



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM									
In re ABCO Realty Corp		Case Number 03-10948									
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of administrative expenses may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> 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. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.									
Name of Creditor and Address Weingarten Nostat, Inc c/o Weingarten Realty Management Company 2600 Citadel Plaza Dr., Suite 400 Houston, Texas 77008 Attention: Jenny J. Hyun, Esq Telephone Number (713) 866 6000		THIS SPACE IS FOR COURT USE ONLY									
CREDITOR TAX ID # 76-0252189	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR P0201 / T#ABCOMI01	This claim amends a previously filed Proof of Claim (No. 12517) dated Sept. 12, 2003, filed Sept. 15, 2003.									
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries, and compensation (fill in below) <input type="checkbox"/> Money loaned Your Social Security Number _____ <input checked="" type="checkbox"/> Other: <u>Non-residential real property lease attached hereto as Exhibit B, together with all amendments and together with all amendments and modifications thereto.</u> Unpaid compensation for services performed from _____ to _____ (date) (date)											
2. Date debt was incurred: See Exhibit "A"		3. If court judgment, date obtained:									
3. TOTAL AMOUNT OF CLAIM AS OF PETITION DATE <table border="0"><tr><td>\$ 361,889.16*</td><td>\$ _____</td><td>\$ _____</td><td>\$ 361,889.16*</td></tr><tr><td>(unsecured)</td><td>(secured)</td><td>(unsecured priority)</td><td>(total)</td></tr></table> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> 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.</p>				\$ 361,889.16*	\$ _____	\$ _____	\$ 361,889.16*	(unsecured)	(secured)	(unsecured priority)	(total)
\$ 361,889.16*	\$ _____	\$ _____	\$ 361,889.16*								
(unsecured)	(secured)	(unsecured priority)	(total)								
5. SECURED CLAIM <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearages and other charges at time case filed included in secured claim, if any: \$ _____		6. UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> 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). <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4). <input type="checkbox"/> 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). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other: Specify applicable paragraph of 11 U.S.C. § 507(a)(____).									
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.											
BY MAIL TO Bankruptcy Management Corporation P.O. Box 900 El Segundo, CA 90245-0900		BY HAND OR OVERNIGHT DELIVERY TO Bankruptcy Management Corporation 1330 East Franklin Avenue El Segundo, CA 90245									
Date: _____ 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): WEINGARTEN NOSTAT, INC.  Jeffrey A. Tucker, Sr., Vice President		THIS SPACE IS FOR COURT USE ONLY FILED DEC 22 2003 BMC <small>Fleming Companies, Cl...</small>  15316									

EXHIBIT "A"

STATEMENT OF ACCOUNT P0201 / T#ABCOMI01

ABCO Realty Corp (#439)
dba ABCO Foods
Debtor's Location No AZ-0640
3434 Greenway Road
Phoenix, Arizona

PETITION DATE 04/01/03

LEASE REJECTION DATE 11/30/03

LEASE EXPIRATION DATE 06/30/08

PREPETITION DAMAGES

Annual Tenant Rebill Charges

Insurance (1/1/03 – 3/31/03)

(\$4 98 per day x 90 days)

448 20▲

Taxes

(\$169 88 per day x 90 days)

15,289 20▲

Common Area Maint

(\$56 02 per day x 90 days)

5,041 80▲

Total Prepetition Damages

\$20,779 20

SECTION 502(b)(6) LEASE REJECTION DAMAGES

One Year Rent Claim --

Base Minimum and Additional Rent

(\$21,400 73 per mo x 12 mos)

\$256,808 76

Annual Tenant Rebill Charges

Insurance

(\$4 98 per day x 365 days)

1,817 70▲

Taxes

(\$169 88 per day x 365 days)

62,006 20▲

Common Area Maint

(\$56 02 per day x 365 days)

20,477 30▲

Total Section 502(b)(6) Lease Rejection Damages Claim

\$341,109 96

TOTAL CLAIM

\$361,889.16*

Base Minimum and Additional Rent

Base Minimum Rent \$20 899 15

Common Area Maint 501 58

Total \$21 400 73

▲ Estimate based on costs accrued during 2003 (See attached invoices)

* Weingarten Nostat Inc reserves the right to amend this Proof of Claim for any reason to include without limitation additional documentation costs interest or attorney's fees



PLEASE REMIT CHECK PAYABLE TO

Weingarten Mostat, Inc
P O Box 201692
Houston, TX 77216-1692
HAR

ABC Markets, Inc #439
c/o the Staubach Co (AZ-064)
1945 Lakepoint Dr
Lewisville, TX 75057

INVOICE NO

R0718886

PROJECT NO.	PROJECT NAME	LEASE NO.	TENANT NO.	DATE
0201-120	Rancho Encanto	LABCONI01	TABCONI01	DEC/16/2003
Type I Cam-Quarterly State Sales Tax Common Area Utility-Quarterly State Sales Tax				AMOUNT
				1,299.85
				31 20
				2,037 61
				48 90
TOTAL AMOUNT DUE				3,417 56

INVOICE PAYABLE ON RECEIPT

Recoverable Cost Computation Summary

RE	Rancho Encanto	Date	12/16/03
	Tenant TABCOMI01 ABCO Markets Inc	Page	1
	Lease LABCOMI01 ABCO #439 (AZ-0640)		
	Space 001	Unit	B0A

Recovery Category	CMQ - Type I Cam-Quarterly	Recovery from	10/01/03	to	11/30/03
-------------------	----------------------------	---------------	----------	----	----------

1	Current Year Costs				\$2 674 00
2	Administrative Fee				\$267 41
3	Net Current Year Costs				\$2 941 41
4	Total Project Area (Sq Units)				80 409
5	Area Occupied By Tenant (Sq Units)				35 534
6	Tenant Area as Fraction of Total Project Area				441915
7	Charge Commencement Date				10/01/03
8	Total Number of Tenant Recovery Days				61
9	Total Number of Days Costs Incurred				61
10	Tenant Recovery Days as Fraction of Total Days	(61/ 61)			1 000000
11	Total Chargeable to Tenant				\$1 299 85
	(441915 X 1 000000 X 2 941 41)				
12	Less Amount Previously Billed For Period			(\$ 00)	
13	Additional Amount Due or (Credit)				\$1,299 85
14	Sales Tax on Additional Amount Due				
	State Sale (024000 X \$1 299 85 - 024000 X \$ 00)				\$31 20
15	Total Amount Due or (Credit)				\$1 331 05

=====

Project 0201-120 Rancho Encanto
Category CMQ Type I Cam-Quarterly
Tenant TABCOMI01 ABCO Markets, Inc
Lease LABCOMI01 ABCO #439(AZ-0640)
Space 001 Type I Cam-Quarterly

Region
Name
Start Date 10/01/2003 October 1, 2003
End Date 11/30/2003 November 30, 2003
Base Year

----- Extraction Period -----
Start 10/01/2003 October 1, 2003
End 11/30/2003 November 30, 2003

Description	----- Current Year -----		----- Base Year -----	
	Current Costs	Gross Up Costs	Base Costs	Gross Up Costs
weeping & Cleaning	722 00	00	00	00
landscaping	1,155 00	00	00	00
Signs	82 00	00	00	00
Steam Cleaning	91 00	00	00	00
Electrical Repairs CAM	65 00	00	00	00
Painting	20 00	00	00	00
Fence	100 00	00	00	00
Other P/L Maint Items Expense	439 00	00	00	00
Total	2,674 00	00	00	00
Plus Administrative Fee	267 41			
Less Total Contributions (00)			
Total	2,941 41	00	00	00
=====				

Recoverable Cost Computation Summary

RE	Rancho Encanto	Date	12/16/03
	Tenant TABCOMI01 ABCO Markets Inc	Page	1
	Lease LABCOMI01 ABCO #439 (AZ-0640)		
	Space 001	Unit	B0A
Recovery Category	CUQ - Common Area Utility-Quarterly	Recovery from	10/01/03 to 11/30/03
1	Current Year Costs		\$4,191 70
2	Administrative Fee		\$419 17
3	Net Current Year Costs		\$4 610 87
4	Total Project Area (Sq Units)		80 409
5	Area Occupied By Tenant (Sq Units)		35 534
6	Tenant Area as Fraction of Total Project Area		441915
7	Charge Commencement Date		10/01/03
8	Total Number of Tenant Recovery Days		61
9	Total Number of Days Costs Incurred		61
10	Tenant Recovery Days as Fraction of Total Days (61/ 61)		1 000000
11	Total Chargeable to Tenant (441915 X 1 000000 X 4 610 87)		\$2 037 61
12	Less Amount Previously Billed For Period	(\$ 00)
13	Additional Amount Due or (Credit)		\$2 037 61
14	Sales Tax on Additional Amount Due State Sale (024000 X \$2 037 61 - 024000 X \$ 00)		\$48 90
15	Total Amount Due or (Credit)		\$2 086 51

=====

Project 0201-120 Rancho Encanto
Category CUQ Common Area Utility-Quarterly
Tenant TABCOMI01 ABCO Markets, Inc
Lease LABCOMI01 ABCO #439(AZ-0640)
Space 001 Common Area Utility-Quarterly

Region
Name
Start Date 10/01/2003 October 1, 2003
End Date 11/30/2003 November 30, 2003
Base Year

----- Extraction Period -- -----
Start 10/01/2003 October 1, 2003
End 11/30/2003 November 30 2003

Description	----- Current Year -----		----- Base Year -----	
	Current Costs	Gross Up Costs	Base Costs	Gross Up Costs
Utilities-Electricity	3,409 90	00	00	00
Utilities-Water	781 80	00	00	00
Total	4,191 70	00	00	00
Plus Administrative Fee	419 17			
Less Total Contributions (00)			
Total	4,610 87	00	00	00
	=====	=====	=====	=====



Weingarten Hostat, Inc
P.O. Box 201692
Houston, TX 77216-1692
HAR

PLEASE REMIT CHECK PAYABLE TO

ABC0 Markets, Inc #439
c/o the Staubach Co (AZ-064)
1945 Lakepoint Dr
Lewisville, TX 75057

INVOICE NO

R0718866

PROJECT NO.	PROJECT NAME	LEASE NO.	TENANT NO.	DATE
0201-120	Rancho Encanto	LABCOMI01	TABCOMI01	DEC/16/2003
Annual Tax Rebiling State Sales Tax				AMOUNT
				55,412 05 1,329 89
				56,741 94
TOTAL AMOUNT DUE				

INVOICE PAYABLE ON RECEIPT

Recoverable Cost Computation Summary

RE	Rancho Encanto	Date	12/16/03
	Tenant TABCOMI01 ABCO Markets Inc	Page	1
	Lease LABCOMI01 ABCO #439 (AZ-0640)		
	Space 001	Unit	B0A

Recovery Category	TXA - Annual Tax Rebilling	Recovery from	1/01/03	to	11/30/03
-------------------	----------------------------	---------------	---------	----	----------

1	Net Current Year Costs				\$110 576 17
2	Total Project Area (Sq Units)				70 909
3	Area Occupied By Tenant (Sq Units)				35 534
4	Tenant Area as Fraction of Total Project Area				501121
5	Charge Commencement Date				1/01/03
6	Total Number of Tenant Recovery Days				334
7	Total Number of Days Costs Incurred				334
8	Tenant Recovery Days as Fraction of Total Days	(334/334)			1 000000
9	Total Chargeable to Tenant				\$55 412 05
	(501121 X 1 000000 X 110 576 17)				
10	Less Amount Previously Billed For Period			(\$ 00)
11	Additional Amount Due or (Credit)				\$55 412 05
12	Sales Tax on Additional Amount Due				
	State Sale (024000 X \$55 412 05 - 024000 X \$ 00)				\$1 329 89
13	Total Amount Due or (Credit)				\$56 741 94

