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COUNTERPARTS

BUILD AND LEASE AGREEMENT

LESSOR -

BERGER-EPSTEIN ASSOCIATES, INC.

LESSEE -

FLEMING FOODS EAST, INC.

Premises:

Perkasie Square Shopping Center
Perkasie, Pennsylvania

ZEH:jac/121092/Landis-1/171.334

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BUILD AND LEASE AGREEMENT

This Agreement is made and entered into this 22nd day of March, 1993 by and between **BERGER-EPSTEIN ASSOCIATES, INC.**, whose address is 927 Hamilton Mall, Allentown, Pennsylvania 18101, hereinafter called the **LESSOR**, and **FLEMING FOODS EAST, INC.**, a Pennsylvania corporation with an office at Oaks, Pennsylvania, hereinafter called the **LESSEE**.

W I T N E S S E T H :

WHEREAS, the **LESSOR** desires to construct a building (hereinafter called "the premises"), containing approximately 44,200 square feet and constituting a part of the Perkasie Square Shopping Center (hereinafter called the "Shopping Center") which Shopping Center is, or will be, located upon the following described real estate:

> Beginning at a point in the center of Constitution Avenue (LR152) (40 feet wide) said point being a distance of 836.00 feet measured Southwestwardly from the centerline of Spruce Street; thence from said point of beginning along the lands of the Telford Industrial Development Authority South 52 degrees 39 minutes 46 seconds East (and passing over an iron pin found 20.24 feet from the beginning of this line) the distance of 1006.50 feet to a found concrete monument, a corner of lands of Shirley Wenhold; thence along said lands and the lands of various owners South 31 degrees 37 minutes 51 seconds West the distance of 317.85 feet to a found concrete monument, a corner of lands of Ann M. Comiskey and Phillis C. Jordan; thence by lands of Donald M. Werner North 56 degrees 55 minutes 34 seconds West the distance of 235.60 feet to a point, a corner of said lands; thence partly along said lands and the lands of Joel Brenner South 38 degrees 23 minutes 55 seconds West (and passing over a found pipe .078 feet from the beginning of this line) the distance of 816.15 feet to a found P.K. nail in a Hickory tree: thence along the lands of Sellersville Heights North 51 degrees 49 minutes 44 seconds West (passing over a found iron pin on line) the distance of 855.52 feet to a point in the centerline of said Constitution Avenue; thence along said centerline North 42 degrees 10 minutes 43 seconds East the distance of 746.01 feet to a found spike; thence continuing along said centerline North 37 degrees 58 minutes 43 seconds East the distance of 394.03 feet to the first mentioned point and place of beginning.

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CONTAINING 1,011,752 square feet or 23.2266 acres more or less.

ALSO KNOWN AS BUCKS COUNTY UNIFORM PARCEL IDENTIFIER: TAX PARCEL # 33-9-1 AND 33-9-2

Together with an easement for storm drainage over lands now or formerly of John and Teresa Mains being part of Bucks County Uniform Parcel Identifier Tax Parcel No. 39-6-27.

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

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

ARTICLE I. OWNERSHIP.

1.1 **OWNERSHIP**. **LESSOR** does, at the time of the execution of this Lease, hold a valid and binding option upon the land described in Exhibit "A" hereof and has the right and authority to enter into this Lease. The **LESSOR** covenants that prior to the **LESSEE** having to do any work in or ordering equipment for the demised premises it will have good title to the real estate containing the premises and that the **LESSEE**, upon paying the rentals herein reserved and observing, performing and keeping all and singular the covenants and agreements herein specified to be kept and performed by **LESSEE**, shall have the exclusive right to, and lawfully, peacefully, and quietly have, hold, use, occupy, possess and enjoy the premises hereby leased and the non-exclusive right as to the common areas for and during the term hereof, without any hindrance eviction, molestation, or interruption of or by the **LESSOR**, or any person or persons. **LESSOR** covenants that at the commencement of this Lease, no zoning or other ordinance, law, regulation, or restrictive covenant prevents use of the premises as a supermarket without the operation of a pharmacy but with a cafeteria.

