

EXHIBIT "A"

AMENDMENT TO BUILD AND LEASE AGREEMENT

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

Background

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

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

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

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

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

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

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

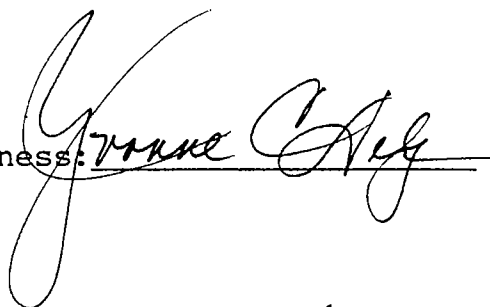
party shall have any further liability or obligation to the other. Notwithstanding the foregoing, in the event LESSOR cancels and terminates this Lease pursuant to this Section 19.26 and subsequently obtains the required financing, LESSOR agrees that it shall not lease any space in the Shopping Center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


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

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

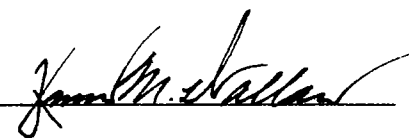
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year set forth above.

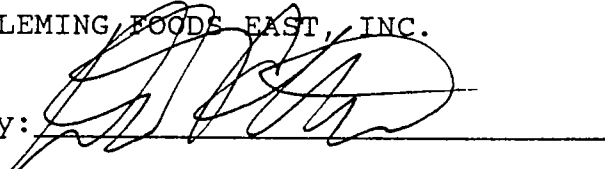
LESSOR:
SACKETT DEVELOPMENT COMPANY
A Pennsylvania limited partnership

Witness: 

By: 
Brian G. McElwee
General Partner

FLEMING FOODS EAST, INC.

Attest: 

By: 

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

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


Yvonne C. Delp

Notary Public

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

STATE OF *Oklahoma* :
 : ss.
COUNTY OF *Oklahoma* :

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


Notary Public
my commission expires: 9-8-94

AFM/dc-092091
Mayfair

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

FINAL EXECUTED COPY

MEMORANDUM OF LEASE

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

WITNESSETH:

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

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

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

1. The name and address of the Lessor is:

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

2. The name and address of the Lessee is:

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

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

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

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

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

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

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

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

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

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

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

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

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

SACKETT DEVELOPMENT COMPANY
A Pennsylvania Limited Partnership

Witness: Kathleen McElwee

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

FLEMING FOODS EAST, INC.

Attest: James Clark
(Corporate Seal)

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

STATE OF Oklahoma :
 : SS
COUNTY OF Oklahoma :

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

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


Notary Public

(SEAL)

My Commission Expires:

September 8, 1994

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

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

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

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

Yvonne C. Delp
Notary Public

My Commission Expires:

LAND DESCRIPTION

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

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

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

EXHIBIT "A"

AFM/kmg-092091
Mayfair2

GUARANTY OF LEASE

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Notices.

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

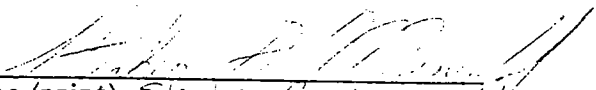
(b) Except as provided in subparagraph (a) hereof, any notice or demand given or made under this Guaranty shall be given or made by mailing the same by certified mail, return receipt requested, postage prepaid, to the party to whom the notice or demand is given or made at the address of such party set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

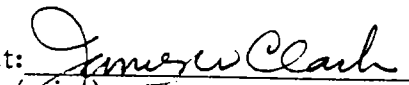
17. Waiver of Subrogation, Etc. Guarantor waives all rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Landlord may have against Tenant, and all rights to participate in any security held by Landlord for the Liabilities, and any defense based upon the impairment of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

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

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

FLEMING COMPANIES, INC.

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

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

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

On this *24th* day of *March*, ¹⁹⁹²1991, before me, a notary public, the undersigned officer, personally appeared *Stephen L. Mangard*, who acknowledged himself to be the *vice president* of FLEMING COMPANIES, INC., an Oklahoma corporation, and that he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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

Renee Lane

Notary Public

My Commission Expires: *September 8, 1994*