described in this subparagraph, shall have all other remedies provided by law

5 3 2 **Landlord's Option to Complete Leased Space** In the event that Tenant fails to substantially complete construction of the Tenant's Work by the Substantial Completion Date and Landlord is not in default hereunder, Tenant hereby grants Landlord an exclusive option to either (i) institute legal action against Tenant for specific performance to enforce the completion of the Leased Space as provided herein or (ii) take over the construction project for the Leased Space utilizing Tenant's contractor(s) and/or new contractors of Landlord's choice and complete construction according to the Construction Documents, in which case all costs and expenses, including attorneys fees, incurred by Landlord plus interest thereon at the Default Rate, as herein defined, from the dates of disbursement thereof shall be rent due Landlord in a lump sum by Tenant within thirty (30) days of invoice Time is of the essence with respect to the substantial completion of the Leased Space by Tenant, and Tenant is not entitled to the benefit of any delays as a result of force majeure with respect Tenant's obligations concerning the substantial completion of the Leased Space, unless the effects of such force majeure have also delayed Landlord's substantial completion of Landlord's Work The parties acknowledge that they are using the same contractor for the Retail Space, Expansion Area and the Leased Space, however, Landlord is using a different contractor for the site preparation work Landlord, in addition to the remedies described in this subparagraph, shall have all other remedies provided by law

5 4 **Construction of Parking Area** Landlord, at its expense, shall construct and hard surface the parking area shown on the Site Plan attached hereto within the same time limit set for commencement and completion of the Landlord's Work all in accordance with the Construction Letter, and shall keep the same in good repair Landlord shall meter the lighting on Tenant's parking lot directly into the Leased Space

6 **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

6 1 **Zoning** The Real Property is zoned for the type of business operation contemplated by Tenant and such zoning is appropriate for the Shopping Center

6 1 1 **Flooding** Portions of the Real Property are susceptible to flooding and lie within a flood plain, but the Leased Space is not susceptible to flooding and does not lie within a flood plain

6 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 except as listed on Exhibit "I" attached hereto (hereinafter the "Permitted Encumbrances") Prior to or within fifteen (15) days after 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 Three Million Dollars ($3,000,000) and otherwise in form 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 and containing no exclusions or exceptions other than Permitted Encumbrances Landlord shall pay the premium for such title insurance policy If the Commitment is not delivered to Tenant within the aforesaid fifteen (15) day period, Tenant, at its option, may terminate this Lease or give Landlord additional time by written extension within which to deliver the Commitment Furthermore, if such Commitment contains any statements, requirements, exceptions or exclusions other than the Permitted Encumbrances ("Defects") which are unacceptable to Tenant, as solely determined by Tenant, Tenant at its option may (i) terminate this Lease, with no liability to Landlord, by written notice to Landlord within fifteen days of receipt of the Commitment 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 subject to the terms of this Lease 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

6 3 **Use of Real Property** The Real Property may 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 as shown on the Site Plan, provided, however Tenant acknowledges the location and size of the buildings to be located on the outlots and the approximately thirty thousand (30,000) square foot mini-anchor space as shown on the Site Plan (hereinafter the "Anchor Building") may be altered by Landlord No portion of the

Real Property shall be used for a warehouse, or for any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation, mobile home park, trailer court, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance), dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, in each case which are regularly emptied so as to minimize offensive odors),auto service station, medical center or clinic, training or educational facility, funeral home or mortuary, selling, renting or exhibiting pornographic materials, a massage parlor (provided this shall not prohibit massages in connection with any permitted beauty salon or health club or athletic facility), living quarters, sleeping apartments or lodging rooms, tattoo parlor, bowling alley, any facility providing financial services, including, but not limited to any such services typically provided by a full service bank, trust department, savings and loan, mutual, stock, savings or other bank, credit union, finance company, all of which services are provided directly to the public for retail fees (collectively "Bank Restriction"), skating rink, theater, bingo parlor, flea market, billiard parlor, night club or any operation selling alcohol for on-site consumption (unless ancillary to the operation of a restaurant), a video arcade (unless ancillary to the operation of a restaurant), physical fitness center which exceeds two thousand four hundred (2,400) square feet of floor area or other place of recreation or amusement (unless ancillary to the operation of a restaurant), or any other non-retail use which exceeds two thousand four hundred (2,400) square feet of floor area unless designated on the Site Plan attached hereto or approved in advance in writing by Tenant Any permitted non-retail use of two thousand four hundred (2,400) square feet of floor area or less or any physical fitness center shall be located a minimum of two hundred (200) feet from the Leased Space 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 an in-store banking facility subject to Landlord's review and approval, which shall not be unreasonably withheld, conditioned or delayed, of the form of such banking facility license (without any financial information) or any other related in-store department, which does not violate any other exclusive uses granted by Landlord to other tenants in the Shopping Center or any uses prohibited in the Shopping Center by this Subparagraph 6 3 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 which permits the sale or offering for sale of groceries, including, without limitation, food products, dry groceries such as household products and paper goods, and other items typically sold in supermarkets, meats, poultry, seafood, dairy products, fruits, vegetables or baked goods ("Supermarket Restriction") Notwithstanding anything contained herein to the contrary, the restrictions set forth in this Subparagraph 6 3 shall not prohibit the operation of a sit down or take out restaurant, an eye glass/optometrist store, a travel agency, a hair cutting operation, a candy store, a liquor store, a toy store, a drug store with less than twenty-five percent (25%) of the drug store's floor area devoted to the sale of food or food products or a video store within the Shopping Center In

addition, such restrictions shall not prohibit the operation of a store, including a department store, which sells food products as an incidental part of its business within the Shopping Center For the purposes hereof, the term "incidental part of its business" shall be deemed to be having less than twenty-five percent (25%) of a store's floor area devoted to the sale of food or food products, but in no event will the area devoted to such sale of food or food products exceed three thousand (3,000) square feet of area The Supermarket Restriction shall also not prohibit the operation of a convenience mart in the Shopping Center or within five hundred (500) feet thereof, which is operated as a gasoline station offering convenience store items or a convenience store without gasoline products in a building, in either case, with no more than three thousand (3,000) square feet of total floor area devoted to the sale of food or food products (this convenience mart floor area restriction does not apply to portions of a convenience store devoted to sit down/take out restaurant use) In the event of any violation of the terms of this Subparagraph 6 3, Tenant shall have the right to provide Landlord with written notice of same Landlord agrees that it will, within ninety (90) days after receipt of such notice from Tenant, commence and diligently prosecute legal or equitable action to terminate or enjoin any such violation of the terms of this Subparagraph 6 3 If Landlord fails to commence and diligently prosecute such legal or equitable action in the instance of a violation of the Supermarket Restriction or the Banking Restriction, then all rental obligations of Tenant under this Lease shall be abated after such ninety (90) day period for so long as the period of such violation (without the necessity of Tenant first getting a final, nonappealable judgment against Landlord for Landlord's default under this Subparagraph 6 3) , and Tenant shall not be in default for failure to pay any rental allocated to such period If Landlord fails to commence and diligently prosecute such legal or equitable action in the instance of a violation of any other restrictions contained herein, then one half (½) of the Minimum Rent to be paid by Tenant under this Lease shall be abated after such ninety (90) day period for so long as the period of such violation (without the necessity of Tenant first getting a final, nonappealable judgment against Landlord for Landlord's default under this Subparagraph 6 3) , and Tenant shall not be in default for failure to pay such rental allocated to such period Landlord agrees that the Supermarket Restriction and Bank Restriction will be included in all conveyances, leases, subleases, licenses and assignments affecting the Real Property and any property adjacent to the Real Property if the Shopping Center is expanded thereon Concurrently with the execution of this Lease, Landlord will execute and record in the real estate records of Waukesha County, a Declaration of the Supermarket Restriction and Bank Restriction in substantially the form of Exhibit "E-1" attached hereto on the Real Property and on the parcel across County Trunk Highway "TT" from the Real Property on which Landlord intends to develop a convenience store, which is described on Exhibit "B-2" attached hereto, and a Declaration of Restrictions and Easements in substantially the form of Exhibit "E-2" attached hereto on the Real Property The Supermarket Restriction and the Bank Restriction shall remain of record for so long as a retail grocery supermarket with an in-store banking facility is being operated in the Leased Space, however, the Supermarket Restriction and the Bank Restriction shall be of no further force or effect if Tenant, its affiliates, subsidiaries or related entities or any