1.2 **IMPINGEMENT**. Except as herein provided for, **LESSOR** warrants and guarantees that there are no prior documents of record, nor unrecorded documents within the knowledge of **LESSOR**, which will permit third parties to impinge upon the rights of **LESSEE** under this Lease by use or occupancy of adjacent property, or of the premises, the parking area, or the other common use areas as shown on the plot plan attached to and made a part of this lease as Exhibit "A", except for the non-exclusive use of the common areas by other tenants in the Shopping Center and their employees, agents and invitees. **LESSOR** shall not make any deviations or variations in the construction or use of the plotted area from that shown on said plot plan without the prior written consent of

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LESSEE. **LESSOR** expressly reserves the right to delete, remove, sell off or otherwise extract the areas marked FUTURE DEVELOPMENT on Exhibit "A" from the Shopping Center without approval of **LESSEE** or other liability to **LESSEE** subject to deed restriction specified in Section 17.1 hereof. In so doing, **LESSOR** reserves the right to grant cross access, parking and utility easements for said FUTURE DEVELOPMENT AREAS in accordance with good shopping center practice. **LESSOR** covenants and agrees that no building in the Shopping Center, except for the premises, and except for the bank building, shall be higher than one (1) story in height, (not including the parapets).

ARTICLE II. COMMON AREAS AND CHARGES.

2.1 COMMON AREAS. The premises are located as shown on the plot plan marked Exhibit "A", attached hereto and incorporated herein. **LESSOR** agrees that the use and occupancy by the **LESSEE** of the premises shall include the use in common with others entitled thereto including its customers, suppliers, visitors and invitees, of the common areas, employees' parking areas, service roads, loading facilities, sidewalks, and customers' parking areas, all as shown on Exhibit "A" and all future facilities and common areas designed for common use, subject, however, to the terms and conditions hereinafter set forth; all of such areas and facilities being hereinafter collectively termed "common areas". The **LESSOR** covenants and agrees that it shall maintain the common areas of the Shopping Center in good operating condition and repair (hereinafter called "common area maintenance"), adequately drained and reasonably free from rubbish and debris, any grass mowed, properly landscaped and the **LESSOR** shall promptly stockpile or remove all snow and ice from the sidewalks, parking and driveway areas and cause all remaining surface ice to be treated with sand, salt or similar abrasive. The **LESSOR** shall resurface the sidewalk, parking and driveway areas when the same shall be reasonably necessary together with the restriping of the parking areas. The **LESSOR** shall keep the common areas of the Shopping Center well lighted during such hours of darkness as **LESSEE** shall remain open for business and for a period of one (1) hour thereafter.

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

In the event **LESSEE**, in its sole discretion, desires to remain open for business after eleven o'clock a.m., then **LESSEE** agrees to pay on demand as additional rental an amount which is computed by

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multiplying the number of hours (not exceeding eight hours daily) **LESSEE** remains open after eleven o'clock a.m., times the average hourly wattage of common area parking lot lighting (which **LESSOR** agrees to meter separately) times the lowest utility rate applicable. Provided, should other tenants in the Shopping Center remain open after eleven o'clock a.m., then **LESSEE** shall pay only a prorata amount arrived at by taking into consideration the number of hours such other tenant(s) remain open for business and the square footage of such tenants leased premises. **LESSOR** shall be required to send **LESSEE** a monthly statement setting forth **LESSEE'S** proportionate share of the parking and common area lighting energy expense denoting clearly the computations during normal business hours together with the computation used should **LESSEE** elect to remain open for business after midnight, twelve o'clock a.m., in accordance with the terms and conditions as hereinabove set forth. **LESSEE** agrees to pay such common area extended hour lighting as additional rental under Section 5.1C hereof.