=====

2/16/03 WRI2
6 47 17 QPADEV000T

<--- WEINGARTEN REALTY --->
Extract Recovery Amounts
Recovery Expense Grouping

CML4126A CM4126-B Page 1
QTEMP V020415 DEWBERRY SK

roject 0201-120 Rancho Encanto
ategory TXA Annual Tax Rebilling

Region Accounting Assistant
Name Sharon K Dewberry

Start Date 1/01/2003 January 1 2003
End Date 11/30/2003 November 30, 2003
Base Year

escription	- --- Current Year -----		- - - Base Year - - - - -	
	Current Costs	Gross Up Costs	Base Costs	Gross Up Costs
id Tax - Primary	34 212 26	00	00	00
Impr Tax - Primary	76,363 91	00	00	00
Total	110 576 17	00	00	00
Plus Administrative Fee	00			
Less Total Contributions (00)				
Total	110 576 17	00	00	00
=====				



Weingarten Mostat, Inc
P O Box 201692
Houston, TX 77216-1692
HAR



PLEASE REMIT CHECK PAYABLE TO

ABC Markets, Inc. #439
c/o the Staubach Co (AZ-064)
1945 Lakepoint Dr
Lewisville, TX 75057

INVOICE NO

R0718864

PROJECT NO.	PROJECT NAME	LEASE NO.	TENANT NO.	DATE
0201-120	Rancho Encanto	LABCONI01	TABCONI01	DEC/16/2003
Insurance Rebilling State Sales Tax				AMOUNT
				1,625.80
				39.02
TOTAL AMOUNT DUE				1,664.82

INVOICE PAYABLE ON RECEIPT

Recoverable Cost Computation Summary

RE	Rancho Encanto	Date	12/16/03
Tenant	TABCOMI01 ABCO Markets, Inc	Page	1
Lease	LABCOMI01 ABCO #439 (AZ-0640)		
Space	001	Unit	B0A

Recovery Category	INA - Insurance Rebilling	Recovery from	1/01/03	to	11/30/03
1	Area Occupied By Tenant (Sq Units)				35,534
2	Rate Per Sq Units				050000
3	Charge Commencement Date				1/01/03
4	Total Number of Tenant Recovery Days				334
5	Total Number of Days Costs Incurred				365
6	Tenant Recovery Days as Fraction of Total Days	(334/365)			915068
7	Total Chargeable to Tenant				\$1 625 80
	(35 534 00 X 050000 X 915068)				
8	Less Amount Previously Billed For Period			(\$ 00)
9	Additional Amount Due or (Credit)				\$1 625 80
10	Sales Tax on Additional Amount Due				
	State Sale (024000 X \$1 625 80 - 024000 X \$ 00)				\$39 02
11	Total Amount Due or (Credit)				\$1 664 82

=====

xc Candace
Ant
Mark Stout
PO201

LEASE

Between

Estes Homes

An Arizona General Partnership

Londlord

and

ABCO MARKETS INC

Tenant

Dated June 25 1987

SHIPPING CENTER

NE 35th Ave & Greenway

Phoenix Arizona

1/2

EXHIBIT "B"

Table of Contents

<u>Article</u>	<u>Page</u>
1 EXHIBITS	1
2 DEMISED PREMISES AND COMMON AREA	1
3 TERM	1
4 RENT	2
5 RENEWAL PERIODS	2
6 USE AND OCCUPANCY	2
7 CONSTRUCTION OF TENANT'S BUILDING	3
8 DELIVERY OF POSSESSION	7
9 REMAINDER OF THE IMPROVEMENTS	8
10 SIGNS	9
11 COMMON AREA	9
12 REPAIRS	11
13 INSURANCE	11
14 WAIVER OF SUBROGATION	12
15 REQUIREMENTS OF LAW AND FIRE INSURANCE	12
16 ALTERATIONS	13
17 ACCESS TO PREMISES	13
18 UTILITIES	13
19 REAL ESTATE TAXES	14
20 SUBORDINATION NON-DISTURBANCE AND ATTORNMEN	15
21 FIXTURES	15
22 ASSIGNMENTS AND SUBLETTING	16
23 LANDLORD S TITLE	16
24 QUIET ENJOYMENT	17
25 UNAVOIDABLE DELAYS	17
26 END OF TERM	17
27 HOLDING OVER	17
28 ADDITIONAL RENT	17
29 TENANT S DEFAULT	17
30 LANDLORD S DEFAULT	19
31 RESTRICTIVE COVENANTS	19
32 DAMAGE OR DESTRUCTION	20
33 EMINENT DOMAIN	20
34 WAIVER OF LANDLORD S LIEN	21
35 INVALIDITY OF CERTAIN PROVISIONS	21
36 CHOICE OF LAW	21
37 MEMORANDUM OR SHORT FORM OF LEASE	21
38 ESTOPPEL CERTIFICATE	21
39 RENT NOTICES	22
40 NOTICES	22
41 NO WAIVER	22
42 ENTIRE AGREEMENT	22
43 SALE OR TRANSFER OF THE SHOPPING CENTER	22
44 LITIGATION	23
45 SUCCESSORS AND ASSIGNS	23
46 REAL ESTATE COMMISSIONS	23
47 CAPTIONS	23
48 LATE PENALTY	23
49 COVENANTS CONDITIONS AND RESTRICTIONS	23

THIS LEASE made as of the 25th day of June 1987
between Estes Homes an Arizona General Partnership (hereinafter
called "Landlord") and ABCO MARKETS INC an Arizona Corporation
(hereinafter called "Tenant")

WITNESSETH

Landlord and Tenant covenant and agree as follows

1 EXHIBITS

The following Exhibits are annexed hereto and made a part
hereof

- (a) Exhibit "A" a site plan of the Shopping Center (as
hereinafter defined)
- (b) Exhibit "B" a legal description of the Land (as
hereinafter defined)
- (c) Exhibit "C" form of agreement setting forth the
Commencement Date (as hereinafter defined) the date of
expiration of the initial term of this Lease and the commencement
dates of the Extension Periods (as hereinafter defined)
- (d) Exhibit "D" outline specifications for construction
of the Tenant's building and some but not all of the remainder
of the Improvements (as such terms are hereinafter defined)
- (e) Exhibit "E" Percentage Rent and
- (f) Exhibit "F" Permitted Encumbrances (as hereinafter
defined)
- (g) Exhibit "G" Sign Criteria
- (h) Exhibit "H" Memorandum of Lease

2 DEMISED PREMISES AND COMMON AREA

Landlord hereby leases to Tenant and Tenant hereby takes
from Landlord the premises outlined in red on Exhibit "A" and the
improvements to be built thereon for Tenant (Tenant's Building")
collectively called the ("Demised Premises") together with any
and all easements appurtenances rights and privileges now or
hereafter belonging thereto. The Demised Premises constitute a
portion of that certain land (the "Land") described on Exhibit
"B". The buildings and improvements on or to be built on the
Land are hereinafter called the "Improvements" and the Land and
the Improvements are collectively called the "Shopping Center".
Landlord hereby grants to Tenant the non-exclusive right to use
in common with other tenants and occupants of the Shopping
Center the portions of the Shopping center intended to be for
common use including but not limited to parking areas roads
streets drives landscaped areas exterior ramps and sidewalks
(hereinafter collectively called the "Common Area")

3 TERM

The term of this lease shall be for a period of twenty
(20) lease years. The term "Lease Year" shall mean a period of
twelve (12) successive months except that if the term commences
on a day other than the first day of a calendar month the
initial fractional month together with the next succeeding
twelve (12) months shall constitute the first Lease Year. Said
term shall commence on the date (the "Commencement Date") which
is the earlier of (1) the date which Delivery of Possession (as
defined in Article 8) has occurred or (2) the date Tenant opens
for business with the public. Within ten (10) days after the
request of either party after the Commencement Date has been
determined Landlord and Tenant shall execute acknowledge and
deliver to each other duplicate originals of an agreement in the

form provided in Exhibit "C" setting forth the Commencement Date the date of expiration of the initial term of this Lease and commencement dates of the Extension Periods. Notwithstanding the above the term of this Lease will not commence between November 1st and January 1st unless Tenant chooses to open during that period.

4 RENT

A FIXED ANNUAL RENT

Tenant shall pay to Landlord as annual rent for each Lease Year during the term of this Lease and all extensions thereof a fixed minimum rental in the amount of \$245 185 00. Tenant shall pay the fixed annual rent to Landlord at the address of Landlord as hereinbelow set forth or such other address as Landlord may designate in equal monthly installments in advance on the first day of each calendar month.

The rent for the first fractional month if any after Delivery of Possession shall be due and payable with the rent for the first calendar month and shall be prorated on the basis of a thirty (30) day month.

In the event Tenant opens for business prior to Delivery of Possession as defined in Article 8 hereof Tenant shall not pay fixed annual rent until Delivery of Possession occurs but shall pay percentage rent of 1.25% of gross sales paid monthly. Tenant shall also pay all other charges accruing hereunder.

B PERCENTAGE RENT

Tenant shall throughout the term of this Lease and any extensions thereof pay to Landlord percentage rent ("Percentage Rent") in accordance with the provisions of Exhibit "E".

C PAYMENT

Except as expressly set forth in this Lease fixed minimum rental, percentage rent and all other sums payable pursuant to this Lease shall be paid without deduction, offset or prior notice or demand when due to Landlord or to such other person as Landlord may from time to time designate.

5 EXTENSION PERIODS

Provided Tenant is not then in default hereunder and in addition has not defaulted in any of its monetary obligations hereunder for a period of one (1) year immediately preceding the date of exercise, Tenant shall have six (6) successive options to extend the term of this Lease for a period of five (5) years each five (5) year period being hereinafter called an "Extension Period." Monetary default shall not include items of Common Area expenses or emergency repairs over which there is a bona fide dispute. Each of such options may be exercised by written notice delivered to the Landlord not less than one (1) year prior to the expiration of the then unexpired term. The terms and conditions of this Lease shall remain unchanged during all of the "Extension Periods."

6 USE AND OCCUPANCY

Tenant agrees to open for business as an ABCO supermarket on or before the Commencement Date of this lease.

The Demised Premises may be used for the operation of a supermarket or for any other lawful retail purpose subject to Article 22 hereof. Tenant shall not be obligated to conduct or to remain open for the conduct of any business in the Demised Premises provided however that in the event that Tenant vacates the Demised Premises (other than a temporary vacation resulting from any unavoidable delay referenced in Article 25 of this Lease) Tenant shall give written notice of such vacation (the "Vacation Notice") to Landlord not less than sixty (60) days prior to the date of such vacation. In the event that Tenant

gives Landlord a Vacation Notice or in the event that Tenant vacates the Demised Premises other than as a result of a temporary vacation as referred to above for a period of more than ninety (90) days Landlord shall have the right to terminate this Lease and the obligations of the parties hereunder by written notice given at anytime thereafter provided however in the event that Tenant shall have commenced the reoccupation of the Demised Premises prior to the date that Tenant receives Landlord's notice of termination said notice of termination shall be of no force and effect and this Lease shall remain in full force and effect. Any termination of this Lease pursuant to this Article 6 shall be effective as of the ninetieth (90th) day following Tenant's receipt of such termination notice.

Landlord represents that the present zoning of the land permits the construction of the improvements as contemplated herein and the use and occupancy of the Demised Premises for the operation of a supermarket.

7 CONSTRUCTION OF TENANT'S BUILDING

A Tenant's Building shall be constructed in accordance with plans and specifications prepared by a licensed architect ("The Architect") employed by Landlord and approved in writing by Tenant which approval shall not be unreasonably withheld. Tenant hereby approves Ellermann & Schick as the Architect. Tenant shall submit to Landlord Tenant's preliminary fixture plans within 30 days after the date hereof and upon receipt thereof Landlord shall promptly cause the Architect to prepare the architectural and mechanical plans and specifications (the "Plans and Specifications") of Tenant's Building and any other improvements to be built by Landlord on the Demised Premises in accordance with the provisions of this Lease. Landlord shall submit to Tenant for Tenant's review preliminary Plans and Specifications within 120 days after delivery of Tenant's preliminary fixture plans. Tenant agrees to promptly review every submission of the Plans and Specifications and in each case to approve same or to state what changes if any Tenant requires therein and if Tenant requires any changes Landlord shall promptly cause the Architect to change the Plans and Specifications in accordance with any reasonable requirements of Tenant and to promptly resubmit same to Tenant for Tenant's review. The changes and resubmissions shall continue until Tenant shall have approved the Plans and Specifications provided however that Landlord and Tenant agree that they will finally approve the Plans and Specifications on or before a date ninety (90) days after Landlord shall submit to Tenant for the first time the Plans and Specifications as provided above. Tenant shall approve in writing any submission made under this Article or state in writing what changes Tenant requires therein on or before the 30th day after such submission with respect to the original submission of the Plans and Specifications or on or before the 10th day after any subsequent re-submission. If Tenant has not responded within this time frame Landlord may provide Tenant with written notice to that effect. If Tenant has not responded within five (5) working days after receipt of Landlord's notice then such submission shall be deemed approved by Tenant. Tenant's approval of the Plans and Specifications shall not constitute an opinion or agreement by Tenant that the Tenant's Building is structurally sufficient or that the Plans and Specifications are in compliance with law. When the plans and Specifications are approved by Tenant Landlord shall provide Tenant with two sets thereof and Landlord and Tenant shall initial counterparts thereof. Such Plans and Specifications shall be final and shall not be changed by Landlord without the prior approval of Tenant except as required by law (and Landlord shall give prior notice to Tenant of such changes as are required by law) but Tenant shall have the right to make changes therein provided however that any such changes shall be subject to Landlord's reasonable consent and shall comply with applicable governmental requirements.

