

# United States Bankruptcy Court

DISTRICT OF DELAWARE

## PROOF OF CLAIM

In re (Name of Debtor)

**Fleming Companies, Inc**

Case Number

**03-10945**

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

Name of Creditor

(The person or entity to whom the debtor owes money or property)

**East Brook Shopping Center, LLC**

Name and Address Where Notices Should be Sent

**Debra T. Lewis Esq.**  
**Balch & Bingham LLP**  
**P O Box 78**  
**Montgomery AL 36101**

Telephone No. (334) 834 6500

☐ 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 the address differs from the address on the envelope sent to you by the court.

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

East Brook Shopping Center &amp; Fuel Facility

Check here if this claim ☐ replaces a previously filed claim dated \_\_\_\_\_  
☐ amends \_\_\_\_\_

## 1 BASIS FOR CLAIM

- ☐ Goods sold  
☐ Services performed  
☐ Money loaned  
☐ Personal injury/wrongful death  
☐ Taxes  
☒ Other (Describe briefly) **Lease Agreements**

- ☐ Retiree Benefits as defined in 11 U.S.C. § 1114(a)  
☐ Wages, salaries, and compensations (Fill out below)  
 Your social security number \_\_\_\_\_  
 Unpaid compensations for services performed from \_\_\_\_\_ to \_\_\_\_\_  
 (date) (date)

2 DATE DEBT WAS INCURRED 3/25/77 and 7/24/2000

3 IF COURT JUDGMENT DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED \$ **263,340.00**

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

Value of Collateral \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any \$ \_\_\_\_\_

## 6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim. Amount entitled to priority \$ \_\_\_\_\_. Specify the priority of the claim.

- ☐ Wages, salaries, or commissions (up to \$4,300) \* 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. U.S.C. § 507(a)(4)  
☐ Up to \$1,950\* 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 4/1/04 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 the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

9/12/03

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).

**W. Clark Watson, Attorney for East Brook Shopping Center**

THIS SPACE IS FOR COURT USE ONLY

**FILED**
**SEP 15 2003**
**BMC**

Fleming Companies Claim



13739

## AGREEMENT SUPPLEMENTING LEASE

THIS IS AN AGREEMENT, dated October 31, 1977, between Eastbrook Shopping Center, Inc., a Delaware Corporation, (hereinafter called "Landlord"), and Hudson-Thompson, Inc., an Alabama Corporation, (hereinafter called "Tenant"), Supplementing the Lease between Landlord and Tenant, dated March 25, 1977, of premises situated at Eastbrook Shopping Center in Montgomery, County of Montgomery, State of Alabama, and fully described in the Lease dated March 25, 1977

1 The remodeling and renovation of the supermarket on  
the premises, as contemplated by the lease, was completed on  
September 30, 1977

2 The primary term of the lease began on the 1st day of October, 1977, and shall end on the 30th day of September 1992, (subject to any rights of termination or extension provided in the lease)

3 Rent commenced to accrue under the Lease on the 1st day of October, 1977

4 The Lease, as hereby supplemented, is ratified,  
confirmed and continued in all respects

5 This Agreement shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Landlord, and the heirs, administrators, executors, successors and assigns of tenant

EXECUTED as of the date first herein written

LANDLORD

(CORPORATE SEAL)

ALLIST

As its Assistant Secretary

EASTBROOK SHOPPING CENTER, INC  
A Corporation

BY [Signature]  
As its President

**-TENANT**

(CORPORATE SEAL)

ATTFT

As its Secretary

HUDSON-THOMPSON, INC.  
An Alabama Corporation

BY \_\_\_\_\_  
As its President

COPY

STATE OF ALABAMA )  
 )  
MONTGOMERY COUNTY)

I, Betty T Lallore, a Notary Public in and for said County in State, hereby certify that Carl W Bear, whose name as President of Eastbrook Shopping Center, Inc, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation

GIVEN under my hand and seal this 31st day of October, 1977

(SEAL)

Betty T Lallore  
Notary Public  
State of Alabama, at Large

STATE OF ALABAMA )  
 )  
MONTGOMERY COUNTY)

I, Orquellon S. Throckmorton, A Notary Public in and for said County in State, hereby certify that Carl W. Bear, whose name as President of Hudson-Thompson, Inc, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation

GIVEN under my hand and seal this 31st day of October, 1977

(SEAL)

Orquellon S. Throckmorton  
Notary Public  
State of Alabama, at Large

Orquellon S. Throckmorton

L E A S E

STATE OF ALABAMA  
MONTGOMERY COUNTY

THIS LEASE made this 25<sup>th</sup> day of March, 1977, by and between Eastbrook Shopping Center, Inc , a Delaware corporation, (hereinafter called "Landlord"), and Hudson-Thompson, Inc , an Alabama corporation, (hereinafter called "Tenant")

W I T N E S S E T H

PREMISES That the Landlord, in consideration of the rents herein reserved, and the covenants of the Tenant, does hereby lease and demise unto the Tenant, for use as a super-market or for any other lawful purposes, for the term and any extension or renewal thereof as hereinafter specified, the following described premises situated in the County of Montgomery, State of Alabama, to-wit

That certain one story store building located in the Eastbrook Shopping Center, Montgomery, Alabama, and being the area outlined in red on Exhibit "A" attached hereto and incorporated herein by reference

TERM

A Interim Term There shall be an interim term commencing on the date of execution of this Lease and running for the period of time in which the premises are being remodeled by the Landlord as hereinafter provided

B Initial Term The initial term of this lease shall be for the period of fifteen (15) years commencing on the first day of the month following the date of the Landlord's completion and Tenant's acceptance of the remodeling as hereinafter provided [Landlord and Tenant agree to execute a separate writing evidencing the commencement date of the initial term as soon as the same has been determined.]

Oct 1, 1977  
to  
Sept 30, 1992  
3 options  
5 yrs each

RENEWALS It is further agreed that Tenant, at its option, shall be entitled to the privilege of three (3)

successive renewals of this lease, such renewals to be for a period of five (5) years each, and upon the same terms and conditions and at the same rental required during the initial term hereof

Each such option privilege may be exercised by the Tenant giving to the Landlord a notice in writing at least six (6) months before the expiration of the then current term, stating the intention of the Tenant to exercise such option, and thereupon this lease shall be so renewed without the execution of any other or further documents. Said notice exercising its option shall be sent by registered mail, in care of Smith and Cochran, Inc., P O Drawer 1630, Montgomery, Alabama, 36102

REMODELING AND RENOVATION

A. The Landlord, at its sole cost and expense, shall as soon as practicable after the execution of this lease, but not later than the 10th day of May, 1977, commence work on remodeling and renovating the premises in accordance with the plans and specifications agreed upon by the parties, which plans and specifications are attached hereto as Exhibit "B", and incorporated herein by reference.

Landlord acknowledges that it has received a bid from Bear Brothers, Inc. to do the remodeling and renovating as required by the plans and specifications attached hereto, said bid is in the amount of \$186,213.00. Landlord recognizes that the amount of rental which Tenant is required to pay under this lease is based on the cost of such remodeling and renovating and does hereby agree with Tenant that the cost of the said remodeling and renovation shall not exceed \$186,213.00, unless Tenant gives its prior written approval to such increase. Landlord shall not be responsible for financing the cost of any remodeling or renovation in excess of \$200,000.00.

B In the event that the Landlord has not completed the remodeling and renovation by the 1st day of October, 1977, then the Tenant at its option may terminate this lease and in the event of such termination, Tenant shall have no further liability or responsibility to Landlord. If, however, the remodeling and renovation has not been completed by the 15th day of January, 1978, then this lease shall automatically terminate and the Tenant shall have no further liability or responsibility to Landlord.

This lease is granted and accepted upon the foregoing and upon the following terms, covenants, conditions and stipulations.

1 RENTAL Tenant agrees to pay to Landlord as rental for the premises, the following

A During the interim term, Tenant shall pay to Landlord (at the office of said Smith and Cochran, Inc., Union Bank Building, Montgomery, Alabama, or at such other place as Landlord may from time to time designate in writing) as rent the sum of One Thousand Five Hundred Thirty-Seven and 50/100 (\$1,537.50) Dollars in advance, on the first day of each month, being at the rate of Eighteen Thousand Four Hundred Fifty and No/100 (\$18,450.00) Dollars per annum, said monthly installment being a "Minimum Guaranteed Rent". In addition, Tenant agrees to pay to Landlord a percentage rental which shall be one (1%) per cent of Tenant's gross sales from the demised premises during the interim term in excess of \$1,845,000.00. It is contemplated that the interim term shall be for a period less than one (1) year, therefore, the amount of gross sales which must be made before Tenant is required to pay Landlord percentage rental shall be prorated. For example, if the interim term is six (6) months, then Tenant would owe Landlord percentage rental of 1% of gross sales in excess of \$922,500.00.