2.3 **COMMON AREA MAINTENANCE COSTS**. During the first year of the lease term, **LESSEE** agrees to pay as additional rent, pursuant to Section 5.1D hereof, up to Thirty Five Thousand Three Hundred Sixty Dollars ($35,360.00) as **LESSEE'S** estimated annual prorata share (determined by the proportion which the number of square feet of floor space in the premises, from time to time, bears to the number of square feet in the proposed Shopping Center as depicted on Exhibit "A" hereof) of the expense of common area maintenance of the Shopping Center shown on Exhibit "A" attached,. **LESSEE'S** prorata share shall be payable monthly in the amount of Two Thousand Nine Hundred Forty Six Dollars and Sixty Nine Cents ($2,946.69) on or before the first day of each month in advance.

During succeeding years of the lease term and renewal terms, the above-described additional rental shall be calculated as hereinafter set forth. Within ninety (90) days after the end of each calendar year, during the original or any renewal term of this Lease, **LESSOR** agrees to furnish to **LESSEE**, if requested by **LESSEE**, a statement itemized in reasonable detail, together with copies of paid receipts, setting forth the total expenses for such common area maintenance charges for such calendar year. If there shall have been any underpayment of **LESSEE'S** prorata share (as hereinabove defined) **LESSEE** shall pay such underpayment with **LESSEE'S** next monthly payment of said expenses, and if there shall have been any overpayment of **LESSEE'S** prorata share, such overpayment shall be credited against **LESSEE'S** next monthly payment of said expenses. At **LESSEE's** request **LESSOR** shall meet with **LESSEE** to review the common area charges. **LESSOR** shall also estimate **LESSEE'S** reasonable prorata share of the expenses for common area maintenance for the succeeding calendar year, and **LESSEE'S** monthly payment of said prorata share shall be adjusted accordingly.

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2.4 **REPLACEMENTS**. Notwithstanding the foregoing, except as hereinafter specifically provided: (i) the cost of Replacements (defined below) to the exterior Common Facilities; and (ii) structural repairs or structural replacements to the exterior Common Facilities shall be excluded from the costs to be shared by **LESSEE** pursuant to this Section. "Replacements" shall mean replacements or repairs of a structural nature.

Notwithstanding the foregoing, reimbursement for the cost and expense of repairs, reconstruction and replacements to the parking areas only of the exterior Common Facilities shall be as follows:

(i) the cost and expense of repairs, reconstruction and replacements to the parking areas, aggregating Twenty Thousand Dollars ($20,000.00) or less during a lease year ("Minor Paving"), shall be included in exterior Common Facilities costs under this Section, in the lease year incurred.

(ii) The cost and expense of repairs, reconstruction and replacements to the parking areas, aggregating more than Twenty Thousand Dollars ($20,000.00) during a lease year, requested by **LESSEE** or consented to by **LESSEE**, which consent shall not be unreasonably withheld ("Major Paving"), shall be included in exterior Common Facilities costs, in the lease year incurred.

(iii) The cost and expense of repairs, reconstruction and replacements to the parking areas, aggregating Twenty Thousand Dollars ($20,000.00) or more during a lease year, which were not requested by **LESSEE** or consented to by **LESSEE** as provided in (ii) above, shall not be included in exterior Common Facilities costs and **LESSEE** shall not be responsible for a share of same.

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

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

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

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

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

Should **LESSOR** fail to perform common area maintenance as herein provided , then, and in that event, **LESSEE** may, at its sole option and in addition to the remedy of specific performance and all other remedies available to **LESSEE** hereunder, undertake to perform said common area maintenance and pursue all remedies available to it under Section 15.2 hereof, including deduction of its costs from those certain items due or to become due **LESSOR** during the term of this Lease or any extension thereof as specified in said Section 15.2, but not the right to cancel and annul this Lease.

ARTICLE III. CONSTRUCTION OF PREMISES.