B The Plans and Specifications shall be in accordance with the outline specifications annexed hereto as Exhibit "D" The Tenant's Building shall be a one story building in the location and with the dimensions shown on Exhibit "A" and shall contain 35 534 square feet of first floor area (the term "gross floor area" shall mean the area computed by measurements made to and from the center of party walls and the outside of exterior walls)

C Upon completion of working drawings Landlord shall either enter into negotiations with a single contractor or solicit bids for the entire Shopping Center from a minimum of three licensed general contractors In either case the general contractors shall be approved in writing by Tenant prior to the bidding process and Tenant shall have the right to specify certain subcontractors to be either included or omitted from the contractors bid list Tenant shall have the right to designate the heating ventilation and air conditioning subcontractor In the event Landlord chooses to negotiate with a single contractor the Plans and Specifications for Tenant's Building shall be bid by a minimum of three (3) subcontractors and if the Costs of Construction exceed \$1 172 622 00 Landlord will solicit bids for the entire Shopping Center from three licensed general contractors as provided for above

Landlord shall provide Tenant with a detailed cost breakdown of Tenant's Building all other buildings and Common Area costs from the bid or negotiation Tenant shall approve the final contract Such approval shall not be unreasonably withheld

(1) In the event that Costs of Construction exceed the sum of \$1 137 088 00 then Tenant for a period not to exceed forty-five (45) days shall have the right to attempt to re-negotiate the contract sum with the general contractor and/or to modify the approved Plans and Specifications (with the consent of Landlord) in order to reduce the Costs of Construction In the event that Tenant is unsuccessful in reducing the Costs of Construction to \$1 137 088 00 or less within said forty-five (45) day time period then Tenant shall either (i) pay on demand to Landlord within fifteen (15) days after receipt of a written itemization of all costs a sum equal to the amount by which Costs of Construction exceed \$1 137 088 00 or (ii) may elect to pay an additional increased fixed annual rent in which event the fixed annual rent payable by Tenant in accordance with Section 4A hereof shall be increased by an amount equal to ten percent (10%) of the amount by which the total Costs of Construction exceed the sum of \$1 137 088 00 The term "Costs of Construction" shall include all of the following items

(a) Actual low bid costs (or the negotiated bid costs with Tenant's approval) of Tenant's Building and all other improvements to be constructed by Landlord in accordance with the approved Plans and Specifications

(b) Fees permits licenses inspections and certificates required for Tenant's Building by any governmental authority

(c) Changes in the approved Plans and Specifications requested by Landlord and approved by Tenant changes requested by Tenant and/or changes required by governmental authority

(d) Construction of Tenant's complete fire sprinkler system (including detector check valves and vaults) and all utilities within the Building

(e) Cash Allowances as noted in the Plans and Specifications and

The term "Costs of Construction" shall not include costs for any of the following items

(i) Offsite improvements costs and costs to construct the Common Area of the Shopping Center

(ii) Excavation soil preparation soil tests and grading the Building pad and Common Area

(iii) Architect's engineer's and surveyor's fees and expenses for Tenant's Building excepting those applicable to change orders requested by Tenant

(2) In the event that the Costs of Construction are in excess of \$1 279 224 ## Landlord shall promptly notify Tenant of the amount of such Costs of Construction prior to the commencement of construction. In the event Tenant and Landlord are unable to mutually agree upon a means of reducing the said Costs of Construction below \$1 279 224 ## within forty-five (45) days of Tenant's receipt of said notice Tenant may elect to terminate this Lease by giving written notice of such termination to the Landlord within fifteen (15) days of the expiration of said forty-five day period and in such event this Lease shall automatically terminate thirty (30) days following the receipt of such notice of termination unless Landlord within such thirty (30) day period elects to pay the amount by which the Costs of Construction exceed \$1 279 224 ## (in which event the Costs of Construction shall be deemed to be \$1 279 224 ## for the purposes of Section 7C (1) above and the fixed annual rent shall be increased accordingly). In the event that the cost of construction exceeds \$1 279 224 ## and this Lease is terminated by Tenant Tenant shall pay to Landlord upon demand half of Landlord's architectural costs incurred in the preparation of the Plans and Specifications for Tenant's Building and neither party hereto shall have any further liability or obligation hereunder it being agreed that such right of termination shall be Tenant's sole remedy hereunder.

(3) In the event that the fixed annual rent payable by Tenant pursuant to Section 4A hereof is increased in accordance with the foregoing provisions this Lease shall be amended by the parties hereto to reflect the final amount of the fixed annual rent to be paid by Tenant.

D Upon Tenant approval of the bid Landlord shall promptly commence and with due diligence shall proceed to construct the Tenant's Building and other improvements on the Demised Premises in accordance with the Plans and Specifications. The construction work on the Tenant's Building and other improvements on the Demised Premises shall be done in a good and workmanlike manner. Landlord shall comply and all construction work shall be in compliance with all applicable laws, orders and regulations of federal, state, county and municipal authorities with any direction pursuant to law of any public officer thereof and with all regulations of any board of fire underwriters having jurisdiction. Landlord shall obtain or cause to be obtained all building permits and temporary and permanent certificates of occupancy which may be required to permit the construction and occupancy of the Tenant's Building as a supermarket.

E During the course of construction of the Tenant's Building and other improvements on the Demised Premises Tenant may enter upon the Demised Premises for purposes of inspecting the work, taking measurements, making plans, installing trade fixtures, erecting temporary or permanent signs and doing such other work as may be appropriate or desirable without being deemed thereby to have taken possession or obligated itself to pay rent or other charges. But Tenant agrees that (1) Landlord shall have no liability to Tenant for damage to any property of Tenant stored on the Demised Premises except for damages caused by the negligence of Landlord or its employees or agents and (2) Tenant shall not unreasonably interfere with Landlord's construction work on the Demised Premises.

F The approved plans and specifications shall set forth in detail the work required to be done at Landlord's expense and direction and the work to be done at Tenant's expense and direction which work shall include but not be limited to the following items:

Landlord's Work

(1) The installation and connection of all utilities including telephone cable with service available from such utilities to Tenant's satisfaction as delineated in the Plans and Specifications.

(2) All necessary off-site improvements including but not limited to paving curbs, curb cuts, sidewalks, lighting and landscaping.

(3) All necessary on-site improvements including but not limited to grading paving drainage and other structures striping direction arrows other required markings lighting planters landscaping and required walls

(4) A reinforced 6-inch concrete slab depressed approximately 4 feet with necessary ramps approximately 36 feet in width across the rear of Tenant's Building complete with such walls loading dock ramps and drainage facilities as may be required

(5) If required by Tenant or any governmental authority having jurisdiction thereover an automatic fire extinguishing system complete with hydrants valves etc with a water supply adequate to service said system and Tenant's other requirements Said system shall be installed so as there will be no deficiency charge relating thereto

(6) Erection of a sign tower in accordance with the mutually approved design (Exhibit G) to be located on the parking area as indicated on Exhibit A or as otherwise indicated by Tenant complete as to necessary foundation columns framing and electrical service

(7) Refrigerated air-conditioning and heating system for the sales area office and rest room area by a ducted system including ventilation of service areas

(8) Rest rooms facilities including toilet fixtures and toilet partitions

(9) A complete 120/208 volt (minimum) three phase 4-wire electrical distribution system including but not limited to branch circuits control panels and outlets parking lot canopy and store lighting complete with fixtures and lamps complete wiring and controls for mechanical equipment (neutralization of the air doors and vestibule) air-conditioning main panels motor control centers refrigeration compressors and the complete wiring and final connection for all equipment furnished by Tenant a complete intercom system according to Tenant's intercommunication system fly fans at all exterior doors electric time clocks for automatic control of signs and equipment

(10) Final plumbing connections as delineated on the Plans and Specifications

(11) Construction materials installed per Tenant's standards included but not limited to vinyl asbestos floor tile with rubber concrete bases as required ceramic tile floor and wall coverings low meat partition and custom ceramic tile in areas required plastic finished "Marlite" panels in colored and wood-grained plank and panels with matching trim automatic door operators air doors and accessories structural provision for rod hangers and wood beams etc for installation of Tenant's accessories seamless epoxy cement in specified department areas all specified ceiling treatments and

(12) Trash enclosure areas in accordance with governmental regulations

Tenant's Work

Tenant shall furnish and install the following equipment

(1) Refrigerated air cooling system in meat cutting room produce preparation room and refrigeration system for walk-in coolers and freezers

(2) All refrigerated cases and refrigeration lines including coils compressors and condensers

(3) All grocery shelving gondolas produce fixtures and check stands

(4) Intercommunication system installed in conduit provided by Landlord and music system with controls and speakers

(5) Time recorder clock (employees time clock)

(6) Meat tables meat sink saws choppers slicers grinders scales wrapping machine and other fixtures and equipment

(7) Produce table and sink complete with garbage disposal

(8) Prefabricated insulated walk-in cooler and freezer rooms complete with insulated doors and hardware

- (9) Bakery including ovens and other fixtures and equipment
- (10) Electric drinking fountain and
- (11) Signage to be affixed to Tenant's Building

8 DELIVERY OF POSSESSION

A Landlord shall be deemed to have delivered to Tenant the Demised Premises ("Delivery of Possession") on the date on which the latest of all of the following shall have occurred

(1) Actual possession of the Demised Premises shall have been delivered to Tenant free of all leases (other than this Lease) and occupants. Tenant shall have sixty (60) days after this event to stock and fixturize Tenant's Building

(2) Construction of the Tenant's Building and other improvements on the Demised Premises and the Common Area including but not limited to the paving and striping in the Common Area, the connection of utilities to and in the Tenant's Building and the installation of the storm and sanitary sewer drainage in the Common Area shall have been substantially completed. All utilities shall as of the date of delivery of the Demised Premises to Tenant be in adequate supply. The storm and sanitary sewer drainage shall be in accordance with the Plans and Specifications. The Common Area shall be usable for the purposes intended. Any work remaining to be done by Landlord on the Tenant's Building or the Common Area shall be of such a nature as not to interfere with or prevent Tenant's full use and enjoyment of the Demised Premises and the Common Area and the operation of business in the Tenant's Building or the making of preparations therefor. And the Architect shall have delivered to Tenant a written A I A Certification of Substantial Completion confirming the foregoing facts

(3) Construction of all buildings shown in Exhibit "A" with the exception of freestanding pad users shall be completed. This condition shall be deemed to be satisfied upon the substantial completion by Landlord of the Foundations, exterior walls, roof and roofing and storefronts (excluding any Tenant improvements) with respect to the building improvements to be constructed by Landlord pursuant to this subsection (3)

B Tenant's opening of the Demised Premises to the public for business prior to Delivery of Possession shall not relieve Landlord of the obligations of completing construction of the building improvements referenced in Section 8A (3) above and the Common Area and providing any certificates and approvals required hereunder

C Within ninety (90) days after the Commencement Date Tenant shall deliver to Landlord a punch list setting forth the work remaining to be done on the Demised Premises and the Landlord shall promptly commence and with due diligence shall proceed to do the work set forth on said punch list. Subject to Article 25 below, if said work is not completed by Landlord within 60 days after receipt of such punch list or if such work reasonably requires more than 60 days to complete and Landlord does not diligently prosecute such work to completion within a reasonable time, Tenant shall have the right after giving ten (10) days prior written notice to Landlord to complete said work and to deduct the cost and expense thereof from all sums which become due and payable to Landlord hereunder. Tenant shall have the right from time to time during the first Lease Year to add to such punch list any items which Tenant later discovers remain to be done but said 60 day period shall be extended to 60 days after such item or items are added to the punch list

D Subject to Article 25 below, if the Commencement Date shall not have occurred by November 1, 1988, Tenant shall have the right either to (1) extend such date to a date not less than three months from the date provided herein or from any previously extended date as the case may be, (2) terminate this Lease by giving not less than sixty (60) days prior written notice to Landlord (such notice to be given to Landlord if at all within 30 days after such date or any extended date as the case may be) and upon the expiration of such 60 day notice

period this Lease and the term hereof shall immediately cease and expire provided however that if Landlord completes such construction or the Commencement Date occurs as may be applicable prior to the expiration of said 60 day notice period then such notice of termination shall be deemed to be rescinded and this Lease shall continue in full force and effect. In the event this Lease is terminated by Tenant pursuant to the foregoing neither party hereto shall have any further liability or obligation hereunder it being agreed that such right of termination shall be Tenant's sole remedy hereunder.