B During the initial term of fifteen (15) years Tenant shall pay to Landlord (at the office of said Smith and Cochran, Inc., Union Bank Building, Montgomery, Alabama,

(1)  
year 22  
start

or at such other place as Landlord may from time to time designate in writing) as rent the sum of Four Thousand Five Hundred and No/100 (\$4,500 00) Dollars in advance, on the first day of each month, being at the rate of Fifty-Four thousand and No/100 (\$54,000 00) Dollars per annum, said monthly installment being a "Minimum Guaranteed Rent" or fixed rent. It is understood and agreed that the minimum guaranteed rental payable during the initial term and any extensions or renewals thereof is based on a remodeling or renovation cost of \$160,000 00. It is understood and agreed that in the event the cost of remodeling or renovating as hereinabove provided exceeds \$160,000 00, the Tenant shall have the option (a) pay to the Landlord as leasehold improvements the amount by which the cost of remodeling or renovating exceeds \$160,000 00, and continue to pay minimum guaranteed rent at \$54,000 per year, or (b) increase the amount of minimum guaranteed rent to an amount which would be equal to the sum of \$54,000 plus fifteen (15%) of the amount by which the cost of remodeling and renovating the premises exceeds \$160,000 00 /

In addition, Tenant agrees to pay to Landlord a percentage rental equal to the amount, if any, by which one (1%) per cent of Tenant's gross sales made from the demised premises in each calendar year, during the term of the lease and any extensions thereof, exceed the minimum guaranteed rental for said calendar year

The expression GROSS SALES as used herein means the total amount of all sales of goods, wares and merchandise and services rendered and all revenues of every kind and character derived from, arising out of, or payable on account of, the business and all business transactions conducted at or from said premises by or for the account of the

Tenant, both for cash and on credit, including all orders for goods, wares and merchandise or services taken or sold at or from said premises, all expressed in terms of money at the prices therefor to the customer or clients. The expression shall not include the revenues realized from pay phones, weighing machines or pay toilets. The expression shall also not include any sales or transfers to others of Tenant's stores or warehouses. The monetary amount of said bona fide refunds or credits for return of goods, wares and merchandise and of all sales or federal retail excise taxes shall be subtracted from the sum which would otherwise be the gross amount of sales for the period. If the Landlord permits the Tenant to farm out any part of the premises to an independent contractor or otherwise, the gross sales of such enterprise shall be included as "gross sales" of the Tenant.

2 RECORD OF SALES The Tenant, during the term hereof, shall maintain and keep, or cause to be maintained or kept, at said premises or such other place as the Landlord shall approve, a full, complete and accurate permanent record and account of all sales of goods, wares and merchandise and services and of all sums of money paid or payable for or on account of or arising out of the business and all business transactions conducted at or from said premises by or for the account of the Tenant, for each day of the term hereof. Such records and accounts, all supporting records and sales tax returns at all times shall be open to inspection and audit at said premises by the Landlord and its duly authorized agents or representatives at all reasonable times during ordinary business hours. The Tenant shall keep and preserve or cause to be kept and preserved said records for not less than twelve (12) months after the time of final receipt in full by the Landlord of each payment of any percentage rent due hereunder.



3 GROSS SALES REPORTS On or before the tenth (10th) day of the first calendar month following the month in which the term hereof begins, and on or before the tenth (10) day of each calendar month thereafter, to and including the month following that in which the term hereof shall end, the Tenant shall deliver to the Landlord at the place where rent is payable a complete written statement of gross sales for the preceding calendar month showing the computation of the amount shown in full reasonable detail

4 ANNUAL STATEMENTS On or before the thirtieth (30th) day of January following the end of the calendar year in which the initial term of this lease begins, and on or before the thirtieth (30th) day following the end of this lease, and on or before the thirtieth (30th) day of January falling between said two last mentioned dates, Tenant shall prepare and deliver to the Landlord at the place where rent is payable an annual statement, verified by the affidavit of the Tenant, if a natural person, or a partner if the Tenant is a firm, or of a principal officer if a corporation, showing gross sales during the calendar year last preceding the due date of said respective statement, except that the first annual statement to become due as aforesaid shall show gross sales only for that period (even though less than a calendar year) in the year preceding the due date of said statement during which the term of this lease was in effect, and the last annual statement to become due as aforesaid shall show gross sales for that period (even though in the same calendar year) ending with the termination of the term of this lease and beginning with the first day of January last preceding said termination, but said first and last statement shall nevertheless be annual statements for the purpose of this lease. The Landlord, if it so elects, may require that any or all of such statements be prepared and submitted by an accountant selected (and paid) by the Landlord. Not later than the time for delivery of each annual statement the Tenant shall

pay, and the Tenant does hereby promise to pay, the Landlord at the place where rent hereunder is payable the percentage rent for the period covered by such statement. If the first or last period of the term is less than a full calendar year the minimum amount of annual gross sales (in excess of which the computation of percentage rent begins) shall be reduced for each business day of the Tenant.

5 USE OF PREMISES The premises during the term of this lease shall be used and occupied solely for the purpose stated in "PREMISES" above and the Tenant shall not use or permit the same to be used for any other purpose or purposes without the prior written consent of the Landlord. The Tenant at all times shall fully and promptly comply with all laws, ordinances, orders, regulations, permits and licenses of any lawful authority having jurisdiction of said premises, including but not limited to those regarding health, cleanliness, safety, occupation and use of said premises and the nature, character and manner of operation of the business conducted in or at said premises. The Tenant shall cause said business to be diligently conducted and operated. The Tenant shall keep all ground level street frontage show windows (if any are included in the premises) brightly lighted during the time from dusk of each day until 11 o'clock P M (Central Standard Time) including Sundays and holidays. The Tenant shall not permit, allow or cause any public or private auction sales to be conducted in or at said premises or the adoption or use of any sales promotion devices or practices that shall tend to mislead or deceive the public or which directly or indirectly would tend to detract from or impair the reputation or dignity of said business, said premises, the building, the Shopping Center, or the general reputation or dignity of the business of others conducted in the Shopping Center. The Tenant shall not by design or neglect carry on

or suffer to be carried on, in or upon the premises, building or Shopping Center, any activity or practice which may be dangerous to life, limb or property, or which increases the premium cost of, invalidates or prevents the re-issuance of any policy of insurance covering or carried on the premises, the building or Shopping Center or the operation of them or any one or more of them or any part or appurtenance thereof. In case of any increase in premium cost resulting from the tenant's making or permitting any such use, the tenant shall pay the Landlord the amount thereof without prejudice to any other right or remedy of the Landlord on account of that or any other breach of the Tenant's obligations under this lease. The tenant shall not make or permit any noise, steam, vapor, odor, gas, smoke, dust, sight or vibration objectional to the public, other occupants of the building or the Shopping Center or to the Landlord, to originate in or emit from the premises, nor create or maintain or permit or suffer a nuisance thereon, nor do any act (of commission or omission) tending to injure the reputation of the building or of the Shopping Center, nor place or permit any picture projector, radio or television antenna, loud-speaker, or sound amplifier or any phonograph, or any other apparatus or device similar to any of the foregoing, on the roof or outside of the building or at any place where any such apparatus or device might be seen or heard or cause anything to be seen or heard outside the premises.

6 CARE OF PREMISES The Tenant will not commit, allow or suffer any waste of the premises. The Tenant at all times shall keep said premises in a neat and orderly condition and shall keep the entry ways, sidewalks and delivery areas adjoining the premises clean and free from rubbish, dirt, snow and ice. The tenant shall keep the premises clear and free of rodents, bugs, vermin and other pests and at the request of the Landlord participate and

cooperate in carrying out any program of extermination the Landlord may direct and the Tenant shall bear the cost thereof, or if conducted in cooperation with other occupants of the property in the Shopping Center, then the Tenant shall bear its prorata cost on the basis of floor area involved. The Tenant shall not use or permit the use of any portion of said premises as sleeping or living quarters or as lodging rooms, or keep or harbor therein any live animals, fish, reptiles, birds or other creatures or use the same for any illegal purpose. The Tenant shall not permit, allow or cause the sinks, toilets or urinals in the premises or building to be used for any purpose except that for which they were designed and installed, and the expense of repairing any breakage or damage or removal of any stoppage resulting from a contrary use thereof shall be paid by the Tenant. The Tenant shall maintain the show windows in a clean, neat and orderly condition and the glass thereof clean, and shall store all trash, rubbish and garbage within said premises, and shall provide for the prompt and regular removal thereof for disposal outside the area of the Shopping Center. Unless otherwise expressly agreed in writing the Tenant shall before the end of the term hereof restore the premises to the same condition in which received or as they may have been put by the Landlord, less ordinary wear and tear, and damage caused by fire or other casualty, and will then and there without notice peaceably surrender and deliver them "broom clean" to the Landlord. The covenants in this Paragraph are independent of and in addition to any other contained herein.

7 EQUIPMENT, INSTALLATION AND FIXTURES The Tenant shall not install in or about said premises any exterior lighting or any additional plumbing fixtures, steps, partitions, walls, fences, shades or awnings or make any structural

changes or alterations in or to any part of the building or the premises except upon the prior written consent of the Landlord, which consent shall not be unreasonably withheld. In the event of a conflict the parties shall pick another person either another tenant or an employee of another tenant in the Shopping Center and his decision shall be final. Should the parties fail to pick such an umpire within ten (10) days, then either party may call upon Messrs Pearson, Tittle and Narrows, Architects of Montgomery, Alabama, to make such final decision. All furnishings, fixtures and equipment used in said premises supplied and installed at the sole cost and expense of the Tenant (and not being a replacement of or a substitute for anything supplied by the Landlord) shall at all times be and remain the property of the Tenant and the latter shall have the right to remove them from said premises at any time during the term hereof, provided the Tenant shall not be in default hereunder and provided further that the Tenant, at the Tenant's sole cost and expense, shall repair (or reimburse the Landlord for the cost of repairing) any and all damage to said premises resulting from the removal of such furnishings, fixtures and equipment. Nothing in the foregoing sentence shall be taken to authorize the Tenant's abandoning or vacating the premises.