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

The **LESSOR** agrees that, at the option of the **LESSEE**, this Lease shall become null and void if construction of the Shopping Center, including the premises, is not commenced on or before August 30, 1993, and completed and ready for occupancy on or before June 1, 1994, causes or conditions beyond the control of **LESSOR** only, excepted; provided, however, that if the premises are not completed and ready for occupancy on or before August 30, 1994, irrespective of cause, and irrespective of whether such cause is beyond the control of **LESSOR** and not withstanding the provisions of Article XVIII hereof to the contrary, **LESSEE**, in its sole discretion is hereby granted the option to cancel and terminate this Lease or pursue those additional remedies available to it as hereinafter in this Article provided. In the event that the premises are not completed and ready for occupancy by August 30, 1994, and **LESSEE** cancels and terminates this Lease, **LESSOR** agrees that it shall not lease the premises for a supermarket use for a period of one (1) year after the date of such Lease cancellation. Notwithstanding

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anything contained in this Lease to the contrary, **LESSOR** must notify **LESSEE** in writing at least thirty (30) days in advance that it cannot meet the deadlines contained in this Article but that it will be commencing or completing construction within a specified time. In the event **LESSEE** does not exercise its right of cancellation within said thirty (30) day period then said right shall be waived unless **LESSOR** fails to commence or complete construction within said time frame outlined in its notice, and upon such failure, the **LESSEE'S** right to cancel shall be reinstated.

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

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

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

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LESSOR and **LESSEE** contemplate the construction of a traffic signal at the intersection of the main entrance to the Shopping Center on Constitution Avenue. **LESSOR** has requested the Borough of Perkasie to renew its application for the traffic signal. Prior to the commencement of construction of the Shopping Center, **LESSOR** shall enter into a Development Agreement with the Borough of Perkasie which Development Agreement will provide in part that the **LESSOR** shall escrow funds in an amount to be determined by the Borough of Perkasie for the construction of the traffic signal. **LESSOR** shall exert its best commercial efforts to cause the completion and operation of the traffic signal prior to the **RENT COMMENCEMENT DATE.**

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

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

3.3 **CORRECTION OF LATENT DEFECTS**. **LESSOR** agrees to correct latent defects (a defect which is a departure from plans and specifications not apparent upon ordinary and reasonable inspection) that become apparent after the commencement of this Lease during the first one (1) year of the initial term. In the event that **LESSOR** fails to correct latent defects, **LESSEE** may, at its sole option and in addition to the remedy of specific performance and all other remedies available to **LESSEE** hereunder, undertake to correct such latent defects and pursue all remedies available to it under Section 15.2, including deduction of its

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costs from those certain items due or to become due **LESSOR** during the term of this Lease or any extension thereof as specified in Section 15.2, including cancellation and annulment of this Lease if any latent defect prevents **LESSEE** from conducting its business or results in the loss of any previously issued certificate of occupancy.

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

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

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

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

4.2 **RENT COMMENCEMENT DATE**. The date **LESSEE** shall commence the payment of rent (**RENT COMMENCEMENT DATE**) shall be the earlier of: (a) on the first day the premises are open for business or (b) ninety (90) days after **LESSOR** has delivered to **LESSEE** (i) the premises in a substantially completed condition, except for completion of items prevented or delayed by something the **LESSEE** has failed to do, (ii) written notice that the work to be performed by **LESSOR** has been substantially completed, except for completion of items prevented or delayed by something the **LESSEE** has failed to do, and (iii) a permanent certificate of occupancy (or its equivalent) if the same shall be issuable in accordance with local law or custom, unless issuance of same is prohibited by something the **LESSEE** has failed to do. The lease commencement date (**LEASE COMMENCEMENT DATE**) shall be the first day of the month next succeeding the month during which rent commences and the lease term shall terminate at 11:59 p.m. on the last day of the twenty (20) year term hereafter.

4.3 **LEASE COMMENCEMENT DATE**. The **LEASE COMMENCEMENT DATE** shall be set forth in a notification letter provided by **LESSOR** to

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LESSEE which shall be attached to this Lease setting forth the **LEASE COMMENCEMENT DATE, RENT COMMENCEMENT DATE** and the amount of the accrued rental due **LESSOR** during the period beginning on the **RENT COMMENCEMENT DATE** and ending on the day prior to the **LEASE COMMENCEMENT DATE** hereinafter referred to as "interim rental period."

