

United States Bankruptcy Court FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM	
In re (Name of Debtor) FLEMING COMPANIES, INC , et al		Case Number 03-10945 MFW	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" 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) USRP I LLC		☐ 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.	
Name and Addresses Where Notices Should be Sent Leslie Beth Baskin, Esquire Spector Gadon & Rosen, P C 1635 Market Street - 7th Floor Philadelphia, PA 19103 Telephone No (215) 215-8888		THIS SPACE IS FOR COURT USE ONLY	
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR		Check here if this claim ☐ replaces ☐ amends a previously filed claim. claim dated _____	
1 BASIS FOR CLAIM ☐ Goods Sold ☐ Services performed ☐ Money loaned ☐ Personal injury/wrongful death ☐ Taxes ☒ Other (Describe briefly) <u>Unpaid rent, CAM underpayments, etc.</u>			
☐ 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 See Attached Supporting Documentation		3 IF COURT JUDGMENT DATE OBTAINED	
4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED \$ 15,270.17 (See attached supporting documentation) ^{1,2} If all or part of claim is secured or entitled to priority also complete Item 5 or 6 below ☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5 SECURED CLAIM ☐ Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral ☐ Real Estate ☐ Motor Vehicle ☐ Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____		6 UNSECURED PRIORITY CLAIM ☐ Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim ☐ Wages, salaries or commissions (up to \$4,650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(3) ☐ Contributions to an employee benefit plan - 11 U.S.C. §507(a)(4) ☐ Up to \$2,100* of deposits toward purchase, lease or rental of property or services for personal, family or household use - 11 U.S.C. §507(a)(6) ☐ Alimony, maintenance or support owed to a spouse, former spouse, or child - 11 U.S.C. §507(a)(7) ☐ Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8) ☐ Other - Specify applicable paragraph of 11 U.S.C. §507(a)(1)	
7 CREDITS The amount of all payments on this claim has been credited and deducted for the purposes 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 9-11-03		Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) Leslie Beth Baskin Esquire	

¹ This Proof of Claim may be amended in the future if it is later determined that there is future rent due and owing.

² This claim amount is also the subject of the Objection (Nunc Pro Tunc) of USRP I LLC to Cure Amount Regarding Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases filed with the Bankruptcy Court on August 8, 2003.

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§1

Fleming Companies Claim



14455

**UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF DELAWARE**

Case No **03-10945(MFW)**

Name of Debtor: **Fleming Companies, Inc**

Name and Address **USRP I LLC**
of Creditor. **c/o Leshe Beth Baskin, Esquire**
 Spector Gadon & Rosen, P C.
 1635 Market Street - 7th Floor
 Philadelphia, PA 19103

Basis for Claim **Unpaid rent, CAM payments, etc.**

EXHIBITS TO PROOF OF CLAIM

EXHIBIT A - **Claim breakdown**

EXHIBIT B - **Lease with amendments**

EXHIBIT “A”

USRP I LLC
4350 East-West Highway
Suite 400
Bethesda, MD 20814

CLAIM BREAKDOWN

**Re: Lease – Mayfair Center, Frankford Avenue and Hellerman Street,
Philadelphia, Pennsylvania**

Pre-Petition

a	January 2003 base rent and CAM underpayment ¹	\$ 216 00
b	February 2003 base rent and CAM underpayment	\$ 216 00
c	March 2003 base rent and CAM underpayment	\$ 216 00

Sub-Total	\$ 648 00
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Post-Petition

a	April 2003 base rent and CAM underpayment	\$ 216 00
b	May 2003 base rent and CAM underpayment ²	\$14,406 17

Sub-Total	<u>\$14,622 17</u>
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<u>TOTAL PRE AND POST-PETITION</u>	<u>\$15,270 17</u>
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¹ Total base rent and CAM payments due each month was \$26,493 69 but each check received from the Debtor during the period of January, 2003 through April, 2003 was in the amount of \$26,277 69

² Total base rent and CAM payments due each month was \$26,493 69 but each check received from the Debtor for May, 2003 was in the amount of \$12,087 52.

EXHIBIT “B”

AMENDMENT TO BUILD AND LEASE AGREEMENT

COUNTERPARTS

THIS AMENDMENT is made this 5th day of November, 1992, by and between SACKETT DEVELOPMENT COMPANY ("LESSOR") and FLEMING FOODS EAST, INC. ("LESSEE").

Background

A. LESSOR and LESSEE have entered into a Build and Lease Agreement ("Lease") dated March 24, 1992 for approximately 25,673 square feet of retail space located at Mayfair Center, Frankford Avenue and Hellerman Street, Philadelphia, Pennsylvania.

B. LESSOR has requested a certain amendment regarding LESSOR'S financing contingency as set forth in the Lease.

C. LESSOR has requested an acknowledgment from LESSEE that the joinder of the Philadelphia Authority for Industrial Development required by the Lease is not necessary.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. The provisions of the Background are incorporated herein by reference.

2. Section 19.26 of the Lease shall be amended to read as follows:

"19.26 LESSOR'S FINANCING CONTINGENCY. LESSOR shall not be obligated to proceed with the construction of the premises unless and until financing reasonably acceptable to LESSOR is obtained. Should such financing not be obtained by January 1, 1993, LESSOR shall notify LESSEE in writing and LESSOR or LESSEE shall have the right to cancel and terminate this Lease and in such event neither

party shall have any further liability or obligation to the other. Notwithstanding the foregoing, in the event LESSOR cancels and terminates this Lease pursuant to this Section 19.26 and subsequently obtains the required financing, LESSOR agrees that it shall not lease any space in the Shopping Center for a supermarket use for a period of one (1) year after the date of such lease termination without first offering such space to LESSEE upon terms, covenants and conditions substantially similar to those set forth in this Lease."

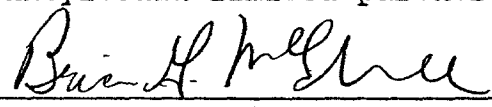
3. Notwithstanding the requirement of LESSEE to have the joinder of the Philadelphia Authority for Industrial Development ("PAID") to the Lease, LESSEE is satisfied that such joinder is not necessary.

4. Except as expressly amended hereby, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year set forth above.

LESSOR:
SACKETT DEVELOPMENT COMPANY
A Pennsylvania limited partnership

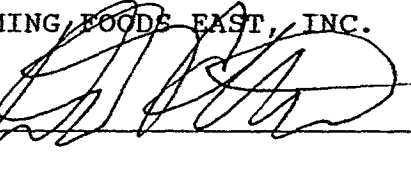
Witness: 

By: 

Brian G. McElwee
General Partner

FLEMING FOODS EAST, INC.

Attest: 

By: 

STATE OF *Pennsylvania* :
COUNTY OF *Montgomery* : ss.
:

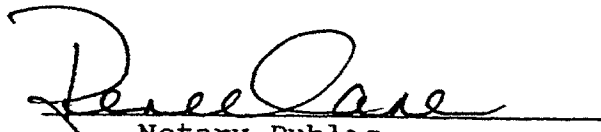
BE IT REMEMBERED, that on this *5th* day of *November*, 1992, before me, the subscriber, a Notary Public in and for the County and State aforesaid, appeared Brian G. McElwee, the General Partner of Sackett Development Company, who, I am satisfied, is the person who signed the within instrument; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the said instrument as such partner aforesaid, and that the within instrument is the voluntary act and deed of said partnership.

Yvonne C. Delp
Notary Public

NOTARIAL SEAL YVONNE C DELP, Notary Public Upper Merion Twp, Montgomery Co., Pa My Commission Expires Nov 16, 1992

STATE OF Oklahoma :
COUNTY OF Oklahoma : ss.
:

BE IT REMEMBERED, that on this 23rd day of November, 1992, before me, the subscriber, a Notary Public in and for the County and State aforesaid, came David R. Almond, Vice President of Fleming Foods East, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of Pennsylvania, and James M. Wallace, Asst. Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.


Notary Public
my commission expires: 9-8-9

AFM/dc-092091
Mayfair

Prepared by:

Andrew F. Malone

Andrew F. Malone, Esquire
600 West Germantown Pike
Suite 380
Plymouth Meeting PA 19462

FINAL EXECUTED COPY

MEMORANDUM OF LEASE

MEMORANDUM OF LEASE made this 24th day of March, 1992, by and between SACKETT DEVELOPMENT COMPANY ("Lessor") and FLEMING FOODS EAST, INC., ("Lessee").

WITNESSETH:

WHEREAS, Lessee entered into a Lease dated March 24, 1992 governing certain premises located in the Mayfair Center, Frankford Avenue and Hellerman Street, Philadelphia, Pennsylvania, with Lessor; and

WHEREAS, it is the desire of the parties hereto to enter into a Memorandum of Lease for the purpose of recording the same and giving notice of the existence of said Lease.

NOW, THEREFORE, in consideration of the rents reserved and the covenants and conditions more particularly set forth in that certain Lease entered into between the parties hereto, Lessor and Lessee have agreed as follows:

1. The name and address of the Lessor is:

Sackett Development Company
c/o Montgomery Realty Company
Plymouth Corporate Center
625 Ridge Pike
Building E, Suite 201
Conshohocken, PA 19428

2. The name and address of the Lessee is:

Fleming Foods East, Inc.
Egypt and Greentree Roads
Oaks, PA 19456

3. Lessor has demised and leased unto Lessee and Lessee has leased from Lessor, a portion of the premises known as Mayfair Center, which premises and the portion thereof leased to Lessee are shown on Exhibit "A" to said Lease and are legally described on page 1 of said Lease, which exhibit is incorporated herein by reference. Said legal description is attached hereto as Exhibit "A", which legal description is of the entire premises known as Mayfair Center (a portion of which has been leased to Lessee)

4. The term of the Lease shall commence on the first day of the month following the earlier of

(a) the date on which the Lessee's supermarket on the demised premises has opened for business; or

(b) Sixty (60) days after Lessor has substantially completed the supermarket building which Lessor shall construct on the demised premises, written notice thereof has been given to Lessee, and a certificate of occupancy has been issued.

The term of the Lease shall end twenty (20) years after the commencement date unless sooner terminated or extended as provided in said Lease. There is a provision for two successive option periods following the end of the initial term, one (1) of five (5) years and one (1) of four (4) years exercisable at the sole option of Lessee.

5. **Exclusive Use.** The Lease provides that Lessor will not permit any person other than Lessee to operate a retail food store in the Shopping Center of which the premises are a part or on any adjoining property owned by Lessor, its assignee or transferee, without first obtaining Lessee's prior written consent. Notwithstanding anything to the contrary, Lessor may permit the operation of a donut shop, a gourmet cookie and/or candy store, a cinnamon bun store, an ice cream and/or frozen yogurt store whose primary business is the sale of hand-dipped ice cream and/or frozen yogurt, a liquor and/or beer store, a health food store or a bagel store. This provision runs with the land and continues to control any portion of the Shopping Center transferred by Lessor and any transferee is bound thereby.

6. **Additional Lease Space.** The Lease provides that Lessee may, at any time within the first six (6) years of the lease term request Lessor to construct additional rental space not exceeding 4950 square feet, depicted as Future Expansion Area on Exhibit "A" attached to the Lease to be leased to Lessee on the terms and conditions as provided for therein.

The Lease further provides that, except for the original tenants, in the event rental space in any space adjacent to the demised premises becomes available for occupancy during the term of the Lease or any extension thereof, Lessee shall have the first right and option to lease such space on the terms and conditions as provided for therein.

7. **Shopping Center Occupancy.** The Lease provides that Lessor agrees on the real estate of which the premises are a part, which the Lessor now controls or on contiguous or adjacent real estate which Lessor may at some later date control, that there will not be located on such real estate, a theater, bowling alley, restaurant, or skating rink (provided, however, a restaurant not to exceed 5,000 square feet of floor space shall be permitted) within 180 feet of the premises, and further no offices, training, educational, physical fitness or exercise facilities within 200 feet of the premises, except for existing tenants or their successors, which shall remain in the existing space as set forth on Exhibit "A".

8. This instrument is executed for the purpose of giving public record notice of the fact of execution of the above-described Lease and all of the terms and conditions of said Lease and amendments thereto, if any, are incorporated by reference herein.

9. This agreement shall extend to and be binding upon the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed these presents and set their hands and seals the day and year first above written.

SACKETT DEVELOPMENT COMPANY
A Pennsylvania Limited Partnership

Witness: Katherine M. Free

By: Brian G. McElwee
Brian G. McElwee, General Partner

FLEMING FOODS EAST, INC.

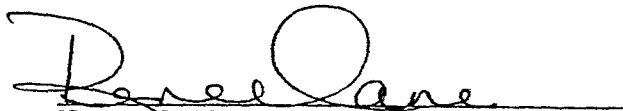
Attest: James Clash
(Corporate Seal)

By: Stephen G. Mangold
Stephen G. Mangold, Vice President

STATE OF Oklahoma :
COUNTY OF Oklahoma : SS
:

BE IT REMEMBERED, that on this 24th day of March, 1992, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen G. Margol, President of FLEMING FOODS EAST, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Pennsylvania, and James W. Clark, Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.


Notary Public

(SEAL)

My Commission Expires:

September 8, 1994

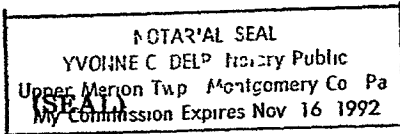
STATE OF

COUNTY OF

:
: SS
:

BE IT REMEMBERED, that on this 17th day of October, 1991, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Brian G. McElwee, General Partner of Sackett Development Company, who, I am satisfied, is the person who signed the within instrument; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed and delivered the said instrument as such partner aforesaid, and that the within instrument is the voluntary act and deed of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.



My Commission Expires:

Yvonne C. Delp
Notary Public

LAND DESCRIPTION

ALL THAT CERTAIN lot or piece of ground situate in the 55th Ward of the City of Philadelphia and described according to a topographical Plan made for Frankford Shopping Center by VPH Associates, dated October 15, 1984, as follows, to wit:

BEGINNING at a point formed by the intersection of the northwesterly side of Frankford Avenue (100' wide) with the southwesterly side of Hellerman Street (60' wide); thence extending S. $51^{\circ} 31' 00''$ W, along the said northwesterly side of Frankford Avenue, the distance of $227' - 6 \frac{7}{8}''$ to an angle point in Frankford Avenue; thence extending S. $63^{\circ} 11' 37''$ W, still along the northwesterly side of Frankford Avenue, the distance of $215' - 2 \frac{1}{4}''$ to a point in the center line of a 20' - wide easement (for ingress and egress purposes); thence extending N. $26^{\circ} 48' 23''$ W. along the center line of said 20' - wide easement, the distance of $214' - 1 \frac{5}{8}''$ to a point on the southeasterly side of former Sackett Street (60' - wide, stricken from City Plan); thence extending S. $37^{\circ} 41' 53''$ W, on the southeasterly side of former Sackett Street, the distance of $81' - 5 \frac{5}{8}''$ to a point on the northeasterly dead-end of Sackett Street (60' wide); thence extending N. $23^{\circ} 08' 38''$ W, along the said northeasterly dead-end of Sackett Street, the distance of $34' 4 \frac{1}{4}''$ to a point on the northwesterly side of Sackett Street; thence extending S. $37^{\circ} 41' 53''$ W, along the said northwesterly side of Sackett Street, the distance of $11' - 11 \frac{5}{8}''$ to a point; thence extending N. $52^{\circ} 18' 07''$ W., the distance of $375' 0''$ to a point, thence extending N. $37^{\circ} 41' 53''$ E.,

the distance of $279' 9''$ to a point, thence extending S. $52^{\circ} 18' 07''$ E., the distance of $187' - 1 \frac{1}{2}''$ to a point in the center line of a 15' - wide driveway, thence extending N. $37^{\circ} 41' 53''$ E., along the center line of the said 15' - wide driveway, the distance of $120' 0''$ to a point on the southwesterly side of Hellerman Street; thence extending S. $52^{\circ} 18' 07''$ E, along the said southwesterly side of Hellerman Street, the distance of $558' - 1 \frac{5}{8}''$ to the first mentioned point and place of beginning;

EXHIBIT "A"

AFM/kmg-092091
Mayfair2

GUARANTY OF LEASE

GUARANTY OF LEASE, dated March 24, ¹⁹⁹²~~1991~~, by FLEMING COMPANIES, INC., an Oklahoma corporation.

A. A Build and Lease Agreement dated March 24, ¹⁹⁹²~~1991~~ (the "Lease") has been executed by and between SACKETT DEVELOPMENT COMPANY, a Pennsylvania limited partnership ("Landlord"), and FLEMING FOODS EAST, INC., a Pennsylvania corporation ("Tenant"), covering a certain tract of land located at Mayfair Center, Frankford Avenue and Hellerman Street, Philadelphia, Pennsylvania, together with the supermarket building to be erected thereon (the "Demised Premises").

B. Landlord requires as a condition to its execution of the Lease, that the undersigned unconditionally become a surety to Landlord for the obligations of Tenant under the Lease.

C The undersigned is the sole shareholder of Tenant and as such desires Landlord to enter into the Lease with Tenant.

NOW THEREFORE, in consideration of the execution of the Lease by Landlord and other good and valuable consideration and intending to be legally bound hereby, the undersigned hereby agrees as follows.

1. Guaranty. The undersigned unconditionally guarantees and becomes surety to Landlord, its successors and assigns, for the full and prompt payment when due of all base rent, percentage rent, additional rent and all other sums and charges payable by the Tenant, its successors and assigns, under the Lease (hereinafter collectively referred to as the "Rent"), and for the full, faithful and punctual performance of each and all of the covenants, agreements and conditions of the Lease to be kept and performed by Tenant, in accordance with and within the time prescribed by the Lease, as well as all other liabilities now or hereafter contracted by Tenant with Landlord, together with all costs and expenses (including reasonable attorneys' fees) incurred by Landlord in connection with any of the foregoing, including (without limitation) the collection of same and the enforcement of the Lease (collectively, the "Liabilities"). The undersigned's obligations to Landlord, its successors and assigns, under this Guaranty shall be subject to all applicable grace periods provided to Tenant in the Lease and subject to the undersigned's right to claim all deductions against said Rent, as may be provided to Tenant under the Lease. The undersigned will forthwith pay all damages that may arise in consequence of any default by Tenant, its successors and assigns, under the Lease, including without limitation, all reasonable attorney's fees and disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

2. Modification of Lease Landlord shall have the right from time to time, and at any time in its sole discretion, without Notice to or consent from the undersigned, and without affecting, impairing, or discharging in whole or in part, the Liabilities of the Tenant or the obligations of the undersigned hereunder, to

(a) enter into any agreements with Tenant which change, extend, or

supplement the Lease in any respect, or any other agreement or transaction between Landlord and Tenant or between Landlord and any other party liable for the Liabilities, or any portion or provision thereof;

(b) grant extensions of time and other indulgences of any kind to Tenant;
or

(c) compromise, release, substitute, exercise, enforce or fail to refuse to exercise or enforce any claims, rights or remedies of any kind which Landlord may have at any time against Tenant or any other party liable for any of the Liabilities, or with respect to any security of any kind held by Landlord at any time under any agreement or otherwise.