assignee or sublessee shall at any time after the Commencement Date fail to operate a retail grocery supermarket with an in-store banking facility in the Leased Space In the event of a conflict between the Supermarket Restriction and the Bank Restriction, as recorded, and the terms of this Subparagraph 6 3, the terms of this Subparagraph 6 3 will take precedence and will control as between Landlord and Tenant

6 4 **Site Plan** The Site Plan is an accurate representation of the Shopping Center and the Leased Space and no material changes shall be made to the building envelopes and site improvements shown on the Site Plan, except as otherwise permitted in Subparagraph 5 3, without the prior written consent of Tenant (such consent not to be unreasonably withheld), provided, however, the alignment of the parking spaces which support the Retail Space and the proposed Anchor Building may be modified so long as the parking ratio for parking spaces which support the Retail Space and the Anchor Building may not fall below the ratio shown on the Site Plan No building located in the Shopping Center, other than the Leased Space, shall exceed twenty-four (24) feet in height Tenant acknowledges and agrees that the Anchor Building may be less than thirty thousand (30,000) square feet in area

6 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, with Landlord's consent, which will not be unreasonably withheld, conditioned or delayed, to locate vending machines on the sidewalks adjoining the Leased Space Landlord represents and covenants that upon completion of the Landlord's Work as shown on the Site Plan and 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 vehicular 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 shall not be granted until reciprocal access and parking agreements have been effected in a manner reasonably satisfactory to Tenant Landlord shall not change or reconfigure the parking or access areas on the Store Parcel as shown on the Site Plan without Tenant's prior written consent Landlord shall keep the parking lot lights and other Common Area lights in the Retail Space Parcel on each day from dusk until at least one (1) hour after any tenant other than Tenant closes for business Tenant shall have control of the lighting for the Store Parcel

6 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 used at the Leased Space

6 7 **Compliance With Laws** Tenant represents and warrants to Landlord that the Leased Space, shall, upon completion, comply with all applicable federal, state and local laws, ordinances and regulations, including without limitation, all building codes and The Americans with Disabilities Act Landlord represents and warrants that the Landlord's Work, excluding the Leased Space constructed by Tenant, and all Common Areas and off site improvements shall, upon completion, comply 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 (excluding the Leased Space), that may be required at any time during the term hereof to make the Shopping Center (excluding the Leased Space) comply with all laws, ordinances, rules and regulations of all duly constituted city, county, state or federal authorities, except that Tenant shall be responsible for the cost and expense of any necessary changes, additions and improvements to the foundation structure and roof of the Leased Space Tenant agrees to make any nonstructural changes to the Leased Space required due to Tenant's supermarket operations In addition, Tenant agrees to make, at Tenant's cost and expense, all necessary changes, additions, alterations and improvements to the Leased Space and appurtenances thereto, that may be required at any time during the term hereof to make the Leased Space comply with all laws, ordinances, rules and regulations of all duly constituted city, county, state or federal authorities

6 8 **Taxes** At all times during the term hereof, all ad valorem taxes, real estate taxes and similar taxes, or any other taxes measured by Landlord's rents from the Shopping Center or the operation thereof (so long as the same are imposed in lieu of or in addition to real estate taxes or assessments and are not "income taxes" for which Tenant is not liable as described below), special assessments and any other taxes levied or assessed against the Shopping Center or any part thereof, including without limitation the Leased Space, which, with the supporting parking for the Leased Space, will be a separate tax parcel with its own key number, by reason of the ownership thereof shall be paid and discharged by Landlord before becoming delinquent The Leased Space and supporting parking will, at times, be herein referred to as the "Store Parcel" It is agreed that the Store Parcel will include the area and driveway which accesses Highway 18 to the south of the Leased Space Except as otherwise provided herein, Tenant shall pay to Landlord all such taxes for the Store Parcel that are due and payable during any calendar year containing any portion of a Lease Year as provided herein Tenant shall have the right to pay all taxes for the Store Parcel directly to the taxing authority before delinquency and to deduct from any Percentage Rent payable hereunder any amount of taxes in excess of

the taxes for the Store Parcel levied or assessed for the first full calendar year (1/1-12/31) after the Leased Space has been opened for business with the public 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 Unless paid directly by Tenant, such taxes shall be paid to Landlord no later than ten (10) days before the due date therefor Tenant shall have no obligation to make monthly tax escrow deposits This Subparagraph 6 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 6 8 to the contrary, Tenant shall have no obligation to pay any taxes under this Subparagraph 6 8 the statement for which shall have been received by Tenant more than three hundred sixty-five (365) 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 The parties agree that the Store Parcel may have a separate tax key number If Tenant shall pay the taxes for the Store Parcel directly to the taxing authority, and Tenant is not then occupying any portion of the Expansion Space, Landlord agrees to pay Tenant eight and six-tenths percent (8 6%) of such taxes (which relates to that portion of the Expansion Space not being occupied by Tenant) not later than ten (10) days before the due date therefor provided Landlord has been provided with a copy of the tax bill for the Store Parcel at least thirty (30) days prior to the due date thereof If Landlord shall fail to pay Tenant eight and six-tenths percent (8 6%) of the taxes on the Store Parcel as and when required herein, Tenant shall have the right of offset the amount owed by Landlord against the Minimum Rent (without the necessity of Tenant first getting a final, nonappealable judgment against Landlord for Landlord's default under this Subparagraph 6 8) until such amount plus interest at the Default Rate, as herein defined, from the date of such payment by Tenant is recouped in full by Tenant

6 8 1 **Special Assessments** Notwithstanding the above Paragraph 6 8, Tenant shall not be required to pay any portion of (i) any special assessments that have been levied prior to the Commencement Date, (ii) any special assessments which result solely from Landlord's activity in performing the Landlord's Work or Leased Space, regardless of when such assessments are ultimately assessed, or (iii) 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 Tenant shall have the right to deduct one hundred percent (100%) of any such payment from any Percentage Rent payable hereunder