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

4.4 **HOLDING OVER**. It is agreed that if at the end of the original term of this Lease or any option hereof, **LESSEE**, in its sole discretion shall deem it necessary to remain in occupancy of said premises beyond the termination date of the Lease, **LESSEE** may do so for a period of time up to one hundred twenty (120) days. For any such extension period, the rent will be one and one-half (1.5) times the minimum monthly rent last in effect plus all other items **LESSEE** would be obligated to pay under the terms of the Lease. **LESSEE** shall give **LESSOR** ninety (90) days notice should such extension be necessary.

Except as provided above, if **LESSEE** remains in possession of the premises after the expiration of this Lease, and without the execution of a new lease, it shall be deemed to be occupying the premises as a tenant from month-to-month, subject to all the conditions, provisions, and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

4.5 **FAILURE TO OPEN PREMISES**. It is agreed that **LESSEE** shall not be obligated to open the premises for business and if **LESSEE** elects not to open said premises, it will under no circumstances be liable to **LESSOR** for any obligation for percentage rent under Section 5.1B hereof. In the event **LESSEE** fails to open the premises for business and it remains unopened for a period of ninety (90) days from the date it could have opened pursuant to the terms of this Lease, then upon written notice given to the **LESSEE** by the **LESSOR**, the **LESSOR** may elect to cancel and terminate this Lease. Upon termination and cancellation of this Lease, the parties shall be relieved of any further liability hereunder.

4.6 **RENEWAL OPTIONS AND EXTENSIONS**. Provided **LESSEE** is not in default and this Lease is in full force and effect, and provided further, **LESSEE** is occupying and operating from the premises during the last two (2) years of the initial term of or any Extension Option thereafter, **LESSEE** shall have the right to extend the term of this Lease beyond the initial term for one (1) successive five

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(5) year period and one (1) successive (4) year, eleven (11) month period (the "Extension Options") under all of the terms and conditions as set forth in this Lease. Such right to extend the Term as aforesaid shall be exercised by giving **LESSOR** written notice of **LESSEE'S** election to exercise the appropriate Extension Option no later than one (1) year prior to the expiration of the then current term or then current Extension Option. Failure to timely give such written notice as herein provided, shall result in the automatic termination of the current Term at the expiration thereof as well as the termination of all subsequent Extension Options. For purposes of this Lease, the Minimum Term and any one or more of the Extension Options together shall be referred to as the "Term". It is further agreed that **LESSEE** shall have the right, at its sole option, to extend this Lease for an additional term necessary to permit reconstruction and repair of the premises after its damage or destruction, in accordance with the provisions of Section 13.1 and 13.2 hereof. Further, **LESSEE** shall have the option to extend this Lease for the period necessary to recoup its costs in event of **LESSOR** default as provided in Section 15.2 hereof; provided: any provision in this Lease to the contrary notwithstanding, this Lease shall in no event be extended beyond the original term and renewal options as provided herein for an additional period in excess of the original term hereof.

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

5.1 **RENT**. As rent for the premises, the **LESSEE** agrees to pay to the **LESSOR** at Berger-Epstein Associates, Inc., 927 Hamilton Mall, Allentown, PA 18101, or such other place as is mutually agreed upon, the following amounts:

A. A minimum monthly rental for each year of the term of this Lease, or any renewal thereof, in an amount in accordance with the following schedule:

Years Installments	Minimum Annual Rent	Monthly
1-10	427,850.00 per annum	$35,654.17
11-20	$483,750.00 per annum	$40,312.50
21-25	$556,850.00 per annum	$46,404.17
26-29 plus	$597,700.00 per annum	$49,808.33

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B. In addition to the foregoing minimum rent, **LESSEE** shall also pay to **LESSOR** in accordance with the terms hereof percentage rent. As used herein, percentage rent shall be the sum of

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(a) an amount equal to one percent (1%) of the amount by which Gross Sales for each lease year exceeds the Lower Sales Bases set forth in the following schedule exclusive of Gross Sales in excess of the Upper Sales Bases set forth in the immediately following schedule and

(b) an amount equal to one-half (1/2) of one percent (.5%) of the amount by which Gross Sales for each lease year exceeds the Upper Sales Bases set forth in the immediately following schedule.