The obligations of the undersigned hereunder shall not be affected, impaired or discharged, in whole or in part, by reason of any action whatsoever taken by Landlord, including, without limitation, any sale, Lease, disposition, liquidation or other realization (which may be negligent, willful or otherwise) with respect to any security in which Landlord may at any time have any interest or against any other party liable for all or any part of the Liabilities.

3. Waivers by the Undersigned. Except as provided in Paragraphs 1 and 16(a) of this Guaranty, the undersigned waives:

(a) all notices, including but not limited to (i) notice of acceptance of this Guaranty; (ii) Notice of presentment, demand for payment, or protest of any of the Liabilities, or the obligation of any person, firm or corporation held by Landlord as collateral security;

(b) trial by jury and the right thereto in any proceeding of any kind, whether arising on, out of, under or by reason of this Guaranty or any other agreement or transaction between the undersigned, Landlord and/or Tenant; and

(c) all notices of the financial condition or of any change in the financial condition of Tenant.

4. Assignment. Landlord may, without notice, assign the Lease or this Guaranty in whole or in part, absolutely or as collateral, and no such assignment of this Guaranty or assignment or transfer of the Lease or subletting of the Demised Premises shall extinguish or diminish the liability of the undersigned hereunder.

5. Primary Obligation. The liability of the undersigned under this Guaranty shall be primary under any right of action which shall accrue to Landlord under the Lease and Landlord may, at its option, proceed against the undersigned without having to commence any action, or having obtained any judgment against Tenant.

6 Bankruptcy, Insolvency, Etc. All of the Liabilities and the obligations of the undersigned hereunder shall be due and payable by the undersigned, anything contained herein to the contrary notwithstanding in accordance with the terms, covenants and conditions of the Lease, immediately upon the insolvency of Tenant in the bankruptcy or equity sense, the application for appointment or appointment of a trustee, receiver, conservator, liquidator, sequestrator, custodian, or other similar judicial representative for Tenant or any of Tenant's assets; the making by Tenant of any assignment for the benefit of creditors; the commencement of an action by or against Tenant under any insolvency, bankruptcy, creditor adjustment or debtor rehabilitation law, whether state

or federal, including, but not limited to, arrangement, composition, liquidation or reorganization laws; the calling of a meeting of creditors of Tenant; or if any of the foregoing shall occur with respect to the undersigned.

7. Jurisdiction. The undersigned consents to the exclusive jurisdiction of the Courts of Common Pleas of Pennsylvania and/or the United States District Court for the Eastern District of Pennsylvania in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking between the undersigned, Landlord and/or Tenant, and irrevocably agrees to service of process by certified mail, return receipt requested, to its address set forth herein, or to such other address as may appear in Landlord's records.

8. Obligations Unaffected. The obligations of the undersigned hereunder shall not be affected, impaired or discharged, in whole or in part, by reason of (a) the entry of an order for relief pursuant to the United States Bankruptcy Code by or against Tenant or the undersigned; (b) the proposal of or the consummation of a plan of reorganization concerning Tenant or the undersigned; (c) the assignment of Tenant's obligations pursuant to (i) the Lease, (ii) an order of court; or (iii) by operation of law, regardless whether such assignment violates the Lease.

9. Waivers by Landlord. The waiver of any right by Landlord or its failure to exercise promptly any right shall not be construed as the waiver of any other right including the right to exercise the same at any time thereafter. No waiver or modification of any of the terms or conditions of this Guaranty shall be binding against Landlord unless such waiver or modification is in writing signed by Landlord.

10. New Promises. Any acknowledgment, new promise, payment of Rent or other sums by Tenant or others with respect to the Liabilities of Tenant shall be deemed to be made as agent of the undersigned for the purposes hereof, and shall, if the statute of limitations in favor of the undersigned against Landlord shall have commenced to run, toll the running of such statute of limitations, and if such statute of limitations shall have expired, prevent the operation of such statute.

11. Successors, Etc. The provisions of this Guaranty shall bind all of the respective heirs, executors, administrators, legal representatives, successors and assigns of the undersigned and shall inure to the benefit of Landlord, its successors and assigns.

12. Cumulative Remedies. All rights and remedies of Landlord are cumulative and not alternative. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the Commonwealth of Pennsylvania and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said Commonwealth, not including the laws of conflict of laws. No defense given or allowed by the laws of any other state or county shall be interposed in any action or proceeding hereunder unless such defense is also given or allowed by the laws of the Commonwealth of Pennsylvania.

13. Effectiveness. The undersigned represents that at the time of the execution and delivery of this Guaranty nothing exists to impair the effectiveness of the obligations of the undersigned to Landlord hereunder, or the immediate taking effect of this Guaranty between the undersigned and Landlord with respect to the undersigned becoming a surety for the Liabilities. The undersigned has all requisite right, power and authority to enter into this Guaranty.

14. Terms Used. Each capitalized term not specifically defined in this Guaranty shall have the meaning (if any) ascribed to it in the Lease.

15. Persons Bound. If less than all persons who were intended to sign this Guaranty do so, the same shall nevertheless be binding upon those who do sign and if one person shall sign, all plural reference shall be read as singular. If the undersigned consists of more than one person or entity, the obligations of such persons and entities hereunder shall be joint and several.

16. Notices.

(a) Upon an event of default under the Lease, Landlord shall simultaneously send a copy of any notice of default which it sends to Tenant to the undersigned, and the Guarantor shall have the right to cure such default within the time period granted to Tenant to cure the same. Such notice shall be sent to the undersigned at 6301 Waterford Boulevard, P.O. Box 26647, Oklahoma City, Oklahoma 73126, Attention: Store Development, in accordance with the notice provisions of the Lease.

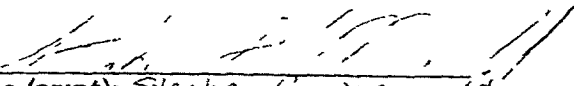
(b) Except as provided in subparagraph (a) hereof, any notice or demand given or made under this Guaranty shall be given or made by mailing the same by certified mail, return receipt requested, postage prepaid, to the party to whom the notice or demand is given or made at the address of such party set forth in this Guaranty or at such other address as may appear in Landlord's records.

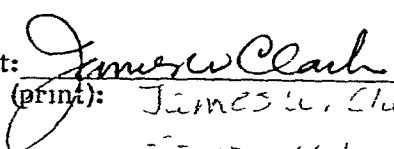
17. Waiver of Subrogation, Etc. Guarantor waives all rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Landlord may have against Tenant, and all rights to participate in any security held by Landlord for the Liabilities, and any defense based upon the impairment of any subrogation right that Guarantor might have.

18. Satisfaction of Guarantor's Liabilities Satisfaction of the Liabilities shall not relieve the undersigned from liability therefor if such satisfaction is lawfully voided by a trustee in bankruptcy or receiver as a preference, or similar voidable transfer, or for any other lawful reason whatever. Notwithstanding any provision of any document, this Guaranty shall survive final payment and performance of all Liabilities for a period of three hundred sixty-seven (367) days, or such longer period as is otherwise provided herein or in the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed and delivered by its duly authorized officers the date stated above.

FLEMING COMPANIES, INC

By 
Name (print): Stephen E. Mangold
Title Vice President

Attest: 
Name (print): James W. Clark
Title Secretary

STATE OF *Oklahoma* :
COUNTY OF *Oklahoma* : SS
:

On this *24th* day of *March*, *1992*, before me, a notary public, the undersigned officer, personally appeared *Stephen L Mangold*, who acknowledged himself to be the *Vice President* of FLEMING COMPANIES, INC., an Oklahoma corporation, and that he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Renee Cane
Notary Public

My Commission Expires: *September 8, 1994*

AFM:jac/082691/mayfair/171.313

ORIGINAL
NUMBER OF
 EXECUTED
COUNTERPARTS

BUILD AND LEASE AGREEMENT

LESSOR -

SACKETT DEVELOPMENT COMPANY

LESSEE -

FLEMING FOODS EAST, INC.

Premises:

Mayfair Center
Frankford Avenue and Hellerman Street
Philadelphia, Pennsylvania

NBSC

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BUILD AND LEASE AGREEMENT

This Agreement is made and entered into this 24th day of March, ¹⁹⁹²~~1991~~,
by and between SACKETT DEVELOPMENT COMPANY, a Pennsylvania limited
partnership, equitable owner of the premises hereafter described, whose address is c/o
Montgomery Realty Company, Plymouth Corporate Center, 625 Ridge Pike, Building E,
Suite 201, Conshohocken, Pennsylvania 19428, hereinafter collectively referred to as the
LESSOR, and FLEMING FOODS EAST, INC., a Pennsylvania corporation with an office at
Egypt and Greentree Roads, Oaks, Pennsylvania 19456, hereinafter called the LESSEE.

W I T N E S S E T H :

WHEREAS, the LESSOR desires to construct a building (hereinafter called "the
premises"), containing approximately 25,673 square feet and constituting a part of the
Mayfair Center (hereinafter called the "Shopping Center") which Shopping Center is, or
will be, located upon the following described real estate.

LAND DESCRIPTION

ALL THAT CERTAIN lot or piece of ground situate in the 55th Ward of the
City of Philadelphia and described according to a topographical Plan made
for Frankford Shopping Center by VPH Associates, dated October 15, 1984,
as follows, to wit:

BEGINNING at a point formed by the intersection of the northwesterly side
of Frankford Avenue (100' wide) with the southwesterly side of Hellerman
Street (60' wide), thence extending S. 51° 31' 00" W, along the said
northwesterly side of Frankford Avenue, the distance of 227' - 6 7/8" to an
angle point in Frankford Avenue; thence extending S. 63° 11' 37" W., still
along the northwesterly side of Frankford Avenue, the distance of 215' - 2
1/4" to a point in the center line of a 20' - wide easement (for ingress and
egress purposes); thence extending N. 26° 48' 23" W. along the center line of
said 20' - wide easement, the distance of 214' - 1 5/8" to a point on the
southeasterly side of former Sackett Street (60' - wide, stricken from City
Plan); thence extending S 37° 41' 53" W, on the southeasterly side of former
Sackett Street, the distance of 81' - 5 5/8" to a point on the northeasterly
dead-end of Sackett Street (60' wide), thence extending N. 23° 08' 38" W.,
along the said northeasterly dead-end of Sackett Street, the distance of 34' -
4 1/4" to a point on the northwesterly side of Sackett Street, thence
extending S 37° 41' 53" W, along the said northwesterly side of Sackett
Street, the distance of 11' - 11 5/8" to a point, thence extending N. 52° 18'
07" W, the distance of 375' 0" to a point, thence extending N. 37° 41' 53" E,

the distance of 279' 9" to a point; thence extending S. 52° 18' 07" E., the distance of 187' - 1 1/2" to a point in the center line of a 15' - wide driveway; thence extending N. 37° 41' 53" E., along the center line of the said 15' - wide driveway, the distance of 120' 0" to a point on the southwesterly side of Hellerman Street; thence extending S. 52° 18' 07" E., along the said southwesterly side of Hellerman Street, the distance of 558' - 1 5/8" to the first mentioned point and place of beginning;

and the LESSEE desires to lease the premises upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the rents to be paid and the mutual covenants to be performed, the parties hereto agree as follows:

ARTICLE I. OWNERSHIP.

1.1 OWNERSHIP. The Philadelphia Authority for Industrial Development (hereinafter sometimes referred to as "PAID") has good title to the real estate containing the premises as set forth on the Land Description set forth above. The LESSOR, by virtue of its entry into an Installment Sale Agreement with PAID for the purchase of the Shopping Center, has equitable title to the real estate containing the premises referred to above, and that the LESSEE, upon paying the rentals herein reserved and observing, performing and keeping all and singular the covenants and agreements herein specified to be kept and performed by LESSEE, shall have the exclusive right to, and lawfully, peacefully, and quietly have, hold, use, occupy, possess and enjoy the premises hereby leased and the non-exclusive right as to the common areas for and during the term hereof, without any hindrance eviction, molestation, or interruption of or by the LESSOR, or any person or persons. LESSOR covenants that at the commencement of this Lease, no zoning or other ordinance, law, regulation, or restrictive covenant prevents use of the premises for any lawful commercial purpose as contemplated by Section 17.2 hereof. This Lease is strictly conditioned upon LESSEE'S receipt at the time of LESSEE'S execution of this Lease, of a non-disturbance agreement from LESSOR'S lender(s), in the form attached hereto as Exhibit "C", and the consent of PAID to this Lease.

1.2 IMPINGEMENT. Except as herein provided for, LESSOR warrants and guarantees that there are no prior documents of record, nor unrecorded documents within the knowledge of LESSOR, which will permit third parties to impinge upon the rights of LESSEE under this Lease by use or occupancy of adjacent property, or of the premises, the parking area, or the other common use areas as shown on the plot plan attached to and made a part of this lease as Exhibit "A". LESSOR shall not make any deviations or variations in the construction or use of the plotted area from that shown on said plot plan without the prior written consent of LESSEE. LESSOR covenants and agrees that no building constructed in the Shopping Center after the date of this Lease shall be higher than one (1) story, not exceeding seventeen (17) feet in height, inclusive of signs and HVAC systems or other rooftop equipment. The parties hereto acknowledge that no business operating in the Shopping Center shall remain open later than 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.

ARTICLE II. COMMON AREAS AND CHARGES.

2.1 COMMON AREAS The premises are located as shown on the plot plan marked Exhibit "A", attached hereto and incorporated herein. LESSOR agrees that the use and occupancy by the LESSEE of the premises shall include the use in common with others entitled thereto including its customers, suppliers, visitors and invitees, of the common areas, employees' parking areas, service roads, loading facilities, sidewalks, and customers' parking areas, all as shown on Exhibit "A" and all future facilities and common areas designed for common use, subject, however, to the requirements of local law, ordinance and zoning requirements and the terms and conditions hereinafter set forth; all of such areas and facilities being hereinafter collectively termed "common areas". The LESSOR covenants and agrees that it shall maintain the common areas of the Shopping Center in good operating condition and repair, adequately drained and reasonably free from rubbish and debris, any grass mowed, properly landscaped and the LESSOR shall promptly stockpile or remove all snow and ice from the sidewalks, parking

and driveway areas and cause all remaining surface ice to be treated with sand, salt or similar abrasive. LESSOR may provide security for the common areas, however, LESSEE shall not be obligated to pay for any portion of the expense of such security unless LESSEE requests the same in writing. The LESSOR shall resurface the sidewalk, parking and driveway areas when the same shall be reasonably necessary together with the restriping of the parking areas. The LESSOR shall keep the common areas of the Shopping Center well lighted during such hours of darkness as LESSEE shall remain open for business and for a period of one (1) hour thereafter. All of the foregoing obligations are defined as "common area maintenance costs".

2.2 COMMON AREA EXTENDED HOUR LIGHTING. Should the LESSEE'S normal business operating hours cease prior to midnight, twelve o'clock p.m., then LESSEE shall be liable for only its proportionate share of the parking and common area lighting energy expense in the Shopping Center, such share to be determined by the proportion which the number of square feet of floor space in the premises bears to the proposed total number of square feet in said Shopping Center as depicted on Exhibit "A".

In the event LESSEE, in its sole discretion, desires to remain open for business after midnight, twelve o'clock a.m., then LESSEE agrees to pay on demand as additional rental an amount which is computed by multiplying the number of hours (not exceeding eight hours daily) LESSEE remains open after midnight, twelve o'clock a.m., times the wattage of common area parking lot lighting (which LESSOR agrees to meter separately) times the lowest utility rate applicable. Provided, should other tenants in the Shopping Center remain open after midnight, twelve o'clock a.m., then LESSEE shall pay only a prorata amount arrived at by taking into consideration the number of hours such other tenant(s) remain open for business and the square footage of such tenants leased premises. LESSOR shall be required to send LESSEE a monthly statement setting forth LESSEE'S proportionate share of the parking and common area lighting energy expense denoting clearly the computations during normal business hours together with the

computation used should LESSEE elect to remain open for business after midnight, twelve o'clock a.m., in accordance with the terms and conditions as hereinabove set forth. LESSEE agrees to pay such common area extended hour lighting as additional rental under Section 5.1C hereof.

2.3 COMMON AREA MAINTENANCE. The LESSEE shall have the obligation to pay its pro rata share, as hereafter defined, of the common area maintenance costs annually and LESSEE agrees to pay as additional rent, pursuant to Section 5.1D hereof, up to Thirty Five Thousand One Hundred Seventy Three Dollars and Sixty Cents (\$35,173.60) as LESSEE'S estimated annual prorata share (determined by the proportion which the number of square feet of floor space in the premises bears to the number of square feet in the Shopping Center as depicted on Exhibit "A" hereof) of the expense of common area maintenance, pursuant to Section 2 1, of the Shopping Center shown on Exhibit "A" attached, for the first year of the lease term. LESSEE'S prorata share shall be payable monthly in the amount of Two Thousand Nine Hundred Thirty One Dollars and Thirteen Cents (\$2,931.13) on or before the first day of each month in advance.

During succeeding years of the lease term and renewal terms, the above-described additional rental shall be calculated as hereinafter set forth. Within one hundred eighty (180) days after the end of each calendar year, during the original or any renewal term of this Lease, LESSOR agrees to furnish to LESSEE a statement itemized in reasonable detail, together with copies of paid receipts, setting forth the total expenses for such common area maintenance costs for such calendar year. If there shall have been any underpayment of LESSEE'S prorata share (as hereinabove defined) LESSEE shall pay such underpayment with LESSEE'S next monthly payment of said expenses, and if there shall have been any overpayment of LESSEE'S prorata share, such overpayment shall be credited against LESSEE'S next monthly payment of said expenses. At LESSEE's request LESSOR shall meet with LESSEE to review the common areacosts. LESSOR shall also estimate LESSEE'S reasonable prorata share of the costs for common area maintenance

for the succeeding calendar year, and LESSEE'S monthly payment of said prorata share shall be adjusted accordingly.

Notwithstanding anything provided in this paragraph to the contrary, it is agreed and understood that the LESSEE'S prorata share of the repair and maintenance costs attributable to common area maintenance of the Shopping Center shall not include any of the following:

a. Charge for any item that was or should have been originally constructed under the plans and specifications of the Shopping Center.

b. Charge for any item of equipment or capital improvements (capital improvements shall mean a valuable addition made to the premises and common areas in excess of ordinary repairs and maintenance) that is properly chargeable to capital expense or capital improvements under recognized and accepted accounting principles and standards and not properly chargeable to LESSEE under Sections 10.1 and 10.2 hereof;

c. Any charge for LESSOR'S overhead and profit; *Mgmt Fee*

d. Charge for LESSOR'S administrative costs and expenses in administering the common area charges. *Admin Fees*

Should LESSOR fail to perform common area maintenance as herein provided, after all periods to cure and written notice to LESSOR, except in the event of an emergency when no such written notice shall be required, then, and in that event, LESSEE may, at its sole option and in addition to the remedy of specific performance and all other remedies available to LESSEE hereunder, undertake to perform said common area maintenance and pursue all remedies available to it under Section 15.2 hereof, including deduction of its costs from those certain items due or to become due LESSOR during the term of this Lease or any extension thereof as specified in said Section 15.2, but not the right to cancel and annul this Lease.