9 REMAINDER OF THE IMPROVEMENTS

A Landlord agrees that Tenant shall approve the architectural design of the Shopping Center prior to the completion of working drawings such approval not to be unreasonably withheld. Landlord also agrees that all improvements constructed within the Shopping Center shall substantially conform to the approved architectural design as well as Exhibit "A" and the improvements to the Common Area shall substantially conform to the specifications outlined in Exhibit D. Landlord further agrees to make no deviation from the approved architectural design nor construct any improvements not delineated in Exhibit "A" without prior written consent of Tenant during the term of this Lease and any extensions thereof which approval shall not be unreasonably withheld.

B During the term of this Lease (including any Extension Periods) the number of parking spaces in the Common Area shall be as shown on Exhibit "A" annexed hereto. Landlord shall not permit the Common Area to be used for parking or any other purpose by any occupant or occupants of contiguous or adjacent property except as provided for in a Conditions Covenants and Restrictions agreement signed by Landlord and approved by Tenant.

C Except for Tenant's Building and the pylon sign or signs shown on Exhibit "A" and except as otherwise shown on Exhibit "A" no improvement or structure in the Shopping Center shall either be of a height greater than 25 feet above ground level or contain more than one story.

D All portions of water gas electricity sewage and other utility lines within the Shopping Center and not within the exterior walls of any structure or enclosed area shall be installed wholly underground except hydrants standpipes meters control valves and other similar items customarily required to be located above ground.

E In doing any construction work making any repairs or doing any maintenance in the Shopping Center after Tenant takes possession of the Demised Premises Landlord shall use reasonable efforts to prevent any undue interference with the operation of the Shopping Center and the business of Tenant or any subtenant or licensee of Tenant.

10 SIGNS

A Tenant shall have the right to erect and maintain upon the Demised Premises and seasonal sales promotional area shown on Exhibit A all signs banners and similar promotional materials that it deems appropriate to the conduct of its business. Landlord agrees that without Tenant's prior consent no signs or advertising matter of any nature other than Tenant's or the sign tower shall be permitted upon any part of the Common Areas except as shown in Exhibit "A".

B Tenant shall have the right to install and maintain its sign upon the sign tower depicted in Exhibit "A" and acknowledges that the identification of up to two (2) additional identification signs of other tenants may also be placed upon said tower. Tenant agrees to reimburse Landlord on demand for its proportionate share of the costs of obtaining and constructing said sign tower. Said proportionate share shall be

determined by the ratio of the sign area occupied by Tenant's sign to the total area of tenant signs including the sign of Tenant

C Signs or similar promotional material to be erected on the Demised Premises by any assignee subtenant or concessionaire of Tenant shall require the prior written consent of Landlord. Such consent shall not be unreasonably withheld.

D Upon approval of the Plans and Specifications Landlord shall promptly commence and with due diligence shall proceed to obtain the necessary permits and approvals for and to construct a sign tower (or a monument if a sign tower is not allowed by law) for Tenant and up to two additional anchor tenants at the location designated as sign tower on Exhibit "A" in accordance with the outlined specifications annexed hereto as Exhibit "D". During the term of this Lease (including any Extension Periods) Landlord shall keep and maintain said sign tower in good condition and repair and the cost and expense thereof shall be part of the Common Area Costs (as hereinafter defined). Lighting of all building signs in the Shopping Center however, shall not be a part of the Common Area Costs. Tenant shall have the right at Tenant's sole expense to change or replace its sign or signs at any time or from time to time during the term of this Lease (including any Extension Periods) provided however that any replacement signs shall conform to the sign criteria included in Exhibit G. ✓

11 COMMON AREA

A Landlord shall keep and maintain or cause to be kept or maintained the Common Area in good condition and repair including but not limited to repairing and replacing paving keeping the Common Area properly policed drained free of water rubbish and other obstructions and in a neat clean orderly and sanitary condition and keeping the Common Area suitably lighted during and for appropriate periods before and after Tenant's business hours maintaining signs markers painted lines and other means and methods of pedestrian and vehicular traffic control and maintaining any plantings and landscaped areas.

B Except as otherwise expressly provided herein the parking spaces in the Common Area shall be used for the parking of private automobiles of customers invitees licensees subtenants and employees of Tenant Landlord or any other tenants or occupants of the Shopping Center and for no other purpose and the access perimeter and through roads streets and drives shall be used for pedestrian and vehicular traffic and no other purpose. The layout of and striping in the Common Area as indicated on Exhibit "A" shall not be changed without Tenant's consent. Employees of Tenant Landlord and the tenants and other occupants of the Shopping Center shall not park their automobiles in the Common Area except in the area designated as "Employee Parking" on Exhibit "A" and Landlord and Tenant shall use reasonable efforts to prevent any violation of this provision.

C Landlord shall not exact any charge or permit others to exact any charge for use of the Common Area from customers invitees licensees subtenants or employees of Tenant or any other tenant or occupant in the Shopping Center except to the extent any such charge is the result of applicable governmental laws ordinances or regulations.

D Notwithstanding any provision to the contrary in making any replacement change restoration alteration improvement or repair of or to the Tenant's Building Tenant and its contractors and suppliers may use the portion of the Common Area adjacent to the Tenant's Building for the parking of trucks and delivery vehicles storage of materials and other matters incidental to such work provided however that no such use shall unreasonably interfere with the operation of the Shopping Center or with the business of any tenant of the Shopping Center and provided further that Tenant shall use the area to the rear of its building to the fullest extent possible therefor. In

making any permitted or required replacement change restoration alteration improvement or repair of or to any portion of the Shopping Center Landlord any tenant or other occupant in the Shopping Center and their or Landlord's contractors and suppliers may use such portions of the Common Area as are not directly adjacent to the Tenant's Building for the parking of trucks and delivery vehicles, storage of materials temporary structures and other matters incidental to such work provided however that no such use shall unreasonably interfere with the operation of the Shopping Center or of the business of Tenant or any subtenant or licensee of Tenant

E Landlord shall maintain or cause to be maintained in respect of the Common Area public liability insurance in amounts of \$1,000,000 for personal or bodily injury to any one person \$5,000,000 for personal or bodily injury to all persons in any one occurrence and \$250,000 for damage to property Tenant shall pay its proportionate cost of said insurance upon the same basis as hereinbelow provided In the event Tenant is able to find an insurance carrier with an equivalent or higher Best Rating able to provide insurance for the Common Area at a lower rate than the carrier used by Landlord Landlord shall either change to this carrier at the next insurance renewal period or charge Tenant based on the alternate carrier's rate

F Commencing upon completion of the construction of the Common Area or the Commencement date whichever occurs later Tenant shall pay to Landlord as additional rent Tenant's proportionate share of the expense of insuring maintaining operating and repairing the Common Area Any single expense in excess of \$5,000 must first be approved in writing by Tenant Tenant's proportionate share shall be determined by the ratio of the ground floor area of Tenant's Building to the total ground floor area of all of the buildings actually constructed within the Shopping Center as shown on Exhibit "A" Such proportionate share will be adjusted incrementally as the construction of additional buildings is completed The expenses in maintaining the Common Area shall include but shall not be limited to the following repairs (including major resurfacing) lighting cleaning stripping landscaping premiums on insurance policies required herein real estate taxes and assessments levied upon the portion of the Land constituting the Common Area and other costs of maintaining the Common Area in a clean and safe condition plus a management fee not to exceed ten percent (10%) of the total costs The calculation of such management fee costs shall not include insurance premiums real estate taxes and assessments and only the first ten thousand dollars (\$10,000) of any single expenditure shall be included Said \$10,000 ceiling on any single expenditure shall be increased by 20% every ten (10) years As soon as is practicable after the end of each month during the term hereof and upon expiration of the term of this Lease Landlord shall submit to Tenant a bill for the amount required to be paid by Tenant pursuant hereto setting forth in reasonable detail (and accompanied by copies of receipted invoices if requested by Tenant) the method of calculating Tenant's proportionate share Tenant shall pay said amount to Landlord as additional rent within ten (10) days after receipt thereof

G Landlord shall have the right to retain the services of a qualified independent contractor to maintain and operate the Common Area The Common Area shall be operated and maintained in good order condition and repair the quality and expense of which shall be reasonably consistent with similar first class retail facilities in the Phoenix metropolitan area If in Tenant's reasonable opinion the costs of operating and maintaining the Common Area are in excess of costs of operating and maintaining other first class shopping centers of comparable age and size in the Phoenix metropolitan area Tenant may give Landlord sixty (60) days written notice thereof setting forth with particularity the operating and/or maintenance function(s) the costs of which it feels are excessive and the shopping center(s) with which it is making a comparison and if such objection(s) are not corrected or met within a sixty (60) day

period then Tenant as its sole remedy shall have the right to obtain an unconditional bid from a qualified independent contractor(s) who will perform the operating and/or maintenance function(s) identified by Tenant for a fee and/or cost of which shall be less than what was being charged by the contractor(s) who was performing said function(s) at the time Tenant give Landlord notice as provided above and thereupon Landlord will enter into a contractual relationship with such independent contractor(s) on terms reasonably satisfactory to Landlord and Tenant as soon as thereafter practicable

12 REPAIRS

A Landlord shall repair at its expense all damage to the Demised Premises caused by subsidence and shall maintain in good condition and repair the roofing the canopy all structural portions of Tenant's Building (which are hereby defined to mean the foundations exterior walls columns roof structure and all members supporting floors or roof) and shall make all other repairs and changes required by reason of the negligence of the Landlord or its employees or agents or any breach by Landlord of any provision of the Lease Landlord agrees at its expense to repair all damage to the Common Area caused by subsidence or the negligence of Landlord or its employees or agents in the construction of the Parking and Common Area Landlord shall cause all repairs to be made without unreasonable interference with the operation of the Shopping Center or the business of Tenant or any subtenant or licensee of Tenant In making repairs, Landlord shall use materials in kind and quality to the original work

B Landlord shall assign to Tenant all assignable warranties and guarantees received in the connection with the construction of Tenant's Building and Landlord shall use its best efforts to enforce non-assignable warranties and guarantees at Tenant's request behalf but same shall not relieve Landlord from any obligation provided in subdivision "A" of this Article

C Tenant shall maintain the Demised Premises in good order and shall make such repairs and changes to the Demised Premises as are not required to be made by Landlord under any subdivision of this Article Further Tenant shall make all repairs at its own expense which arise from Tenant's rooftop equipment or from Tenant's negligent acts

D All repairs to be performed by Landlord shall commence within thirty (30) days after written notice of the necessity therefor has been given by Tenant and if Landlord has not commenced the necessary repairs within said thirty (30) day period Tenant may thereafter make such repairs at the expense of Landlord Landlord further agrees that Tenant may without notice make emergency repairs costing not in excess of Three Thousand and 00/100 Dollars (\$3 000 00) at Landlord's expense provided that such repairs are the obligation of Landlord under Paragraph A above