Years	Lower Sales Bases	Upper Sales Bases
1-10	$21,000,000.00	$26,000,000.00
11-20	$23,743,800.00	$29,397,000.00
21-25	$27,331,700.00	$33,839,200.00
26-29 plus	$29,336,700.00	$36,321,600.00

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

C. Payment of common area extended hourly lighting as provided in Section 2.2 hereof.

D. Common area maintenance charges, payable monthly as set forth under Section 2.3 hereof.

E. Taxes and assessments against the premises as provided in Section 7.1 hereof.

F. Public Liability and Property Damage Insurance payments as set forth in Article VIII hereof.

G. Fire and Extended Coverage and Rent Abatement Insurance annual payments as provided in Sections 12.1 and 12.2 hereof.

5.2 GROSS SALES. Except as hereinafter in this paragraph provided, the term "gross sales", as used herein, shall include all sales of merchandise from, through or off the premises, and the performance of any service for any customer or patron for compensation by the **LESSEE** or employee, and shall include all sales from every department thereof, for cash or on a charge basis, and

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including all business in which orders come by mail, telephone or telegraph, less credit for returned merchandise, merchandise trade-ins, and credit of a similar nature. "Gross sales" shall not include sales, luxury, excise or other taxes collected by **LESSEE** from customers to be remitted to any governmental agency or unit; merchandise transfers from one of **LESSEE'S** or **SUBLESSEE'S** stores to another; sales of lottery tickets, and proceeds paid to **LESSEE** as a result of the sale of winning lottery tickets; check cashing fees, or fees collected as a result of returned checks; return of merchandise to a supplier; sales at cost to non-profit organizations for charitable purposes not to exceed one percent (1%) of gross sales; or sales such as money orders or other sales and service, including double or triple coupons, which is strictly for the accommodation of **LESSEE'S** customers where charges for said sales and services are for the purpose of reimbursement of **LESSEE'S** costs and expenses and not for the purpose of profit not to exceed one percent (1%) of gross sales. Further excepted are receipts from sales of fixtures that are not a part of **LESSEE'S** stock in trade, receipts from vending, game machines, and automated bank teller machines or similar devices and/or banking facilities which are owned and operated by other than the **LESSEE** where **LESSEE** merely permits said machines or facilities to be operated on the premises; provided, however, that **LESSEE'S** gross receipts shall include any compensation **LESSEE** receives from such owner or operator of said vending, game machines and automated bank teller machines or similar devices and/or banking facilities for permission to use and operate said machines or facilities on the premises.

At the time set forth in Section 5.3 hereof for the payment of percentage rent, **LESSEE** shall deliver to **LESSOR** a statement, certified by an authorized officer of **LESSEE** or **LESSEE'S** sublessee or assignee, of the gross sales for the said lease year. If any percentage rent is due by **LESSEE**, payment of such percentage rent shall accompany said statement. The statements referred to herein shall set forth gross sales in a monthly breakdown and shall detail all deductions and calculations used in preparation of the statement.

LESSOR shall have the right, at any time, but no more than once a year, at **LESSOR'S** expense, to have audits made of the records of sales which occur on the premises. **LESSEE** shall keep books and records in accordance with generally accepted accounting practices. Books and records shall be kept at the premises or at some other reasonably accessible place in Bucks or Montgomery Counties.

LESSOR'S right to examine the books and records pertaining to the operation of a business on the premises, or to make an audit thereof in respect to any lease year, shall be limited to the then current lease year, plus the year immediately preceding. **LESSEE'S** statements for other prior lease periods shall be deemed to have

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been accepted by **LESSOR** and be incontestible. If said audit discloses an inaccuracy of greater than two percent (2%) error with respect to the amount of the gross sales reported by **LESSEE** for the period of said statement, then **LESSEE** shall immediately pay to **LESSOR** the cost of such reasonable audit; otherwise the cost of each audit shall be paid by **LESSOR**.