ARTICLE III. CONSTRUCTION OF PREMISES

3.1 CONSTRUCTION. The LESSOR agrees to cause construction of the premises and other improvements in accordance with the plot plan as approved by all governmental controlling jurisdictions, attached hereto as Exhibit "A" and the specifications marked Exhibit "B", attached or to be attached hereto and incorporated herein. This Lease shall not be effective until such specifications, Exhibit "B", and the plot plan, Exhibit "A", have been so attached and have been initialed by both parties. The LESSOR agrees to require all contractors used in said construction to furnish a performance bond with sufficient surety acceptable to LESSOR'S mortgagee. The LESSOR shall provide water, sewer, gas, electrical and other utilities. LESSEE shall have the right to review the elevation drawing.

The LESSOR agrees that, at the option of the LESSEE, this Lease shall become null and void if construction of the Shopping Center, including the premises, and other improvements, is not commenced on or before ninety (90) days from the date LESSOR obtains financing as referred to in Section 19 26, and completed and ready for occupancy on or before nine (9) months from the date LESSOR obtains financing, except for causes or conditions beyond the control of LESSOR and delays occasioned as a result of LESSEE'S written change orders; provided, however, that if the premises are not completed and ready for occupancy on or before one (1) year from the date LESSOR obtains financing, irrespective of cause, and irrespective of whether such cause is beyond the control of LESSOR and notwithstanding the provisions of Article XVIII hereof to the contrary, LESSEE, in its sole discretion is hereby granted the option to: (i) amend this Lease to provide for revised construction and completion dates or (ii) cancel and terminate this Lease or pursue those additional remedies available to it as hereinafter in this Article provided. LESSOR shall promptly notify LESSEE in writing of the date, place and time of settlement on such financing, the date of which shall be deemed to be the "date LESSOR obtains financing" for the purpose of this Article III. In the event that the premises are not completed and ready for occupancy on or before one (1) year from the date LESSOR obtains financing, and LESSEE cancels and terminates this Lease,

LESSOR agrees that it shall not lease the premises for a supermarket for a period of one (1) year after the date of such Lease cancellation.

Upon completion of said premises ready for occupancy, LESSOR shall notify LESSEE in writing and LESSEE shall thereafter promptly cause an inspection of said premises to be made and upon completion of said inspection, shall furnish to LESSOR a "punch list" of defective and incomplete items and items that do not conform to the plans and specifications hereto attached as Exhibit "A" and "B". Upon receipt of said punch list, LESSOR shall promptly take such action necessary to place all such listed items in a condition acceptable to LESSEE and in conformity with Exhibit "B".

Construction of the premises shall not be considered complete until it is substantially completed, (substantially completed shall mean complete except those items listed in said punch list, which can be and will be corrected and completed within thirty (30) days by LESSOR in accordance with the specifications of Exhibit "B" hereof, none of which items would materially interfere with or impair the LESSEE'S use of the premises and to an extent which will permit LESSEE to perform necessary work in installing its trade fixtures and equipment) including, but not limited to toilet fixtures, office space, vinyl floor covering, automatic doors, light fixtures, including tubes and globes, boiler, heating, refrigerated air conditioning, enclosed machine rooms, curtain walls and partitions, and electrical and plumbing requirements complete to the point of connection of fixtures, equipment, checkstands and signs, interior and exterior decoration completed, parking areas completely surfaced, with adequate lighting and initial traffic control, service roads, sidewalks, loading facilities, all to be in accordance with specifications (Exhibit "B") to be supplied by LESSEE. LESSOR agrees to construct LESSEE'S premises in full compliance with the then-existing Insurance Service Organization ratings, or ratings of any other rating bureau having jurisdiction. Upon completion of construction, LESSOR agrees to provide LESSEE with a rating sheet for LESSEE'S premises from the Insurance Service Organization, or from any other rating bureau having jurisdiction, indicating deficiencies, if any

It is further agreed that in no event shall this Lease or any rental payable hereunder commence until all streets and highways and parking areas, as shown on Exhibit "A" attached hereto, have been fully paved and are open for public use.

3.2 PUNCH LIST. LESSEE agrees to accept the premises in the condition existing on the rent commencement date, as hereafter defined, subject to LESSEE'S "punch list" being completed. In the event of LESSOR'S failure to complete construction of said premises on or before the agreed date of completion as above set forth (as may be extended pursuant to Section 3.1) or failure to complete said punch list items within thirty (30) days after receipt thereof, then LESSEE, at its sole option, and in addition to the remedy of specific performance and all other remedies available to LESSEE herein, may complete construction of said premises or said punch list items as the case may be or may pursue all other remedies available to it under Section 15.2 hereof including deduction of LESSEE'S costs from those certain items due or to become due to LESSOR during the term of this Lease or any extension thereof as specified in said Section 15.2, including the cancellation and annulment of this Lease if the premises is not completed, or if any incomplete punch list items prevent LESSEE from conducting its business or results in the loss of any previously issued certificate of occupancy. It is further agreed in advance that all such costs incurred by LESSEE in completion of construction or completion of punch list items are deemed reasonable and proper.

LESSOR covenants that the premises to be constructed shall, at the commencement of the term hereof and subject to LESSEE'S punch list being completed, be structurally sound and in good tenantable condition.

3.3 CORRECTION OF LATENT DEFECTS. LESSOR agrees to correct latent defects, if any, (a defect which is a departure from plans and specifications not apparent upon ordinary and reasonable inspection) that become apparent after the commencement of this Lease which become apparent after the commencement of this Lease of which LESSOR receives notice from LESSEE within the first five (5) years from the LEASE

COMMENCEMENT DATE. After the expiration of said five (5) year period, LESSEE shall be responsible for curing all latent defects, with the exception of those for which LESSOR is, and shall continue to be, responsible as a result of LESSOR'S repair, replacement and maintenance obligations under this Lease. In the event that LESSOR fails to correct latent defects, if any, which it is obligated to correct, LESSEE may, at its sole option and in addition to the remedy of specific performance and all other remedies available to LESSEE hereunder, undertake to correct such latent defects and pursue all remedies available to it under Section 15.2, subject to LESSOR'S right to cure, including deduction of its costs from those certain items due or to become due LESSOR during the term of this Lease or any extension thereof as specified in Section 15.2, including cancellation and annulment of this Lease if any latent defect which LESSOR fails to correct after receipt of written notice prevents LESSEE from conducting its business or results in the loss of any previously issued certificate of occupancy.

In the event LESSEE completes construction of punch list items or corrects latent defects pursuant to this Section 3.3 or furnishes maintenance or repair pursuant to Sections 2.1 or 10.1 hereof, LESSEE is hereby authorized to assert all of LESSOR'S rights, claims, actions and causes of action in its name or in the name of LESSOR with respect to any and all rights LESSOR might have or possess against its architect or in manufacturer's and/or supplier's warranties or undertakings express or implied, relating to the property or any fixture and the performance bonds of any contractor.

From and after the commencement date of the term hereof and subject to LESSOR'S duty to correct latent defects as above provided, LESSEE shall have full responsibility for maintenance and repair of said premises pursuant to the provisions and subject to the limitations of Section 10.1.

ARTICLE IV. TERM, COMMENCEMENT DATES, HOLDING OVER AND OPTIONS.

4.1 TERM The LESSOR agrees to and does hereby lease the premises to the LESSEE for the original term of twenty (20) years which shall commence on the LEASE COMMENCEMENT DATE as hereinafter defined

4.2 RENT COMMENCEMENT DATE. The date LESSEE shall commence the payment of rent (RENT COMMENCEMENT DATE) shall be the earlier of: (a) on the first day the premises are open for business or (b) sixty (60) days after LESSOR has delivered to LESSEE (i) the premises in a substantially completed condition, (ii) written notice that the work to be performed by LESSOR has been substantially completed, and (iii) a permanent certificate of occupancy (or its equivalent) if the same shall be issuable in accordance with local law or custom whichever is earlier. The lease commencement date (LEASE COMMENCEMENT DATE) shall be the first day of the month next succeeding the month during which rent commences and the lease term shall terminate at 11 59 p m. on the last day of the twenty (20) year term hereafter.

4.3 LEASE COMMENCEMENT DATE. The LEASE COMMENCEMENT DATE shall be set forth in a notification letter provided by LESSOR to LESSEE which shall be attached to this Lease setting forth the LEASE COMMENCEMENT DATE, RENT COMMENCEMENT DATE and the amount of the accrued rental due LESSOR during the period beginning on the RENT COMMENCEMENT DATE and ending on the day prior to the LEASE COMMENCEMENT DATE hereinafter referred to as "interim rental period."

All rental accrued for said interim rental period shall be payable together with and at the time for the first payment of minimum rent hereunder as provided in Section 5.1 hereof and shall be computed by multiplying the amount of minimum monthly rental as set forth in Section 5.1A hereof by the proportion that the number of days in said interim rental period bears to the total number of days in the month during which the RENT COMMENCEMENT DATE occurs.

4.4 HOLDING OVER. It is agreed that if at the end of the original term of this Lease or any option hereof, LESSEE, in its sole discretion shall deem it necessary to remain in occupancy of said premises beyond the termination date of the Lease, LESSEE may do so for a period of time up to one hundred twenty (120) days For any such extension period, the base rent will be one and one-half (1 5) times the minimum monthly

rent together with all additional rent required to be paid by LESSEE under this Lease. LESSEE shall give LESSOR one hundred eighty (180) days notice should such extension be necessary.

4.5 FAILURE TO OPEN PREMISES. It is agreed that LESSEE shall not be obligated to open the premises for business and if LESSEE, or any sublessee, elects not to open said premises, LESSEE shall be liable to LESSOR for the payment of all rental, and all additional rental as set forth in this Lease, as set forth in this Lease; provided, however, LESSEE will under no circumstances be liable to LESSOR for any obligation for percentage rent under Section 5.1B hereof. In the event LESSEE fails to open the premises for business and it remains unopened for a period of ninety (90) days from the RENT COMMENCEMENT DATE, then upon written notice given to the LESSEE by the LESSOR, the LESSOR may elect to cancel and terminate this Lease. Upon termination and cancellation of this Lease, the parties shall be relieved of any further liability hereunder, except for items which have accrued up to and as of the date of such termination and cancellation.

4.6 RENEWAL OPTIONS AND EXTENSIONS. It is further agreed that, at the expiration of the original term, the LESSEE shall have the option at its sole discretion, provided LESSEE at the time of each renewal option is not then in default of the terms of this Lease, to extend and renew this Lease for two (2) additional terms, one (1) of five (5) years and one (1) of four (4) years (hereinafter "renewal options") upon the same terms and conditions as provided in this Lease. The LESSOR shall be notified of the LESSEE'S intent to exercise its option to renew for the next succeeding option period at least six (6) months prior to the end of the original term or the then current option period. Should LESSEE fail to exercise any of its renewal options in the manner and at the time above set forth, then this Lease shall terminate at the end of the then current term. It is further agreed that LESSEE shall have the right, at its sole option, to extend this Lease for the period of time necessary to permit reconstruction and repair of the premises

after its damage or destruction, in accordance with the provisions of Section 13.1 and 13.2 hereof. Further, LESSEE shall have the option to extend the term of this Lease for the period of time necessary to recoup its costs in event of LESSOR default as provided in Section 15.2 hereof. Provided, however, that any provision in this Lease to the contrary notwithstanding, the terms of this Lease (including the initial term, all renewal options, and the right of extension contained in this Section 4.6) shall not extend for a period longer than twenty-nine (29) years from the LEASE COMMENCEMENT DATE.

ARTICLE V. MINIMUM RENT, PERCENTAGE RENT AND ADDITIONAL RENT.

5.1 RENT. As rent for the premises, the LESSEE agrees to pay to the LESSOR, c/o Montgomery Realty Company, Plymouth Corporate Center, 625 Ridge Pike, Building E, Suite 201, Conshohocken, Pennsylvania 19428, or such other place as is mutually agreed upon, the following amounts:

A. A minimum monthly rental of:

- (1) During years 1 through 5 inclusive of the original term, a minimum monthly rental of Nineteen Thousand Two Hundred Fifty Four Dollars and Seventy Five Cents (\$19,254.75).
- (2) During years 6 through 10 inclusive of the original term, a minimum monthly rental of Twenty One Thousand Three Hundred Ninety Four Dollars and Seventeen Cents (\$21,394.17)
- (3) During years 11 through 15 inclusive of the original term, a minimum monthly rental of Twenty Two Thousand Four Hundred Sixty Three Dollars and Eighty Eight Cents (\$22,463.88).
- (4) During years 16 through 20 inclusive of the original term, a minimum monthly rental of Twenty Three Thousand Five Hundred Thirty Three Dollars and Fifty Eight Cents (\$23,533.58).
- (5) During years 1 through 5 inclusive of the first extended renewal period, if exercised, a minimum monthly rental of Twenty Four Thousand Six Hundred Three Dollars and Twenty Nine Cents (\$24,603.29)
- (6) During years 1 through 4 inclusive of the second extended renewal period, if exercised, a minimum monthly rental of Twenty Five Thousand Six Hundred Seventy Three Dollars

(\$25,673.00).

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B. In addition to the foregoing minimum monthly rental, the following percentage rental shall be due and payable on or before the thirtieth (30th) day of the month following the end of each Lease Year:

- (i) During years 1 through 5 inclusive of the original term, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Eighteen Million Four Hundred Eighty Four Thousand Five Hundred Sixty Dollars (\$18,484,560.00) made from the premises in each lease year.
- (ii) During years 6 through 10 inclusive of the original term, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Twenty Million Five Hundred Thirty Eight Thousand Four Hundred Dollars (\$20,538,400.00) made from the premises in each lease year.
- (iii) During years 11 through 15 inclusive of the original term, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Twenty One Million Five Hundred Sixty Five Thousand Three Hundred Twenty Dollars (\$21,565,320 00) made from the premises in each lease year.
- (iv) During years 16 through 20 inclusive of the original term, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Twenty Two Million Five Hundred Ninety Two Thousand Two Hundred Forty Dollars (\$22,592,240.00) made from the premises in each lease year.
- (v) During years 1 through 5 inclusive of the first extended renewal period, if exercised, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Twenty Three Million Six Hundred Nineteen Thousand One Hundred Sixty Dollars (\$23,619,160.00) made from the premises in each lease year.
- (vi) During years 1 through 4 inclusive of the second extended renewal period, if exercised, an amount equal to 1.25% of annual gross sales, as defined herein, in excess of Twenty Four Million Six Hundred Forty Six Thousand Eighty Dollars (\$24,646,080 00) made from the premises in each lease year.

Notwithstanding anything to the contrary set forth herein, LESSEE shall always have the right to close its store as provided in Section 17.2 hereof and upon said closing, LESSOR shall have no claim whatsoever to percentage rental or loss thereof under this Section 5.1B.

Percentage rental, as specified in this Section 5.1B to be paid by LESSEE to LESSOR shall be reduced, in addition to those sums paid by

LESSEE to cure LESSOR'S default pursuant to Section 15.2 hereof, by an amount (which shall be first applied in reduction of said percentage rental) equal to those sums paid by LESSEE against one hundred percent (100%) of any lump sum assessment required to be paid by LESSEE (as provided in Section 7.2) during the year immediately preceding such percentage rent payment, and if said percentage rent shall be insufficient to cover the full amount of said item for any year during the term of this Lease or any extension thereof, the resulting deficiency shall not accumulate.

- C. Payment of common area extended hourly lighting as provided in Section 2.2 hereof.
- D. Common area maintenance charges, payable monthly as set forth under Section 2.3 hereof.
- E. Taxes and assessments against the premises as provided in Section 7.1 hereof.
- F. Public Liability and Property Damage Insurance payments as set forth in Article VIII hereof.
- G. Fire and Extended Coverage and Rent Abatement Insurance annual payments as provided in Sections 12.1 and 12.2 hereof.

5.2 GROSS SALES. Except as hereinafter in this paragraph provided, the term "gross sales", as used herein, shall include all sales of merchandise from, through or off the premises, and the performance of any service for any customer or patron for compensation by the LESSEE or employee, and shall include all sales from every department thereof, for cash or on a charge basis, and including all business in which orders come by mail, telephone or telegraph, less credit for returned merchandise, merchandise trade-ins, and credit of a similar nature. "Gross sales" shall not include sales, luxury, excise or other taxes collected by LESSEE from customers to be remitted to any governmental agency or unit; merchandise transfers from one of LESSEE'S or SUBLESSEE'S stores to another; sales of lottery tickets, and proceeds paid to LESSEE as a result of the sale of winning lottery tickets; check cashing fees, or fees collected as a result of returned checks; return of merchandise to a supplier; sales at cost to non-profit organizations for charitable purposes; or sales such as money orders or other sales and service, including the value of double or triple coupons, which is strictly for the

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accommodation of LESSEE'S customers where charges for said sales and services are for the purpose of reimbursement of LESSEE'S costs and expenses and not for the purpose of profit. Further excepted are receipts from sales of fixtures that are not a part of LESSEE'S stock in trade, receipts from vending, game machines, and automated bank teller machines or similar devices and/or banking facilities which are owned and operated by other than the LESSEE where LESSEE merely permits said machines or facilities to be operated on the premises; provided, however, that LESSEE'S gross receipts shall include any compensation LESSEE receives from such owner or operator of said vending, game machines and automated bank teller machines or similar devices and/or banking facilities for permission to use and operate said machines or facilities on the premises.

LESSOR shall have the right, at any time, but no more than once a year, at LESSOR'S expense, to have audits made of the records of sales which occur on the premises.

LESSOR'S right to examine the books and records pertaining to the operation of a business on the premises, or to make an audit thereof in respect to any lease year, shall be limited to the then current lease year, plus the year immediately preceding. LESSEE'S statements for other prior lease periods shall be deemed to have been accepted by LESSOR and be incontestible, provided, however, there is no pending dispute regarding such statements. If any audit by LESSOR shall correctly disclose a liability for percentage rent, and an under reporting of Gross Sales by three percent (3%) or more in the year in question, LESSEE shall promptly pay LESSOR for the reasonable cost of said audit in addition to any deficiency in percentage rent.

5.3 TIME FOR PAYMENT. From and after the LEASE COMMENCEMENT DATE as defined in Section 4.3 hereof, minimum monthly rent for each calendar month shall run from the first day of the month to the last day of said month, and shall be paid on or before the first day of each month in advance, without demand, and without offset except as specifically provided for in this Lease, at the office of LESSOR'S agent as set

th in Section 5.1. In the event that the RENT COMMENCEMENT DATE as defined in Section 4.2 hereunder is a day other than said LEASE COMMENCEMENT DATE, then rental for the intervening period shall be computed and paid as set forth in Section 4.3.

Payment of percentage rental, as outlined in Section 5.1B herein, shall be paid on or before the twentieth (20th) day of the month following the ending of each Lease Year. Payment of those items of rental set forth in Sections 5.1C, D, E, F and G shall be payable as in this Lease provided.

Payments of all items of rental above set forth shall always be subject to LESSEE'S right to recoup its reasonable expenses in event of LESSOR'S breach, after all periods to cure, as set forth in Section 15.2 hereof.

ARTICLE VI. LESSOR MORTGAGE.