13 INSURANCE

A Tenant shall at its cost and expense maintain fire and extended coverage insurance throughout the term of this Lease in an amount equal to the full replacement value (exclusive of foundation and excavation costs) of the Tenant's Building including any improvements to the Tenant's Building which may be made by Tenant Said insurance shall be effected with a company or companies licensed to do business in the State of Arizona and rated Class X or better in Best's Key Rating Guide of Property-Casualty Insurance Companies The proceeds of said policy shall be payable to Landlord and Tenant as their respective interests may appear Tenant agrees that upon Landlord's request Tenant will procure a mortgagee loss payable endorsement to said policy provided that any policy proceeds paid to such mortgagee shall be available for reconstruction in accordance with the terms of this Lease

B Tenant shall maintain in respect of the Demised Premises public liability insurance protecting Landlord and Tenant in amounts of \$1 000 000 00 for personal or bodily injury to any one person \$5 000 000 00 for personal and bodily injury to all persons in any one occurrence and \$250 000 00 for damage to property

C Tenant covenants and agrees to indemnify and hold Landlord its officers directors shareholders employees agents successors and assigns harmless from any and all liability resulting from Tenant's use and occupation of the Demised Premises any repairs or alterations which Tenant may make upon the Demised Premises and/or arising or alleged to have arisen out of any act or omission of Tenant its agents servants or employees The foregoing indemnity shall not apply to any loss claim of loss damage liability or expense arising out of or resulting from negligence or misconduct of Landlord or its agents servants or employees

D Tenant shall promptly deliver to Landlord certificates of all insurance policies required under this Lease and shall thereafter deliver to Landlord renewal policies or certificates at least 15 days prior to the expiration of any existing policy All insurance policies required under this Lease shall contain a provision that the same cannot be cancelled without 30 days prior notice to Landlord Tenant shall have the right to provide any insurance required to be carried by it hereunder under blanket policies provided that said insurance shall have a Landlord's protective liability endorsement attached thereto

14 WAIVER OF SUBROGATION

A Landlord hereby releases Tenant from liability for damage or destruction to the Demised Premises whether or not caused by acts or omissions of Tenant provided however such release shall be in force and effect only in respect of damage or destruction covered by the policies of fire insurance with extended coverage to be carried by Tenant pursuant to this Lease

B Tenant hereby releases Landlord from liability for damage or destruction to Tenant's property whether or not caused by acts or omissions of Landlord provided however such release shall be in force and effect only in respect of damage or destruction normally covered by standard policies of fire insurance with extended coverage (whether or not such coverage is in effect) Tenant shall cause its fire insurance and extended coverage policies in respect of the Demised Premises to contain a provision whereby the insurer waives any rights of subrogation against Landlord

15 REQUIREMENTS OF LAW AND FIRE INSURANCE

Tenant shall comply with all laws orders and regulations relating to Tenant's business at the Demised Premises of federal state county and municipal authorities and with any direction pursuant to law of any public officer thereof relating to Tenant's business Tenant shall comply with all regulations of any board of fire underwriters having jurisdiction which shall impose any violation order or duty in respect of the Demised Premises Tenant shall have the right upon giving notice to Landlord to contest any obligation imposed upon Tenant pursuant to the provisions of this Article and to defer compliance during the pendency of such contest provided that the failure of Tenant to so comply will not subject Landlord to prosecution of criminal or civil penalty and/or action Landlord shall cooperate with Tenant in such contest and shall execute any documents reasonably required in furtherance of such purpose This Article is not intended to impose on Tenant at any time any obligation to make changes or alterations to the Tenant's Building (except such changes or alterations as are required by governmental authority resulting from Tenant's use of Tenant's Building for purposes

other than a supermarket which changes and alterations shall be at Tenant's sole expense) or any obligation which under this Lease is an obligation of Landlord

16 ALTERATIONS

Tenant may from time to time at its own cost and expense make such nonstructural alterations additions restorations changes replacements or installations (hereinafter called "Alterations") in of or to the Demised Premises as Tenant deems necessary or desirable including but not limited to the installation replacement or removal of a sign or signs on the exterior or interior walls of the Tenant's Building or the change or replacement of Tenant's sign in the Common Area provided however no Alteration shall be permitted which would decrease the cubical content or the market value of the Tenant's Building. Tenant in making the Alterations shall comply with all applicable laws orders and regulations of federal state county and municipal authorities with any direction pursuant to law of any public officer thereof and with all regulations of any board of fire underwriters having jurisdiction. Tenant shall obtain or cause to be obtained all building permits licenses temporary and permanent certificates of occupancy and other governmental approvals which may be required in connection with the making of the Alterations and Landlord shall cooperate with Tenant in the obtaining thereof and shall execute any documents reasonably required in furtherance of such purpose. Tenant shall pay all costs and expenses in connection with the making of Alterations and shall discharge or bond any mechanic's lien filed against the Demised Premises in connection therewith within the period of ten (10) days after Tenant receives notice of the filing of such lien. Tenant in making the Alterations shall not unreasonably interfere with the operation of the Shopping Center or the business of the other tenants or occupants thereof. Tenant shall indemnify and hold Landlord harmless from and against any claims arising out of such work. Notwithstanding the above Tenant shall give Landlord at least thirty (30) days prior written notice of any Alterations so that Landlord may post appropriate Notices of Non-Responsibility.

Structural alterations and or alterations which affect the exterior appearance or architectural integrity of Tenant's Building shall require Landlord's prior written consent which may be given or withheld at Landlord's sole discretion.

17 ACCESS TO PREMISES

Tenant shall permit Landlord to enter upon the Demised Premises at all reasonable times and upon reasonable notice during customary business hours of Tenant (a) to make the necessary repairs changes replacements and restorations to the Tenant's Building and to exhibit same to prospective purchasers and mortgagees of the Shopping Center and (b) during the six month period preceding the Expiration Date to exhibit the Demised Premises to prospective tenants.

18 UTILITIES

As of the Commencement Date only Landlord shall make available to Tenant at the Demised Premises all facilities for water gas electricity and any other utility for use in the Demised Premises in such a manner as will allow Tenant to arrange with the public utility companies servicing the Shopping Center for providing services. Tenant shall arrange with and pay directly to such public utility companies for all utilities it uses in the Demised Premises including but not limited to electricity for the lighting of Tenant's Building sign. Landlord agrees that it will provide separate metering for all utilities serving the Tenant.

If the Common Area is lighted during the hours of 10:00 pm and 6:00 am to accommodate Tenant's extended business hours and the cost of lighting during this period exceeds the sum of \$150.00 per month Tenant shall pay its proportionate share of such cost over \$150.00 which shall be the ratio to the ground floor area in Tenant's Building to the total ground floor area of all tenants remaining open within these hours. If additional tenants are open during some but not all of these hours their proportionate share shall be further adjusted by the percent of this time these tenants were open for business.

19 REAL ESTATE TAXES

A Tenant shall further pay prior to delinquency all real property taxes and assessments levied or assessed upon the Demised Premises during the term hereof. Any tax or assessment relating to a fiscal period a part of which is not included within the term of this Lease shall be prorated to that Tenant shall pay only that portion thereof which relates to the tax period included within the term of this Lease. In the event any assessment may be paid in periodic installments Tenant shall be responsible only for those installments relating to the period included in the term of this Lease. Tenant may contest the amount or validity of any tax which it is required to pay under the terms of this Lease and may for such purpose institute proceedings in the name of the Landlord provided however such proceedings shall be at Tenant's sole cost and expense and provided further that Tenant shall hold Landlord and the Demised Premises harmless from the consequences thereof. In the event Tenant obtains a refund such refund shall belong to Tenant.

B Landlord agrees to attempt to have the demised Premises separately assessed and agrees to deliver to Tenant at least ten (10) days prior to delinquency a copy of the tax bill which Tenant is obligated to pay. In the event the Demised Premises are not separately assessed the tax bill shall be accompanied by a statement as to Tenant's proportionate share of the bill and a computation as to how said amount was determined. Tenant's proportionate share shall be determined by the ratio of the ground floor area of Tenant's Building to the total ground floor area of all of the other buildings actually constructed in the Shopping Center. Landlord further agrees to promptly notify Tenant (within 5 days if possible) of any written notice received relating to a change in the assessed valuation of the Demised Premises and/or Common Area percentage.

C Tenant shall further pay to Landlord as additional rent any and all excise privilege gross receipts rent ad valorem and other tax(es) (herein "Tax") levied or assessed by any governmental authority upon or measured by any rent or other sums payable by Tenant to or on behalf of Landlord pursuant to the terms of this Lease or by reason of the tenancy created by this Lease. Such tax shall be paid by Tenant whether or not it comprises a portion of any real property tax or taxes or real property tax bills and such tax shall include without limitation any new tax of a nature not presently in effect but which may be hereafter levied assessed or imposed upon the Landlord or the Demised Premises if such new tax shall be based on or arise out of the ownership use or operation of the Demised Premises or any portion thereof or right thereto. Nothing contained herein shall be construed to require Tenant to pay any estate gift inheritance or net income tax of Landlord.

D Tenant shall also pay before delinquency any and all taxes and assessments levied or assessed and becoming payable during the term against Tenant's property located upon the Demised Premises and any form of license tax relating to the business conducted by Tenant in the Demised Premises.

E If either Landlord or Tenant attacks the existence amount or validity of any real property tax or assessment affecting the Shopping Center and/or the Demised Premises neither party shall attempt to reduce said taxes and/or assessments against then respective Improvements through a shifting of the tax burden to other Improvements.

20 SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN

Tenant agrees to subordinate this Lease to any first mortgage of the demised Premises or the entire fee interest of the Shopping Center made to any institution or person making real estate loans in the ordinary course of business including but not limited to a bank trust company savings and loan association title company college university insurance company or federal or state pension or retirement fund and any renewals modifications replacements or extensions thereof by entering into a non-disturbance agreement in accordance with the provisions of this Article in respect of such mortgage. Such non-disturbance agreement shall be an agreement in recordable form between Tenant and the holder of such mortgage binding on such holder and on future holders of such mortgage or an agreement by such holder expressed in such mortgage which shall provide in substance as follows (a) all condemnation awards and proceeds of insurance shall be applied in the manner provided for in this Lease and (b) neither such holder nor any other holder of such mortgage shall name or join Tenant as a party-defendant or otherwise in any suit action or proceeding to enforce nor will this Lease or the term hereof be terminated (except as permitted by the provisions of this Lease) or otherwise affected by enforcement of any rights given to any holder of said mortgage pursuant to the terms covenants or conditions contained in such mortgage or any other documents held by any holder or any rights given to any holder as a matter of law. Upon request of the holder of a mortgage to which this Lease becomes subordinate Tenant shall (i) execute acknowledge and deliver to such holder an agreement to attorn to such holder as Landlord if such holder becomes Landlord hereunder and/or (ii) execute acknowledge and deliver to such holder an agreement not to make any payment of fixed annual rent for a period of more than one month in advance. The term "mortgage" as used herein shall also mean a Deed of Trust.

21 FIXTURES

All trade fixtures furnished or installed by Tenant or its subtenants or licensees in the Demised Premises (including fixtures leased to Tenant its subtenants or licensees by third parties) regardless of the manner or mode of attachment including but not limited to refrigeration machines machinery controls piping coils and conduits appurtenant thereto incinerators compactors food storage boxes display cases counters shelves racks and general store fixtures shall be and remain the property of Tenant or its subtenants or licensees and may be removed by Tenant or its subtenants or licensees at any time during the term of this Lease (including any Extension Periods) or within the period of 30 days after the expiration Date (or sooner expiration or termination). Tenant shall repair all damage to Tenant's Building caused by the removal of any such trade fixtures within thirty (30) days after removal. The rights of Tenant its subtenants and licensees to remove trade fixtures as specified herein shall be suspended during any period in which Tenant is in default with respect to any monetary obligation under this Lease but such default shall not prevent removal of such trade fixtures by lessors of such equipment having rights to possession of such equipment pursuant to leases thereof. Fixtures remaining on the Demised Premises after the expiration of such 30 day period shall be deemed abandoned by Tenant or its subtenants or licensees and shall become the property of Landlord without payment therefor.