5.3 **TIME FOR PAYMENT**. From and after the **LEASE COMMENCEMENT DATE** as defined in Section 4.3 hereof, minimum monthly rent for each calendar month shall run from the first day of the month to the last day of said month, and shall be paid on or before the first day of each month in advance. In the event that the **RENT COMMENCEMENT DATE** as defined in Section 4.2 hereunder is a day other than said **LEASE COMMENCEMENT DATE**, then rental for the intervening period shall be computed and paid as set forth in Section 4.3.

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

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

5.4 **LATE FEES**. **LESSEE** hereby acknowledges that late payment by **LESSEE** to **LESSOR** of rent and other sums due hereunder will cause **LESSOR** to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on **LESSOR** by the terms of any mortgage or Deed of Trust, covering the premises. Accordingly, if any installment of rent or any other sum due from **LESSEE** shall not be received by **LESSOR** or **LESSOR'S** designee within ten (10) days after written notice that such amount is due and if the payment of rent has been late twice before during any lease year then **LESSEE** shall pay to **LESSOR** a late charge equal to the then prevailing prime interest rate of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs **LESSOR** will incur by reason of late payment by **LESSEE**. Acceptance of such late charge by **LESSOR** shall in no event constitute a waiver of **LESSEE'S** default with respect to such overdue amount, nor prevent **LESSOR** from exercising any of the other rights and remedies granted hereunder.

ARTICLE VI. LESSOR MORTGAGE.

6.1 **LESSOR MORTGAGE**. All mortgage payments or other payments required to discharge any lien or encumbrance that may affect the

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premises, and for which the **LESSOR** is solely responsible, and which is superior and prior to the terms of this Lease, and the rights of **LESSEE** hereunder, shall be paid by the **LESSOR** as the same shall become due.

ARTICLE VII. TAXES AND ASSESSMENTS.

7.1 **TAXES AND ASSESSMENTS.** As additional rental, the **LESSEE** agrees to pay to the **LESSOR**, on demand, the amount of all taxes and assessments levied and assessed against the premises (exclusive of any realty transfer taxes which may be imposed pursuant to Section 19.23 herein but not excluding a tax on use, occupancy, possession or rental levied against the Shopping Center) and of **LESSEE'S** prorata share (determined as hereinafter provided) of the taxes and assessments levied against the parking and common areas, as shown on Exhibit "A", of the Shopping Center, (exclusive of any inheritance, sales, use, franchise, gift, excise or profit taxes) that shall become due and payable during the original or any renewed term hereof. If the Shopping Center is taxed as a unit, the **LESSEE** shall be liable for only such prorata share of such taxes and assessments determined by the proportion that the number of square feet of floor space in the premises bears to the total number of square feet of floor space in the Shopping Center. Such taxes and assessments must be billed by **LESSOR** to **LESSEE** no later than one hundred eighty (180) days after receipt of notice by **LESSOR** from the local taxing authority. If such copy of the tax bill is not received by **LESSEE** within one hundred eighty (180) days after receipt of same by **LESSOR**, **LESSEE'S** obligation to pay such taxes and assessments will be considered to be null and void. **LESSOR** shall be required to send **LESSEE** receipted tax bills showing payment of taxes, as well as all special assessments, within thirty (30) days after written request by **LESSEE**. Provided, however, that for any partial tax year occurring during the original or any renewed term hereof, the **LESSEE** shall be liable for only that proportion of such taxes and assessments as the number of days in such partial tax year bears to 365.

LESSEE shall not be liable for any interest, penalty or late charges payable by **LESSOR** with respect to any taxes and assessments, and if a discount of any taxes and assessments is available by prompt payment, **LESSEE'S** pro rata share thereof shall be based on such discounted amount, regardless of whether prompt payment is made by **LESSOR**.