6 8 2 **Tax Dispute** In the event Tenant disputes in good faith the computation or allocation of any taxes on the Store Parcel, Tenant shall still have the obligation to pay such taxes on or before the due date, unless otherwise permitted by law 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, and in such case the disputed charge need not be paid until finally adjudged to be valid 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

6 9 **Survey** Landlord agrees, at its expense, prior to the execution of this Lease, to furnish Tenant a survey 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 The legal description of the Real Property shall be in detail sufficient to allow for the tracking of the boundary of the Real Property

6 9 1 **As-Built Survey** Within thirty (30) days after the date of completion of the improvements of the Landlord's Work, Landlord shall furnish Tenant an as-built survey showing the exact location of all buildings, malls, if any, driveways, easements, striped parking, rights of way, underground utility lines and storm water drainage systems or flood plains, if any

6 10 **Responsibility for Hazardous Material and Underground Storage Tanks**

6 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 reasonably considered by Tenant to pose an actual or potential threat to health or safety or 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) "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

6 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 The foregoing representations and warranties shall survive the termination of this Lease

6 10 3 1 **Indemnification by Landlord** Landlord hereby agrees to indemnify, defend and hold each 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 which has had or may have a material adverse effect on the business conducted by Tenant in the Leased Space or may result in any liability on the part of Tenant to remediate any Hazardous Materials, so long as the source of such Hazardous Material is not "off-site" and such Hazardous Material has migrated onto the Real Property (Landlord gives no indemnity hereunder for such "off-site" migration), (ii), the presence at any time of any underground storage tank on the Real Property, which has had or may have a material adverse effect on the business conducted by Tenant in the Leased Space or may result in any liability on the part of Tenant to remediate any Hazardous Materials, or (iii) the inaccuracy or breach of any of the representations or warranties set forth in this Paragraph 6 10 which has had or may have a material adverse

effect on the business conducted by Tenant in the Leased Space or may result in any liability on the part of Tenant to remediate any Hazardous Materials The costs covered by Landlord's indemnification include, without limitation, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, costs and expenses incurred by Tenant in exercising any of its rights under this Paragraph 6 10 and any damages suffered as a result of any termination of this Lease in accordance with Subparagraphs 6 10 6 1 or 6 10 6 2 hereof Excluded form the Landlord's indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Real Property by any Indemnified Person

6 10 3 2 **Indemnification by Tenant** Tenant hereby agrees to indemnify, defend and hold Landlord 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 the presence, suspected presence or release at any time of any Hazardous Material in, on or from the Real Property arising out of or resulting from Tenant's or Tenant's sublessees and/or licensees operation of their respective businesses in the Leased Space The costs covered by Tenant's 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 In any such event, Tenant shall have the duties of remediation described herein with respect to such Hazardous Materials deposited or released by Tenant in or on the Real Property Excluded from Tenant's indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Real Property by Landlord or any third party

6 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

6 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, not caused by the activities of 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 thirty (30) 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 thirty (30) 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 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

6 10 6 1 **Termination** If (i) any plan required by the preceding subparagraph is not delivered to Tenant within the time prescribed or (ii) if in Tenant's reasonable opinion such violation and/or action materially impairs Tenant's ability to conduct business upon the Leased Space or may result in any liability on the part of Tenant to remediate any Hazardous Materials and Tenant ceases to operate from the Leased Space as a direct result thereof, all rent and charges payable by Tenant hereunder shall abate (without the necessity of Tenant first getting a final, nonappealable judgment against Landlord for Landlord's default under this Subparagraph 6 10 6 1) during such period as Tenant's ability to so operate is materially impaired and if such condition continues for in excess of nine (9) months, Tenant shall have the right to terminate all of its rights and obligations hereunder by giving written notice to Landlord at any time after the expiration of such nine (9) month period and so long as such condition continues Tenant's right to terminate this Lease as provided in this Subparagraph 6 10 6 1 is a separate right, and Tenant need not comply with the notice requirements of Subparagraph 11 2

6 10 6 2 **Termination during Pre-Lease Term** If during the "Pre-Lease" Term hereof (i) any plan required by the Subparagraph 6 10 5 is not delivered to Tenant within the time prescribed or (ii) if in Tenant's reasonable opinion such violation and/or action materially impairs Tenant's ability to conduct business upon the Leased Space or may result in any liability on the part of Tenant to remediate any Hazardous Materials and Tenant ceases construction of the Leased Space as a direct result thereof, all rent and charges payable by Tenant hereunder shall abate (without the necessity of Tenant first getting a final, nonappealable judgment against Landlord for Landlord's default under this Subparagraph 6 10 6 2) during

such period and if such condition continues for in excess of thirty (30) days, Tenant shall have the right to terminate all of its rights and obligations hereunder by giving written notice to Landlord at any time after the expiration of such thirty (30) day period Tenant's right to terminate this Lease as provided in this Subparagraph 6 10 6 2 is a separate right, and Tenant need not comply with the notice requirements of Subparagraph 11 2 Landlord shall reimburse Tenant for all construction costs in connection with the Leased Space incurred by Tenant up to the time Tenant ceases such construction

6 10 7 **Implementation of Plan** If Landlord delivers the plan required hereunder within the specified time and Tenant does not terminate this Lease as provided herein, then, within ten (10) days of Tenant's notice to Landlord that the plan is acceptable (or Tenant's failure to terminate this Lease prior to the expiration of the time for Tenant to do so), Landlord will commence action necessary to implement the plan and diligently pursue such action to completion Any work required hereunder will be at no cost to Tenant and will be performed strictly in accordance with the plan and in accordance with all applicable laws, ordinances and regulations governing such work

6 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 reasonably necessary and Landlord shall promptly reimburse Tenant for all costs incurred in such action

6 10 9 **Tenant Environmental Representations.** Except for Excluded Materials (hereinafter defined), Tenant shall not, without the prior written consent of Landlord, cause or permit knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at the Leased Space or the Shopping Center "Excluded Materials" shall mean Hazardous Materials (1) whose storage, disposal or presence on, in or under the Leased Space or any part of the Shopping Center does not constitute a violation of applicable laws or regulations, (2) which may be present in (i) paints, glues, fuels, photocopy equipment, supplies, photographic chemicals and supplies, building materials, maintenance supplies, cleaning agents and solvents, (ii) inventory held for sale at retail, (iii) oil, gasoline or other fluid deposits released from passenger cars or maintenance vehicles parked at the Shopping Center, or (iv) fertilizer, herbicides, insecticides, and pesticides applied by Tenant within the Leased Space, (3) in quantities commonly stored, found or maintained for similar uses by tenants in retail shopping centers, and (4) which are not used for manufacturing purposes Should Landlord consent in writing to

Tenant bringing, using, storing or treating any Hazardous Material(s) in or upon the Leased Space or the Shopping Center or if Tenant is allowed to bring, use, store or treat Hazardous Materials in or upon the Leased Space pursuant to this Section, Tenant shall strictly obey and adhere to any and all federal, state or local laws, ordinances, orders, rules, regulations, codes or any other governmental restrictions or requirements (including but not limited to those federal and state statutes referred to in this section) which in any way regulate, govern or impact Tenant's possession , use, storage, treatment or disposal of said Hazardous Material(s)

6 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 6 10 3 as provided in Subparagraph 13 3