22 ASSIGNMENT AND SUBLETTING

Tenant may sublet or assign the Demised Premises to a supermarket operator having either a net worth greater than \$10,000,000 or at least 25 existing supermarkets or sublet up to 25% of the Demised Premises to concessionaires but Tenant shall nevertheless continue to remain liable hereunder.

Tenant may not sublet all or part of the Demised Premises or license the use of any portion thereof to a non-supermarket operator or to a supermarket operator which does not meet the aforementioned standards without the prior written consent of Landlord which consent may be granted or withheld in Landlord's sole discretion. In any event, Tenant shall nevertheless continue to remain liable hereunder.

Any non-supermarket operator assignee or sublessee of Tenant shall be permitted to use the Demised Premises for any other retail use as shall be lawful provided that such use does not conflict with any applicable covenants or restrictions in the Leases of other tenants in the Shopping Center of which Tenant shall have been given prior written notice by Landlord.

If Tenant assigns this Lease, Landlord, when giving notice to said assignee or any future assignee in respect to any default, shall also serve a copy of such notice upon the Original Tenant, ABCO Markets, Inc. or any successor to the original Tenant. Landlord further agrees that in the event of an assignment it will not exercise its right to cancel this lease because of Tenant's default without giving the Original Tenant additional written notice of its intention to so cancel and affording the Original Tenant a reasonable period after mailing of such notice to cure said default on behalf of the assignee.

In the event Tenant sublets the Demised Premises to other than a Concessionaire, Tenant shall remit to Landlord fifty percent (50%) of any excess rent. Excess rent accruing from the fixed annual rent paid to Tenant by any subtenant shall be remitted to Landlord with ten (10) days after Tenant's receipt thereof. Excess rent accruing from percentage rent paid to Tenant by any subtenant shall be remitted to Landlord with Tenant's payment of percentage rent pursuant to Paragraph 4B and Exhibit E hereof. As used herein, the term "excess rent" shall mean the amount of rent received by Tenant pursuant to said subletting in excess of (a) rent payable by Tenant hereunder, (b) any sums paid by Tenant hereunder respecting the Demised Premises during the period covered by such rental payment for which Tenant has no right of reimbursement by its subtenant, and (c) any other reasonable costs incurred by Tenant with respect to leasing the Demised Premises (including without limitation any remodeling costs, brokerage fees or any so-called tenant improvement allowance) prorated on a straight line basis over the term of the sublease.

23 LANDLORD'S TITLE

Landlord represents and warrants to Tenant that Landlord has the right and lawful authority to enter into this Lease for the term hereof (including the Extension Periods) and that as of the date hereof, Landlord is the owner of the fee simple of the Shopping Center and title to the Shopping Center is free and clear of any liens and encumbrances except those (hereinbefore and hereinafter called "Permitted Encumbrances") set forth in Exhibit "F". If there is a mortgage or deed of trust affecting the Land, Landlord shall obtain and shall deliver to Tenant within 30 days after the date hereof, a non-disturbance agreement or agreements in respect of such mortgage or deed of trust in accordance with the provisions of Article 20 hereof.

24 QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant is not in default hereunder Tenant may peaceably and quietly enjoy the Demised Premises subject however to the terms covenants and conditions contained in this Lease

25 UNAVOIDABLE DELAYS

If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any strike lockout labor dispute inability to obtain labor or materials or reasonable substitutes therefor act of God governmental restriction regulation or control enemy or hostile governmental action civil commotion insurrection sabotage fire or other casualty or any other condition beyond the reasonable control of such party then the time to perform such obligation to satisfy such condition shall be extended by the delay caused by such event provided however that the foregoing shall not apply to the obligations of Tenant pursuant to this Lease to pay rent additional rent or any other sums payable by Tenant hereunder

26 END OF TERM

Upon expiration or other termination of the term of this Lease Tenant shall peaceably and quietly quit and surrender the Demised Premises broom-clean in good order and condition reasonable wear and tear and damage by fire or other casualty excepted

27 HOLDING OVER

Should Tenant hold over in possession after the Expiration Date such holding over shall not be deemed to extend the term or renew this Lease but the tenancy thereafter shall continue as a tenancy from month to month at the sufferance of Landlord upon the terms and conditions herein contained and at the fixed annual rent in effect immediately preceding the Expiration Date

28 ADDITIONAL RENT

If Tenant shall be in default hereunder Landlord after 30 days notice that Landlord intends to cure such default or without notice if in Landlord's reasonable judgment an emergency shall exist shall have the right but not the obligation to cure such default and Tenant shall pay to Landlord upon demand as additional rent the reasonable cost thereof plus interest at five points over the prime rate charged by the Valley National Bank of Arizona from time to time from the date due to the date of the payment Except when in Landlord's reasonable judgment an emergency shall exist Landlord shall not commence to cure any default of such a nature that it could not reasonably be cured within such period of 30 days if Tenant commenced to cure same within said period so long as Tenant proceeds with reasonable diligence and in good faith to cure such default

29 TENANT'S DEFAULT

A The occurrence of any of the following events shall be deemed to constitute an event of default on the part of Tenant hereunder

(1) If Tenant defaults in the performance of any obligation under this Lease other than the payment of fixed annual or percentage rent or any other monetary obligation of Tenant Landlord may give notice to Tenant specifying the nature of such default

If Tenant does not within 30 days after receipt of such notice (or if such default is of such a nature that it could not reasonably be cured within such period of 30 days then within such longer period as it would take to cure such default if pursued with reasonable diligence) Tenant shall be in default hereunder

In the event of a default in payment of fixed annual or percentage rent or any other monetary obligations of Tenant hereunder except as to items of Common Area expense over which there is a bona fide dispute) Landlord may give Tenant notice of said default after a five (5) day grace period If Tenant does not cure said default within five (5) days after receipt of such notice Tenant shall be in default hereunder

(2) If (a) a voluntary petition shall be filed by Tenant under the Federal Bankruptcy Act or the law of any state to be adjudicated by a bankrupt or for any arrangement or other debtor's relief, or (b) any such petition shall be filed against Tenant by any other party and not dismissed within sixty (60) days after the filing thereof or (c) a permanent receiver trustee or liquidator is not discharged within sixty (60) days after the date of his appointment or (d) Tenant shall make an assignment of its Property for the benefit of creditors

B In the event of the occurrence of any event of default specified above in Paragraph A Landlord may so long as such default continues either terminate this lease by written notice to Tenant which written notice shall specify a date for such termination at least five (5) days after the date of such notice or not terminate this lease as the result of default of Tenant

In the event that Landlord terminates this Lease Landlord shall have the right to recover from Tenant in addition to any unpaid rentals and interest accrued thereon as provided in Section 28 hereof

(1) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided

(2) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided and

(3) Any other reasonable amount necessary to compensate Landlord

The worth at the time of the award of the amounts referred to in subparagraphs (1) and (2) above shall be computed by allowing interest at the rate of ten percent (10%) per annum Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder In the event of such termination Landlord may then or at any time thereafter reenter the Demised Premises or any part thereof and expel or remove therefrom Tenant any other persons occupying the same and again repossess and enjoy the Demised Premises

C In the event Landlord does not terminate this Lease as a result of the default of Tenant Tenant shall remain and continue liable to Landlord under all of the terms of this Lease Landlord may evict Tenant and let or relet the Demised Premises or any or all parts thereof for the whole or any part of the remainder of the term hereof and out of any rent so collected or

Termination (1) (2) award

578

received Landlord shall first pay to itself the expense of the cost of retaking and repossessing the Demised Premises and the expense of removing all persons and property therefrom and shall second pay to itself any costs or expenses sustained in securing any new tenant or tenants and shall third pay to itself any balance remaining and apply the whole thereof or so much thereof as may be required toward payment of the liability of Tenant to Landlord then or thereafter unpaid by Tenant. Any entry or reentry by Landlord whether had or taken under summary proceedings or otherwise if this Lease shall not be terminated pursuant to Paragraph B above shall not absolve or discharge Tenant from liability hereunder. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning. The failure or refusal of Landlord to relet the Demised Premises nor any part thereof shall not release or affect Tenant's liability hereunder. Should any rent so collected by Landlord after the payments aforesaid be insufficient to fully pay Landlord a sum equal to all rent and other charges herein reserved or should no rents be collected by Landlord the deficiency shall be calculated and paid by Tenant monthly following receipt of notice from Landlord of the amount of such balance or deficiency that is upon each of the dates for the payment of rent as provided in Section 4A hereof and Tenant shall pay to Landlord the amount of said deficiency then existing and shall remain liable for any portion thereof not so paid.

D The foregoing remedies of Landlord as set forth in subsections A B and C of this Article shall not be exclusive and Landlord shall have all such other rights and remedies as shall be available to Landlord under the laws of the State of Arizona

30 LANDLORD'S DEFAULT

If Landlord shall be in default in the performance of any of its obligations under this Lease which default continues for a period of more than thirty (30) days after written notice from Tenant specifying such default (or if such default is of a nature to require more than thirty (30) days to remedy and continues beyond the time reasonably necessary to cure) Tenant may at its option upon written notice incur any expense necessary to perform the obligation of Landlord specified in such notice and deduct such expense together with interest at the rate of five (5) points over the prime rate charged by the Valley National Bank of Arizona from time to time from the next rent becoming due.

OFFSET

If the Demised Premises or any part thereof are subject to a first mortgage or deed of trust and this Lease or the rentals due hereunder are assigned in the connection with such mortgage or deed of trust and Tenant is given written notice thereof including the post office address of such assignee Tenant agrees that it will concurrently with the giving of any notice of default to Landlord mail a duplicate of such notice to such assignee.

Notwithstanding the above when in Tenant's reasonable judgement an emergency shall exist Tenant shall have the right to immediately perform emergency repairs costing Three Thousand and 00/100 Dollars (\$3 000 00) or less.

31 RESTRICTIVE COVENANTS

Throughout the term of this Lease and any extensions thereof Landlord covenants and agrees that none of the following uses shall be conducted within the Shopping Center depicted in Exhibit "A". These uses are: massage parlor, adult book store, cocktail lounges, places of recreation (including but not limited to theaters, video and pin ball arcades and health spas), churches, any business using a loudspeaker within the Common Area (exclusive of drive through restaurant or bank facilities) and

schools of any nature In addition restaurants larger than 3 500 s f must first be approved in writing by Tenant Drive thrus and office and professional uses must be limited to areas designated on Exhibit "A" unless otherwise approved in writing by Tenant As long as the Demised Premises are being used for the operation of a supermarket no other supermarket will be allowed in the Shopping Center

32 DAMAGE OR DESTRUCTION

A Landlord shall promptly and diligently repair or reconstruct the Tenant's Building in the event it is damaged or destroyed by fire or other casualty and all proceeds from insurance carried in accordance with this Lease shall be available to the Landlord for said repair or reconstruction provided however if during the last three (3) years of the term of this Lease the Tenant's Building is damaged as a result of fire or other casualty to an extent in excess of 25% of its then replacement cost (excluding foundation) Landlord may within thirty (30) days following the date such damage occurs terminate this Lease by written notice to Tenant If Tenant has an unexercised option to extend the term of this Lease and within thirty (30) days following the receipt of Landlord's termination notice exercises such option Landlord shall promptly thereafter commence the necessary repair or reconstruction of the Tenant's Building

B The foregoing provisions of subdivision A of this Article to the contrary notwithstanding if the Tenant's Building is damaged or destroyed to an extent of more than 25% of its then replacement cost (excluding foundation) as a result of a casualty not insured against Landlord may within thirty (30) days following the date of such destruction terminate this Lease upon written notice to Tenant provided however that in the event Tenant shall notify Landlord within thirty (30) days after notice of termination has been received that Tenant elects to repair or reconstruct the Tenant's Building this Lease shall not terminate regardless of Landlord's notice of termination and Tenant shall promptly repair or reconstruct the Tenant's Building Any funds reasonably expended by Tenant for said repair or reconstruction shall be recoverable by Tenant from the Percentage Rent if any thereafter payable by Tenant in accordance with section 4B of this Lease above If this Lease is so terminated Tenant shall surrender possession of the Demised Premises within thirty (30) days of receipt of Landlord's notice of termination and Tenant's obligation to pay rent shall terminate as of the date of such destruction