8 SIGNS AND ADVERTISING The Tenant shall not permit, suffer or cause to be erected, installed, maintained, painted or displayed on, in or at said premises or any part thereof any permanent exterior or permanent interior sign, lettering, placard, announcement, poster, decoration, advertising media or advertising material of any kind whatsoever, visible from the exterior of said premises, without the prior written approval of the Landlord, which approval shall not be unreasonably withheld, provided, however, that subject to

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compliance with all other applicable provisions hereof the Tenant may display merchandise and advertising media within said premises but not closer than twelve (12) inches to the interior side of any store front display window, except Tenant may place temporary signs in the show window of the demised premises during the periods of special merchandising sales, which it may conduct from the premises from time to time

9 DRIVEWAYS, SIDEWALKS AND PARKING Subject to the conditions of this lease, the Tenant shall have a non-exclusive privilege of use of all driveways, and sidewalks adjoining said premises. The parking areas in said Shopping Center are acknowledged to be intended primarily for use by customers and patrons. The Tenant shall not, and shall not permit its employees, to use said parking area, the driveways or vacant lands in said Shopping Center for the parking or storage of any automobiles, trucks, vehicles or equipment owned or used by them except as may be approved and designated in writing by the Landlord. The Tenant, on request of the Landlord, within five (5) days, shall furnish to the Landlord a written statement of the names of all employees, agents and representatives employed in or at the premises by the Tenant and the license registration number of all vehicles owned or used by the Tenant or by such employees, agents or representatives. The Tenant will park delivery vehicles in places assigned by Landlord. If, in the opinion of the Landlord, the parking of vehicles by the Tenant or the Tenant's employees or agents, on public property in the vicinity of the Shopping Center is or is about to become detrimental to the customers and patronage of said Center, the Landlord shall have the right to require the Tenant or the Tenant's employees or agents to park at a further distance but in no

event beyond seven hundred (700) feet from the outer perimeter of the Shopping Center. Moreover, the Tenant will cooperate with the Landlord in advising all persons delivering goods to or from the premises as to the spaces assigned for the stationing or parking of delivery vehicles. The Landlord, without limiting its rights, expressly reserves the right, should it deem it needful, to establish regulations or bylaws as to the direction, speed and other matters of control concerning the traffic of persons and vehicles within the Shopping Center.

10 MAINTENANCE AND REPAIRS The Landlord, at its sole cost and expense, shall maintain and keep in good repair the roof, exterior walls of the building, underground plumbing, and all structural parts of the building, including but not limited to supporting walls and foundation. The Landlord shall also at its sole cost and expense, maintain and keep in good repair the parking lot and all driveways in and to the Shopping Center. It is understood and agreed, however, that the cost of any such repairs required as the result of the negligence, design or willful act of the Tenant, its customers, licensees, agents, servants, or employees, shall be borne by the Tenant. The Tenant shall keep the exterior walls and glass clean. If the Tenant is given access to the roof, then it shall keep the roof, gutters and downspouts free of all trash, leaves or loose roof material. The Tenant, at Tenant's sole cost and expense, shall promptly repair, and at all times maintain in good condition the interior of said premises, including heating unit, store fixtures, store equipment, air conditioning equipment, electrical fixtures and equipment, electrical installations, plumbing and plumbing equipment and fixtures, all machinery, all hardware, all plaster, all interior painting or decorations of every kind, all door and window screens, and replace all broken or damaged glass,

including window glass and plate glass, and such repairs and replacements shall be made, all without regard to whether or not such property shall be that of the Landlord or of the Tenant

[The Landlord and Tenant agree to mutually select a mechanical engineer or qualified mechanic to make inspections of the heating and air conditioning equipment. Such inspections are to be made every three (3) months during the term of this lease and any renewals or extensions thereof and the cost of the engineer or mechanic shall be borne one-half by the Landlord and one-half by the Tenant.] It is understood and agreed, however, that should it become necessary to replace or substantially replace the air conditioning or heating equipment, such replacement shall be made by the Landlord at Landlord's sole cost and expense. The Tenant shall immediately advise Landlord of any structural defects of any matter for which the Landlord is obligated to make any repairs

Nothing herein, unless expressly so stated in "PREMISES" hereof, shall be taken to constitute a demise of any part of the building beyond the interior walls of the premises. This, however, is not in derogation of the duty of the Tenant with respect to matters beyond the premises

11. INJURY OR LOSS The Landlord, its agents and servants, shall not be liable, and the Tenant waives all claims for loss or injury to person or property sustained by the Tenant or any occupant of the building or premises resulting from the building or premises or any part of either of any equipment or appurtenance being or becoming out of repair, or resulting from any accident in or about the building, or resulting directly or indirectly from any act or neglect of any other tenant or occupant of the building or Shopping Center or of any other person, including Landlord's agents and servants. This Paragraph shall apply in particular, but not exclusively, to the flooding of basements or other sub-surfaces area, and to damage caused by refrigerators, sprinkling devices, air conditioning apparatus, water, snow,

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frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors, or noise, or the bursting or leaking of pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or neglect of the Landlord or of other tenants, occupants, or servants in the building or Shopping Center or of any other person, and whether such damage be caused or result from any thing or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. If any such loss or injury, whether to the premises or to the building or any part thereof, or whether to the Landlord or to other tenants in the building, results from any act or neglect of the Tenant, the Landlord may, at its option, repair such damage and Tenant shall, upon demand by Landlord, reimburse the Landlord forthwith for the total cost of such repair.

12 PROPERTY IN OR ABOUT PREMISES AT TENANT'S RISK

All property belonging to or in the care, custody or control of the Tenant or any occupant of the premises which is in the building or the premises shall be there at the risk of the Tenant or such occupant only, and the Landlord shall not be liable for any injury thereto or any loss or destruction thereof. Any and all property which may be removed from the premises by the Landlord pursuant to the authority of this lease or of law, to which the Tenant is or may be entitled, may be handled or removed by the Landlord at the risk, cost and expense of the Tenant, and the Landlord shall in no event be responsible as warehouseman, bailee, custodian, trustee or otherwise for any property left in the premises or the building by the Tenant, or for the value, preservation or safekeeping thereof. The Tenant shall pay to the Landlord, upon demand, any and all expenses incurred in any such removal of the Tenant's property.

13 ENTRY BY LANDLORD The Landlord, its agents and representatives, at all reasonable times may enter said

premises for the purpose of (1) inspection thereof, (2) inspection and examination of the Tenant's records, pursuant to the provisions hereof for the examination and audit thereof relating to the computing of percentage rent, (3) making repairs, replacements, alterations, or additions to said premises or said building, (4) exhibiting the premises to prospective tenants, or purchasers and (5) during the last ninety (90) day period, provided the Tenant shall have vacated the premises, to decorate, remodel, alter and otherwise prepare the premises for reoccupancy and any such entry by or on behalf of the Landlord shall not be or constitute an eviction, total or partial, constructive or actual, or a deprivation of any right of the Tenant, and shall not alter the obligations of the Tenant hereunder or create any right in the Tenant adverse to the interests of the Landlord

14 PAYMENT FOR UTILITIES AND SERVICES The Tenant shall contract with the appropriate utilities and pay for all water, gas, electricity and fuel consumed in or at said premises. The Tenant will pay all charges for sewerage, garbage and trash removal.

15 ALTERATIONS AND CHANGES BY LANDLORD The Landlord, without liability of any kind to Tenant, at any time may construct additional buildings and change, alter, remodel or remove any of the improvements of the Shopping Center except the demised premises, provided that the Landlord shall have the right to install or place in, through, over or <sup>under</sup> ~~under~~ said premises wiring, piping, ducts or conduits for service of the premises or other parts of the building or other buildings.

16 INJURY OR DESTRUCTION BY CASUALTY Should the premises, without design, fault, or neglect of the Tenant, be damaged or destroyed by fire or other casualty, the Landlord shall within a reasonable time, not to exceed one hundred

twenty (120) days, to restore the premises to substantially the same condition as prior to said fire or other casualty. During such time as the premises are being restored fixed rent shall be reduced prorata in accordance with the amount of usable floor space available to the Tenant from month to month. Should premises, without design, fault, or neglect of tenant, be damaged or destroyed by fire or other casualty to the extent of sixty (60%) per cent or more of the then reproduction value thereof, then within thirty (30) days after the happening of such damage or destruction, the Landlord or the tenant shall have the election within said thirty-day period to terminate this lease by giving written notice to the other party of its intention to so terminate. In the event neither the Landlord nor the tenant terminates the lease, then the Landlord shall, at its sole cost and expense, rebuild, restore or replace said premises within one hundred twenty (120) days from the date of such damage or destruction, and during any such rebuilding or restoration fixed rent shall be reduced prorata in accordance with the amount of the usable floor space available to the tenant from month to month during such rebuilding or restoration. Regardless of the percentage of the building so destroyed, if the Landlord has not substantially completed the repairs to the building or the restoration to the premises within one hundred twenty (120) days from the date of said damage or destruction, the Tenant shall have the right to terminate said lease by giving written notice to the Landlord of its intention to so terminate, and if tenant elects to so terminate, the lease shall terminate and neither party shall have any further liability to the other.