6.1 LESSOR MORTGAGE All mortgage payments or other payments required to discharge any lien or encumbrance that may affect the premises, and for which the LESSOR is solely responsible, and which is superior and prior to the terms of this Lease, and the rights of LESSEE hereunder, shall be paid by the LESSOR as the same shall become due.

ARTICLE VII. TAXES AND ASSESSMENTS.

7.1 TAXES AND ASSESSMENTS. As additional rental, the LESSEE agrees to pay to the LESSOR, on demand, the amount of all taxes and assessments levied and assessed against the premises, including use and occupancy taxes, (exclusive of any realty transfer taxes which may be imposed pursuant to Section 19.23 herein) and of LESSEE'S prorata share (determined as hereinafter provided) of the taxes and assessments levied against the parking and common areas, as shown on Exhibit "A", of the Shopping Center, (exclusive of any inheritance, sales, use, franchise, gift, excise or profit taxes) that shall become due and payable during the original or any renewed term hereof. If the Shopping Center is taxed as a unit, the LESSEE shall be liable for only such prorata share of such taxes and assessments determined by the proportion that the number of square feet of

floor space in the premises bears to the total number of square feet of floor space in the Shopping Center. Such taxes and assessments must be billed by LESSOR to LESSEE no later than one hundred eighty (180) days after receipt of notice by LESSOR from the local taxing authority. If such copy of the tax bill is not received by LESSEE within one hundred eighty (180) days after receipt of same by LESSOR, LESSEE'S obligation to pay such taxes and assessments will be considered to be null and void. LESSOR shall be required to send LESSEE receipted tax bills showing payment of taxes, as well as all special assessments, within thirty (30) days after payment is due. Provided, however, that for any partial tax year occurring during the original or any renewed term hereof, the LESSEE shall be liable for only that proportion of such taxes and assessments as the number of days in such partial tax year bears to 365.

Provided LESSEE has timely paid such taxes and assessments to LESSOR LESSEE shall not be liable for any interest, penalty or late charges payable by LESSOR with respect to any taxes and assessments, and if a discount of any taxes and assessments is available by prompt payment, LESSEE'S pro rata share thereof shall be based on such discounted amount, provided LESSEE pays such taxes and assessments to LESSOR no later than fourteen (14) days before the end of any discount period, regardless of whether prompt payment is made by LESSOR.

Any taxes and assessments levied and assessed against the premises or Shopping Center that shall become due and payable during the term or any renewal thereof which LESSEE has agreed to pay, may be contested by LESSEE, in appropriate proceedings, in LESSOR'S or LESSEE'S name and LESSOR will offer no objections, will cooperate with LESSEE, will provide any information requested by LESSEE, and will execute any document which may be necessary and proper for such proceedings. In the event LESSOR is required to, or is requested to, cooperate, LESSEE shall pay LESSOR'S reasonable costs and expenses related to such cooperation, including reasonable attorneys fees. Any refund shall be the property of LESSEE to the extent it is based upon the payment of any

such taxes or assessments made by LESSEE. In the event LESSOR shall contest any taxes or assessments, LESSEE shall be immediately notified in writing LESSOR and LESSEE agree that in the event LESSOR initiates appropriate action necessary to take an appeal to the taxing body during the term of this Lease for the purpose of obtaining a reduction of taxes or assessments for the premises and/or the Shopping Center (whether or not such appeal is successful) LESSEE agrees to pay its pro rata share of the reasonable cost associated with the appeal, including reasonable attorneys fees. Notwithstanding the foregoing, no matter how many times LESSOR files such an appeal during the term of this Lease, LESSEE shall not be obligated to pay a pro rata share of such costs or attorneys fees more frequently than once in every five (5) years.

7.2 ASSESSMENTS MADE DURING LEASE TERM. In the event during the term of this Lease or any extension thereof, an assessment is placed upon the premises or Shopping Center by any taxing authority of competent jurisdiction, and if such assessment is payable or may be paid in installments, then and in that event such assessment shall be paid by installments and LESSEE shall be liable to pay said assessment only to the extent of making timely payment of those installments falling due during the term of this Lease or any extension thereof, if exercised. Further, if any assessment be proposed by any competent taxing authority during the term of this Lease or any extension thereof, then upon the request of LESSEE, LESSOR and any mortgagee shall write to the taxing authority to obtain an assessment which is payable or may be paid in installments.

> In the event during the term of this Lease or any extension thereof, an assessment is placed upon the premises or Shopping Center by any taxing authority of competent jurisdiction and such assessment be payable only in lump sum, then and in that event LESSEE shall be liable only for payment of a proportionate share of such assessment in the proportion that the number of years remaining in the original term and/or any renewal options then remaining available to LESSEE hereunder bears to the useful life of

the improvement against which the assessment is made; said useful life being determined by agreement of the parties or in absence of agreement, by arbitration under the procedures set forth in Section 14 hereof. LESSEE shall further have the right to deduct one hundred percent (100%) of such lump sum assessment payable by LESSEE from percentage rent as provided in Section 5.1B(1) hereof, provided, however, such deduction shall be noncumulative.

The LESSEE shall also pay all taxes levied and assessed upon property belonging to it or its SUBLESSEE and located upon the premises. In no event shall such tax payments by LESSEE for taxes levied and assessed upon its property be deducted from percentage rent.

ARTICLE VIII. LIABILITY INSURANCE AND HOLD HARMLESS.

8.1 LESSEE'S RESPONSIBILITY. LESSEE agrees to maintain, at its own expense, during the full term of this Lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the Commonwealth of Pennsylvania in which policy LESSOR, and its mortgagee of whom LESSEE has been notified in writing, shall be named as additional named insureds, and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to LESSOR. Such policy shall provide primary coverage for the benefit of LESSOR and LESSEE in an amount of \$2,000,000.00 single limit combined bodily injury and property damage each occurrence, to cover all situations where any person or persons claim bodily injury, death or property damage in or upon said premises.

8.2 LESSOR'S RESPONSIBILITY. LESSOR covenants and agrees to maintain, during the full term of this Lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the Commonwealth of Pennsylvania, in which policy LESSEE shall be named as an additional named insured insuring against liability (including injury or property damage) arising on or about the

common areas of said Shopping Center as defined in Section 2.1 hereof, including, but not limited to all common use and parking areas of said Shopping Center and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to LESSEE. Such policy shall provide primary coverage for the benefit of LESSEE and LESSOR and all other tenants in the Shopping Center in an amount of \$2,000,000.00 single limit combined bodily injury and property damage each occurrence to cover all situations where any person or persons claim personal injury, death, or property damage on or about said common areas.

8.3 REPAYMENT AND SETOFF. LESSEE agrees to remit to LESSOR, on an annual basis within thirty (30) days after being billed therefore, LESSEE'S prorata share (determined as hereinabove provided for determination of common area maintenance charges in Section 2.3 hereof) of the premium for insurance covering the common and parking areas for said policy(s), upon fifteen (15) days prior written notice to LESSOR, as hereinabove provided, subject to LESSEE'S right to obtain a like insurance coverage policy(s) should LESSEE be able to secure such policy(s) on the common and parking areas at a lower rate for like coverage upon the same terms as herein provided. Should LESSOR not desire to cancel its insurance policy(s) on the common and parking areas, then LESSOR agrees to deduct the difference between the premium paid or charged by LESSOR and that which would have been paid by LESSEE from amounts due from LESSEE in payment of such insurance coverage within thirty (30) days after being presented reasonable supporting data of the availability of like insurance at a lower rate

8.4 LESSOR HOLD HARMLESS. The LESSOR agrees to protect and save the LESSEE harmless from any and all claims of others for injuries to persons or property occurring on or about said common areas, for which LESSOR is fully or partially responsible, including reasonable attorney's fees, except such claims for injuries which are caused in any proportion by the negligent, intentional, or willful acts of the LESSEE,

its agents or employees, and are not covered by insurance.

8.5 LESSEE HOLD HARMLESS. The LESSEE agrees to protect and save the LESSOR harmless from any and all claims of others for injuries to persons or property occurring in or upon the premises as defined on page one (1) hereof, including reasonable attorney's fees, and arising out of the use, occupancy or operation of said premises by the LESSEE and its sublessees, except for such claims for injuries as are caused in any proportion by the negligent, intentional or willful acts of the LESSOR, its agents or employees, and are not covered by insurance.

8.6 ADDITIONAL RENT. Reimbursement for Public Liability and Property Damage Insurance payments made by LESSEE to LESSOR pursuant to Section 8.3 shall be considered as payments of additional rental under Section 5.1F hereof.

8.7 INSURANCE MAY BE PROVIDED. It is further understood that LESSEE at all times shall maintain insurance coverage it is required to carry pursuant to this Lease for the benefit of LESSOR with a provision in such insurance that there will be no cancellation or non-renewal without at least thirty (30) days' written notice to LESSOR. Provided, however, that LESSEE may satisfy this insurance requirement through the maintenance of such insurance coverage for the benefit of LESSOR, as required in Section 8.1 above, by LESSEE or by an assignee or sublessee of LESSEE.

ARTICLE IX. WAIVER OF LIABILITY.

9.1 WAIVER OF LIABILITY. LESSEE hereby waives any cause of action which LESSEE or anyone claiming by, through or under LESSEE, by subrogation or otherwise, might now or hereafter have against LESSOR, or any other tenant in the Shopping Center of which the premises are a part, based on any loss, damage or injury which is insured against under any insurance policy which names LESSEE as insured or which would be insured against under any insurance policy which this Lease requires LESSEE to carry. LESSOR hereby waives any cause of action which LESSOR or anyone claiming by, through, or under LESSOR, by subrogation or otherwise, might now or hereafter have

against LESSEE based on any loss, damage or injury which is insured against under any insurance policy which names LESSOR as insured or which would have been insured against under any insurance policy which this Lease requires LESSOR to carry. All policies of insurance written to insure all buildings, parking and common areas, service and delivery areas, improvements, contents, and all other such property (real or personal) shall contain a proper provision, by endorsement or otherwise, whereby the insurance carrier issuing the same shall (i) acknowledge that the insured has waived and released its right of recovery pursuant to this paragraph and (ii) waive the right of subrogation which such carrier might otherwise have had, all without impairment or invalidation of such insurance. The provisions of this paragraph shall be equally binding upon and inure to the benefit of any assignee or sublessee of LESSEE.

ARTICLE X. MAINTENANCE, CAPITAL IMPROVEMENTS AND WASTE.

10.1 MAINTENANCE AND CAPITAL IMPROVEMENTS. Subject to LESSOR'S duty to perform common area maintenance as provided in Section 2.1 hereof, to correct latent defects as provided in Section 3.3 hereof, and LESSOR'S obligations with respect to repair, maintenance and/or replacement of the roof, slab, structural walls, and all plumbing and utility lines outside the premises, and LESSOR'S obligation to repair and rebuild as set forth in Articles XIII and XIV, LESSEE agrees, at its expense, to maintain the premises in good condition, including but not limited to, the plumbing and the air conditioning and heating equipment. LESSEE shall have for this purpose pursuant to Section 3.3 hereof, the benefit of all architects, contractors, manufacturers and sellers warranties and undertakings available to LESSOR, said warranties and undertakings being hereby specifically assigned to LESSEE for said purposes.

10.2 CAPITAL IMPROVEMENTS. LESSEE shall have the right to make capital improvements to the premises as in this Lease provided, but shall have no obligation to make capital improvements either to the premises or Shopping Center except as hereinafter set forth (For purposes of this Lease, the term "capital improvement" shall

mean a value-adding addition or modification in excess of ordinary repairs and maintenance.)

In the event LESSOR shall be required by competent governmental authority to make capital improvements to the common areas of said Shopping Center, or in the event LESSOR, after first obtaining approval of LESSEE, voluntarily makes capital improvements to said common areas then and in either event LESSEE shall, upon being furnished by LESSOR with an itemized statement, properly documented, showing the computations used to determine the costs and expenses of said capital improvements and LESSEE'S prorata share thereof (determined as hereinabove provided for determination of common area maintenance charges as provided in Section 2.3 hereof) promptly pay a proportionate share of said prorata share based on the proportion that the number of years remaining in the original term of this Lease and/or all renewal options then remaining available to LESSEE hereunder bears to the number of years of the asset life of said capital improvement as determined by agreement of the parties or in absence of agreement, by arbitration under the procedures set forth in Article XIV hereof.

10.3 WASTE. The LESSEE shall not commit waste or permit waste to be committed in or upon the leased premises and, at the termination of this Lease, shall surrender and deliver the premises to the LESSOR in as good condition as the same were at the commencement of the term, including removal of LESSEE'S fixtures and equipment, excepting (1) usual wear and tear, (2) acts of God and unavoidable casualties, (3) repair of latent defects for which LESSOR is responsible hereunder, (4) damage or loss for which LESSOR has waived recovery under Section 9.1 hereof, and (5) other non-insurable casualties beyond the reasonable control of LESSEE.

ARTICLE XI. SIGNS.

11.1 SIGNS. LESSOR shall have the sole right to approve the design and placement of any and all signs of any nature upon the exterior premises; provided, however, that the size and advertising effect of any sign to be used by the LESSEE shall

be substantially equal to any sign permitted to be used by other tenants in the Shopping Center and permitted by local law. LESSEE shall have the right to place on the sign identifying the Shopping Center its sign, which shall be of at least the same size and advertising effect as any sign placed on such sign identifying the Shopping Center by any other tenant in the Shopping Center. LESSOR covenants and agrees that neither it nor any other tenant in the Shopping Center shall construct a sign so as to impair the visibility of or access to the premises. All signs constructed or placed on said premises shall be in conformity with the specifications hereto attached as Exhibit "B".

ARTICLE XII. FIRE AND EXTENDED COVERAGE, INSURANCE
AND RENT ABATEMENT.

12.1 **FIRE AND EXTENDED COVERAGE INSURANCE.** The LESSOR agrees to keep in effect, during the original or any renewed term of this Lease, a policy of all risk insurance, to cover damage to the building of which the premises is a part, or the premises, caused by fire, vandalism and malicious mischief and burglary, written by a responsible insurance company authorized to do business within the state where the premises are located, for an amount equal to the full replacement cost of the premises. Such policy of insurance shall provide protection against the losses so insured against for the benefit of the LESSOR, LESSEE, PAID and any mortgagee as their interests may appear under the terms of this Lease and any mortgage agreement, providing that such insurance shall not be cancelled except after thirty (30) days' notice to LESSEE and any mortgagee and shall contain the provision of endorsement required by Section 9.1 hereof. LESSEE agrees to immediately endorse any insurance proceeds draft or check presented to it in conjunction with such damage or loss. The LESSOR agrees to name the LESSEE, PAID and any mortgagee as additional named insureds and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to LESSEE and mortgagee.

LESSEE agrees to remit to LESSOR, on an annual basis within thirty (30) days

after being billed therefor, the annual premium for insurance covering the premises (or, LESSEE'S pro rata share of such annual premium if such premium is for the entire Shopping Center) for said policy(s) as hereinabove provided, subject to LESSEE'S right to obtain a like insurance coverage policy(s) covering the premises or Shopping Center should LESSEE be able to secure such policy(s) on the premises or Shopping Center at a lower rate for like coverage. In the event LESSEE is able to obtain like insurance policy(s) covering the premises or Shopping Center at a lower rate, with a company having a Best Insurance Reports rating at least equal to that of LESSOR'S insurance company, LESSEE shall provide to LESSOR reasonable data supporting the availability of such like insurance policy(s) at a lower rate; whereupon receipt of such data, LESSOR shall have the option, exercisable in its sole discretion and within thirty (30) days after receipt of such data, to cancel its insurance policy(s) covering the premises or Shopping Center and obtain LESSEE'S policy(s). Should LESSOR elect not to cancel its insurance policy(s) and obtain LESSEE'S policy(s), as aforesaid, LESSOR agrees to deduct, from amounts due from LESSEE in payment of LESSOR'S insurance policy(s) covering the premises or Shopping Center and within said thirty (30) days, the difference between the premium paid or charged by LESSOR for its insurance policy(s) covering the premises or Shopping Center and that which would have been paid by LESSEE for LESSEE'S policy(s) covering the premises or Shopping Center.

The premises to be constructed by LESSOR under this Lease is to be equipped with an automatic sprinkler system which is more fully described in Exhibit "B". LESSOR further understands that LESSEE'S SUBLESSEE is required to carry fire and extended coverage insurance covering all of its merchandise, furniture, fixtures, and equipment located in and upon the premises.

Should the building covered by this Lease be rated deficient by the Insurance Service Organization, or any other rating bureau having jurisdiction, then LESSOR, after receipt of written notice from LESSEE, shall pay for any differential amount between

the premium paid and that which would have been paid had the building not been rated deficient, and LESSOR agrees to reimburse LESSEE and/or its SUBLESSEE for any differential amount it may incur. Said differential amount shall be computed and paid annually using the then published insurance rates until the defects are cured by LESSOR. Upon LESSOR'S receipt of notice of any deficiencies from the Insurance Service Organization, or any other rating bureau having jurisdiction, LESSOR agrees to immediately notify LESSEE in writing of said deficiencies. Upon completion of construction, LESSOR agrees to provide LESSEE with a rating sheet for LESSEE'S premises from said Insurance Service Organization, or any other rating bureau having jurisdiction, citing deficiencies, if any. LESSOR shall not be liable for any reimbursement of such differential if LESSOR has complied fully with the agreed plans and specifications of the premises and has complied with all of the Insurance Service Organization's, or any other rating bureau having jurisdiction, recommendations and requirements, after its review of said architectural plans and related engineering drawings and specifications of the premises. Neither shall the LESSOR be liable for any reimbursement of any such differential due to the Insurance Service Organization's, or any other rating bureau having jurisdiction, subsequent change of standards of qualifications for full sprinkler credit pertaining to the standards of construction of the premises. LESSOR agrees that future buildings which may be constructed in the Shopping Center will be constructed in such a manner that LESSEE will not be penalized and denied full sprinkler credit, unless agreed to in writing by the LESSEE.

LESSOR agrees it shall not, nor shall it allow any other tenant(s) in the Shopping Center, to keep anything within their leased premises or on the Shopping Center, or use their leased premises or the Shopping Center, for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the premises by LESSEE, such other tenant(s) or other parts of the Shopping Center. LESSEE shall not keep anything within the premises, nor shall it use the premises for any

purpose, which will cause an increase in the LESSOR'S insurance premium cost or invalidate any insurance policy(s) carried on the premises by LESSOR.

12.2 RENTAL ABATEMENT INSURANCE. LESSOR agrees to provide rental abatement insurance, in an amount not to exceed one (1) year's annual minimum rental, as set forth under Section 5.1A hereof, in the event of damage or destruction of the premises. The proceeds of such policy to be payable monthly, for the benefit and to the credit of the LESSEE, to LESSOR or mortgagee, as their interest may appear in this Lease, in proportion to the extent of damage and destruction of the premises and during the period of reconstruction and repair of said premises which shall not exceed one (1) year from the date of occurrence. LESSEE agrees to remit to LESSOR, on an annual basis within thirty (30) days after being billed therefor, the annual premium for such insurance.