6 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

6 10 12 **Environmental Studies and Reports** Landlord represents to Tenant that to Landlord's knowledge 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

7 **MAINTENANCE RESPONSIBILITY** Landlord and Tenant shall have the following responsibilities for maintenance of the Shopping Center and Leased Space, provided that any obligation or liability not specifically covered by the terms of this Lease shall be considered an obligation of Landlord

7 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 be responsible for, keep in repair and shall replace as necessary all of the exterior of any improvements in the Shopping Center so long as same are owned by Landlord (other than the Leased Space, which is Tenant's responsibility as hereinafter provided)

Tenant, at its own discretion, shall either be responsible to pay its Proportionate Share of actual costs or to provide for all maintenance of, and repairs and replacements to, Tenant's portion of the Common Areas as designated the Store Parcel on the attached Site Plan (the "Tenant's 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 Tenant's 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 Tenant's Common Areas clean, lighted and in good repair, and keeping all sidewalks and Tenant's Common Areas clean and free of all debris, ice and snow Tenant shall also either be responsible for its Proportionate Share of actual Common Area costs or to provide, within the Tenant's Common Areas, the following Common Area maintenance service ("Common Area Maintenance Costs") costs of cleaning, lighting, repairing and maintaining (but not replacing) all common area improvements, (except to the extent proceeds of insurance or condemnation awards or other reimbursements are available therefor), maintenance and repair of the Shopping Center signage, snow removal, removal of litter, parking lot striping, seal coating with a quality - non tracking sealant, pot hole filling, cut out and filling of parking areas, landscaping, 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) charges for any item that was or should have been originally constructed under the Construction Documents or repair of any latent defects, (iv) depreciation, (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, e g , resurfacing of the parking areas Tenant may elect to self maintain the Tenant's Common Area only once by providing Landlord with a minimum of one hundred twenty (120) days prior written notice thereof and if such election is made by Tenant, Tenant may not thereafter elect to return the maintenance of the Tenant's Common Area to Landlord Should Tenant decide not to self-perform Common Area Maintenance, 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 and agreed to by Tenant for the first twelve months of the term hereof and annually thereafter as provided in Subparagraph 7 1 1 below Notwithstanding anything contained in this Subparagraph 7 1 to the contrary, Tenant shall have no obligation to make any such payment pursuant to this Subparagraph 7 1 the statement for which shall have been received by Tenant more than three hundred sixty-five (365) days after the end of the Lease Year 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

7 1 1 **Annual Common Area Maintenance Budget** During the first twelve (12) months of the term hereof, Tenant's proportionate share of Common Area Maintenance Costs shall be billed to Tenant and paid monthly

After the first twelve (12) months and on each subsequent anniversary date thereafter during the term hereof, Landlord and Tenant shall review the actual Common Area Maintenance Costs for such period and agree upon a budget for the upcoming twelve (12) month period as provided herein Within sixty (60) days after the end of each twelve (12) month period, Landlord shall furnish Tenant with a statement of actual Common Area Maintenance Costs on which the new budget will be based and within thirty (30) days after Tenant's receipt of the statement of actual Common Area Maintenance Costs, Landlord and Tenant shall meet, review the previous year's actual Common Area Maintenance Costs and agree upon a new budget for the new year which may include not only recurring costs, but also non-recurring costs approved by both parties Tenant shall pay its proportionate share of the agreed upon budgeted amount of such Common Area Maintenance Costs monthly Within sixty (60) days after the end of each twelve (12) month period, Landlord shall furnish Tenant with a statement of actual Common Area Maintenance Costs and within thirty (30) days after Tenant's receipt of the statement of actual Common Area Maintenance Costs, Landlord shall remit any overcharges to Tenant or credit same against the next monthly payment, and if applicable, Tenant shall remit any undercharges to Landlord It is agreed that Tenant may question and/or dispute any Common Area Maintenance Costs or the reasonableness of same without thereby becoming in default hereunder In the event Tenant shall dispute any Common Area Maintenance Costs or the reasonableness thereof, Tenant shall pay such Common Area Maintenance Costs without waiving Tenant's right to dispute same, and the parties shall promptly attempt to resolve such dispute, and failing same, shall submit the dispute to arbitration under the then current rules of the American Arbitration Association, with the non-prevailing party paying the cost of such arbitration

7 2 **Maintenance by Tenant** Tenant, at its cost, shall maintain, repair and replace the the Leased Space in good condition, except for reasonable wear and tear, damage by fire and the elements and 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 Tenant shall also be responsible for removal of ice and snow from sidewalks adjoining the Leased Space and the maintenance and repair of the drive through facilities adjoining the Leased Space at Tenant's sole cost and expense

7 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 consent, which consent shall not be unreasonably withheld, conditioned or delayed

7 4 **Tenant's Expansion** Tenant shall have the right, upon two hundred seventy (270) days prior written notice to Landlord, to expand the Leased Space into the approximately nine thousand three hundred twelve (9,312) square foot expansion area set forth on the Site Plan (the "Expansion Area") commencing on the first day of the eleventh (11^{th}) year of this Lease and every five (5) years thereafter, in Tenant's sole discretion and without Landlord's consent and at Tenant's sole cost and expense as to the demolition of any demising wall and the installation of leasehold improvements, equipment, trade fixtures and the like, 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

Landlord agrees to construct the Expansion Area as depicted on the Site Plan, according to plans and specifications approved by Tenant At the time or at any time prior to the date Tenant elects to expand the Leased Space, Landlord shall have the right to rent same to third parties Beginning the earlier of (i) 60 days after Tenant takes occupancy of the Expansion Space or (ii) three hundred thirty (330) days after Tenant has given Landlord written notice of its election to expand into the Expansion Space as provided above, Tenant shall commence the payment to Landlord of additional rent for such Expansion Area in an amount equal to the then current Minimum Rent being paid by Tenant, on a square foot basis, for the Leased Space

Landlord and Tenant agree that the roof for the Leased Space and the Expansion Area will be constructed as a single roofing unit, but, notwithstanding anything herein to the contrary, the responsibilities of Landlord for the Expansion Area roof and the responsibilities of Tenant for the Leased Space roof will be coordinated in the event any repair or maintenance is required of both sections of roofing The dividing line between the Expansion Area roof and the Leased Space roof will be evidenced by a seam on the roof Landlord will be responsible for the repair and maintenance of the areas of roof over the Expansion Area during such time as Tenant is not occupying any portion of the Expansion Area In the event the roof over the Expansion Area requires repair or replacement at any time after Tenant occupies any portion of the Expansion Area, Tenant shall undertake the maintenance and repair obligations for the Expansion Area roof, at Tenant's sole cost and expense

7 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 complete said repair(s) within thirty (30) days from the date of said notice If such repair(s) cannot be reasonably completed within said thirty (30) day period, Landlord shall promptly commence said repair(s) 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) or the non-removal of a snow fall from the Store Parcel and access points to the public streets, which would materially impede public access to the Leased Space from the public streets for such a period as to adversely affect Tenant's business, Tenant may immediately make such emergency repairs or remove such snow 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 thirty (30) 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 thirty (30) 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 or removal of snow in an instance described in this Subparagraph 7 5, Tenant shall send to Landlord statements setting forth the cost of such repairs or removal 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 be reimbursed by Landlord for the amount of such statement plus interest at the Default Rate, as herein defined, until reimbursed in full