17 INSURANCE The Tenant shall at all times keep in force by advance payment of premium, casualty insurance

in an amount of not less than One Hundred Thousand Dollars (\$100,000 00) for injury to or death of one person as a result of one occurrence and not less than Three Hundred thousand Dollars (\$300,000 00) for injury to or death of more than one person as a result of one occurrence, insuring the tenant and the Landlord against any liability that may accrue against them or either of them on account of any occurrence in or about the premises during the term or in consequence of the tenant's occupancy of the premises and resulting in personal injury or death, said insurance to protect and indemnify the tenant and the Landlord not only against any and all such liability, but also against all loss, damage and expense of any and every sort and kind, including costs of investigation and attorneys' fees and other costs of defense. If the premises are in a building containing an elevator then said insurance shall include not only Owners, Landlords, and tenants Insurance, but also Elevator Insurance. Said insurance shall be with an underwriter or underwriters satisfactory to the Landlord and shall not be subject to cancellation except after at least ten (10) days' prior written notice to the Landlord, and the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this paragraph shall at all times be kept on deposit with the Landlord, and if the tenant fails to comply with such requirements the Landlord may obtain such insurance and keep the same in force and effect and the Tenant shall pay the Landlord upon request the premium cost thereof for the term of this lease then unexpired. To reduce jurisdictional conflicts, the Tenant shall effect such insurance with the same underwriter or underwriters as the Landlord effects any

similar insurance carried by it, the Tenant always reserving the right of selecting the Tenant's agent. Landlord shall insure the demised premises to the extent of at least eighty (80%) per cent of its full insurable value thereof. Tenant shall insure its property within the demised premises to the extent of at least eighty (80%) per cent of the full insurable value thereof. The insurance required of Landlord and Tenant hereby shall include at least fire and extended coverage and shall be in good and reputable insurance companies, licensed to do business in Alabama. Each party agrees to carry such insurance throughout the entire term of this lease. The Landlord's fire and extended coverage insurance shall contain a waiver of subrogation against the Tenant, and the Tenant's fire and extended coverage insurance shall contain a waiver of subrogation against the Landlord.

18 EXERCISE OF EMINENT DOMAIN In the event any portion of the demised premises be taken for any public or quasi public use, under any statute, or the right of eminent domain, or by private purchase in lieu thereof, or in the event any portion in excess of twenty-five (25%) per cent of the overall parking area of the Shopping Center be so taken, or in the event any portion of the parking area which is shaded in green on Exhibit "A" which is attached hereto and made a part hereof be so taken, then in any of such events, Tenant shall be entitled to terminate this lease, at its option, within thirty (30) days after it receives notice of such taking, which notice shall specify what shall be taken, and likewise, Landlord shall be entitled to terminate this lease, at its option, within thirty (30) days after it receives notice of such taking, and in the event either the Tenant or the Landlord terminates said lease, any unearned rent or other charges paid in advance by the Tenant shall be refunded to the Tenant.

In the event any part of the premises be so taken and neither the Landlord nor the Tenant elects to cancel this lease, then the Landlord, at its election, shall either (1) restore the remaining portion of the premises not so taken, or (11) restore the remaining portion of the premises not so taken and add thereto additional square feet of store area so taken as to make the premises the same size as immediately prior to such taking. If, however, the premises, after restoration, are less than 22,600 square feet, then annual rental shall be reduced by an amount equal to the per square foot rental which the Tenant is paying under this lease times the number of square feet by which the premises are less than 22,600 square feet. All damages awarded for the taking of said premises, or any part thereof, shall be payable in the full amount thereof to, and the same shall be the property of, Landlord, including but not limited to any sum paid or payable as compensation for loss of value of the leasehold or loss of the value of the fee of any part of the premises, and Tenant shall be entitled only to that portion of any award expressly stated to have been made to Tenant for loss of the business and the loss of value and cost of removal of stock, furniture and fixtures owned by Tenant.

19 ASSIGNMENT BY LANDLORD FOR MORTGAGE The Landlord shall have the right to assign this lease or the moneys payable to it, or both, as security for any loan or loans for the construction, reconstruction, restoration of the premises or the Shopping Center or any extension thereof and for any refinancing.

20 ASSIGNMENT OR SUBLETTING The Tenant may sublet departments of the lease premises and may also sublet the

leased premises in its entirety, or assign the lease. In the event of sublease or assignment, Tenant will remain liable for the performance of all of the terms, covenants, and conditions contained in this lease for the term of the lease and any renewal or extension thereof. Any assignee of this lease shall assume all obligations assumed by Tenant. The use of the leased premises shall at all times be restricted to lawful purposes.

21 RELATIONSHIP OF THE PARTIES The relationship between the parties is solely that of landlord and tenant. The provisions hereof for the computation of percentage rent have been adopted as a convenient formula for a flexible rent adjusted to economic vicissitudes and in no sense constitute any joint venture or other association between the parties.

22 WAIVER The failure of the Landlord to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect. The parties hereto waive and each surety, guarantor or endorser waives as to the obligations hereof all exemptions accorded them by law, including those of any jurisdiction.

23 DETERMINATION BEFORE EXPIRY OF TERM The term of this lease may be shortened under any of the following circumstances:

(a) By the Tenant at its option to the extent provided in Paragraphs 16 and/or 18 above.

(b) By the Landlord at its option (i) upon the violation by the Tenant of any covenant or agreement herein contained, or (ii) upon non-payment of rent in full when due, or (iii) upon the Tenant's vacating the premises, or

(iv) upon the Tenant's removing from the premises without the consent of the Landlord (other than in the ordinary course of business) any substantial portion of Tenant's goods, wares and merchandise, or (v) upon the Tenant's failure to transact business at the premises, or (vi) upon the Tenant's filing or there being filed against the Tenant a bankruptcy petition or a debtor's petition or any proceeding in the nature of a business reorganization under any bankruptcy law, or (vii) upon the appointment of a receiver, trustee or other custodian of the business, property, assets or affairs of the Tenant, or (viii) upon the Tenant's making an assignment for creditors or (ix) upon any levy of execution or attachment of the Tenant's interest herein, or (x) as provided in the manner and to the extent permitted and provided in Paragraphs 16 and/or 18 above

Should the term be shortened nevertheless all stipulations, covenants and agreements herein contained shall survive except as expressly stated or as necessarily arise from the circumstances of determination

24 REENTRY UPON DETERMINATION AFTER CASUALTY If the term hereof shall have been shortened pursuant to Paragraphs 16 and/or 18 hereof, the Tenant shall surrender the premises peaceably within ten (10) days after the date the operative decision so to shorten shall have been made known or became apparent (e g by lack of notice) to the other party and at the end of said ten (10) days the Landlord may reenter and resume possession of the premises and remove therefrom all persons and property without being liable for any damages therefor

25 REENTRY UPON DETERMINATION AFTER TENANT'S DEFAULT If the term hereof shall have been shortened by the Landlord having elected so to treat it because of the events set forth



in Paragraph 23(b)(1), (11), (111), (1v), (v), (vi), (vii), (viii) or (ix) above, the Landlord may, at its election, at any time thereafter without notice and without process reenter and resume possession and remove all persons and property without being liable for any damages therefor. No reentry by the Landlord under this Paragraph 25 shall be deemed to be an acceptance of a surrender of this lease.

26 RELETTING UPON DEFAULT If during the term hereof the tenant abandons or vacates the premises or any part thereof, or fails to transact business thereat as herein required, then the Landlord, in its own name, but as agent for the tenant, may (but need not) relet the whole or any part of the premises for any period of time equal to, greater or less than the then remainder of the original term hereof, for any sum which it may deem reasonable, to any tenant which it may deem suitable and satisfactory, and for any use and purpose which it may deem appropriate. This provision is cumulative and in addition to any other right of the Landlord and the Landlord is not obligated so to relet. Nor shall it in any event be required to pay the Tenant any sums received on reletting over and above the rent herein reserved, but the tenant shall owe the Landlord any deficiency.

27 ACCELERATION OF RENT UPON DEFAULT In addition to any other remedy herein provided upon the Tenant's default, the Landlord may, in its sole discretion, elect upon the happening of any such default, including but not limited to, those specifically enumerated in Paragraph 23(b), (1)-(1v), inclusive, to accelerate the due date of all further installments of rent for the then remainder of the term hereof and said rent shall be immediately due and payable by the Tenant without any notice to the Tenant whatsoever. For the purposes of this Paragraph it is expressly stipulated that percentage rent shall

be a per diem amount constituting liquidated damages therefor equal to the per diem average of such percentage rent accrued to the time of such happening during the elapsed period of the term hereof to said date. Said liquidated damages shall thereupon be due and payable for each and every day of what would have otherwise been the full term hereof.

28 ACCELERATING RENT IN LIEU OF DAMAGES No provision herein for the payment by the tenant of accelerated rent or liquidated damages shall be taken or construed as a waiver of any right to damages by the Landlord for any breach or loss or injury, except and only except the non-payment of rent.

29 STIPULATION FOR ATTORNEY'S FEE The Tenant agrees to pay a reasonable attorney's fee and all costs if it becomes necessary for the Landlord to employ an attorney to collect any of the monies agreed to be paid or to enforce performance of any of the provisions of this lease, or to obtain possession of the premises or otherwise to exercise any option or enforce any right given to the Landlord upon default by the Tenant under any term, condition, stipulation, or obligation of the lease. The tenant expressly waives all exemptions secured to the tenant under the laws of the State of Alabama or of any other jurisdiction as against the collection of any debt herein or hereby incurred or secured.