12.3 BLANKET INSURANCE. The insurance to be provided by LESSEE and/or LESSOR or LESSOR'S agent may be provided pursuant to a blanket insurance policy covering the premises and other locations of LESSEE and or LESSOR provided, however, in no event shall the protection afforded by such blanket insurance policy be less than required hereunder.

Insurance premiums paid by LESSEE for insurance provided hereunder shall be deemed to be rental to LESSOR for purposes of this Lease pursuant to Section 5.1 hereof.

ARTICLE XIII. DAMAGE AND DESTRUCTION

13.1 PARTIAL DAMAGE AND DESTRUCTION If, at any time during the original or any renewed term hereof, the premises shall be partially damaged by fire, windstorm, or other casualty, but the extent thereof is not sufficient to deprive the LESSEE of more than twenty-five percent (25%) of the floor space in the premises, then LESSEE shall notify LESSOR thereof in writing and LESSOR, at its expense, shall proceed promptly to rebuild and repair such portion of the premises so damaged or destroyed; and this Lease shall continue in full force and effect

13.2 TOTAL DAMAGE AND DESTRUCTION. If, at any time during the original

or any renewed term hereof, the premises shall be partially or wholly damaged by such casualty, and the extent of such damage shall be sufficient to deprive LESSEE of more than twenty-five percent (25%) of the floor space therein for its purpose, the LESSEE shall notify LESSOR thereof in writing and the rights and obligations of the parties shall be governed by the following:

- A. If such damage shall occur during the first thirteen (13) years of the original term hereof, then at its expense, the LESSOR shall proceed to rebuild and repair such damage, and this Lease shall continue in full force and effect.
- B. If such damage shall occur during the last seven (7) years of the original term hereof, or during any of the renewal terms available to LESSEE at its option under Section 4.6, and if within thirty (30) days after the occurrence of such damage, LESSEE shall further notify LESSOR of LESSEE'S intent to exercise options, then still available to it under Section 4.6, to extend the term hereof for a period of at least seven (7) years following such notification, then LESSOR, at its expense, shall proceed promptly to rebuild and repair such damage, and this Lease shall continue in full force and effect. If notice be not so given to LESSOR of LESSEE'S intent to exercise such options to so renew the term hereof for such period of at least seven (7) years, then LESSOR, at its sole option, may elect to rebuild and repair such damage at its expense, by written notice to LESSEE within thirty (30) days after the expiration of the thirty (30) day period, during which LESSEE may give LESSOR notice of election to renew the term hereof, upon the happening of which LESSOR shall so proceed to build and repair such damage, and this Lease shall continue in full force and effect. If LESSEE shall fail to so give LESSOR notice of LESSEE'S intent to exercise such option to so renew the term hereof, and LESSOR shall thereafter fail to so give LESSEE notice of LESSOR'S election to rebuild and repair such damage, then this Lease shall terminate as of the date of the occurrence of such casualty, the rental shall be adjusted accordingly, and neither party shall have further rights or obligations hereunder.

LESSOR agrees that in the event any building or buildings in the Shopping Center other than the building containing the premises, shall be destroyed or damaged by fire or other hazard, during the term of this Lease, or any renewal thereof, except during the last seven (7) years of the then current term, LESSOR shall rebuild and repair said buildings as closely as possible to those building or buildings shown on Exhibit "A" attached hereto.

Whenever, under the foregoing provisions of this Article XIII, LESSOR shall have

the obligation to rebuild and repair all or any portion of the premises or other building or buildings so to continue this Lease in full force and effect, the same shall be commenced within thirty (30) days after LESSOR'S receipt of insurance proceeds, which shall be preceded by LESSOR'S receipt of notice of such damage, or receipt of notice of LESSEE'S intent to exercise the necessary option to renew, or the exercise of LESSOR'S election to rebuild, as the case may be. LESSOR shall prosecute such rebuilding and repairing diligently to the end that the premises, other building or buildings will be restored to substantially the same condition as before the occurrence of such damage. If, for any reason whatsoever, rebuilding and repairing is not completed within six (6) months after receipt by LESSOR of insurance proceeds, unless LESSOR be prevented from completing such rebuilding and repairing by causes or conditions beyond its reasonable control, then, and in either such events, LESSEE may, at its sole option, terminate this Lease by written notice to LESSOR of its intention to do so, upon the happening of which, rental shall be adjusted as of the date of termination, LESSEE shall have no further rights hereunder, and LESSEE shall have no further interest in the proceeds of said insurance.

Whenever, under the foregoing provisions of this Article XIII, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, other building and buildings, and so to continue this Lease in full force and effect, the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such casualty to the date of completion of such rebuilding and repairing in proportion to LESSEE'S deprivation of use of the premises for its purposes; provided, however, in the event that the premises is not damaged by such casualty, and LESSEE continues to conduct its business, but other building or buildings in the Shopping Center are damaged to the extent that fifty percent (50%) or more of the ground floor area of such building or buildings not containing the premises are rendered untenable, then the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such casualty to the date of completion of the

rebuilding and repairing thereof in proportion to the percentage of the Shopping Center so damaged.

Whenever, under the foregoing provisions of this Article XIII, the premises shall not be rebuilt or this Lease shall be terminated by reason of the exercise or non-exercise of any option herein granted to either the LESSOR or the LESSEE, the LESSEE shall have no further interest in the proceeds of such insurance.

Should LESSOR fail to repair or reconstruct said premises as in this Article XIII provided, after all periods to cure, then, and in that event, LESSEE may, at its sole option and in addition to the remedy of specific performance and all other remedies available to LESSEE hereunder, undertake to perform said repairs or reconstruction and pursue all remedies available to it under Section 15.2 hereof, including deduction of its costs and expenses from those certain items due or to become due LESSOR during the term of this Lease or any extension thereof as specified in said Section 15.2

ARTICLE XIV. CONDEMNATION.

14.1 CONDEMNATION FOR REPAIRS The LESSOR agrees that if any authority condemns the Shopping Center or any part thereof, other than the premises, as being unsafe, or not in conformity with the applicable laws or regulations, the LESSOR, at its own costs and expense, will promptly make such changes, alterations or repairs (structural or nonstructural) as may be necessary to comply with such laws and regulations, or with the requirements of the authority. If, during the time such changes, alterations or repairs are being performed, the premises are rendered unsuitable for occupancy and use by the LESSEE, the rent shall abate, and if only a portion of the premises is rendered unsuitable for such occupancy and use, then the rent shall abate proportionately

Provided, however, in the event the premises or any part thereof are condemned as being unsafe or not in conformity with the applicable laws and regulations due to the defective condition or use of supplies, materials, and/or equipment owned or used by

LESSEE, or due to a defective condition of common facilities or any part of the premises which LESSEE is required to maintain as herein provided, then, and in that event, LESSEE, at its own cost and expense, agrees to make such changes, alterations and repairs (structural or nonstructural) in the building and equipment or the use of the same as may be necessary to comply with such laws and regulations, or with the requirements of the authority, but LESSEE shall be entitled to any condemnation award made to LESSOR in respect thereto.

Should LESSOR fail to make such repairs which it is obligated to make as herein provided, after all periods to cure, then, and in that event, LESSEE may, at its sole option and in addition to the remedy of specific performance and all other remedies available to LESSEE hereunder, undertake to perform said repairs and pursue all remedies available to it under Section 15.2 hereof, including deduction of its costs from those certain items due or to become due LESSOR during the term of this Lease or any extension thereof as specified in said Section 15.2. LESSEE shall also, in the event of LESSOR'S breach, have the benefit of all monies received by LESSOR from any condemnation award for the purpose of making such repairs required to be made by LESSOR hereunder

14.2 CONDEMNATION.

(A). Within fifteen (15) days following LESSOR'S receipt of notice from any condemning authority of a proposed condemnation, LESSOR shall notify LESSEE thereof in writing and give LESSEE a copy of such notice. If all of the premises shall be taken under the right of eminent domain by any authority having the right of taking or if a portion of the premises is so taken as will prevent the practical use of the premises for LESSEE'S purposes, this Lease, and all obligations hereunder, shall terminate on the date title vests pursuant to such proceedings

(B). If such part of the premises, including parking, is so taken that same does not cause the termination of this Lease under subsection (A) of this Section 14.2, LESSOR

(subject to the terms of subsection (C) of this Section 14.2) shall restore the building and other improvements upon the premises to a condition and to a size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the taking, and there shall be an equitable abatement of the minimum rent only according to the square footage of the floor area before and after the taking. In the event that the parties are unable to agree upon whether the remaining part of the premises, including parking, is suitable for the practical use of LESSEE'S business or in the event that the parties are unable to agree upon the amount of any such abatement of minimum rent, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

(C). LESSEE shall have the right to make a claim against the condemnor for the removal expenses, business dislocation damages and moving expenses which are separately payable to LESSEE under the Eminent Domain Code or other condemnation statutes of Pennsylvania. Except as aforesaid, LESSEE hereby waives all claims against LESSOR and all claims against the condemnor, and LESSEE hereby assigns to LESSOR all claims against the condemnor including, without limitation, all claims for leasehold damages and diminution in the value of LESSEE'S leasehold interest. If only part of the premises is taken and this Lease is not terminated pursuant to subsection (A) of this Section 14.2, the net proceeds of any condemnation award recovered by reason of any taking of the premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then current market value of the land taken (such excess being hereunder called the "net condemnation proceeds") shall be held in trust by LESSOR or any mortgagee of the premises and released for the purpose of paying the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking. In the event that the parties are unable to agree upon the portion of the

award attributable to the then current market value of the land taken or in the event that the parties are unable to agree upon the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

If such taking does not prevent the practical use of the premises for the purposes of the LESSEE, then this Lease shall continue in full force and effect, but the rent shall abate proportionately, and such other adjustments shall be made as shall be just and equitable.

ARTICLE XV. DEFAULT.

15.1 LESSEE DEFAULT. LESSEE further covenants with the LESSOR that if the LESSEE defaults by not paying the rent, additional rent or any part thereof when it becomes due, and has not cured said default by making the required rental payment within ten (10) business days of the receipt of written notice of said nonpayment, at which time LESSEE shall be liable to LESSOR for interest thereon at the then prevailing prime interest rate; or in the event of default by LESSEE in violating or neglecting any other covenant, agreement or stipulation therein contained on LESSEE'S part to be kept, performed or observed, and any such default shall continue for thirty (30) days after receipt of written notice specifying such default or if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and LESSEE has not proceeded with reasonable diligence and good faith to complete the curing thereof; or if LESSEE shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation or dissolution or similar relief under any present or future bankruptcy laws of the United States or any other country or political

subdivision thereof (collectively, "Bankruptcy Relief"), or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of all or any substantial part of its properties, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or if within sixty (60) days after the commencement of any proceedings against the Lessee seeking any Bankruptcy Relief, such proceedings shall not have been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of the LESSEE, of any trustee, receiver or liquidator of the LESSEE or of all or any substantial part of its property, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within sixty (60) days after the expiration of any such stay, such appointment shall not have been vacated; then, and in addition to the other remedies or courses of action now or hereafter provided by law, LESSOR may, at its option, (1) terminate, forfeit, cancel and annul this Lease, in which case neither LESSOR nor LESSEE shall have any further rights or obligations under this Lease as of the date of termination, forfeiture, cancellation and annulment except with respect to those amounts that LESSEE was obligated to pay to LESSOR prior to the date of termination forfeiture, cancellation and annulment; or (2) terminate LESSEE'S possessory rights, without terminating the term of this Lease, in which case LESSOR shall have the rights hereinafter set forth. LESSOR shall give written notice to LESSEE of LESSOR'S election.

If LESSOR elects to terminate LESSEE'S possessory rights, without terminating the term of this Lease, LESSOR shall have the right, after appropriate judicial hearing and process or with LESSEE'S consent, to enter and take possession of the premises immediately and may remove all persons, furniture, fixtures and equipment from the premises, at LESSEE'S sole expense, in order to recover at once, full and exclusive possession of the premises, and such entry shall not operate as a waiver or satisfaction, in full or in part, of any claim or demand arising out of or connected with, any breach,

default, or violation by the LESSEE of any covenant or agreement on its part to be performed; provided that notwithstanding any of the foregoing LESSOR shall not have the right to repossess the premises in the event of a bona fide dispute as to the LESSEE'S liability, if any, to make repairs, except after such liability has been finally judicially determined, and so long as LESSEE continues to pay minimum rent as hereinabove provided in Section 5.1.A.

Should LESSOR elect to terminate LESSEE'S possessory rights, without terminating the term of this Lease, as hereinabove provided, LESSOR shall use its best efforts to relet the premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as LESSOR may deem advisable. For the purpose of such reletting, LESSOR shall have the right to make reasonable alterations and repairs to the premises, and such reletting shall not work a forfeiture of the rent to be paid by LESSEE; provided, that rentals received by LESSOR from any such reletting shall be applied first, to the payment of any indebtedness other than rent due hereunder from LESSEE to LESSOR; second, to the payment of rent then due and unpaid hereunder; third, to the payment of any cost of such reletting; fourth, to the payment of any alterations and repairs to the premises to which LESSEE has given its written consent and the residue, if any, shall be held by LESSOR and applied in payment of future rent as the same may become due and payable hereunder, and if no future rent becomes due and payable hereunder, such residue shall be retained by LESSOR. Should such rentals received from such reletting by LESSOR to which LESSEE has given its written consent, during any month be less than the minimum rental agreed to be paid hereunder during that month by LESSEE, then LESSEE shall upon receipt from LESSOR specifying the amount, pay the difference to LESSOR. Such difference shall be calculated and paid monthly.

No such termination of LESSEE'S possessory rights, without terminating the Lease term, shall be construed as an election on the part of LESSOR to terminate this Lease

unless a written notice of such intention be given to LESSEE or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, LESSOR may at any time thereafter elect to terminate this Lease for such previous default, unless LESSOR has allowed LESSEE or LESSEE'S sublessee to reenter and relet the premises. All remedies granted to LESSOR by the terms of this Lease, or by applicable statute or other principles of law or equity, shall be cumulative and not exclusive, and the exercise of any such remedy shall not bar or delay the exercise of any other such remedy.

15.2 LESSOR DEFAULT. The LESSOR and any mortgagee covenant with the LESSEE that if LESSOR shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice thereof is given by LESSEE to LESSOR, and its mortgagee of whom LESSEE has been notified in writing, specifying such default, except in the event of emergency when no such written notice shall be required, (provided, however, if such failure is incapable of being cured with diligence within such thirty (30) day period, and if LESSOR proceeds diligently to cure the same and thereafter prosecutes such curing with diligence to completion, then upon receipt by LESSEE of notice from LESSOR or its mortgagee stating the reason such failure cannot be cured within said thirty (30) days, the time period for such curing shall be extended for such period as may be reasonably necessary to complete the curing) then, and in addition to the remedy of specific performance and other remedies and causes of action now or hereafter provided by law or in equity, LESSEE may, at its option, among other things, cancel and annul this Lease, but such right to cancel and annul shall not be exercised during said curative period, or remedy the condition or need referred to in such notice, or make the payment which LESSOR has not made, but should have made, and deduct LESSEE'S actual cost or the amount of the payment together with interest at the then prevailing prime interest rate from subsequent payments of rental due LESSOR under

this Lease. LESSEE shall have the right to withhold payment of rental in whole or in part to the extent LESSEE'S costs attributable to such default together with all accrued interest have been fully recovered and LESSEE shall have the right to extend this Lease subject to the limitation for extension set forth in Section 4.6 hereof, for the period of time necessary to allow LESSEE to fully recoup the total amount of its costs and all accrued interest through such withholding, which costs are hereby agreed by the parties in advance to be reasonable and proper costs and deductions.

ARTICLE XVI. LESSOR'S ADDITIONAL COVENANTS.

16.1 PARKING AREA. LESSOR agrees that at no time during the term of this Lease, will the customer parking area, entrances and exits, except for the driveway currently existing next to Building D, store D4, which intersects with Frankford Avenue, and service areas of the Shopping Center be reduced in size or configuration from that shown on the plot plan attached as Exhibit "A", unless such reduction is made necessary by the exercise of eminent domain by proper and duly constituted authority or authorities, or is done at LESSEE'S request, or results from the exercise of any right granted LESSEE herein. Any violation of this provision shall entitle the LESSEE, at LESSEE'S sole option, to treat such violation as a default with an option to cancel the Lease, or to require a proportionate reduction of rent, with full reservation of LESSEE'S right to damages (if any) and to equitable relief, including specific performance, together with a full reservation of any other right or remedy available to LESSEE at law or in equity.

16.2 SHOPPING CENTER OCCUPANCY. LESSOR further covenants that it will, simultaneously with the construction of the premises, construct other buildings in the Shopping Center of the size and to be, simultaneously with or previous to the RENT COMMENCEMENT DATE, occupied by no less than four (4) of the following retail tenants, the occupancy of the following tenants to be guaranteed only for a period of sixty (60) days after LESSOR'S substantial completion of the premises.

<u>Name of Tenant</u>	<u>Store Square Footage</u>
Thrift Drug	8468
Fashion Bug	8800
Gold Medal Sporting Goods	5560
Merit Outlet	4348
Royal Auto	4232
Payless Shoe	3133

If LESSOR shall fail to so construct such other buildings, or if such buildings shall fail to be occupied simultaneously with or previous to the RENT COMMENCEMENT DATE for at least the period of time referred to above, then at the sole option of the LESSEE, this Build and Lease Agreement may be declared null and void or LESSEE may be entitled to either pay percentage rental or the minimum fixed monthly rental, whichever is less, until the retail space is constructed and occupied by retail tenants as hereinabove set forth within this Article 16. LESSOR agrees, on the real estate of which the premises are a part, that the LESSOR now controls or on contiguous or adjacent real estate the LESSOR may at some later date control, that there will not be located on such real estate, a theatre, bowling alley, restaurant, or skating rink (provided, however, a restaurant not to exceed 5000 square feet of floor space shall be permitted) within one hundred eighty (180) feet of the premises, and further no offices, training, educational, physical fitness or exercise facilities within two hundred (200) feet of the premises, except for existing tenants, or their successors, which shall remain in the existing space as set forth on Exhibit "A".

ARTICLE XVII. EXCLUSIVE, RIGHT TO CLOSE, ASSIGNMENT AND SUBLETTING.

17.1 **EXCLUSIVE.** Provided LESSEE is operating the premises as a retail supermarket, LESSOR covenants that it will not permit any person other than the LESSEE to operate a retail supermarket of any nature in the Shopping Center of which the premises are a part or on any adjoining property owned by LESSOR, its assignee, or its transferees, without first obtaining the LESSEE'S prior written consent. Notwithstanding anything to the contrary set forth in this Section 17.1, LESSOR may, in conformity with the provisions of Section 16.2, permit the operation of. (a) a donut shop;

(b) a gourmet cookie and/or candy store; (c) a cinnamon bun store; (d) an ice cream/frozen yogurt store whose primary business is the sale of hand-dipped ice cream and/or frozen yogurt; (e) a liquor and/or beer store; (f) a health food store; (g) a bagel store. The provisions of this Section 17.1 shall be a covenant which shall run with the land, and shall continue to control any portion of the Shopping Center disposed of by the LESSOR and the assignee or transferee shall be bound by the provisions of this Section 17.1 and shall be deemed to have received notice thereof.