C During the period of Landlord's repair or reconstruction all rent shall abate from the date of such damage until the date the Demised Premises are completely restored provided however if Tenant continues the operation of its business all rental charges shall be equitably adjusted during the period of repair or reconstruction in the proportion that the usable part of the Demised Premises bears to the whole thereof

33 EMINENT DOMAIN

If during the term of this Lease or any extensions thereof as a result of a condemnation proceeding or transfer in lieu thereof any portion or interest in the Shopping Center including without limitation the Demised Premises the common areas and the other buildings in the Shopping Center is taken and such taking renders the Demised Premises unsuitable for the operation of a supermarket in like manner as Tenant's other supermarkets Tenant may within thirty (30) days following the date of such taking terminate this lease upon written notice to the Landlord Nothing herein contained shall prevent Landlord and Tenant from prosecuting claims in any condemnation proceedings for the value of their respective interests In the event of a taking which does not result in a termination of this Lease Landlord shall be entitled to the entire condemnation

award except that amount necessary if any to compensate Tenant for the taking of its fixtures and equipment and Landlord shall promptly and diligently restore the premises to as near as their condition prior to such taking as is reasonably possible

34 WAIVER OF LANDLORD S LIEN

Within twenty (20) days after receipt of a written demand from Tenant Landlord shall execute and deliver any document required by any supplier lessor or lender in connection with the installation on the Demised Premises of Tenant's trade fixtures and by which Landlord waives any rights it may have or acquire with respect to that property provided the supplier lessor or lender agrees in writing that upon expiration or termination of the Lease it will remove that property from the Demised Premises within thirty (30) days after expiration or termination and if it does not do so it shall have waived any rights it may have to that property

35 INVALIDITY OF CERTAIN PROVISIONS

If any provision of this Lease shall be invalid or unenforceable the remainder of the provisions of this Lease shall not be affected thereby and each and every provision of this Lease shall be enforceable to the fullest extent permitted by law

36 CHOICE OF LAW

This Lease and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Arizona

37 MEMORANDUM OR SHORT FORM OF LEASE

Upon request of either party Landlord and Tenant agree to execute acknowledge and deliver to each other duplicate originals of a memorandum or short form of this Lease and upon request of either party a memorandum of short form of any modification of this Lease in recordable form containing the information required by law for recording same as to give notice of the provisions of this Lease or said modifications as the case may be

38 ESTOPPEL CERTIFICATES

Upon the reasonable request of either party at any time after the commencement of construction of Tenant s Building Landlord and Tenant agree to execute acknowledge and deliver to the other within 10 days after request a written instrument duly executed and acknowledged (a) certifying that this Lease has not been modified and is in full force and effect or if there has been a modification of this Lease that this Lease is in full force and effect as modified setting forth such modifications (b) specifying the dates to which the fixed annual rent and additional rent have been paid (c) stating whether or not to the knowledge of the party executing such instrument the other party thereto is in default and if such party is in default stating the nature of such default (d) stating the Commencement Date and (e) stating which options to renew the term have been exercised if any

39 RENT NOTICES

If the ownership of the Demised Premises or the name or address of the party entitled to receive the rent shall be changed Tenant may until receipt of proper notice of such change from the grantor assignor or party entitled to receive the rent immediately preceding such change continue to pay the rent and additional rent to the party to which and in the manner in which the last preceding installment of rent was paid

40 NOTICES

Any notice required to be given hereunder or which either party hereto may desire to give to the other shall be in writing Such notice may be given by personal delivery or by mailing the same by United States mail registered or certified return receipt requested postage prepaid addressed to

Landlord

The Estes Company
P O Box 37886
Phoenix Az 85069
Attention Property Manager
Commercial Division

Additional Copy to

The Estes Company
Office of the President
Commercial Division
P O Box 37116
Phoenix Az 85069

Tenant

ABCO Markets Inc
3001 W Indian School Rd
Phoenix Az 85017

or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section and shall be deemed complete upon receipt thereof

41 NO WAIVER

The failure of either party to seek redress for violation of or to insist upon the strict performance of any term covenant or condition contained in this Lease shall not prevent a similar subsequent act from constituting a default under this Lease

42 ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties and cannot be changed modified or amended unless such change modification or amendment is in writing and executed by both Landlord and Tenant

43 SALE OR TRANSFER OF THE SHOPPING CENTER

If Landlord sells or transfers all or any portion of the Shopping Center or Landlord's interest in this Lease on the consummation of the sale or transfer Landlord shall be released from liability under this Lease except that Landlord shall not be relieved from its obligations to complete the construction of the Tenant's Building and the Common Area as required under Article Seven of this Lease and shall continue to be liable for all Acts performed prior to the sale or transfer of the Shopping Center Any such sale or transfer of the Shopping Center by Landlord unless to Tenant shall be conditioned upon and subject to Landlord's successor assuming the Landlord's obligations under this Lease In the event of any such sale Tenant and Landlord's

successor shall execute in recordable form a declaration and amendment to this Lease whereby Landlord's successor will assume all of Landlord's position benefits rights obligations and duties under this Lease and whereby Landlord's successor and Tenant shall be in privity of contract under this Lease

44 LITIGATION

Should any legal action be commenced in connection with this Lease the prevailing party in such action shall be entitled to recover in addition to court costs such amount as the Court and not a jury may adjudge as reasonable attorney's fees

45 SUCCESSORS AND ASSIGNS

The covenants and agreements contained in this Lease shall bind and inure to the benefit of Landlord and its successors and assigns and Tenant and its successors and assigns

46 REAL ESTATE COMMISSIONS

Both Landlord and Tenant represent that they dealt with no other brokers than Realty Experts and Grubb & Ellis in connection with the negotiation execution and delivery of this Lease Landlord agrees to pay a reasonable brokerage commission shared equally between said brokers pursuant to a separate agreement between Landlord and said brokers This provision shall not be construed to create any third party rights hereunder in favor of said brokers

If any person shall assert a claim to a finder's fee brokerage commission or other compensation on account of alleged employment as finder or broker or performance of services as a finder or broker in connection with this transaction other than Realty Experts or Grubb & Ellis the party hereto under whom the finder or broker is claiming shall indemnify and hold the other party harmless from and against any such claim and all costs expenses and liabilities incurred in connection with such claim or any action or proceeding brought thereon including but not limited to counsel witness fees and court costs in defending such claim

47 CAPTIONS

The captions preceding the Articles of this Lease are intended only as a matter of convenience and for reference and in no way define limit or describe the scope of this Lease or the intent of any provision hereof

48 LATE PENALTY

If Tenant shall fail to pay any rent or other charge hereunder such unpaid amount shall bear interest at five (5) points over the prime interest rate then charged by the Valley National Bank of Arizona from five (5) days after the date due to the date of payment

49 COVENANTS, CONDITIONS AND RESTRICTIONS

This Lease is and shall be subordinate to that certain amended and restated Declaration and Establishment of Protective Covenants Conditions and Restrictions and Grant of Easements (the "CC&R's") which has been recorded with the Maricopa county Recorder's Office The CC&R's may be amended at any time by Landlord provided that if such amendment effects or could effect Tenant's access visibility parking or allows uses prohibited by Article 31 of this Lease or make any changes to the Shopping

Center which do not conform to Exhibit A of this Lease such amendment shall not be effective without Tenant's prior written consent

IN WITNESS WHEREOF Landlord and Tenant have caused this Lease to be executed the day and year first above written

LANDLORD

Estes Homes
An Arizona General Partnership

By The Estes Co an Arizona
General Partnership as
Managing General Partner
of Estes Homes

By Guardian Development Inc
an Arizona Corporation as
Managing General Partner
The Estes Co

By

Its

TENANT

ABCO MARKETS INC
an Arizona corporation

By Ed Hill
Ed Hill President

LANDLORD

Estes Homes an Arizona General Partnership

By The Estes Co an Arizona General
Partnership as Managing General
Partner of Estes Homes

By The Guardian Construction Company an
Arizona General Partnership as
Managing General Partner of The Estes Co

By Guardian Development Inc an Arizona
Corporation, as Managing General
Partner of the Guardian Construction
Company

By

Its

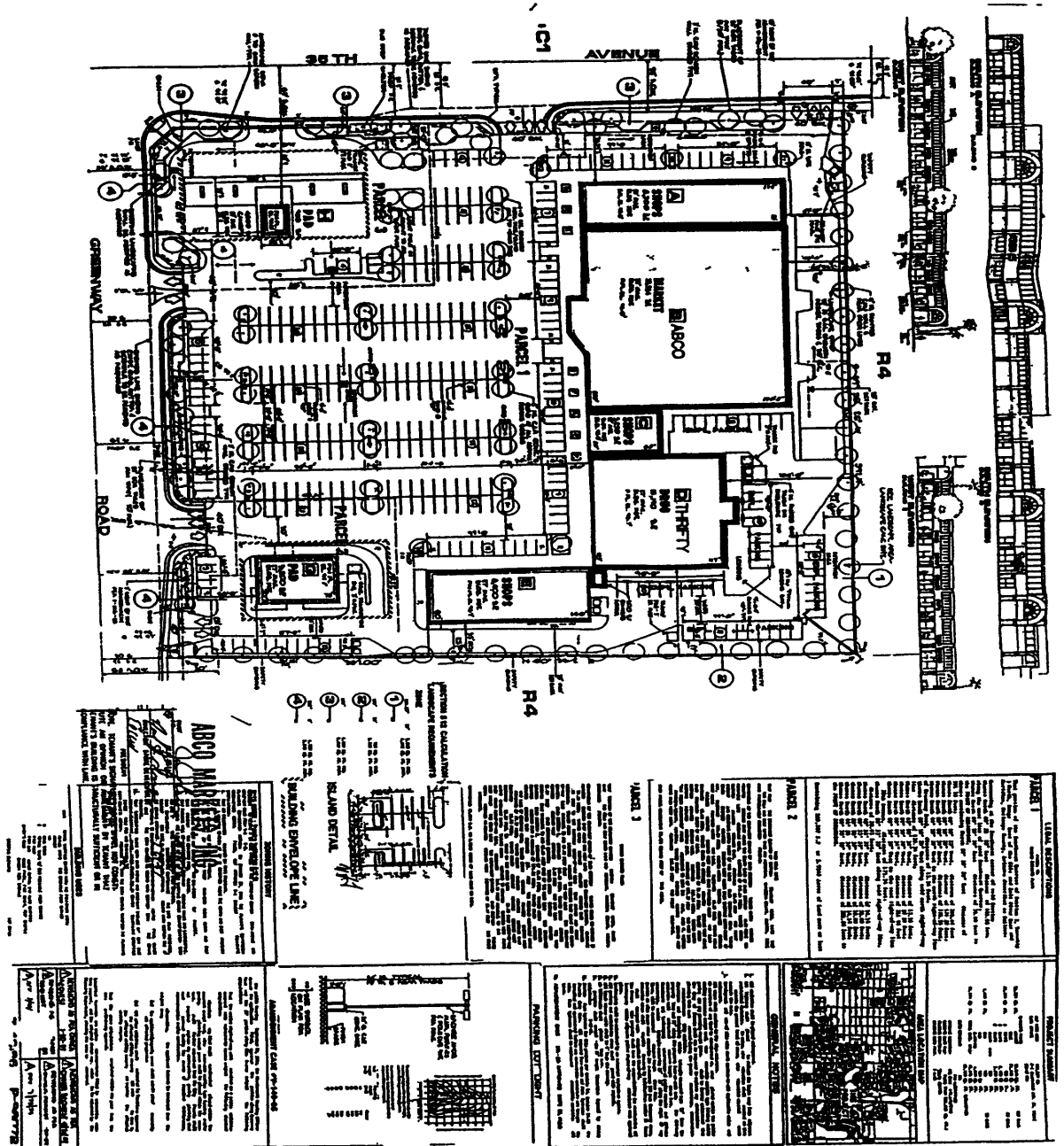


EXHIBIT A

DESCRIPTION
RANCHO ENCANTO PLAZA

That portion of the Southwest Quarter of Section 2, Township 3 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing at the Southwest corner of said Section 2;
thence North 00° 33' 23" East, a distance of 635 00 feet along the west line of said Southwest Quarter;
thence North 89° 50' 26" East, a distance of 55 00 feet to the POINT OF BEGINNING;
thence continuing North 89° 50' 26" East along the South line of the Final Plat of Rancho Encanto Apartments recorded in Book 248 of Maps, Page 39 records of Maricopa County, Arizona, a distance of 591 18 feet;
thence South 00° 33' 23" West along the West line of the Plat of Oak Ridge Apartments Phase I recorded in Book 260 of Maps, Page 46 records of Maricopa County, Arizona, a distance of 385 47 feet;
thence South 89° 50' 26" West, a distance of 177 27 feet;
thence South 00° 09' 34" East, a distance of 170.54 feet;
thence South 44° 50' 26" West to the North Right of Way Line of Greenway Road, a distance of 15 56 feet;
thence South 89° 50' 26" West along said North Right of Way Line a distance of 178 34 feet;
thence North 45° 09' 34" West, a distance of 15 56 feet;
thence South 89° 50' 26" West, a distance of 27 50 feet;
thence North 00° 09' 34" West, a distance of 211.98 feet;
thence South 89° 50' 26" West, a distance of 175 54 feet to a point on the East Right of Way Line of 35th Avenue,
thence North 00° 33' 23" East, a distance of 39 02 feet along said East Right of Way Line;
thence North 45° 33' 23" East, a distance of 14 14 feet;
thence North 00° 33' 23" East, a distance of 55 00 feet;
thence North 89° 26' 37" West, a distance of 10 00 feet;
thence North 44° 26' 37" West, a distance of 14 14 feet;
thence North 00° 33' 23" East along said East Right of Way Line a distance of 229 88 feet to the POINT OF BEGINNING