30 PRACTICAL IMPOSSIBILITY OF PERFORMANCE OF REPAIRS Wherever this lease creates or carries any obligation to rebuild, restore or repair the premises or any part or appurtenance thereof, full performance by the party obligated in any instance shall be excused for the period and to the extent that performance is rendered reasonably or practically impossible by reason of any riot, civil commotion, strike, lockout, restraint, or stoppage of labor from any cause, act of God, or the public enemy, priority, allocation, rationing,

or the regulation or prohibition of the use or supplying or transportation of any material, electrical or other energy, heat, fuel, or the hours of work of laborers or artisans, or by reason of any matter or thing, either of the same nature or of a nature different from those matters and things hereinbefore mentioned, beyond the reasonable and practical control of the party obligated, or by any combination of two or more of the foregoing matters, but only in such case and to such extent

31 NOTICES TO PARTIES All notices as herein required or implied shall be sufficiently effected if deposited in the United States mails addressed to the party to be notified at the address hereinafter specified below the execution hereof unless the other party hereto shall have been notified in writing of another address. Such notice shall be in writing and sent first class mail, registered return receipt requested postage prepaid

✓ 32 COMMON AREA MAINTENANCE As additional minimum guaranteed rental, Tenant agrees to pay the following common area maintenance

A During the interim term of this lease, Tenant agrees to pay \$133.33 per month in advance on the first day of each month, and

225996 33 700000 AB During the initial term of this lease and any renewals and extensions thereof, Tenant agrees to pay \$188.33 per month in advance on the first day of each month

33 INCREASE IN TAXES As additional minimum guaranteed rental due hereunder, Tenant shall pay to Landlord its prorata share, as hereinafter defined, of any increase in ad valorem or other property taxes for the Shopping Center in excess of the annual ad valorem taxes which Landlord pays and fall due during the year 1977. The prorata share of

such increase and/or addition and imposition which is required to be paid by Tenant shall be that percentage of such increase which is equal to the percentage of the total floor area of the store space occupied by Tenant as compared to and in relation to the total floor area of the Shopping Center the Tenant shall pay such additional minimum guaranteed rental not later than thirty (30) days prior to the due date of such imposition, provided that in any event Tenant shall not be required to pay its prorata share of such additional or increased taxes sooner than fifteen (15) days after it has received notice thereof from Landlord

Tenant shall have the right to contest any such increased ad valorem taxes in the name of the Landlord if it be necessary to make such contest in the Landlord's name and Landlord agrees to cooperate fully with the Tenant in such contest. Tenant shall be responsible for bearing the costs of any such contest

Any amounts paid by Tenant to the Landlord as increased ad valorem taxes shall be considered as minimum guaranteed rental hereunder and shall be taken into consideration in the computation of percentage rental which Tenant may be required to pay hereunder *not under CM*

34 RECORDING Landlord and Tenant agree, if either party is requested by the other, to execute a short form of this lease for purpose of recording the same. The cost of recording the short form lease shall be borne equally by the parties hereto.

35 MISCELLANEOUS The covenants, conditions and agreements contained herein shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns, of all of the parties hereto. Wherever used, the singular number shall include

the plural, the plural the singular, the use of any gender shall include all genders The headings are inserted only for convenience and are in no wise to be construed as part of the text hereof

36 By accepting the benefits of this Lease, the Lessor binds itself to pay Smith & Cochran, Inc , Agent, a commission of five (5%) per cent on all rentals received from said tenant, subtenant, or assignee so long as either continues to occupy said premises or rent is collected from same from said tenant, and this is to apply whether tenant, subtenant or assignee occupies said premises under this Lease and/or renewal thereof and/or a subsequent lease

IN WITNESS WHEREOF, this lease has hereunto been executed by the parties hereto on the day and year the same bears date

(CORPORATE SEAL)

EASIBROOK SHOPPING CENTER, INC  
A Corporation

WITNESST

BY

As its President

[Signature]  
As its Secretary

LANDLORD

(CORPORATE SEAL)

HUDSON-THOMPSON, INC  
An Alabama Corporation

WITNESST

BY

As its PRESIDENT

[Signature]  
As its Secretary

TENANT

STATE OF ALABAMA

MONTEGOMERY COUNTY

I, Francis L. Jones, a Notary Public in and for said County in State, hereby certify that Carl W. Brier, whose name as President of Eastbrook Shopping Center, Inc , a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation

GIVEN under my hand and seal this 25<sup>th</sup> day of March, 1977

[Signature]  
Notary Public

State of Alabama, Adopted

(SEAL)

STATE OF ALABAMA

MONIGOMLRY COUNTY

I, Kay Blackmon, a Notary Public in  
and for said County in State, hereby certify that         
Jack M. Barber, whose name as President  
of Hudson Thompson, Inc, a corporation, is signed to the  
foregoing ~~ument~~ and who is known to me, acknowledged before  
me on this day that being informed of the contents of said  
instrument, he, as such officer and with full authority,  
executed the same voluntarily, for and as the act of said  
corporation

GIVEN under my hand and seal this 24 day of March,  
1917

Kay Blackmon  
Notary Public  
State of Alabama, At Large

(SEAL)

## FUEL FACILITY LEASE AND SUBLEASE AGREEMENT

Capitalized terms used in this Fuel Facility Lease and Sublease Agreement and not otherwise defined shall have the meanings set forth on Schedule 1 hereto. This Agreement is made and entered into by and between the Landlord, Tenant and Subtenant with reference to the following:

(i) Landlord is the owner of the Shopping Center. Pursuant to the Store Lease described on Schedule 1, Landlord has leased certain retail space therein (the "Store Space") to Tenant. Pursuant to the Store Sublease described on Schedule 1, Tenant has subleased the Store Space to Subtenant, in which Subtenant operates a retail grocery store.

(ii) Tenant and Subtenant have entered into a separate agreement which contemplates the installation of a Fuel Facility in the parking lot of the Shopping Center. The Fuel Facility is more particularly described on Schedule 1 and is to be located at the specific location within the Shopping Center identified as the "Premises" on Exhibit A hereto.

(iii) Landlord, Tenant and Subtenant have reached certain agreements regarding the installation, operation, use and removal of the Fuel Facility and desire to reflect those agreements herein.

NOW THEREFORE, in consideration of the foregoing and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### 1 Lease and Sublease

1.1 Lease Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the sole purposes of the installation, operation, use and removal of the Fuel Facility in accordance with the terms of this Agreement. The term of such lease (the "Lease Term") shall commence on the Commencement Date set forth on Schedule 1 and, unless earlier terminated in accordance with other provisions of this Agreement, shall terminate on the expiration or earlier termination of the Store Lease.

1.2 Sublease Tenant hereby subleases to Subtenant and Subtenant hereby subleases from Tenant, the Premises for the sole purposes of the installation, operation, use and removal of the Fuel Facility in accordance with the terms of this Agreement. The term of such sublease (the "Sublease Term") shall commence on the Commencement Date set forth on Schedule 1 and, unless earlier terminated in accordance with other provisions of the Agreement, shall terminate on the expiration or earlier termination of the Store Sublease.

1.3 Relationship of Lease and Sublease The terms of both the lease of the Premises by Landlord to Tenant and of the sublease of the Premises by Tenant to Subtenant are set forth herein. Subtenant agrees that it will neither take any action nor fail to take any action which may constitute a default by Tenant in its obligations hereunder. The parties agree that, except to the extent the rights and obligations of the Tenant and Subtenant, as between themselves, are specifically set forth herein, such rights and obligations shall be the same as the

rights and obligations of the Landlord and the Tenant, respectively, as set forth herein. ACCORDINGLY, SUBTENANT AGREES TO PERFORM EACH AND EVERY OBLIGATION OF TENANT UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, PAYMENT OF ALL RENT AND OTHER AMOUNTS PAYABLE HEREUNDER, PERFORMANCE OF ALL REQUIRED INSTALLATION, MAINTENANCE, REPAIR AND CLOSURE WORK, PERFORMANCE OF TENANT'S OBLIGATIONS REGARDING ENVIRONMENTAL MATTERS UNDER PARAGRAPH 20 AND MAINTENANCE OF ALL REQUIRED INSURANCE REQUIRED. FURTHER, IF SUBTENANT DEFAULTS IN ANY SUCH OBLIGATION, TENANT SHALL HAVE ALL REMEDIES AVAILABLE TO LANDLORD HEREIN. To the extent this Agreement requires any action by Tenant in order to exercise any rights thereunder, Subtenant will take such action not less than 10 days prior to the time at which Tenant must take such action in order to provide an opportunity for Tenant to take such necessary action. Promptly following any such action by Subtenant, Tenant will take corresponding action contemplated hereunder. The foregoing shall not apply to the payments of rent and other action contemplated by Schedule 1 which shall be performed as described therein.

2 Installation, Alteration and Removal of Fuel Facility Landlord hereby consents to the installation of the Fuel Facility on the Premises, including the installation of underground electric lines connecting the Fuel Facility to equipment located in the Store Space, and any alterations or improvements thereto which Tenant may desire. In connection with such installation, Tenant agrees to restripe portions of the Shopping Center parking lot surrounding the Premises to conform to the parking configuration shown on Exhibit A hereto. All work in connection with the installation or alteration of the Fuel Facility as authorized by this paragraph, as well as work in connection with the removal of the Fuel Facility in accordance with paragraph 3 of this Agreement, shall be conducted at the sole cost and expense of Tenant and strictly in accordance with the following:

2.1 Permits No work shall be undertaken unless and until Tenant shall have procured, so far as the same may be required, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall join, at the sole cost and expense of Tenant, in the application for such permits or authorizations whenever such action is necessary and requested by Tenant. The Tenant shall pay all costs of building permits, changes in zoning, and other governmental approvals necessary for any construction.