17.2 USE OF PREMISES AND RIGHT TO CLOSE STORE. LESSOR agrees that nothing in this Lease shall be construed as compelling LESSEE to operate any particular type of business or to keep the store in or upon the premises open for business and LESSEE shall have the privilege of operating the premises for any lawful retail purpose so long as said activity does not violate any ordinance, law, regulations, or restrictive covenant then in force and effect or violate any exclusive retail activity entitlement previously granted to any other tenant occupying space in said Shopping Center; provided, however, that if LESSEE permanently closes the premises, or ceases to operate the premises as a retail food store (except for periods of restoration, renovation, repair or maintenance), LESSEE shall so notify LESSOR in writing and LESSOR shall, no later than sixty (60) days after receipt of said notice, notify LESSEE whether LESSOR desires to terminate this Lease and recapture the premises as of the last day of the month one (1) month subsequent to the month in which LESSOR notifies LESSEE. In the event of such termination neither party shall have any further liability or obligation to the other under this Lease, except for matters which have accrued prior to and as of the date of such termination.

Notwithstanding the foregoing, LESSEE may nullify LESSOR'S termination right, one time only, by notice to LESSOR within thirty (30) days after receipt of LESSOR'S termination notice that LESSEE will open the premises within sixty (60) days thereafter. Notwithstanding the foregoing, LESSEE agrees that it shall not use the

premises, or any part thereof, for a pharmacy, nor shall LESSEE sell primarily health and/or beauty aids on the premises so long as there is a drugstore in operation in the Shopping Center.

LESSEE shall always have the privilege of closing said store at any time, provided LESSEE shall continue to pay the rental as set forth in Section 5.1 of this Lease; provided, however, that in no event upon such closing shall LESSEE have any obligation to pay percentage rental provided in Section 5.1B hereof and LESSOR shall have no claim against LESSEE under Section 5.1B arising out of or as a result of such closing.

17.3 SUBLET OR ASSIGN. The LESSEE shall have the right, during the term of this Lease, to sublet all or a portion of the premises, or to assign this Lease, either in whole or in part, but no such subletting or assignment shall release the LESSEE from any of the obligations under the terms of this Lease, and the LESSOR shall, at all times, have the right to look to the LESSEE for the performance of all of the covenants to be performed on the part of the LESSEE.

Notwithstanding anything to the contrary set forth in this Lease, LESSEE shall have the right to sublet or license a part of the premises for use as a bakery, or floral department, and LESSEE shall have the right to utilize a debit card service (such as MAC) at the checkout counters, but LESSEE shall not be permitted to sublet or license a part of the premises for a bank or automatic teller machine unless LESSEE obtains consent for the same from Corestates Bank, or any other bank which is operating in the Shopping Center and has an exclusive banking use.

ARTICLE XVIII. FORCE MAJEURE.

18.1 FORCE MAJEURE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted) said obligated party shall immediately furnish written

notice to the other party stating clearly the reason for delay and the date when performance is to re-commence and the re-scheduled date for completion. Thereafter, the performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, LESSEE or LESSOR shall exercise its best efforts to remedy any such cause of delay or cause preventing performance, and nothing in this paragraph shall excuse LESSEE from the prompt payment of any rental or other charges required of LESSEE, except as may be expressly provided elsewhere in this Lease and except where the Commencement Date of this Lease is delayed in which latter case rent shall not be payable hereunder until the date of such delayed Commencement Date.

ARTICLE XIX. MISCELLANEOUS PROVISIONS.

19.1 REMOVAL. The LESSEE shall have the right to remove any and all furniture, fixtures, and equipment it may have installed on or in the premises provided the LESSEE shall restore any damage to the building resulting from such removal, usual wear and tear excepted

19.2 LESSOR ENTRY. The LESSOR shall have the right to enter the premises at any reasonable time, upon prior notice and accompanied by a representative of LESSEE, for the purpose of inspecting the same, or for the purpose of doing anything that may be required under this Lease, or for the purpose of doing anything LESSEE may be required to do and shall fail to do. In the event it is reasonably necessary for the LESSOR to make any repairs to the premises that the LESSEE is responsible for, but which the LESSEE has failed to make, LESSEE shall reimburse the LESSOR for the cost thereof on demand, with interest thereon at the then prevailing prime interest rate, and the LESSOR shall not be responsible to the LESSEE for any loss or damage that the LESSEE may suffer from such repairs, provided that such loss or damage is reasonable under the circumstances.

19.3 SHOWING BY LESSOR. During such time as LESSEE is in possession of the

premises, LESSOR may at any time, enter the premises at all reasonable hours, upon prior notice and accompanied by a representative of LESSEE, for the purpose of offering the premises for sale, and LESSOR may, during the last six (6) months before the expiration of this Lease, enter the premises for the purpose of offering the premises for rent, upon prior notice and accompanied by a representative of LESSEE, subject to LESSEE'S rights, as set out in Section 4.6.

19.4 RELATIONSHIP. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relation of principal and agent or of partnership or of joint venture between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of LESSOR and LESSEE.

19.5 UTILITIES. LESSEE agrees to pay all electric current, water, gas, and other fuel bills, as determined by separate meters for LESSEE'S space and use. LESSOR, at its sole expense, will provide any and all utility meters, utility hook-up or connection fees or charges for all utilities to the premises.

19.6 LEASE APPLIES ONLY TO BUSINESS ON PREMISES. It is understood that LESSEE is presently involved in numerous other activities at other locations. In this respect, it is not intended that the gross sales and other provisions of this Lease shall apply to the business activities of LESSEE or of any assignee or sublessee of LESSEE at other locations, but shall apply only to the business conducted on the premises, whether conducted thereon by LESSEE or by an assignee or sublessee of LESSEE, it being fully understood that the foregoing provisions are not intended to modify in any manner the responsibilities or obligations of LESSEE pursuant to Section 17.3 of this Lease.

19.7 ALTERATIONS OR ADDITIONS. The LESSEE shall have the right to make alterations or additions to the interior of the premises, provided such alterations or additions are at its sole cost and expense, and that such alterations or additions shall be

of good workmanship and material at least equal to that of the original construction, and that such alterations or additions neither shall reduce the size and strength of the existing building, nor adversely affect the market value of the premises; provided, however, that no such alterations or additions to the premises which shall cost more than One Hundred Thousand Dollars (\$100,000.00) shall be made by the LESSEE without the written consent of the LESSOR. LESSEE shall require any contractors or subcontractors to file a Waiver of Liens prior to the commencement of any construction. The LESSEE shall not be required to remove any such alterations or additions or to restore the building to its original condition at the termination of this Lease and any such alterations or additions shall then become the property of the LESSOR.

19.8 SPECIAL SALES PROMOTION. Notwithstanding any provisions in this Lease to the contrary, it is agreed that LESSEE may place special sales promotion signs on the parking area light poles from time to time and may string pennants and streamers around the parking area. These signs and decorations, however, shall be of a strictly temporary nature and in conformance with any governmental regulations, and LESSEE shall promptly remove the same when any such promotion is over.

19.9 ADDITIONAL LEASE SPACE. It is contemplated that during the term of this Lease, LESSEE may require additional rental space in excess of that included in this Lease. It is agreed that LESSEE may, at any time within the first six (6) years of the term of this Lease, request LESSOR to construct, at LESSOR'S expense, additional rental space depicted as "Future Expansion Area" on the Plot Plan attached as Exhibit "A", not exceeding 4950 square feet, to be leased to LESSEE on the same terms and conditions as provided herein, except that the minimum rent payable by LESSEE to LESSOR with respect to such additional space shall be determined as hereinafter provided. Any such additional space shall be constructed by LESSOR in accordance with specifications to be provided by LESSEE at the time that LESSEE requests the construction of the additional space. Such additional space shall be of good workmanship and in conformity with all

applicable building codes, ordinances, rules and regulations and other requirements of governmental authorities. Upon receipt of such specifications from LESSEE, LESSOR shall obtain bids for such work from not less than three (3) good and reputable contractors, all of whom shall have been previously approved by LESSEE. Such bids shall then be forwarded to LESSEE who may approve any one of said bids or may decline all three. Should LESSEE decline all bids, then LESSEE shall obtain a bid acceptable to it from a contractor who is reasonably acceptable to LESSOR. Upon approval by LESSOR and LESSEE of a bid for construction of the additional space, LESSOR shall promptly undertake to have LESSEE'S store building enlarged by the contractor whose bid was approved and shall use all reasonable diligence for the completion of the construction of the additional space in accordance with the plans and specifications, the minimum rental provided for in Section 5.1A shall be increased annually by an amount equal to eleven percent (11%) of the total project costs associated with construction of the additional space. For purposes of the foregoing, the "total project costs associated with construction of the additional space" shall be the sum of (i) the amount of the approved construction bid (referred to above), and (ii) an allocation of One Dollar (\$1.00) for the land underlying the additional space, and (iii) such additional costs as are directly attributable to the construction of the additional space and are fair and reasonable, including legal and architectural fees, LESSOR'S points actually paid to the construction lender, mortgage insurance on the construction loan, construction loan interest and permit fees, but excluding title insurance costs. LESSOR shall furnish to LESSEE such reasonable documentation setting forth LESSOR'S total project costs as LESSEE may request. The said increased rent shall commence, and be due and payable, at the earlier of (i) thirty (30) days from the date that construction of the additional space is substantially completed as defined in Article III of this Lease, (ii) at the time the additional space is open for business, or (iii) such earlier time as is mutually agreed upon between LESSOR and LESSEE. The term for such additional space shall run concurrently

with the term of this Lease, including all renewal options.

LESSOR further agrees that, except for the original tenants, when rental space in any space adjacent to LESSEE, as depicted on Exhibit "A" becomes available for occupancy during the term of this Lease, or any renewal period, LESSEE shall have the first right and option to lease such space from LESSOR on the same terms and conditions as provided in this Lease, except that the minimum rental payable for such adjoining space shall be based on the then fair market rental for fixed minimum rent. Fair market rental shall be defined as the then prevailing average of rentals in the building in which such space is located. The rental for such space shall commence thirty (30) days after the space has been made available for occupancy by Tenant pursuant to the terms and conditions as agreed upon in writing by the parties hereto prior to such occupancy. LESSEE shall exercise its first right and option in writing within thirty (30) days after LESSEE'S receipt of notice from LESSOR that such space is available.

19.10 LESSOR'S WAIVER. LESSOR agrees that none of the property, including food, supplies, merchandise, inventory, furniture, fixtures, machinery, equipment, cash or any proceeds therefrom that are placed upon or permitted to be upon the premises by LESSEE, or any of LESSEE'S sub-tenants, assigns, or successors, during the term of this Lease or any renewal thereof, shall be subject to or liable for levy or distress or any legal process whatsoever for the collection of rent for the premises.

19.11 NOTICES. Any notice required or desired to be given to any party shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier, such as Federal Express, or other comparable delivery service that provides proof of delivery and shall be deemed given when received by the party to whom it is addressed. Any such notice to the LESSOR shall be addressed jointly, until such time as Sackett Development Company takes fee title to the Shopping Center, to Sackett Development Company, c/o Montgomery Realty Company, Plymouth Corporate Center, 625 Ridge Pike, Building E, Suite 201, Conshohocken, Pennsylvania

19428, and to The Philadelphia Authority for Industrial Development , 123 South Broad Street, 22nd Floor, Philadelphia, Pennsylvania 19109. Commencing with the date when Sackett Development Company takes fee title to the premises, notice to LESSOR shall be addressed only to Sackett Development Company. Any such notice to LESSEE shall be addressed to it at Egypt and Greentree Roads, P.O. Box 935, Oaks, Pennsylvania 19456, Attention: Store Development, with a copy to LESSEE addressed to 6301 Waterford Boulevard, P.O. Box 26647, Oklahoma City, Oklahoma 73126, Attention: Store Development. The address of any party may be changed by written notice thereof to the other party.

Any such notice to the LESSOR may be sent by LESSEE'S agent, including, but not limited to, any attorney employed by BOROFF, HARRIS & HELLER, P.C., which firm is specifically authorized to act for the LESSEE for purposes of giving such notice. Any notice sent by said attorney shall be as effective and as valid as if the same were mailed by LESSEE.

19.12 CAPTIONS. Any headings preceding the text of the several paragraphs and sub-paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

19.13 ADVANCE POSSESSION FOR FIXTURE INSTALLATION. LESSEE shall have the privilege rent free of entering the premises for the purpose of installing its store and trade fixtures, storing its first items of equipment and otherwise preparing the premises for LESSEE'S occupancy prior to the RENT COMMENCEMENT DATE.

When the performance of the LESSOR'S work has proceeded to the point where LESSEE can commence any portion of its work and the installation of LESSEE'S trade fixtures, furniture and equipment in the premises, in accordance with good construction practice together with adequate security of the premises, be commenced, LESSOR shall notify LESSEE to that effect. LESSEE agrees to install its trade fixtures and equipment in the premises in a prompt and expeditious manner so as not to delay LESSOR in

readying the premises for occupancy at the earliest possible date referred to hereinabove. LESSEE further agrees not to engage any persons in the installation of such fixtures and equipment which would result in a work stoppage by employees of the general contractor or any subcontractor engaged in readying the premises for occupancy.

19.14 SUBORDINATION. LESSEE agrees that this Lease shall be subordinate to any mortgage that may hereafter be placed upon the premises, and to all renewals and extensions thereof, upon condition that any mortgagee shall enter into a non-disturbance agreement with LESSEE in a form reasonably acceptable to LESSEE, which non-disturbance agreement shall provide, in part, that (a) the mortgagee named in such mortgages shall agree to recognize this Lease in the event of foreclosure if the LESSEE is not then in default, (b) in the event that premises are damaged or destroyed at a time when neither LESSOR nor LESSEE are in default under the terms of this Lease, and LESSOR is not in default under the terms of any such mortgages, any insurance proceeds that are available under the insurance policy(s) hereinabove required to be maintained under Section 12.1 are first applied to repair, replace or rebuild the premises so damaged or destroyed, if LESSOR and/or LESSEE under the terms of Article XIII above, either are required to or elect to repair, replace or rebuild the premises, and (c) any proceeds from condemnation to which LESSEE, and/or its sublessee, is entitled under Article XIV, awarded to LESSEE and/or its sublessee under Article XIV above, shall be the sole property of LESSEE and/or its sublessee.

19.15 ESTOPPEL CERTIFICATE. LESSEE agrees that prior to commencement of the term hereof, or at any time thereafter, upon twenty (20) days advance written notice, it shall furnish to LESSOR'S present or future mortgagee a completed Non-Disturbance, Subordination and Estoppel Certificate in the form hereto attached as Exhibit "C"

19.16 HAZARDOUS MATERIAL

19 16 1 Definitions. As used in this paragraph, the following terms shall

have the following meanings:

19.16.1.1 "Hazardous Material" means any substance, material or waste which poses an actual or potential threat to the health or safety of persons entering the Property or which is or at any time hereafter becomes regulated as "hazardous", "toxic" or under any other similar designation by any local, state or federal governmental authority. Such term includes, without limitation, (i) asbestos, (ii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), (iii) any material, substance or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.) or (iv) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U.S.C. § 6991, et seq.).

19.16.1.2 "Improvements" means the buildings and other improvements located, or to be located, on the Real Estate including, but not limited to, the premises.

19.16.1.3 "Property" means the Real Estate and the Improvements.

19.16.1.4 "Real Estate" means the tract of land under and surrounding the premises owned by the LESSOR, including, without limitation, all groundwater and other substances therein.

19.16.1.5 "Indemnified Person" means the LESSOR, LESSEE, any sublessee holding an interest in the premises or any portion thereof, their successors and assigns and any director, officer, employee, agent or invitee of LESSOR, LESSEE or of any such sublessee or their successors and assigns.

19.16.2 Representations and Warranties. LESSOR represents and warrants to LESSEE that to the best of its actual knowledge and belief (i) any handling, transportation, storage, treatment or usage of Hazardous Material that has occurred on

the Property has been in substantial compliance with all applicable federal, state and local laws, regulations and ordinances, (ii) no leak, spill, release, discharge, emission or disposal of any Hazardous Material has occurred on the Property in substantial violation of applicable federal, state and local laws, regulations and ordinances, (iii) the Property is free of any Hazardous Material except to the extent disclosed in a certain environmental report dated June 5, 1991, as updated, prepared by R.E. Wright Associates, Inc. (the "Environmental Report") a true and correct copy of which has been delivered to LESSEE, and (iv) there are no underground storage tanks located on the Property.

19.16.3 Indemnification LESSOR hereby agrees to indemnify, defend and hold each Indemnified Person harmless from any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of (i) the presence at any time of any Hazardous Material in or on the Property, regardless (except as set forth below) of the source of such Hazardous Material, (ii) the presence at any time of any underground storage tank on the Property, or (iii) the inaccuracy of any of the representations and warranties set forth in the preceding paragraph. The costs covered by the LESSOR'S indemnification include, without limitation, reasonable costs incurred in the investigation of site conditions, reasonable fees of attorneys, engineers and other consultants, costs and expenses incurred by LESSEE in exercising any of its rights under paragraph 19.16.5 hereof and any damages suffered as a result of any termination of this Lease in accordance with paragraph 19.16.5 hereof. Excluded from the LESSOR'S indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Property by any tenant or any sublessee or any director, officer, employee, agent or invitee of LESSEE or any sublessee.

LESSEE agrees that it will not bring onto the premises, nor will it permit any assignee, sublessee, licensee or concessionaire, to bring onto the premises, any Hazardous Material, other than inventory, cleaning supplies and other materials in normal quantities ordinarily used in the operation of its, or its assignee's, sublessee's,

licensee's or concessionaire's, business. LESSEE hereby agrees to indemnify, defend and hold LESSOR harmless from any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of the presence of any Hazardous Material in or on the premises introduced therein or thereon by LESSEE or its agents, employees, customers, contractors, assignees, sublessees, licensees, concessionaires or invitees during the term of this Lease.

19.16.4 Notices. LESSOR and LESSEE agree to promptly notify the other in the event such party becomes aware of the presence of any Hazardous Material or any underground storage tank on the Property.

19.16.5 Remedial Action.

19.16.5.1 Development of Remedial Plan If, at any time during the term of this Lease, LESSEE becomes aware of the presence or suspected presence of any Hazardous Material in or on the Property, except as identified in the Environmental Report, and reasonably determines that the presence of such Hazardous Material was not caused by LESSEE or its agents, employees, customers, contractors, assignees, sublessees, licensees, concessionaires or invitees, and that such Hazardous Material presents an actual or potential threat to the health or safety of any Indemnified Person or becomes aware of any pendency or threatened action by any federal, state or local governmental authority with respect thereto, LESSEE may so notify LESSOR and request that LESSOR institute remedial action LESSOR and LESSEE shall confer on what remedial action may be appropriate and within ninety (90) days of LESSOR'S receipt of such notice, LESSOR shall deliver to LESSEE a written plan describing in detail the remedial action which is necessary to eliminate any actual or potential threat to the health or safety of any Indemnified Person.