8 **ADVERTISING SIGNS** Immediately after execution of this Lease, subject to any applicable governmental approvals, Landlord shall erect a sign on the Real Property announcing the future opening of Tenant's store Such sign shall be placed in a conspicuous place on the Real Property acceptable to Tenant and shall be constructed pursuant to Tenant's specifications and satisfaction 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 The size, type and location of Tenant's signs, including panels on Shopping Center monument/pylon signs is attached hereto as Exhibit "J" and incorporated herein by reference All such signs will be in compliance with all applicable governmental rules and regulations

8 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 No "For Sale" or "For Lease" signs relating to the Leased Space shall be placed upon the Leased Space or the Shopping Center during the term of this Lease

8 2 **Shopping Center Sign** Landlord agrees to furnish within the Shopping Center one or more signs advertising the entire Shopping Center in compliance with all governmental rules and regulations, and said signs shall be kept in good order and repair and lighted during the evening hours of Tenant's operation, at the sole cost and expense of Landlord, during the Initial Term and each Extended Term of this Lease 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 at least one hundred fifty percent (150%) bigger in size, type and prominence than that of any other tenant all as shown on Exhibit "K" attached hereto

8 3 **Special Sales Promotions** Notwithstanding any provisions in this Lease to the contrary, Tenant may, for a period of not more than forty-five (45) days after opening the Leased Space for business with the public, place special grand opening/sales promotion signs on the parking area light poles and may string pennants and streamers around the parking area All such promotions will be taken down upon expiration of the above mentioned period of time

9 **EMINENT DOMAIN, RESTRICTION OF ACCESS, CASUALTY LOSS**

Landlord and Tenant agree as follows

9 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 twenty percent (20%) 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 It is understood and agreed that any and all condemnation awards or payments shall be paid to Landlord except that, in any event, Tenant shall be entitled to any separate 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

9 2 **Eminent Domain Affecting Shopping Center and Parking Area** In the event (i) twenty percent (20%) or more of the Retail Space is taken by eminent domain and the taking would materially interfere with the Tenant's business in the Leased Space in Tenant's reasonable judgment, (ii) twenty percent (20%) or more of the parking area within the Shopping Center is taken by eminent domain, (iii) a portion of the parking lot is taken such that the parking ratio for the parcel containing the Leased Space and the

supporting parking therefor (the Store Parcel as shown on the Site Plan) falls below five (5) spaces per one thousand (1,000) square feet of first floor area of the Leased Space, remaining after any such taking and Landlord is not able to replace such parking spaces within sixty (60) days of such taking in a location reasonably acceptable to Tenant, or (iv) twenty percent (20%) or more of any other common area of the Shopping Center should be taken by the power of eminent domain or transfer in lieu thereof and the taking would materially interfere with the Tenant's business in the Leased Space in Tenant's reasonable judgment, 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 ninety (90) days after such notice

9 3 **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, Landlord shall, at its sole cost and expense, promptly, and in any event within thirty (30) days after such occurrence, commence to rebuild or replace the same in as good condition as prior to such casualty, which rebuilding or replacement shall be completed within three hundred (300) days 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 and due to such casualty the Leased Space is rendered untenable and unfit for occupancy and Landlord is not able to repair same within three hundred (300) days following such casualty, 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, or (ii) terminate this Lease, effective on the date of such casualty Monthly Minimum Rents shall automatically 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 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

9 4 **Destruction of Retail Space** In the event less than twenty-five percent of the Retail Space should be destroyed partially or substantially as a result of fire or other casualty, Landlord shall begin restoration within sixty (60) days after the date of such destruction and have the same fully repaired or rebuilt to the condition existing before such damage within three hundred (300) days from the date of such destruction, and failing same, Landlord shall be in default hereunder In the event twenty-five percent or more percent of the Retail Space should be destroyed partially or substantially as a result of fire or other casualty Landlord shall within thirty (30) days of such casualty notify Tenant if Landlord shall elect to rebuild such Retail Space If (i) Landlord shall not notify Tenant that Landlord does not elect to rebuild the Retail Space (in the case of twenty-five percent or more percent of the Retail Space destroyed) or (ii) if, having undertaken restoration (regardless of the percentage of Retail Space destroyed), Landlord shall fail to fully repair

and rebuild the Retail Space to the condition existing before such damage within three hundred (300) days from the date of such destruction, Tenant may terminate this Lease by providing ninety (90) days prior written notice thereof to Landlord

9 5 **Destruction During Last Two Years of the Lease Term** Anything herein contained to the contrary notwithstanding, if such damage, loss or destruction as described in Subparagraphs 9 3 or 9 4 shall take place within the last twenty-four (24) months of the Initial Term or any Extended Term of this Lease, 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 If Tenant shall elect to have this Lease continue during the Initial Term or any Extended Term (other than the last one), then, at the time Tenant elects to have this Lease continue, Tenant shall also exercise an option to renew this Lease for a five (5) year Extended Term

10 FIRE AND CASUALTY INSURANCE.

10 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 Wisconsin Landlord shall provide Tenant with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Tenant 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 sixty (60) 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 10 1 to the contrary, Tenant shall have no obligation to pay any insurance premiums under this Subparagraph 10 1, the statement for which shall have been received by Tenant more than three hundred sixty-five (365) days after the insurance premiums shown on such statement have become due Landlord shall provide Tenant with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Tenant At Tenant's request, which must be given not less than one hundred twenty (120) days prior to the expiration date of any insurance policy required hereunder and procured by Landlord, Landlord shall, at least sixty (60) days prior to the expiration date, provide Tenant with a quote for the premium of any such insurance for the upcoming policy period Tenant may, at Tenant's option, provide Landlord with a premium quotation for said required insurance If said premium quotation shall (i) be issued by an insurance company with a Best rating equal to or better than Landlord's insurer with the same or better coverages (in Landlord's reasonable opinion) and (ii) have a lower premium cost than that of Landlord's insurance for the new

policy period, and Tenant shall provide Landlord with reasonable data supporting the availability of such an insurance policy (hereinafter "Tenant's Insurance"), then upon the receipt of this data, Landlord shall have the option, exercisable in its sole discretion, to obtain the insurance policy for which it received the premium quotation supplied to Tenant or purchase the Tenant's Insurance Any Tenant's Insurance may be furnished by Tenant under an insurance policy meeting the requirements hereof or any blanket policy carried by it provided that the policy or certificate acknowledges that funds in the amount of the replacement value of the Shopping Center have in fact been allocated to the replacement of the Shopping Center notwithstanding any other loss covered by such policy In the event Landlord chooses not to purchase Tenant's Insurance and the insurance procured by Landlord is more expensive than the Tenant's Insurance, Landlord agrees to deduct an amount equal to the difference (prorated based on Tenant's Proportionate Share) between the premium paid or charged to Landlord for the insurance policy(s) procured by Landlord and that premium which would have been paid by the Tenant for the Tenant's Insurance, from the amount due from Tenant for payment of Landlord's insurance