2.2 Liens If any involuntary liens for labor or materials supplied or claimed to have been supplied in connection with any of the work shall be filed, Tenant shall pay or otherwise obtain the release or discharge thereof with reasonable promptness.

2.3 Insurance Worker's Compensation Insurance covering all persons employed in connection with any of the work, in such amounts as may be required by applicable law, and Builder's Risk Insurance, as may be required by Landlord, shall be maintained by the Tenant at Tenant's sole cost and expense, at all times when any substantial work is in progress.



2.4 Quality All work shall be conducted in a good and workmanlike manner and diligently pursued to completion

2.5 Safety Tenant shall take all reasonable precautions to avoid any unsafe conditions of the surrounding areas with the understanding that business at the Shopping Center will continue to be operated throughout the period of construction

2.6 Timing Upon commencement of installation of the Fuel Facility such installation shall be carried out diligently to completion. Installation of the Fuel Facility shall be completed not later than 180 days after the commencement of such installation. If Tenant has not commenced installation of the Fuel Facility within 180 days after the date hereof, Landlord may, by notice to Tenant and Subtenant, terminate this Agreement

2.7 Title Title to the Fuel Facility, all equipment used in connection with construction or alteration of the Fuel Facility and all items of personal property now or hereafter located on or used in connection with the Premises and Fuel Facility, shall remain solely in Subtenant or, pursuant to the applicable agreement between Subtenant and Operator, the Operator

3 Closure Work On the expiration or earlier termination of the Term, Tenant agrees to immediately cease business being conducted on the Premises and promptly commence all action required to remove the Fuel Facility from the Premises. In addition, upon the removal of the Fuel Facility, the parking lot shall be restored by the installation of a parking surface of the same material and quality as the surrounding parking areas in the Shopping Center and shall be striped in accordance with the then current parking configuration of surrounding parking areas in the Shopping Center. Tenant shall diligently pursue the work described in this paragraph (including all work necessary to constitute a "closure" of the Premises under applicable laws governing underground storage tanks) to completion. Such work shall be conducted at the sole cost and expense of Tenant in accordance with paragraph 2 of this Agreement. Such work shall be completed as soon as reasonably practical after the expiration or termination of the Term. The work required under this paragraph shall be referred to in this Agreement as the "Closure Work."

4 Compliance with Law Tenant agrees, at its sole cost and expense, in the installation, operation, use, alteration or removal of the Fuel Facility to comply with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all federal, state and local governments, agencies and officials, foreseen and unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to all or any part of the Premises or the Fuel Facility or to any use or condition of all or any part of the Premises or the Fuel Facility or to the Landlord, Tenant or the Subtenant. Without limitation of the foregoing, Tenant shall conduct the installation, operation, use, alteration and removal of the Fuel Facility, including underground storage tanks and other components thereof, in strict compliance with the foregoing. Each party hereby represents to the other parties that it is not aware of any existing violation of any law, ordinance or regulation relating to the protection of the environment or any

contamination of the Shopping Center by any petroleum product or other material in a manner or to an extent that any cleanup or remediation is required by law

5 Rent As rent for the use of the Premises, Tenant shall pay to Landlord during the Lease Term, and Subtenant shall pay to Tenant during the Sublease Term, the Rent and Subrent, respectively, specified on Schedule 1, all as provided therein. Rent for partial calendar months or weeks during the Term shall be prorated. Rent and other amounts payable by Subtenant hereunder shall be paid as directed by Tenant.

6 Utility Charges Throughout the Term the Tenant will pay all charges for utilities used in connection with the Fuel Facility as the same are due and payable.

7 Maintenance At all times during the Term, Tenant shall maintain the Fuel Facility in good condition and repair, ordinary wear and tear excepted. Tenant shall promptly repair any damage to the Fuel Facility required by any reason whatsoever, other than repairs resulting from the negligence or misconduct of Landlord, which repairs shall be repaired promptly by and at the sole expense of the party causing such damage.

8 Fuel Sales The parties agree that notwithstanding any provision of the Store Lease or the Store Sublease to the contrary, sales of fuel and other items dispensed from the Fuel Facility shall not be considered gross sales for purposes of computing percentage rent which may be payable under the Store Lease or the Store Sublease.

9 Landlord Expenses Pursuant to the Store Lease, the Tenant has agreed to pay its proportionate share of certain expenses of operating the Shopping Center incurred by the Landlord. Pursuant to the Store Sublease, Subtenant has agreed to reimburse Tenant for such expenses paid by Tenant. The parties intend that by virtue of its occupancy of the Premises Tenant shall, in addition, pay an additional portion of the such expenses. Because of the difficulty of allocating a portion of such expenses to the Premises, the parties have agreed on a fixed sum to be paid to Landlord as such reimbursement, as set forth as the Landlord Expenses on Schedule 1. Amounts received by Landlord under this paragraph shall be credited toward (and thereby reduce) the expenses otherwise being passed through to tenants of the Shopping Center (including Tenant) under their respective leases. Accordingly, Tenant agrees to pay to Landlord the Landlord Expenses, the manner set forth in Schedule 1 and Subtenant agrees to pay Tenant all amounts payable by Tenant to Landlord hereunder.

10 Indemnity The Tenant agrees to protect, indemnify and hold harmless the Landlord against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by the Landlord or asserted against its interests in the Premises, which do not result from the willful act or gross negligence of Landlord, and which arise by reason of (a) any injury to or death of any person on the Premises or any damage to property located on the Premises, (b) any use, condition or state of repair of all or any part of the Fuel Facility; (c) any failure by the Tenant to perform the obligations of the Tenant under this Agreement, or (d) any negligence or willful act on the part of the Tenant or any of the Tenant's agents, contractors, employees, licensees or invitees. The Tenant's indemnification under this paragraph includes

liabilities arising from underground pollution to the extent the same results from activities on the Premises pursuant to this Agreement. If any action, suit or proceeding is brought against the Landlord by reason of any such occurrence, the Tenant, promptly after the written request of the Landlord, as applicable, will defend such action, suit or proceeding at the Tenant's expense with legal counsel designated by the Tenant which is reasonably acceptable to the Landlord. To the extent such occurrence is covered by insurance naming Tenant and Landlord as insureds, Tenant will not unreasonably withhold approval of counsel designated by the insurer and if approved, will designate such counsel to defend such action, in accordance with the preceding sentence, on behalf of Landlord and Tenant.

11 Insurance Tenant shall secure and maintain in force, at Tenant's expense, during the Term the insurance specified on Exhibit B hereto.

12 Casualty

12.1 Reconstruction If at any time during the Lease Term the Fuel Facility shall be damaged or destroyed by fire or other casualty, of any kind or nature, ordinary or extraordinary, Tenant may, at its option exercised by notice to Landlord within 30 days after such damage or destruction, terminate the Lease Term as of the date of such damage or destruction, in which event the Sublease Term shall terminate concurrently. If the Lease Term is not so terminated, Tenant shall make the necessary repairs to restore the Fuel Facility to its condition prior to such damage. Any such repairs shall be done at the sole cost and expense of Tenant in strict conformity with paragraph 2 hereof. If the Lease Term is terminated, Tenant shall conduct the Closure Work in accordance with paragraph 3 hereof.

12.2 Insurance Proceeds All proceeds of insurance on account of any damage or destruction of the Fuel Facility shall be paid to Tenant but will be made available to Subtenant so that in accordance with paragraph 1.3 hereof it may perform Tenant's obligations to either restore the Fuel Facility or conduct Closure Work set forth in paragraph 12.1 above. Any proceeds not used in such work will be remitted to Subtenant on completion of such work.

12.3 Rent No damage to the Fuel Facility shall reduce the obligations of Tenant hereunder, including the obligation to pay the Rent, unless the Term is terminated as provided hereby.

13 Condemnation

13.1 Taking If at any time during the Lease Term there is any actual or threatened taking of the Premises as a result of the exercise of the power of eminent domain or by purchase in lieu thereof, Tenant may, at its option exercised by notice to Landlord within 30 days after notified in writing of such actual or pending taking, terminate the Lease Term as of the date it must yield possession of the portion of the Premises so taken, in which event the Sublease Term shall terminate concurrently. If the Lease Term is not so terminated, the Tenant shall restore that portion of the Fuel Facility not so taken to a complete architectural unit of substantially the same usefulness, design, construction and character as existing before such taking. Any such restoration shall be done at the sole cost and expense of Tenant and in strict

conformity with paragraph 2 hereof Under such circumstances, for the balance of the Lease Term a proportionate part of the Rent and the Landlord Expense, based on the portion of the Premises so taken, will be abated If the Lease Term is terminated, Tenant shall conduct the Closure Work in accordance with paragraph 3 hereof

13 2 Apportionment of Award If all or a portion of the Premises are taken, all awards allocable to the Premises shall be paid to Landlord The Tenant shall be entitled to that portion of the award allocable to the Fuel Facility If for any reason the court is unwilling or unable to allocate an award between the Premises and the Fuel Facility, and the parties are unable to agree on such allocation, such allocation shall be determined by arbitration conducted in accordance with the rules of the American Arbitration Association

13 3 Participation in Proceedings Each party will each have the right at its expense to participate in any proceeding seeking to take all or any portion of the Premises or the Fuel Facility and any appeals which might be taken therefrom