If, at any time during the term of this Lease, LESSEE becomes aware of any underground storage tank located on the Property LESSEE may so notify LESSOR and request that LESSOR institute remedial action if required pursuant to applicable laws, ordinances, rules or regulations LESSOR and LESSEE shall confer on what remedial action may be appropriate, and within ninety (90) days of LESSOR'S receipt of such notice

LESSOR shall deliver to LESSEE a written plan describing in detail the remedial action which is necessary to (i) remove any risk of any present or future leakage of substances from the tank into the Real Estate, and (ii) eliminate the possibility that the presence of such tank may, at any time during the term of this Lease, pose a threat to the health or safety of any Indemnified Person or may, at any time during the term of this Lease, require such maintenance, repair or other work so as to interfere with the conduct of business on the premises.

If, at any time during the term of this Lease, LESSEE, or its agents, employees, customers, contractors, licensees, concessionaires, invitees, assignees or sublessees causes or permits the presence or release of Hazardous Material onto the Property, except as is otherwise permitted in Section 19.16.3, LESSEE shall prepare and deliver to LESSOR a written plan describing the remedial action which is necessary and shall institute remedial action. LESSOR and LESSEE shall confer on what remedial action may be appropriate, in accordance with all applicable federal, state and local laws, regulations and ordinances, and within ninety (90) days of LESSEE'S receipt of such notice LESSEE shall deliver to LESSOR a written plan describing in detail the remedial action which is necessary to eliminate any actual or potential threat and to return the Property to a condition substantially similar to that which existed prior to the LESSEE'S introduction of any such Hazardous Material onto the Property.

Any plan developed pursuant to this paragraph shall, without limitation of the foregoing, cause the Property to comply with all applicable federal, state and local laws, ordinances and regulations and shall be sufficient to abate any pending or threatened action with respect to the Property by any federal, state or local governmental authority.

19.16.5.2 Termination. If (i) any plan required by the preceding paragraph is not delivered to LESSEE or LESSOR, as applicable, within the time prescribed, (ii) any such plan is not in compliance with all applicable federal, state or

local laws, ordinances and regulations or (iii) LESSEE or LESSOR determines that the actual or suspected presence of Hazardous Material or any underground storage tank has had a materially adverse effect on the business conducted from the premises or that the implementation of such plan may have such an effect, either party may, by notice to the other within twenty (20) days of such party's receipt of such plan (or, if either party fails to provide such plan, within twenty (20) days of the expiration of the time for either party to provide such plan) terminate this Lease, such termination to be effective as of the date to be specified in such notice.

19.16.5.3 Implementation of Plan. If LESSOR or LESSEE delivers the plan required hereunder within the specified time and LESSOR or LESSEE does not terminate this Lease as provided in this Article XIX, then, within ten (10) days of notice that the plan is in compliance with all applicable federal, state or local laws, ordinances and regulations (or LESSOR'S or LESSEE'S failure to terminate this Lease prior to the expiration of the time to do so), LESSOR or LESSEE will, at their sole cost and expense, commence action necessary to implement the plan and diligently pursue such action to completion. Any work required by this paragraph will be performed strictly in accordance with the plan and in accordance with all applicable laws, ordinances and regulations governing such work.

19.16.5.4 Performance by LESSOR or LESSEE. If LESSOR or LESSEE fails to deliver a plan for remedial action within the time prescribed above and LESSOR or LESSEE does not terminate this Lease, or if LESSOR or LESSEE fails to undertake such work as is required by this paragraph and diligently pursue such work to completion, LESSOR or LESSEE may take such remedial action as it deems necessary and LESSOR or LESSEE shall promptly reimburse the other for all reasonable costs incurred in such action.

19.16.5.5 Maintenance. Throughout the term of this Lease LESSOR shall, at its sole cost and expense, maintain in good condition and repair any

improvements to the Property made under this paragraph and shall continually cause the Property and such improvements to remain in compliance with all applicable federal, state and local laws and regulations. If at any time LESSOR fails to perform such maintenance, LESSEE may perform the same, in which event LESSEE shall be promptly reimbursed by LESSOR for all costs incurred in such work.

19.16.6 Remedies.

19.16.6.1 Abatement of Rent. If, during the implementation of any remedial or maintenance work required hereunder, the Property is wholly or partially unsuitable for its use as provided in this Lease, there shall be an equitable abatement of minimum fixed rent, percentage rent and any additional rent or other charges required to be paid by LESSEE hereunder until such time as such remedial or maintenance work has been completed.

19.16.6.2 Termination. Notwithstanding any other provision herein, in the event of any breach of LESSOR'S representations and warranties set forth above or in the event LESSOR fails to undertake remedial or maintenance work required of it hereunder and diligently pursue such work to completion, LESSEE may, by notice to LESSOR, terminate this Lease as of the date to be specified in such notice.

19.16.6.3 Offset. LESSEE shall be entitled to offset against rent payable hereunder any loss, cost, damage or expense covered by the LESSOR'S indemnification set forth in paragraph 19.16.3 hereof.

19.16.6.4 Nonexclusive Remedies. LESSOR and LESSEE shall be under no obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice LESSOR and LESSEE from exercising any other remedy available hereunder or under law or in equity. The remedies provided herein shall not be considered exclusive or preclude any claim for damages or any other remedy which may be available under this Lease or under law or in equity.

19.16.7 Environmental Audit LESSOR represents, warrants and

covenants to LESSEE that it has heretofore provided to LESSEE full, accurate and complete copies of the Environmental Report and other information in its possession relating to the presence, or suspected presence, of any Hazardous Material on the Property, and LESSOR agrees that it will, promptly following its receipt thereof, furnish to LESSEE full, accurate and complete copies of any reports, audits, studies and other information hereafter obtained by LESSOR.

19.17 BINDING. This agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

19.18 MERGER. This agreement contains the entire agreement of the parties hereto, both written and oral, and shall not be amended, altered or otherwise modified except in writing signed by the parties.

19.19 TIME Time is of the essence in the performance of all obligations of LESSOR and LESSEE hereunder for which a time of performance is specified.

19.20 CHOICE OF LAWS. This agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created hereunder are performable in Philadelphia County, Pennsylvania.

19.21 ADDITIONAL COSTS. In the event that either party hereto requests any consent of the other, as permitted in this Lease, whether or not said party to whom the request is made consents thereto, or should either party hereto request the other to review and execute any documents, whether such documents are for the benefit of the party making such request, or are for the benefit of a third party, the party making such request, or requesting such consent, shall pay to the other all reasonable counsel fees and

other costs and expenses incurred by the reviewing party in connection therewith.

19.22 CONSENT OF THE PARTIES. Where pursuant to the terms of this Lease, or in connection with the administration of this Lease, the consent, approval, cooperation or similar exercise of discretion of or by either party shall be requested, required, or appropriate, such party covenants and agrees that its consent shall not be unreasonably withheld, delayed or charged for.

19.23 MEMORANDUM OF LEASE. It is the intention of the parties hereto not to record this Lease. However, should recordation of this Lease be desired by either party hereto, or required by applicable law, each party, at the request of the other, shall execute a Short Form Lease, or Memorandum of Lease, stating the Lease term as well as any other terms necessary for recording. In the event of the recordation of any such Short Form or Memorandum of Lease, the party requesting the same shall be solely responsible for the payment of all costs and expenses of such recordation including but not limited to, any and all recordation fees and notary fees. It is the understanding and intention of the parties hereto that this Lease is not subject to any realty transfer taxes imposed by state or local government. However, in the event that any such realty transfer taxes are imposed by the state or local government, or any agency or authority, based upon the transfer of or interest in real property, or as a result of this Lease, LESSOR shall be solely responsible for the payment thereof and LESSOR shall indemnify and hold LESSEE harmless therefrom.

19.24. LIMITATION OF LIABILITY. Anything contained in this Lease to the contrary notwithstanding, LESSEE agrees that subsequent to: (a) the completion of all construction and/or punch list items, (b) the issuance of a permanent certificate of occupancy (or its equivalent) and (c) the LEASE COMMENCEMENT DATE, LESSEE shall look solely to the estate and property of the LESSOR in the land and buildings comprising the Shopping Center of which the premises forms a part, together with any insurance or condemnation proceeds to which LESSOR may be entitled, but only as and when such

proceeds are received by LESSOR, for the collection of any judgment (or other judicial process) requiring the payment of money by LESSOR for any default or breach by LESSOR of any of its obligations under this Lease subject, however, to the prior rights of any ground or underlying landlord or the holder of any mortgage covering the Shopping Center or of LESSOR'S interest therein. It is agreed that LESSOR (and its shareholders, venturers, and partners, and their shareholders, venturers and partners and all of their officers, directors and employees) will never be personally liable for any such judgment. No other assets of the LESSOR shall be subject to levy, execution or other judicial process for the satisfaction of LESSEE'S claim. The provisions contained in this paragraph are not intended to, and will not, limit any right that LESSEE might otherwise have to obtain legal (but not including personal collection or enforcement of any judgment against LESSOR, its shareholders, venturers, partners, and their shareholders, venturers, and partners and all of their officers, directors and their employees or their assets beyond their respective or collective interests in the land and buildings comprising the Shopping Center) equitable or injunctive relief against LESSOR, or to offset or deduct from rent.

19.25 MECHANIC'S LIENS. LESSEE shall discharge, by payment, bonding or otherwise, at LESSEE'S discretion, any mechanic's liens filed against the Shopping Center, in connection with any alterations, additions, capital improvements or other work done by or on behalf of LESSEE in the premises, within thirty (30) days after LESSEE'S receipt of notice of the filing of such lien, and LESSOR shall cooperate with LESSEE, if necessary, in order to accomplish such discharge. LESSEE shall indemnify and hold LESSOR harmless from any claims against LESSOR by LESSEE'S contractors or subcontractors related to any such alterations, additions, capital improvements or other work done on behalf of LESSEE in the premises.

19.26 LESSOR'S FINANCING CONTINGENCY LESSOR shall not be obligated to proceed with the construction of the premises unless and until financing reasonably

acceptable to LESSOR is obtained. Should such financing not be obtained within six (6) months of the date of the signing of this Lease, LESSOR shall notify LESSEE in writing and LESSOR or LESSEE shall have the right to cancel and terminate this Lease and in such event neither party shall have any further liability or obligation to the other. Notwithstanding the foregoing, in the event LESSOR cancels and terminates this Lease pursuant to this Section 19.26 and subsequently obtains the required financing, LESSOR agrees that it shall not lease any space in the Shopping Center for a supermarket use for a period of one (1) year after the date of such lease termination without first offering such space to LESSEE upon terms, covenants and conditions substantially similar to those set forth in this Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date and year first above written.

LESSOR -

SACKETT DEVELOPMENT COMPANY
A Pennsylvania limited partnership

Witness: James A. Clark

By: Brian G. McElwee
Brian G. McElwee, General Partner

LESSEE -

FLEMING FOODS EAST, INC.

(SEAL)

Attest:

James A. Clark
Secretary

By: John J. McElwee
President

The undersigned, intending to be legally bound, hereby warrants and represents that it has entered into an Installment Sales Agreement with the LESSOR and it hereby consents to this Lease. The undersigned further warrants and represents that LESSOR is

Shop N Bag

forth in Section 5.1. In the event that the RENT COMMENCEMENT DATE as defined in Section 4.2 hereunder is a day other than said LEASE COMMENCEMENT DATE, then rental for the intervening period shall be computed and paid as set forth in Section 4.3.

Payment of percentage rental, as outlined in Section 5.1B herein, shall be paid on or before the twentieth (20th) day of the month following the ending of each Lease Year. Payment of those items of rental set forth in Sections 5.1C, D, E, F and G shall be payable as in this Lease provided.

Payments of all items of rental above set forth shall always be subject to LESSEE'S right to recoup its reasonable expenses in event of LESSOR'S breach, after all periods to cure, as set forth in Section 15.2 hereof.

ARTICLE VI. LESSOR MORTGAGE.

6.1 LESSOR MORTGAGE. All mortgage payments or other payments required to discharge any lien or encumbrance that may affect the premises, and for which the LESSOR is solely responsible, and which is superior and prior to the terms of this Lease, and the rights of LESSEE hereunder, shall be paid by the LESSOR as the same shall become due.

ARTICLE VII. TAXES AND ASSESSMENTS.

7.1 TAXES AND ASSESSMENTS. As additional rental, the LESSEE agrees to pay to the LESSOR, on demand, the amount of all taxes and assessments levied and assessed against the premises, including use and occupancy taxes, (exclusive of any realty transfer taxes which may be imposed pursuant to Section 19.23 herein) and of LESSEE'S prorata share (determined as hereinafter provided) of the taxes and assessments levied against the parking and common areas, as shown on Exhibit "A", of the Shopping Center, (exclusive of any inheritance, sales, use, franchise, gift, excise or profit taxes) that shall become due and payable during the original or any renewed term hereof. If the Shopping Center is taxed as a unit, the LESSEE shall be liable for only such prorata share of such taxes and assessments determined by the proportion that the number of square feet of

Shop 'N Bag

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immediately preceding such percentage rent payment, and if percentage rent shall be insufficient to cover the full amount of said item for any year during the term of this Lease or extension thereof, the resulting deficiency shall not accumulate

14 **Gross Sales** Landlord shall have the right to audit Tenant's records not more than once per year, at Landlord's expense. If any audit discloses a liability for percentage rent, and an under reporting of gross sales by 3% or more, Tenant shall promptly pay Landlord for the reasonable cost of the audit in addition to any deficiency in percentage rent

15 **Taxes and Assessments.** Tenant agrees to pay its pro-rata share of the amount of all taxes and assessments, including use and occupancy taxes, levied against the parking and common areas as well as the premises that shall become due and payable during the original or any renewed term hereof. Tenant's pro-rata share shall be determined by the proportion that the number of square feet of floor space in the premises bears to the total number of square feet of floor space in the S C. Landlord must bill Tenant no later than 180 days after Landlord receives notice from the taxing authority. In the event Tenant does not receive a copy of the tax bill within said 180 days, Tenant's obligation to pay such taxes shall be null and void. Landlord is required to send Tenant receipted tax bills showing payment of taxes and any special assessments within 30 days after payment is due. Partial tax year to be pro-rated. Provided Tenant has made timely payment of such taxes and assessments to Landlord, Tenant shall not be liable for any interest, penalty, or late charges. If Tenant pays such taxes and assessments within 14 days before the end of any discount period, Tenant's pro-rata share shall be based on such discounted amount, regardless of whether prompt payment is made by Landlord. If Landlord shall contest any taxes or assessments, Tenant shall be immediately notified in writing. In the event Landlord initiates action to take an appeal to the taxing body for the purpose of obtaining a reduction of taxes or assessments for the premises or the S.C. (whether or not such appeal is successful), Tenant agrees to pay its pro-rata share of the reasonable costs associated with the appeal, including reasonable attorneys fees, provided however, that Tenant shall not be obligated to pay a pro-rata share of such costs more frequently than once in every 5 years

16 **Assessments Made During Lease Term** If an assessment is placed upon the premises or S C. by any taxing authority, and if such assessment is payable or may be paid in installments, Tenant shall be liable to pay said assessment and Tenant shall be permitted to make payments. In the event an assessment is placed upon the premises or S C. and such assessment is payable only in a lump sum, then Tenant shall be liable only for payment of a pro-rata share of such assessment in the proportion that the number of years remaining in the original term and/or any renewal options then remaining bears to the useful life of the improvement against which the assessment is made, said useful life being determined by agreement of the parties. Tenant shall have the right to deduct 100% of such lump sum assessment payable by Tenant from percentage rent, provided such deduction shall be non-cumulative.

not in default of the terms, covenants or conditions of the Installment Sales Agreement and that in the event that the Installment Sales Agreement is ever terminated by virtue of a default of LESSOR, the undersigned shall continue to recognize this Lease, and LESSEE'S possession or other rights under the Lease shall not be disturbed, provided that at such time LESSEE shall not be in default under the Lease beyond all curative periods.

THE PHILADELPHIA AUTHORITY
FOR INDUSTRIAL DEVELOPMENT

Attest: _____

By: _____

Dated: _____

The commencement date of this Lease, as provided in Article 4, Page ____ hereof,
is agreed to be the _____ day of _____, 19 ____.

LESSOR -

SACKETT DEVELOPMENT COMPANY
A Pennsylvania limited partnership

By: Brian G. McElwee
Brian G. McElwee, General Partner

Witness. Heather J. McElwee

LESSEE -

FLEMING FOODS EAST, INC.

By: Heather J. McElwee
President

(SEAL)

Attest

James W. Clark
Secretary

STATE OF Oklahoma
COUNTY OF Oklahoma

:
: SS.
:

BE IT REMEMBERED, that on this 24th day of March, A.D., 1992, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen J. Marshall, President of FLEMING FOODS EAST, INC., a corporation duly organized, incorporated and existing under the by virtue of the laws of Pennsylvania and James W. Clark, Secretary of said corporation, who are personally known to me to be the same persons who execute, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Doree Lane
Notary Public

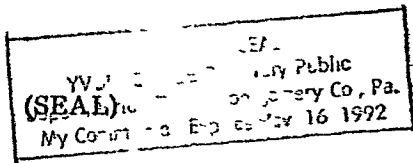
My Commission Expires September 8, 1994

(SEAL)

STATE OF *Pennsylvania* :
COUNTY OF *Montgomery* : SS.
:

BE IT REMEMBERED, that on this 17th day of October, A.D., 19 91, before me, the undersigned, a Notary Public in and for the County and State aforesaid, appeared Brian G. McElwee, the General Partner of SACKETT DEVELOPMENT COMPANY, who, I am satisfied, is the person who signed the within instrument; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the said instrument as such partner aforesaid and that the within instrument is the voluntary act and deed of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.



James A. Hulp
Notary Public

AFM:jac/082791/MAYFAIR4/171.313

NON-DISTURBANCE, SUBORDINATION AND ESTOPPEL CERTIFICATE

TO: (Mortgagee)

RE: Build and Lease Agreement dated _____

LESSOR - SACKETT DEVELOPMENT COMPANY

LESSEE - FLEMING FOODS EAST, INC.