10 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

10 1 2 **Failure of Landlord to Insure** If Landlord shall fail, refuse or neglect to obtain the insurance required in Section 10 1 above or to maintain the same, and furnish Tenant with proof of the same upon demand, Tenant shall have the right upon five (5) days' prior written notice to Landlord to procure such insurance and the amount thereof shall be payable to Tenant on demand together with interest at the Default Rate, as herein defined If Landlord fails to pay Tenant for same, Tenant may offset such amount against the rent due hereunder, as provided herein

10 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 and Landlord, as applicable

10 1 4 **Other Tenants' Uses** Landlord agrees it shall not, and shall not allow any other tenant(s) in the Shopping Center, and Tenant agrees that it shall not 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

10 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 Wisconsin Tenant shall provide Landlord with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Landlord If Tenant shall fail, refuse or neglect to obtain such insurance or to maintain the same, and furnish Landlord with proof of the same upon demand, Landlord shall have the right to procure such insurance and to add the cost thereof to any rental or other sums payable under this Lease, and the amount thereof shall be payable to Landlord on demand together with interest at the Default Rate, as herein defined,

10 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

11 ASSIGNMENT, SUBLETTING AND DISCONTINUANCE OF OPERATIONS

11 1 **Assignment and Subletting** Except as otherwise provided herein, 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 (i) the Leased Space is used as a retail grocery store and (ii) Tenant shall remain primarily liable hereunder unless specifically released by Landlord In the event of any assignment or subletting by Tenant, Landlord shall not change, modify or amend this Lease without the prior written consent of Tenant not to be unreasonably delayed, denied or withheld In the event of any assignment or sublease, the computation of Percentage Rent shall be based upon the Gross Retail Sales of such assignee or sublessee If Tenant proposes to assign this Lease or to sublease the Leased Space or any part thereof to an assignee or sublessee which would not operate a retail grocery store in the Leased Space (with or without in-store banking), Tenant shall provide Landlord with not less than forty-five (45) days prior written notice of such proposal, which will include the effective date of the proposed assignment or sublease Landlord shall have the right, within ninety (90) days after receipt of Tenant's notice, to terminate this Lease upon written notice of such termination to Tenant The Lease shall terminate sixty (60) days after Landlord notifies Tenant of such termination and Tenant shall have sixty (60) days after receipt of such termination notice from Landlord within which to vacate the Leased Space, leaving same in the condition required hereunder at the

expiration of this Lease during which time Tenant shall continue to pay Minimum Rent and Percentage Rent and fulfill all other obligations of Tenant hereunder If Landlord does not terminate this Lease as and when provided herein, Tenant may assign or sublease the Leased Space or any part thereof to the proposed assignee or sublessee which would not operate a retail grocery store therein (with or without in-store banking) provided such assignee or sublessee shall not use the Leased Space (i) for any non-retail use or (ii) in any manner which would violate any exclusive rights granted to any other tenants or occupants of the Shopping Center and provided further that such sublease or assignment shall be for the entire Leased Space Any assignment shall not release Tenant from its obligations under this Lease and Tenant shall remain primarily liable for the payment of rental and all other amounts due under this Lease and for the performance of all of the provisions, covenants and conditions set forth in this Lease on Tenant's part to be performed

11 2 **Discontinuance of Operations** Tenant shall be obligated to fully fixture and stock and open the Leased Space for business to the general public as a Sentry Food Store for at least one (1) day on or prior to December 1, 1999 Thereafter, Tenant shall have the continuing right to discontinue its operations in the Leased Space without the consent of Landlord subject to the terms hereinafter set forth In the event the operations in the Leased Space are discontinued, no imputed Percentage Rent will thereafter be due Landlord shall have the right, at its option, to terminate this Lease in the event that Tenant notifies Landlord in writing of its intent to cease using the Leased Space or to permanently vacate or abandon the Leased Space (hereinafter the "Tenant Notice") It is agreed that any such Tenant Notice must be given not less than sixty (60) days prior to any such discontinuance of operations, vacation or abandonment The Tenant Notice will specify the earliest possible date on which such discontinuance of operations, vacation or abandonment would occur (hereinafter the "Effective Date") The Effective Date shall not be less than sixty (60) days from the date of the Tenant Notice In the event Landlord elects to terminate this Lease, Landlord must give written notice of its election to terminate this Lease (hereinafter the "Landlord Notice") (A) within one hundred eighty (180) after receipt of the Tenant Notice or, (B) within one hundred eighty (180) days of such discontinuance of operations, vacation or abandonment, whichever occurs first The Landlord Notice shall provide for a termination date (hereinafter the "Termination Date") not less than one hundred eighty (180) days after the date of delivery of such Landlord Notice, provided, however, that if such Landlord Notice is delivered prior to the Effective Date, the Termination Date shall not be earlier than the Effective Date (but in any event, Tenant shall have not less than sixty (60) days within which to vacate the Leased Space after receipt of Landlord's Notice) If the Landlord Notice is given as provided herein, then this Lease shall terminate on said Termination Date, but if no Landlord Notice is given by Landlord as and when provided herein, this Lease shall continue in full force and effect for the remaining term hereof Tenant's failure to provide a Tenant Notice prior to the Tenant's discontinuance of operations shall be deemed a Tenant default hereunder

12 **INDEMNITY AND PUBLIC LIABILITY INSURANCE** Subject to the waiver of subrogation provisions of Paragraph 10, Landlord and Tenant shall provide the following indemnification

12 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 7 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

12 2 **Tenant's Indemnity** Tenant agrees to 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 and its sublessees, and their respective 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

13 **DEFAULT**

13 1 **Tenant's Default** If Tenant shall fail to pay any Minimum Rent, Common Area Maintenance Costs, Percentage Rent or any other sums payable hereunder with ten (10) days after the same shall be due or if Tenant shall fail to perform any of the other terms, conditions or covenants of this Lease to be performed or observed by Tenant for more than thirty (30) days after notice of such default has been given to Tenant, or if Tenant shall be adjudged bankrupt or insolvent or shall make an assignment for the benefit of creditors, or if a receiver or trustee of Tenant's property shall be appointed and such receiver or trustee, as the case may be, shall not be discharged within ninety (90) days after such appointment or if an execution or attachment is levied against Tenant's property, or if this Lease shall be operation of law devolve upon or pass to any person or persons other than the Tenant (except by merger, consolidation or reorganization or as otherwise permitted in this Lease), then in any such case, Landlord may, in addition to all other rights available to Landlord under the laws of Wisconsin, terminate this Lease Landlord may, upon notice to Tenant, terminate this Lease and recover possession of and re-enter the Leased Space either peaceably, by force, or otherwise, and may expel all persons and