14 Cessation of Business In the event Tenant elects to cease operation of the Fuel Facility it may terminate the Lease Term in accordance with this paragraph In order to terminate the Lease Term Tenant shall provide notice to Landlord which notice shall specify an effective date of termination, not later than 30 days after such notice If Tenant so terminates the Lease Term, the Lease Term will end on the date specified in such notice, Tenant shall thereafter perform the Closure Work specified in paragraph 3 hereof and the parties shall otherwise be released from all obligations hereunder accruing after such termination date

## 15 Default

15 1 Events of Default The following events will be deemed to be Events of Default by the Tenant under this Agreement (a) failure to pay any Rent or other sums payable by the Tenant hereunder when such sums become due or (b) failure to comply with any term of this Agreement to be observed by the Subtenant and, in either case, a failure to cure the same after notice as provided in the following paragraph

15 2 Notice, Opportunity to Cure Landlord shall provide notice to Tenant and Subtenant of any event described in the preceding paragraph which could, if not cured, become an Event of Default In the event the Subtenant or Tenant cures a default arising from the events specified at Section 15 1(a) within ten (10) days after receipt of such notice, or cures a default arising from the events specified at Sections 15 1(b) within thirty (30) days after receipt of such notice, or, if such default is one not reasonably susceptible of being cured within thirty (30) days within such additional time as is reasonably required provided Subtenant promptly commences action reasonably designed to cure such default and pursues such action to completion, the parties will be restored to their respective rights and obligations under this Agreement as if no such event had occurred

15 3 Remedies On the failure to cure a default within the time provided above, the Landlord will have the option to do any one or more of the following, without any further notice or demand

15 3 1 Termination The Landlord may terminate the Lease Term, in which event the Tenant will immediately cease conducting business from the Premises, conduct, at its sole cost and expense the Closure Work described in paragraph 3 and surrender the Premises to the Landlord, but if the Tenant fails to do so, the Landlord may, to the maximum extent permitted by law, without notice and without prejudice to any other remedy the Landlord might have enter and take possession of the Premises and remove the Tenant and the Tenant's property therefrom

15 3 2 Option to Perform The Landlord may perform or cause to be performed the obligations of the Tenant under this Agreement and may enter the Premises to accomplish such purpose The Tenant agrees to reimburse the Landlord on demand for any expense which the Landlord might incur in effecting compliance with the terms of this Agreement on behalf of the Tenant

15 3 3 Exclusive Remedies The foregoing are the exclusive remedies of Landlord following an Event of Default Without limitation of the foregoing, Tenant shall not be liable for Rent accruing following a termination of the Term or other damages except as set forth above

## 16 Transfers of Interests

16 1 Assignment of Landlord's or Tenant's Interest Landlord may assign its interest under this Agreement to any successor owner of the Premises who expressly assumes all obligations of assignor hereunder accruing from and after such assignment without the consent of Tenant or Subtenant Tenant may assign its interest under this Agreement to any successor to its leasehold interest under the Store Lease who expressly assumes all obligations of assignor hereunder accruing from and after such assignment without the consent of Landlord or Subtenant In either case, the assignor shall not be relieved of obligations hereunder accruing from or after such assignment

16 2 Subletting by Tenant Tenant may sublease the Premises following any termination of the sublease to the Subtenant hereunder without the consent of Landlord

16 3 Assignment and Subletting by Subtenant With the prior written consent of Tenant, Subtenant may, without the consent of Landlord, assign its interest under this Agreement to any succeeding operator of a retail grocery store in the Store Space Subtenant may not otherwise assign its interest under this Agreement or sublease all or any part of the Premises without the prior written consent of Landlord and Tenant In the event of any assignment of the Subtenant's interest under this Agreement, the Subtenant shall be released from all obligations under this Agreement accruing after such assignment

17 Store Lease and Store Sublease The Store Lease is hereby amended as provided herein Upon completion of the Fuel Facility and commencement of operation thereof for retail sales the term of the Store Lease will be extended so that the term runs for seven years after such date, and the Tenant will have two five-year renewal options thereafter, such options to be exercised as provided on the Store Leases Tenant's occupancy during such extended term

and such renewal terms, if applicable, shall be on the terms and conditions set forth in the Store Lease except that minimum annual rent shall be \$69,247 during the extended seven year term, \$74,440 during the first renewal term and \$80,023 during the second renewal term. The Store Sublease is hereby amended as provided herein. Upon completion of the Fuel Facility and commencement of operation thereof for retail sales the term of the Store Sublease will be extended so that the term runs for seven years after such date, and the Tenant will have two five-year renewal options thereafter, such options to be exercised as provided on the Store Subleases. Tenant's occupancy during such extended term and such renewal terms, if applicable, shall be on the terms and conditions set forth in the Store Sublease except that minimum annual rent shall be \$76,171.70 during the extended seven year term, \$81,884 during the first renewal term and \$88,025 during the second renewal term.

18 Site Plan The location of the Premises shown on the site plan attached hereto as Exhibit A is approved by all parties.

19 Consents Landlord hereby represents and warrants to Tenant and Subtenant that neither Landlord nor the Shopping Center is subject to any agreement, order or decree which requires the consent of any other person or entity to the transactions described herein or to the installation, operation, use or removal of the Fuel Facility as contemplated hereby. Without limitation of the foregoing, Landlord represents and warrants that this agreement does not violate any exclusive or other covenant in any other lease of space in the Shopping Center or the term of any mortgage, deed of trust or similar security agreement covering the Landlord's interest in the Shopping Center.

20 Environmental Matters Tenant represents, warrants, and covenants to Landlord that

(a) In the ownership and operation of the Fuel Facility, Tenant and the Premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph (g), to the extent applicable, all as amended and modified from time to time (collectively, "Environmental Laws"). Tenant will obtain and comply with all governmental permits relating to the use or operation of the Fuel Facility required by applicable Environmental Laws. Tenant will conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal and other actions necessary to clean up and remove all hazardous material introduced on the Premises introduced in connection with the Fuel Facility and not maintained thereon in accordance with all applicable Environmental Laws.

(b) Tenant will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of "hazardous material," (as that term is defined in subparagraph (g)) introduced in connection with the Fuel Facility, on, in, under, or from the Premises in violation of any Environmental Laws. Tenant will promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any such hazardous material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or

from the Premises in violation of any Environmental Laws, and if any hazardous material is found on the Premises in violation of any Environmental Laws, Tenant, at its own cost and expense, will immediately take such action as is necessary to bring the Premises into compliance with Environmental Laws

(c) Tenant will immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the Fuel Facility or its compliance with Environmental Laws. Tenant will promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Tenant with respect to the Fuel Facility to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Alabama Department of Environmental Management, and any other local, state, or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to Environmental Laws. Tenant will promptly cure and have dismissed with prejudice any such actions and proceedings. Tenant will keep the Premises free of any lien imposed pursuant to any Environmental Law and related to the ownership or operation of the Fuel Facility. Tenant will promptly notify Landlord of any such lien threatened or attached against the Premises pursuant to any Environmental Law. If such a lien is filed against the Premises then within the earlier of twenty (20) days or five (5) days less than the period to remove the liens set forth in any underlying mortgage or lease from the date that the lien is placed against the Premises, and before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Tenant will either (1) pay the claim and remove the lien from the Premises, or (2) furnish either (i) a bond or cash deposit reasonably satisfactory to Landlord and Landlord's title insurance company in an amount not less than the claim from which the lien arises, or (ii) other security satisfactory to Landlord and to any superior mortgagee or lessee in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

(d) Landlord and Landlord's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by Landlord, may (but without the obligation or duty so to do), at any time and from time to time, inspect the Premises to determine whether Tenant is complying with Tenant's obligations set forth in this paragraph 20, and perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as Landlord and Tenant may agree. If Tenant is not in compliance with the requirements of this paragraph 20, Landlord will have the right in addition to Landlord's other remedies available at law and in equity following (i) written notice to Tenant of such noncompliance and (ii) Tenant's failure to institute action reasonably designed to bring Tenant and the Premises into compliance within 30 days of such notice and to diligently pursue such action to completion to enter upon the Premises immediately and take such action as Landlord in its reasonable judgment deems appropriate to remediate any actual or threatened contamination caused by Tenant's failure to comply. Landlord will use reasonable efforts to minimize interference with Tenant's business but will not be liable for any interference caused by Landlord's entry and remediation efforts. Upon completion of any sampling, testing or remediation, Landlord will (at Tenant's expense if

Landlord's actions are a result of Tenant's default under this section) restore the affected area of the Premises from any damage caused by Landlord's sampling, testing and remediation.

(e) If Tenant fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may, following (i) written notice to Tenant of such noncompliance and (ii) Tenant's failure to institute action reasonably designed to bring Tenant and the Premises into compliance within 30 days of such notice and to diligently pursue such action to completion, cause the removal (or other cleanup acceptable to Landlord) of any hazardous material introduced on the Premises in connection with the Fuel Facility in violation of Environmental Laws. The costs of such hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Agreement, whether or not a court has ordered the cleanup, and such costs will become due and payable on demand by Landlord. Tenant will give Landlord, its agents, and employees access to the Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material introduced in connection with the Fuel Facility, and this Agreement will not be construed as creating any such obligation.

(f) Tenant agrees to indemnify, defend (with counsel selected by Tenant's insurance company or otherwise reasonably acceptable to Landlord and at Tenant's sole cost), and hold Landlord and Landlord's affiliates, shareholders, directors, officers, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord or any of them in connection with or arising from or out of

(i) any hazardous material on, in, under, or affecting all or any portion of the Premises introduced in connection with the Fuel Facility,

(ii) any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this paragraph,

(iii) any violation or claim of violation by Tenant of any Environmental Law, or

(iv) the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material introduced in connection with the Fuel Facility. This indemnification is the personal obligation of Tenant and will survive termination of this Agreement.