LEASE GUARANTOR - FLEMING COMPANIES, INC.

on premises located and addressed as. Mayfair Center, Frankford Avenue and Hellerman Streets, Philadelphia, Pennsylvania

Legal description of the entire shopping center on which the premises is intended to be located

ALL THAT CERTAIN lot or piece of ground situate in the 55th Ward of the City of Philadelphia and described according to a topographical Plan made for Frankford Shopping Center by VPH Associates, dated October 15, 1984, as follows, to wit:

BEGINNING at a point formed by the intersection of the northwesterly side of Frankford Avenue (100' wide) with the southwesterly side of Hellerman Street (60' wide); thence extending S. 51° 31' 00" W., along the said northwesterly side of Frankford Avenue, the distance of 227' - 6 7/8" to an angle point in Frankford Avenue; thence extending S. 63° 11' 37" W., still along the northwesterly side of Frankford Avenue, the distance of 215' - 2 1/4" to a point in the center line of a 20' - wide easement (for ingress and egress purposes); thence extending N. 26° 48' 23" W. along the center line of said 20' - wide easement, the distance of 180' - 10 3/4" to a point on the southeasterly side of former Sackett Street (60' - wide, stricken from City Plan); thence extending S. 37° 41' 53" W., on the southeasterly side of former Sackett Street, the distance of 83' - 10 7/8" to a point on the northeasterly dead-end of Sackett Street (60' wide); thence extending N. 23° 08' 38" W., along the said northeasterly dead-end of Sackett Street, the distance of 68' - 8 1/2" to a point on the northwesterly side of Sackett Street; thence extending S. 37° 41' 53" W., along the said northwesterly side of Sackett Street, the distance of 11' - 11 5/8" to a point; thence extending N. 52° 18' 07" W., the distance of 375' 0" to a point; thence extending N. 37° 41' 53" E., the distance of 279' 9" to a point, thence extending S. 52° 18' 07" E., the distance of 187' - 1 1/2" to a point in the center line of a 15' - wide driveway; thence extending N. 37° 41' 53" E., along the center line of the said 15' - wide driveway, the distance of 120'

EXHIBIT "C"

0" to a point on the southwesterly side of Hellerman Street; thence extending S. 52° 18' 07" E., along the said southwesterly side of Hellerman Street, the distance of 558' - 1 5/8" to the first mentioned point and place of beginning;

The undersigned, as LESSEE and MORTGAGEE, hereby confirm the following:

1) MORTGAGEE has advised LESSEE that it has made, or proposes to make a mortgage loan to the LESSOR, to be secured by a Mortgage or Deed of Trust covering the aforesaid tract of land and all of LESSOR'S improvements thereon and a security interest in all of the LESSOR'S personal property thereon or used in connection therewith and to be further secured by assignment of said Build and Lease Agreement. LESSEE hereby consents to the aforementioned assignment of said Build and Lease Agreement, by the LESSOR to MORTGAGEE as security for the mortgage loan to be made with the understanding that the personal property owned by LESSEE or its sublessee shall not be subject to or liable to levy or distress or any legal process whatsoever for the collection of rent for said premises.

2) LESSEE has entered into a certain Build and Lease Agreement, as hereinabove referenced, on the above described real estate.

3) The improvements and space required to be furnished according to the terms of said Build and Lease Agreement have yet to be completely constructed and furnished in accordance with said Build and Lease Agreement, and upon completion of said improvements and space, LESSEE shall furnish to Mortgagee, LESSEE'S punch list, to be marked Exhibit "A" and to be attached hereto and to be incorporated herein at that time.

4) Said Build and Lease Agreement has not been modified, altered or amended or assigned except as hereinabove referenced.

5) There are no off-sets or credits against rental as of this date, except as may be set forth in Exhibit "A" attached hereto and incorporated herein, nor have rentals

been prepaid except as provided by the terms of said Build and Lease Agreement.

6) Rentals commence to accrue on the Commencement Date endorsed at the end of said Build and Lease Agreement. The primary lease term expires twenty (20) years from said commencement date. Minimum monthly installments of rent (excluding additional rent provided in Section 5.1B of said Build and Lease Agreement) is \$18,843.00.

7) LESSEE has no notice of a prior assignment, hypothecation or pledge of rents or the Build and Lease Agreement, except as herein referenced.

8) LESSEE agrees that in the event of a default by said LESSOR in the performance of any obligation to be performed by said LESSOR under said Build and Lease Agreement, LESSEE will, prior to terminating said Build and Lease Agreement, or exercising any other remedies available to it thereunder, provide MORTGAGEE a copy of any and all notice of default sent to LESSOR, wherein MORTGAGEE shall have the same rights and privileges, but not the obligation, of LESSOR to cure said defaults of LESSOR under the terms of said Build and Lease Agreement.

9) LESSEE agrees that upon proper written notification from MORTGAGEE of a default by LESSOR in the payment of LESSOR'S indebtedness to MORTGAGEE, LESSEE will thereafter pay all subsequent installments of rent thereafter coming due under said Build and Lease Agreement, to MORTGAGEE, as the holder of the indebtedness, so long as (a) MORTGAGEE, as holder, together with LESSOR, hold LESSEE and its sublessee harmless from any liability and for all costs, including reasonable attorney's fees, that may be incurred on the part of LESSEE or its sublessee to protect its leasehold interest rights under said Build and Lease Agreement arising and due to any dispute between MORTGAGEE, as holder, and LESSOR on any contest as to the rents or on any foreclosure proceedings and (b) MORTGAGEE has provided such reasonable legal documentations as LESSEE may request from MORTGAGEE.

10) Said Build and Lease Agreement shall be subject and subordinate to the lien of MORTGAGEE'S mortgage referred to above to the full extent of the principal sum secured thereby and interest thereon, and to all renewals, modifications, consolidations, replacements, and extensions thereof so long as LESSEE first receives written notice of such renewals, modifications, consolidations, and replacements. In the event the premises are damaged or destroyed at a time when neither LESSOR nor LESSEE are in default under the terms of said Build and Lease Agreement, and LESSOR is not in default under the terms of said mortgage indebtedness to MORTGAGEE, any insurance proceeds that are available under the insurance policies that LESSOR is required by the terms of said Build and Lease Agreement to maintain shall be first applied to repair, replace or rebuild the premises so damaged or destroyed, provided that LESSOR and/or LESSEE, under the terms of said Build and Lease Agreement, either are required or elect to repair, replace, or rebuild the premises. In the event of condemnation or other public taking of the shopping center or the premises, and LESSOR is not in default under the terms of said mortgage indebtedness to MORTGAGEE, all compensation awarded or paid upon a total or partial taking of the fee title of the premises shall belong to the LESSOR, and shall be applied to repair, replace or rebuild the premises or the shopping center, whether such compensation be awarded or paid as compensation for diminution of value of the leaseholds or of the fee; provided, however, that LESSEE shall be entitled to any award made to LESSEE for loss of business or depreciation to and cost of removal of stock and fixtures and any other damages of LESSEE (except diminution of the value of the leasehold or of the fee) Notwithstanding the foregoing, LESSEE does not waive any rights or remedies it may have either at law or in equity or under the terms of said Build and Lease Agreement against LESSOR in the event of damage, destruction or any other loss to the premises.

11) In the event MORTGAGEE succeeds to the interest of LESSOR under said Build and Lease Agreement, during the original or any renewed term of said Build

and Lease Agreement, LESSEE agrees: (a) to attorn to MORTGAGEE, or any party lawfully representing its interest or acting for its benefit (so long as LESSEE has received prior written notice of the fact that any such party is representing MORTGAGEE'S interest or acting for MORTGAGEE'S benefit and that such party has agreed to be bound by and to accept the responsibilities and obligations, and perform in compliance with all of the terms, covenants and conditions, of said Build and Lease Agreement arising subsequent thereto); (b) to be bound by, and perform all of the obligations and conditions, imposed upon LESSEE by said Build and Lease Agreement; and (c) to pay in accordance with the terms and conditions of said Build and Lease Agreement, all of the rentals therein provided for which LESSEE is thereby obligated to pay.

12) In the event MORTGAGEE succeeds to the interest of LESSOR under said Build and Lease Agreement, as a result of any foreclosure on said mortgage by MORTGAGEE, LESSEE agrees that MORTGAGEE shall not be bound by any rent which LESSEE might have paid to LESSOR or any other lessor prior to MORTGAGEE'S succession to the interest of LESSOR so long as LESSEE promptly receives written notice of the date on which MORTGAGEE succeeds to LESSOR'S interest.

13) MORTGAGEE agrees that the Build and Lease Agreement shall not be terminated, nor shall LESSEE'S possession or other rights under the Build and Lease Agreement be disturbed, in the event MORTGAGEE exercises any of its rights or remedies under any mortgage or loan documents, provided that at such time LESSEE shall not be in default under the Build and Lease Agreement for a time period, if any, which would entitle LESSOR to terminate the Build and Lease Agreement.

14) Except for the amendments, modifications, and assignment stated above, LESSEE agrees that MORTGAGEE shall not be bound by any other amendment, modification, or assignment of said Build and Lease Agreement, made without its consent, which consent shall not be unreasonably withheld, delayed or charged for.

15) This Non-Disturbance, Subordination and Estoppel Certificate shall not be effective or binding upon LESSEE until such time as LESSEE receives written notification from MORTGAGEE that MORTGAGEE has made said mortgage loan to LESSOR and the date on which said mortgage loan was made.

16) This Non-Disturbance, Subordination and Estoppel Certificate shall not be binding upon LESSEE as regards any subsequent successors or assigns of MORTGAGEE unless LESSEE is first notified thereof in writing.

17) Except as hereinabove set forth, LESSEE does not waive, alter, amend, or otherwise modify any rights or remedies it has under said Build and Lease Agreement.

18) The representations and agreements herein contained shall be binding upon the LESSEE, the Lease Guarantor, and LESSEE'S respective successors and assigns and the MORTGAGEE and shall inure to the benefit of MORTGAGEE, as holder of the indebtedness secured by assignment of said Build and Lease Agreement and LESSEE, the Lease Guarantor, and LESSEE'S respective successors and assigns.

Dated this day of , 19 .

FLEMING FOODS EAST, INC.

By: _____
President

(SEAL)

Attest:

Secretary

(MORTGAGEE)

By: _____

(SEAL)

Attest:

FLEMING COMPANIES, INC.

By: _____
Vice President

(SEAL)

Attest

Assistant Secretary

STATE OF :
 : ss.
COUNTY OF :

BE IT REMEMBERED, that on this day of A.D., 19 , before me, the undersigned, a Notary Public in and for the County and State aforesaid, came , President of FLEMING FOODS EAST, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Pennsylvania, and , Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF :
 : ss.
COUNTY OF :

BE IT REMEMBERED, that on this day of A.D., 19 , before me, the undersigned, a Notary Public in and for the County and State aforesaid, came , of , a corporation duly organized, incorporated and existing under and by virtue of the laws of , and , of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF :
 : ss.
COUNTY OF :

BE IT REMEMBERED, that on this day of A.D., 19 , before me, the undersigned, a Notary Public in and for the County and State aforesaid, came , Vice President of FLEMING COMPANIES, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Oklahoma, and , Assistant Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public

(SEAL)

My Commission Expires:

ADDENDUM INDEX

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INITIALS

2111
LANDLORD

Revised November 19, 1991

SPECIFICATIONS

Specifications and requirements are for a building of approximately 25,673 square feet measuring approximately two hundred twenty-one (221) feet wide by approximately one hundred and twenty-seven (127) feet deep, parking lot, curbs, docks, driveways, and walks (collectively referred to herein as "building").

Page 1, 1 GENERAL CONDITIONS

1.1.6 Delete and insert: The criteria plans and specifications must be available to the superintendent on the job site. In the event there is a conflict or disagreement between the written specification, including the standard specification, and any additional approved specification and any approved drawing, the written specification will prevail. Should anything be mentioned in these specifications and not shown in the drawings, or vice versa, the same shall be followed as if set forth in both, as it is the intent of these specifications and accompanying drawings to correspond and embody every item and part necessary for the completion of the building, in accordance with the plans and specifications which have been reviewed, and signed by the Lessee

Page 2., 1.1 8 Delete and insert: Lessee shall review all construction plans Said review shall be conducted prior to the start of construction. Lessee shall indicate completion of said review by signing each plan sheet and providing Lessor with any appropriate comments Said review and signature shall be subject to the terms and conditions as set forth in Section 1 1.6

1.1 9 Insert Should the Lessor determine it to be financially feasible to re-use any portion of an existing structure, that portion that is not new construction, must be brought into compliance with these specifications (ie structural steel, walls, roofing, etc.)

1 2.4 Delete and insert. Lessor and joint contractors shall guarantee equipment, materials and workmanship for one (1) year unless stated otherwise, from the day the store opens for business, or the date of substantial completion and turnover to Lessee, whichever comes first. Guarantees shall in turn bind each subcontractor, supplier or vendor to make good deficiencies arising from inferior materials or installations.

Page 3., 1 4 2 Delete and insert: The Lessor will be responsible for obtaining a Certificate of Occupancy for the building premises from the appropriate controlling jurisdiction, to include all local, county, state and federal agencies. If the issuance of one (1) or more of the above certificates is subject to conditions and/or action by the Lessee, Lessee shall be responsible to promptly correct said conditions and take the appropriate action to assure compliance and facilitate Lessor's ability to obtain said permit and/or certificates Failure of Lessor to obtain a certificate of occupancy due to conditions and/or actions by Lessee shall not lengthen the sixty (60) day period from substantial completion to rent commencement

1 4 3 Delete and insert: Any place in the written specifications or the criterial plans that allows an approved equal, the equal must be submitted in writing and signed by the Division Store Planning Manager, or other appropriate person designated by Lessee or Lessee's representative in the absence of the Division Store Planning Manager. Failure to obtain this written approval will require the Lessor to use the listed equipment manufacturer

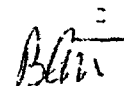
1.5 1 Delete and insert: Claims for extra work shall be honored. Such changes requested by Lessee shall be in writing using a standard change order form. In such a case, both Lessee and Lessor must agree to the scope of the work involved in the change and the total cost of the change. All executed change orders, resulting in additional cost, shall be paid by Lessee upon satisfactory completion of the work described in said change order. All change orders shall be executed by Lessee, Lessor, Lessor's General Contractor or by an authorized agent of the appropriate parties, prior to authorization and proceeding with said work order

1 7 1 Delete and insert: Prior to the start of construction, the Lessor shall prepare and submit to the Lessee a construction progress schedule showing the time required for each trade with the starting date and completion date for each trade. This schedule should include expected arrival dates of the Lessee's major equipment including coolers, mechanical systems, refrigerated cases, shelving, checkstands and front end equipment. Arrival dates of Lessee's major equipment described herein shall be provided by Lessee to Lessor in order to develop a complete and accurate schedule. It is expressly understood that the Lessor shall be completely finished with all his interior work at time of substantial completion before fixture installation begins so that his men will not interfere with Lessee's workmen assembling fixtures. However, coordination between the general contractor and the arrival of the Lessee's equipment will save time for all parties.

Page 4 , 1.10.1 Delete and insert Lessor shall furnish to Lessee, for review, comment, and execution of the following drawings prepared by a licensed architect and related engineers, duly licensed by the State in which the building will be constructed

1 10.4 Delete entire section

Page 6 , 2 1 9 Insert at the end of paragraph Final design and approval by Lessee included but not limited to SHEETS 2, 4, and 5


EJM

1
Page 7., 2.2 6 Delete and insert Details for ramping (SHEET 6) are subject to final design by Lessor and approval by Lessee.

Insert 2 2 7 Sections 2.2.1, 2.2 2, 2 2.3, and 2 2.5 which are existing and shall remain undisturbed shall be considered "As Is" and shall be exempt from the criteria described above

Insert 2 2 3 Sections 2.3.1, and 2 3 2 which are existing shall remain undisturbed and shall be considered "As Is" and shall be exempt from the criteria described above

Page 8 , 4 2 1 Add at the end of the paragraph: This canopy and detail SHEET 8 are subject to final design by Lessor and approval by Lessee. It is understood that a single story canopy/entrance vestibule with an area as noted on the attached site plan has been approved subject to said final design and approval.

Page 9 , 4 2 2 Delete and insert. The location and attachment of the illuminated sign and logo of the store hours sign as designed by the Lessee is subject to final design by Lessor and approval by Lessee. Lessor to supply a minimum of three 20 AMP circuits for the signs Final electrical connections by Lessee.

4 3 1 Delete and insert: Interior partitions shall be as indicated on the plans, but primarily shall be metal studs with gypsum board wall covering Partitions separating back room from sales area shall extend to roof deck and be sealed. Minimum construction shall be 2" x 4" of 2" x 6" blocking on 16" centers All studs used in sprinklered or nonsprinklered area shall be metal.

Page 10 , Insert 4 3 11: All studs used in conjunction with this construction project shall be metal The use of wood studs is specifically prohibited.

Page 15 , 9.3 1 Delete and insert The Lessor shall provide an allowance of \$25,673 (Twenty-Five Thousand Six Hundred Seventy-Three Dollars) which represents one dollar (\$1 00) per square foot of the total building size to be paid to the Lessee for interior decor Payment to Lessee is to be made upon completion of the poured concrete floor. This allowance will be used by Lessee to purchase decor design drawings, graphic wall design material and decor wallcoverings Installation of graphic wall design materials by Lessee Any changes to the approved plans required to facilitate the installation and/or operation of Lessee's decor drawings and/or decor package, including but not limited to such items as changes and additions to electrical systems, sprinkler, HVAC, ceilings, walls, etc., shall be at the sole cost and expense of the Lessee

9 3.2 Delete and insert: Lessor shall be responsible for painting of the walls and wallcovering installation, as defined in sections 9 1 Paint - Interior, and 9 2 Paint - Exterior

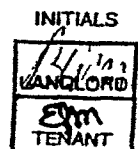
11.1 1 Insert at the end of the paragraph: , subject to and to the extent required by section 11.2.1, and generally recognized standards of NFPA #13

Page 17., 11 2 9 Insert at the end of the paragraph The monitoring equipment, supplies and materials for installation and service charge for the monthly monitoring fee will be the Lessee's responsibility.

Page 25., 13.12.1 Delete and insert All air conditioning equipment is to be guaranteed for a period of one (1) year by the installing contractor starting the day the store opens for business subject to completion and turnover whichever occurs first. Compressor section of the air conditioning equipment is to be guaranteed by factory for an additional four (4) years

13 13.1 Delete and insert. (SHEET 21 & 22) equipment room layout subject to final design by Lessor and approval by Lessee.

Page 28., 14 10.4 Delete and insert Replace all burned-out lamps subject to completion, turnover, or store opening whichever comes first.



SPECTOR GADON & ROSEN, P.C.

NEW JERSEY OFFICE
1000 LENOLA ROAD
P O BOX 1001
MOORESTOWN, NJ 08057
[856] 778-8100
FAX [856] 722-5344

E-MAIL
lbaskin@lawsgr.com

ATTORNEYS AT LAW
SEVEN PENN CENTER
1635 MARKET STREET
7TH FLOOR
PHILADELPHIA, PENNSYLVANIA 19103
[215] 241-8888
FAX [215] 241-8844

WWW.LAWSGR.COM

Leslie Beth Baskin

DIRECT DIAL NUMBER
[215] 241-8926

September 11, 2003

Via Federal Express

United States Bankruptcy Court
for the District of Delaware
ATTN Clerk's Office
824 Market Street
5th Floor
Wilmington, DE 19801

Via Federal Express

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

*Re· Fleming Companies, Inc , et al ,
Bankruptcy No 03-10945MFW*

Dear Sir or Madam

Enclosed please find the original and two copies of an Amended Proof of Claim form to be filed on behalf of FWR, Partners, L P Kindly file the original and time-stamp a copy and return same to me in the enclosed self-addressed, stamped envelope

Thank you for your assistance in this matter and if you need anything further, please do not hesitate to contact my assistant, Elizabeth Doyal at 215-241-8907

Very truly yours,

 / **LESLIE BETH BASKIN**
Leslie Beth Baskin

LBB/sk

Enclosures

cc James H M Sprayregen, Esquire (w/encl)
Laura Davis Jones, Esquire (w/encl)
Mr Donald Brenits (w/encl)
David M Giles, Esquire (w/o encl)