remove all property therefrom without becoming liable to prosecution therefor In the event of any such default and the termination of this Lease, Landlord shall be entitled to recover from Tenant all past due rent and other charges equivalent to rent plus all other damages sustained by Landlord on account of the breach of this Lease, including, but not limited to, the expenses incurred by Landlord in re-entering and recovering possession of the Leased Space and for the cost of repairs, alterations and brokerage fees connected with the reletting of the Leased Space In the event of a default by Tenant, Landlord shall have the affirmative obligation to use reasonable efforts to mitigate its damages The rights and remedies of Landlord under this Lease shall be cumulative and the exercise of any of them shall not be exclusive of any other right or remedy provided by this Lease or allowed by Law, and the waiver by Landlord of any breach of any covenant of this Lease shall be limited to the particular instance and shall not operate or be deemed to waive any future breach of the same or any other covenant on the same or any other occasion, nor operate as a waiver of Landlord's right to enforce the payment of subsequent installments of rental or any of Landlord's rights under this Lease by such remedies as may be appropriate Landlord shall have the right at anytime, after twenty (20) days notice to Tenant (or without notice in case of emergency or in case any fine, penalty, interest or cost may otherwise be imposed or incurred) to make any payment or perform any act required of Tenant under any provision in this Lease, and in exercising such right to incur necessary and incidental costs and expenses, including reasonable counsel fees Nothing herein shall imply any obligation on the part of Landlord to make any payment or perform any act required of the Tenant, and this exercise of the right to so do shall not constitute a release of any obligation or a waiver of any default All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed to Landlord by Tenant within ten (10) days after such payment together with interest at the Default Rate, as herein defined, from the respective dates of the making of such payments or the incurring of such costs and expenses until paid In the event of non-payment thereof, Landlord shall have the rights and remedies it would have hereunder or by law in the case of non-payment of rent Landlord may, in additional to all other rights available to Landlord under the laws of the State of Wisconsin, terminate Tenant's right of possession and may repossess the Leased Space without demand or notice of any kind to Tenant and without terminating this Lease, in which event Landlord may relet the same for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord For the purpose of such reletting Landlord is authorized to make repairs, changes, alterations or additions to the Leased Space to make same relettable, and (i) if Landlord shall be unable to relet the Leased Space, or (ii) if the same are relet and sufficient sum shall not be realized from such reletting (after paying (A) the unpaid rentals due hereunder earned but unpaid at the time of reletting plus interest thereon at the Default Rate, as herein defined,, (B) the costs of recovering possession, (C) all of the reasonable costs and expenses of reletting, including decorations, repairs, changes, alterations and additions by Landlord, and (D) the expense of the collection of the rent accruing therefrom) to satisfy the rent and all other charges provided for in this Lease to be paid by Tenant, then Tenant shall pay to Landlord as damages a sum equal to the amount of the

rent and other expenses payable by Tenant for such period or periods, or if the Leased Space have been relet, Tenant shall satisfy and pay any such deficiency upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover all sums falling due under the terms of this Article without Landlord being obligated to wait until expiration of the Term Such reletting shall not be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention be given to Tenant by Landlord Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time thereafter

13 2 **Bona Fide Dispute Re. Percentage Rent** Tenant's failure to pay Percentage Rent shall not be a default hereunder if such failure is the result of a bona fide dispute as to the amount due and payable and Tenant has paid the undisputed amount as provided herein It is agreed that if Landlord shall dispute Tenant's calculation of the Percentage Rent the parties shall promptly attempt to resolve such dispute, and failing same, shall submit the dispute to arbitration under the then current rules of the American Arbitration Association, with the non-prevailing party paying the cost of such arbitration In the event that the arbitrator shall award any sums to Landlord, Tenant shall pay such amount together with interest thereon at the Default Rate, as herein defined, from the date such Percentage Rent should have been paid under the terms of the Lease and Landlord's attorneys fees and costs Tenant's failure to pay such sum within thirty (30) days from the entry of the arbitration award shall constitute a default under this Lease In the event that the arbitrator shall agree with Tenant's calculation of the Percentage Rent, Landlord shall pay Tenant's attorneys fees and costs

13 3 **Landlord's Default** Should Landlord default in fulfillment of any of its obligations under this Lease and fail to correct such default within sixty (60) days from receipt of written notice from Tenant of such default or begin to remedy such default if it is of a nature which would reasonably require more than sixty (60) days to cure (except for failure to make emergency repairs as set forth in Subparagraph 7 5 hereof which shall not require sixty (60) days written notice), Tenant, at its option, may (i) correct such default and deduct any and all cost as a result of such correction, together with interest at the Default Rate, as herein defined, from rentals due or becoming due until Tenant shall be reimbursed in full for the 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 with interest thereon from the date of such set-off together with attorneys fees and costs incurred by Landlord within thirty (30) days after the entry of a final and unappealable judgment with respect thereto in favor of Landlord Landlord and Tenant acknowledge and agree that before Tenant shall have the right to offset any amounts due Tenant from Landlord as provided in Subparagraphs 6 10 10 and 10 1 2

incurred by the reviewing party in connection therewith in any amount not to exceed Five Hundred Dollars ($500 00) Tenant agrees to execute a Subordination and Non-Disturbance Agreement and Estoppel Certificate at the time Landlord obtains its first "take-out" permanent financing without such charge Landlord agrees that if Landlord requests a Subordination and Non-Disturbance Agreement and Estoppel Certificate or any other documents from Tenant within a period shorter than thirty (30) days more than once within any twelve (12) month period during the term of this Lease, there will be no Five Hundred Dollar cap on the reasonable counsel fees and other costs and expenses to be reimbursed to Tenant by Landlord

21 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

THIS SPACE INTENTIONALLY LEFT BLANK

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

LANDLORD

MEADOWBROOK, LLC
a Wisconsin limited liability company

By _____
Agent Stephen B Styza

TENANT

FLEMING COMPANIES, INC
An Oklahoma Corporation

By _____
Sr. Vice Pres

STATE OF Wisconsin)
) SS
COUNTY OF Waukesha)

Personally came before me this 18th day of December 1998, the above-named Stephen B. Styza of Meadowbrook, 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 Wisconsin

My commission is permanent

(Notary Seal)

STATE OF Oklahoma)
) SS
COUNTY OF Oklahoma)

Personally came before me this 21st day of December, 1998, the above-named Robert W. Smith, Sr. Vice Pres 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

RENEE MANNING NOTARY PUBLIC COMM. EXPIRES SEPT 8 2002 IN AND FOR STATE OF OKLAHOMA OKLAHOMA COUNTY

Renee Manning
Notary Public, State of Oklahoma

My commission _____

(Notary Seal)

EXHIBIT "A"