(g) The provisions of this Section will be in addition to any and all obligations and liabilities Tenant may have to Landlord at common law, and will survive this Agreement.



(h) For purposes of this Agreement, "hazardous material" means (i) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U S C §§ 9601 et seq or the Hazardous Materials Transportation Act, 49 U S C § 1801 all as amended and amended after this date, (ii) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act (RCRA) 42 U S C §§ 6901 et seq as amended and amended after this date, (iii) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended or amended after this date, (iv) crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), (v) any radioactive material, including any source, special nuclear or by- product material as defined at 42 U S C §§ 2011 et seq , as amended and amended after this date, (vi) asbestos in any form or condition, and (vii) polychlorinated biphenyls (PCBs) or substances or compounds containing PCBs

21 Whole Agreement--No Oral Modification This Agreement embodies all representations, warranties, and agreements of the parties with respect to the matters set forth herein and may be altered or modified only by an agreement in writing signed by the parties

22 Section Headings The section headings contained in this Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation thereof

23 Exclusive Landlord covenants and agrees that during the Lease Term no other business engaged in dispensing fuel shall be permitted in the Shopping Center

24 Governing Law This Agreement and the interpretation thereof shall be governed by and construed in accordance with the laws of the state in which the Premises is located

25 Notices All notices and other communications called for or contemplated by this Agreement shall be given by personal delivery in return for a receipt or by registered or certified mail to the parties at the addresses set forth on Schedule 1 hereto

26 Memorandum The parties agree that this Agreement will not be recorded but the parties agree, at the request of any party, to execute a memorandum hereof in recordable form, which may be recorded

27 Store Lease and Store Sublease Except as specifically set forth herein no event or action which results in a termination of this Agreement will result in a termination of, or otherwise affect, the Store Lease or the Store Sublease The effect of any such event or action on the Store Lease and the Store Sublease, respectively, will depend on the specific terms of such agreements

EXECUTED AND DELIVERED as of the Effective Date set forth on Schedule 1

EAST BROOK SHOPPING CENTER, L L C , a  
Alabama limited liability company

By Regions Bank, an Alabama banking  
corporation, Manager

By Mark C Keith  
Vice President

"Landlord"

FLEMING COMPANIES, INC , an Oklahoma  
corporation

By Yvonne D. Yuen  
Sr Vice President

"Tenant"

BAKERS II, an Alabama general partnership

By Lennae M Baker  
General Partner

By Larry W Baker  
General Partner

"Subtenant"

STATE OF Alabama )  
 ) ss  
COUNTY OF Montgomery )

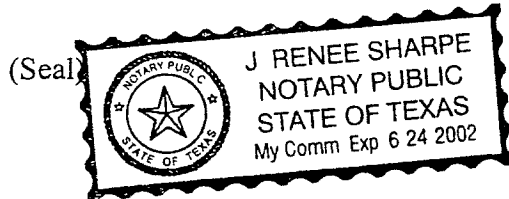
This instrument was acknowledged before me on July 24, 2000, by  
Mark C Keith, as Vice President of Regions Bank, an Alabama banking  
corporation, as Manager of East Brook Shopping Center, L L C , a \_\_\_\_\_ limited liability  
company

(Seal)

Martha Thomas  
Notary Public **My commission expires 01-20-2002**  
My Commission Expires \_\_\_\_\_

STATE OF TEXAS )  
 ) ss  
COUNTY OF DENTON )

This instrument was acknowledged before me on August 16 2000, by  
Lenore T. Graham as <sup>SE</sup>Vice President of Fleming Companies, Inc, an Oklahoma corporation



J. Renee Sharpe  
Notary Public  
My Commission Expires 6-24-02

STATE OF Alabama )  
 ) ss  
COUNTY OF Montgomery )

This instrument was acknowledged before me on July 24, 2000, by  
Ronnie M. Baker, as general partner of Bakers II, an Alabama general partnership

(Seal)

Martha Thomas  
Notary Public  
My Commission Expires \_\_\_\_\_  
**My commission expires 01-20-2002**

STATE OF Alabama )  
 ) ss  
COUNTY OF Montgomery )

This instrument was acknowledged before me on July 24, 2000, by  
Harry W Baker, as general partner of Bakers II, an Alabama general partnership

(Seal)

Martha Thomas  
Notary Public  
My Commission Expires \_\_\_\_\_  
**My commission expires 01-20-2002**

## FUEL FACILITY LEASE AGREEMENT

### Schedule 1

EFFECTIVE DATE	_____
COMMENCEMENT DATE	The date the Fuel Facility opens for retail business
SHOPPING CENTER	East Brook Shopping Center
SHOPPING CENTER LOCATION	439 Coliseum Boulevard Montgomery, Alabama 76109
LANDLORD	East Brook Shopping Center, L L C , an Alabama limited liability company , and its permitted successors and assigns
LANDLORD'S ADDRESS	P O Box 2450 Montgomery, Alabama 36101 Attn Mr Mark Keith
TENANT	Fleming Companies, Inc , its permitted successors and assigns
TENANT'S ADDRESS	6301 Waterford Boulevard P O Box 26647 Oklahoma City, OK 73126
STORE LEASE	
DATE	March 25, 1977
ORIGINAL PARTIES	East Brook Shopping Center, Inc , as landlord and Hudson-Thompson, Inc , as tenant
AMENDMENTS, IF ANY	October 31, 1977
SUBTENANT	Bakers II, an Alabama general partnership and its permitted successors and assigns
SUBTENANT'S ADDRESS	439 Coliseum Boulevard Montgomery, Alabama 76109

STORE SUBLEASE

DATE

February 22, 1993

ORIGINAL PARTIES

Scrivner of Alabama, Inc., as landlord, and  
Bakers II, as tenant

AMENDMENTS, IF ANY

None

RENT

\$6,000 per annum, payable in 12 equal monthly  
installments of \$500. Rent will be payable each  
month at the rate of \$500

SUBRENT

~~\$6,000~~ <sup>6,000 PB MCK LWB</sup> per annum, payable in 52 equal weekly  
installments of ~~\$550~~ <sup>500</sup> Subrent will be payable  
each week at the rate of ~~\$550~~ <sup>500 PB MCK LWB</sup>

LANDLORD EXPENSES

\$\_\_\_\_\_ per annum, payable in 12 equal  
monthly installments of \$\_\_\_\_\_

FUEL FACILITY

Gasoline pumps with associated underground  
storage tanks and other equipment together with  
awnings, signage and related facilities, as  
modified by any alterations or improvements  
thereto made from time to time by Subtenant

**EXHIBIT A**

**SITE PLAN**

## EXHIBIT B

### INSURANCE SPECIFICATIONS

#### Fuel Facility Development and Supply Agreement

#### Fleming Companies, Inc

a     Liability Insurance   At all times during the term of this agreement and for any period required for closure and removal of the Fuel Facility, Retailer shall maintain, at its cost, and for Landlord and Fleming as their interests may appear, liability insurance with a combined single limit of not less than \$3,000,000, insuring itself, Landlord and Fleming against any and all liability occasioned by or arising out of or in connection with the operation of the Fuel Facility and occupancy of the Premises. Such policies shall name Landlord and Fleming as an additional insured. Retailer will furnish a certificate of insurance to Fleming and Landlord upon execution of this agreement, and will provide certificate of renewal upon expiration of the policy.

b     Environmental and Impairment Liability Insurance   At all times during the term of this agreement and for any period required for closure and removal of the Fuel Facility, Retailer shall maintain, at its cost, and for Landlord and Fleming as their interests may appear, Environmental and Impairment Liability Insurance with a combined single limit of not less than \$1,000,000, insuring itself, Landlord and Fleming against any and all liability occasioned by or arising out of or in connection with the operation of the Fuel Facility and occupancy of the Premises. Such policies shall name Landlord and Fleming as an additional insured. Retailer will furnish a certificate of insurance to Fleming and Landlord upon execution of this agreement, and will provide a certificate of renewal upon expiration of the policy.

c     Hazard/Property Insurance   At all times during the term of this agreement and for any period required for closure and removal of the Fuel Facility, Retailer shall maintain, at its cost, all risk property insurance on the Fuel Facility in an amount equal to one hundred percent of the value of the Fuel Facility. Such policy shall name Retailer, Landlord and Fleming as their interest may appear.

d     Builder's Risk Insurance/Installation Floater/Liability Insurance   The contractor selected by Retailer will maintain all risk insurance during the construction of the fuel facility covering one hundred percent of the property value of the fuel facility at risk. The contractor will maintain liability insurance, which includes the products and completed operations hazard, to protect Retailer, landlord and Fleming from any and all liability associated with the construction of the fuel facility.

e     Insurance Policies   Policies required hereunder shall be maintained with one or more insurance companies authorized to do business in the state where the facility is located. Retailer and Contractor will each furnish satisfactory evidence of the maintenance of the insurance required by this Paragraph, including certificates of such Insurance and will endeavor to obtain a written notice on the part of the insurance company to notify Fleming and landlord at least thirty days prior to cancellation or material change of any such insurance. In the event either party fails to maintain the insurance required under the paragraphs, the other party may perform its obligations and Retailer or Contractor agrees to reimburse the performing party.