Containing 259,413 S F or 5 9553 Acres of Land More or Less

Prepared by
O'NEILL ENGINEERING, INC.
4560 N 19th Ave #500
Phoenix, Ariz 85015

June 17, 1987

Job #2029



EXHIBIT B

24

EXHIBIT C

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT is made as of the _____ day of _____ 198__ between Estes Homes An Arizona General Partnership (hereinafter called "Landlord") and ABCO Markets Inc an Arizona corporation (hereinafter called "Tenant")

RECITALS

- A Landlord and Tenant have entered into a Lease (the "Lease") as of the June 15 1987 whereby Landlord leased to Tenant and Tenant leased from Landlord certain real property located in the County of Maricopa State of Arizona which real property is outlined in red on Exhibit "A" attached hereto and made a part hereof
- B In accordance with Article 3 of the Lease Landlord and Tenant desire to set forth herein the date that the term of the Lease has commenced (the "Commencement Date") the date of expiration of the initial term of the Lease and the commencement dates of the Renewal Periods

NOW THEREFORE Landlord and Tenant agree as follows

- 1 The Commencement Date of the Lease defined in Article 3 of the Lease is hereby established as _____ 198__
- 2 The initial term of this lease shall be twenty (20) lease years ending upon _____
- 3 Pursuant to Article 5 of the Lease the first Renewal Period if exercised by Tenant shall commence as of _____ Any additional Renewal Periods shall if exercised by Tenant commence upon the expiration of the prior Renewal Period

IN WITNESS WHEREOF Landlord and Tenant have caused the Commencement Date Agreement to be executed the day and year first above written

Landlord

Tenant

Estes Homes
An Arizona General Partnership

ABCO Markets Inc
An Arizona Corporation

By The Estes Co an Arizona
General Partnership as
Managing General Partner
of Estes Homes

By _____

Its _____

By Guardian Development Inc
an Arizona Corporation as
Managing General Partner
The Estes Co

By _____

Its _____

24

CONSTRUCTION EXHIBIT

<u>Sheet</u>	<u>Description</u>	<u>Date Issued</u>	<u>Date Revised</u>
A-1	ABCO Cover Sheet	7-1-87	8-17-87
A-2	Site Details	7-1-87	8-6-87
A-3	Floor Plan	7-1-87	9-18-87
A-4	Fixture Plan	7-1-87	8-17-87
A-5	Sidewalk Plan & Mezzanine Plan	7-1-87	9-18-87
A-6	Building Section & Interior Elevations	7-1-87	9-18-87
A-7	Exterior Building Elevations	7-1-87	8-17-87
A-8	Reflected Ceiling Plan	7-1-87	9-18-87
A-9	Office Mezzanine Reflected Ceiling Plan	7-1-87	9-18-87
A-10	Wall Sections	7-1-87	9-18-87
A-11	Stair Details	7-1-87	8-17-87
A-12	Deli Bakery Floor Plan	7-1-87	8-17-87
A-13	Interior Elevations	7-1-87	9-18-87
A-14	Door & Finish Schedules & Details	7-1-87	9-18-87
A-15	Canopy Sections & Details	7-1-87	8-6-87
A-16	Canopy Sections & Details	7-1-87	8-6-87
A-17	Details	7-1-87	8-6-87
A-18	Details	7-1-87	8-6-87
A-19	Roof Plan & Details	7-1-87	8-17-87
A-20	Utility Stub-Up Plan	7-1-87	8-17-87
S-1	Foundation Plan	7-1-87	8-17-87
S-2	Roof Framing Plan	7-1-87	9-18-87
S-3	Canopy, Foundation & Framing Plan	7-1-87	8-17-87
S-4	Structural Details	7-1-87	
S-5	Structural Details	7-1-87	8-6-87
S-6	Structural Details	7-1-87	8-6-87
S-7	Structural Details & Notes	7-1-87	
M-1	Mechanical Floor Plan	7-1-87	8-6-87
M-2	Mechanical Mezzanine Floor Plan	7-1-87	8-17-87
P-1	Plumbing Floor Plan	7-1-87	8-17-87
P-2	Plumbing Floor Plan	7-1-87	8-17-87
P-3	Canopy & Office Mezzanine Floor Plan	7-1-87	8-17-87
P-4	Riser Plumbing Diagrams	7-1-87	8-17-87
E-1	Lighting Plan	7-1-87	8-17-87
E-2	Power Plan	7-1-87	8-17-87
E-3	Mezzanine Lighting & Power Plans	7-1-87	9-18-87
E-4	Meat Prep & Bakery Deli Power Plan	7-1-87	8-6-87
E-5	Panel Schedules	7-1-87	9-18-87
E-6	One-line Diagram	7-1-87	8-17-87
B	Floor Tile Lay-out	4-87	
R-1	Refrigeration Drawings	6-24-87	7-15-87
R-2	Refrigeration Drawings	6-24-87	7-15-87
R-3	Refrigeration Drawings	6-24-87	7-15-87
R-4	Refrigeration Drawings	6-24-87	7-15-87
R-5	Refrigeration Drawings	6-24-87	7-15-87
R-6a	Refrigeration Drawings	6-24-87	7-15-87
R-6b	Refrigeration Drawings	6-24-87	7-15-87
R-6c	Refrigeration Drawings	6-24-87	7-15-87
R-7	Refrigeration Drawings	6-24-87	7-15-87
R-8	Refrigeration Drawings	6-24-87	7-15-87
R-9	Refrigeration Drawings	6-24-87	7-15-87
AC-1	Refrigeration Drawings	6-24-87	7-15-87
AC-2	Refrigeration Drawings	6-24-87	7-15-87
AC-3	Refrigeration Drawings	6-24-87	7-15-87
AC-4	Refrigeration Drawings	6-24-87	7-15-87
AC-5	Refrigeration Drawings	6-24-87	7-15-87
AC-6	Refrigeration Drawings	6-24-87	7-15-87
	Schedules	6-24-87	7-15-87
	Specifications - ABCO Store No 439	7-1-87	
Addendum No 1		7-16-87	
Addendum No 2		8-6-87	
Addendum No 3		8-17-87	
Addendum No 4		9-17-87	
Addendum No 5		9-18-87	

EXHIBIT D

EXHIBIT "E"

PERCENTAGE RENT

A Within sixty (60) days after the close of each Lease Year Tenant shall pay to Landlord as additional rent 1 00% of the amount by which Gross Sales exceed \$16 000 000 00 for that Lease Year

B The following terms shall have the following meanings

"Gross Sales" shall mean (a) income received from the rental of merchandise and (b) the selling price of all merchandise sold or delivered in at or from any part of the Demised Premises and the Charges for all services performed at the Demised Premises including sales and charges for cash or credit (regardless of collection) and excluding or deducting therefrom as the case may be however (i) service charges or other charges for extending credit to customers and amounts in excess of Tenant's cash sales price charged on sales made on credit or under the time payment plan (ii) returns to and refunds made by Tenant (iii) exchange of merchandise between stores or warehouses of Tenant where such exchange is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has been made from the Demised Premises (iv) the amount of any sales luxury and excise tax and similar taxes which is both added to the selling price (or absorbed therein) and paid to the taxing authority by Tenant (but not by any vendor of Tenant) (v) the selling price of merchandise delivered to Tenant at the Demised Premises for sale to the public but not yet sold to the public (vi) delivery service and installation charges relating to work performed outside the Demised Premises so long as the Demised Premises are used as a supermarket (vii) sales of store fixtures and equipment used in the operation of the Demised Premises by Tenant (viii) lottery tickets and (ix) United States postal stamps A sale shall be deemed to have been made in the Demised Premises if any order therefor is secured or received whether secured or received by mail telephone or similar means in the Demised Premises whether such order is filled in the Demised Premises or elsewhere If any business shall be conducted on the Demised Premises by any person firm or corporation other than Tenant there shall be included in Gross Sales all Gross Sales of such person firm or corporation in the same manner and with the same effect as if the business of same had been conducted by Tenant Rent paid to Tenant by subtenants shall not be included in Gross Sales

C Tenant shall keep for a period of two years following the end of each Lease Year a complete and accurate record of all sales of merchandise and services and all revenue derived from the business conducted on the Demised Premises by Tenant and shall require all other persons firms and corporation having Gross Sales from the Demised Premises to keep similar records In the event of any dispute as to the amount of Gross Sales for any Lease Year the records required to be kept pursuant to this Section C for such period shall be retained until such time as the dispute is resolved

D At the time of payment of the Percentage Rent for each Lease Year Tenant shall submit to Landlord a written statement of the amount of the Gross Sales during such period certified by an officer of Tenant or by its certified public accountant However if the Tenant shall assign this Lease or sublet the entire Demised Premises to one other than an affiliated company such written statement shall be prepared and certified by the then Tenant's or occupant's independent certified public accountant Tenant shall require its licensees and concessionaires to furnish similar statements

E For each Lease Year Landlord shall have the right at any time within two years after receipt of the statement referred to in Section D during business hours of Tenant upon ten days notice to have the books and records of Tenant in respect of

21

- C All penetrations of the building structure required for sign installation shall be neatly sealed in water tight condition
- D No labels or other identification will be permitted on the exposed surface of signs except those required by local ordinance which shall be applied in an inconspicuous location
- E Tenant shall be fully responsible for the operations of its sign contractors and shall indemnify defend and hold the parties harmless from damages or liabilities on account thereof

V

INSURANCE

Tenant shall be responsible for selecting a sign company that carries workman s compensation and public liability insurance in the amount of \$1 000 000 00 per incident covering all damage suffered or done to any and all persons and/or property while engaged in the construction or erection of signs

138



**WEINGARTEN
REALTY
MANAGEMENT
COMPANY**

2600 Citadel Plaza Drive
Houston Texas 77008
PO Box 924133
Houston Texas 77292 4133
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December 19, 2003

Bankruptcy Management Corporation ("BMC")
1330 East Franklin Avenue
El Segundo, CA 90245

via Federal Express

Re *In re Fleming Companies, et al* , Case No 03-10945 (MFW)

Dear Sir or Madam

Enclosed for filing in the above-referenced bankruptcy case is an original and two copies of the Proof of Claim for Weingarten Realty Investors. A preaddressed Federal Express envelope is also enclosed for your convenience in returning the file-marked copy to me. If you have questions or need anything further, I can be reached at (713) 866-6043.

Very truly yours,

Kristi Sofka
Legal Department

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Enclosures