SHOPPING CENTER DRAWING

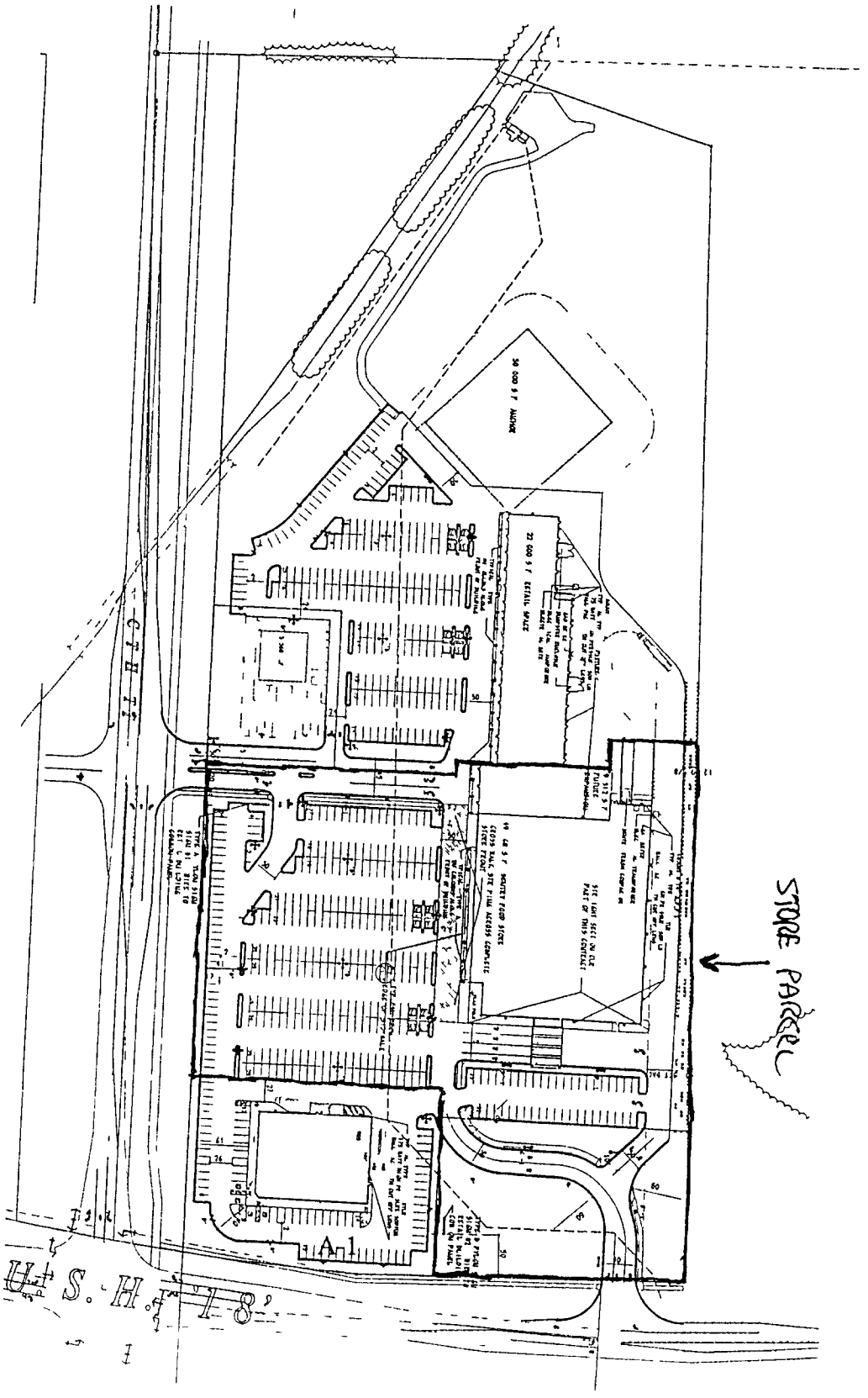

EXHIBIT "B-1"

SHOPPING CENTER LEGAL DESCRIPTION

Lot 2 of Certified Survey Map No 8683, recorded on December 8, 1998 in Volume 77 of Certified Survey Maps on Pages 9-18 as Document No 2395481, being a part of the NW 1/4 and SW 1/4 of the SW 1/4 of Section 32, Town 7 North, Range 19 East, City of Waukesha, County of Waukesha, State of Wisconsin

EXHIBIT "B-2"

CONVENIENCE PARCEL LEGAL DESCRIPTION

Parcel at Northwest Corner USH "18" and CTH "TT"
All that part of the Southeast Quarter (SE 1/4) of Section 31, Town 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin, bounded and described as follows
Commencing at the northeast corner of said Southeast Quarter (SE 1/4), thence South 01°21'28" East along the east line of said Southeast Quarter (SE 1/4) 608 132 feet, thence South 35°50'59" East 195 320 feet to the west right of way line of County Trunk Highway "TT" (Meadowbrook Road) and the place of beginning of the lands hereinafter described thence continuing South 35°50'59" West 691 059 feet to the north right of way line of United States Highway "18", thence South 78°06'28" East along said north right of way line 221 422 feet, thence southeasterly 192 363 feet along said north right of way line and along the arc of a curve of radius 3759 720 feet, center lies to the north, chord of said arc bears South 79°34'25" East 192 342 feet to the aforesaid west right of way line of CTH "TT", thence North 00°05'57" West along said west right of way line 640 580 feet to the place of beginning Containing 130,643 square feet (2 999 acres) of land

EXHIBIT "C"

COMMENCEMENT DATE ACKNOWLEDGMENT

THIS **COMMENCEMENT DATE ACKNOWLEDGMENT**, entered into this _____ day of _____, 19__, by and between _____, a _____ corporation (hereinafter referred to as "Lessor"), and **FLEMING COMPANIES, INC** , an Oklahoma corporation (hereinafter referred to as "Lessee"),

W I T N E S S E T H

WHEREAS, the Lessor and the Lessee have previously entered into a certain Shopping Center Lease, dated _____, 19__, (the "Lease") covering Leased Space in the improvements located on the Real Property more particularly described on Exhibit "A" attached hereto, and

WHEREAS, by this instrument and pursuant to the terms of Paragraph 3 1 1 of the Lease, the Lessor and the Lessee desire to set forth in a written document the Commencement Date of the term of the Lease

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

1 COMMENCEMENT DATE The Commencement Date of the Initial Term of the Lease shall be 12 01 A M on the ____ day of _____, 19__

2 TERMINATION The Termination Date of the Initial Term of the Lease shall be at 11 59 P M on the _____ day of _____, 19__, provided, however, the Lessee has the option to extend the term of the Lease for _____ additional term(s) of _____ year(s)

3 EFFECT This Acknowledgment is executed pursuant to the terms of Paragraph 3 1 1 of the Lease and in no way alters, modifies or amends the Lease, and the Lease continues uninterrupted, unabated and in full force and effect

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

LESSOR

_____,
A _____ Corporation

Attest _____
Secretary

By _____
_____, President

[SEAL]

LESSEE

FLEMING COMPANIES, INC ,
An Oklahoma Corporation

Attest _____

By

[SEAL]

STATE OF _____)
)
COUNTY OF _____)

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

Print Name
Notary Public
_____ County,
My Commission

STATE OF _____)
)
COUNTY OF _____)

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

Print Name
Notary Public
_____ County,
My Commission _____

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

_____
_____
_____

Weiss
Berzowski
Brady LLP
ATTORNEYS AT LAW

700 North Water St
Milwaukee WI 53202-4273
(414) 276-5800
(414) 276-0458 Fax

400 Genesee St Ste D
Delafield WI 53018-1815
(262) 646-5812
(262) 646-3340 Fax

Debra A. Slater
Direct (414) 270-2510
das@wbb-law.com
Reply to Milwaukee

September 11, 2003

VIA OVERNIGHT DELIVERY

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

Re: In Re: Fleming Companies, Inc.
Case No.: 03-10945 (MFW)

Dear Sir or Madam

I am enclosing an original and one photocopy of a Proof of Claim for filing in the referenced proceeding. I am also enclosing a self-addressed stamped envelope. Please file the original and return an acknowledgement copy to me in the envelope enclosed for that purpose.

Very truly yours,

Debra A. Slater

DAS/lmg
enclosures
cc Ms. Ann K. Chandler (w/encl.)
Bruce P. Styza Companies (w/encl.)