Any taxes and assessments levied and assessed against the premises or Shopping Center that shall become due and payable during the term or any renewal thereof which **LESSEE** has agreed to pay, may be contested by **LESSEE** provided **LESSOR**, following written request by **LESSEE**, has chosen not to contest said taxes and assessments. **LESSEE** shall contest said taxes and assessments in appropriate proceedings, in **LESSOR'S** or **LESSEE'S** name and **LESSOR**

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will offer no objections, will cooperate with **LESSEE**, will provide any non-confidential information requested by **LESSEE**, and will execute any document which may be reasonably necessary and proper for such proceedings. Any refund shall be the property of **LESSEE** to the extent it is based upon the payment of any such taxes or assessments made by **LESSEE** and either party shall also receive reimbursement of its reasonable costs incurred in prosecuting such appeal, including reasonable attorneys fees. In the event **LESSOR** shall contest any taxes or assessments, **LESSEE** shall be immediately notified in writing.

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

In the event during the term of this Lease or any extension thereof, an assessment is placed upon the premises or Shopping Center by any taxing authority of competent jurisdiction and such assessment be payable only in lump sum, then and in that event **LESSEE** shall be liable only for payment of a proportionate share of such assessment in the proportion that the number of years remaining in the original term and/or any renewal options then remaining available to **LESSEE** hereunder bears to the useful life of the improvement against which the assessment is made; said useful life being determined by agreement of the parties or in absence of agreement, by arbitration under the procedures set forth in Section 14 hereof.

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

ARTICLE VIII. LIABILITY INSURANCE AND HOLD HARMLESS.

8.1 **LESSEE'S RESPONSIBILITY**. **LESSEE** agrees to maintain, at its own expense, during the full term of this Lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the State of Pennsylvania in which policy **LESSOR** shall be named as an additional named insured,

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and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to **LESSOR**. Such policy shall provide primary coverage for the benefit of **LESSOR** and **LESSEE** in an amount of $3,000,000.00 single limit combined bodily injury and property damage each occurrence, to cover all situations where any person or persons claim bodily injury, death or property damage in or upon said premises.

8.2 **LESSOR'S RESPONSIBILITY**. **LESSOR** covenants and agrees to maintain, during the full term of this Lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the State of Pennsylvania, in which policy **LESSEE** shall be named as an additional named insured insuring against liability (including injury or property damage) arising on or about the common areas of said Shopping Center as defined in Section 2.1 hereof, including, but not limited to all common use and parking areas of said Shopping Center and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to **LESSEE**. Such policy shall provide primary coverage for the benefit of **LESSEE** and **LESSOR** in an amount of $3,000,000.00 single limit combined bodily injury and property damage each occurrence to cover all situations where any person or persons claim personal injury, death, or property damage on or about said common areas.

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

8.4 **LESSOR HOLD HARMLESS**. The **LESSOR** agrees to protect and save the **LESSEE** harmless from any and all claims of others for injuries to persons or property occurring on or about said common areas, including reasonable attorney's fees, except such claims for

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injuries which are caused in any proportion by the negligent, intentional, or willful acts of the **LESSEE**, its agents or employees.

8.5 **LESSEE HOLD HARMLESS**. The **LESSEE** agrees to protect and save the **LESSOR** harmless from any and all claims of others for injuries to persons or property occurring in or upon the premises as defined on page one (1) hereof, including reasonable attorney's fees, except for such claims for injuries as are caused in any proportion by the negligent, intentional or willful acts of the **LESSOR**, its agents or employees.

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

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

ARTICLE IX. WAIVER OF LIABILITY.

9.1 **WAIVER OF LIABILITY**. **LESSEE** hereby waives any cause of action which **LESSEE** or anyone claiming by, through or under **LESSEE**, by subrogation or otherwise, might now or hereafter have against **LESSOR**, or any other tenant in the Shopping Center of which the premises are a part, based on any loss, damage or injury which is insured against under any insurance policy which names **LESSEE** as insured or which would be insured against under any insurance policy which this Lease requires **LESSEE** to carry. **LESSOR** hereby waives any cause of action which **LESSOR** or anyone claiming by, through, or under **LESSOR**, by subrogation or otherwise, might now or hereafter have against **LESSEE** based on any loss, damage or injury which is insured against under any insurance policy which names **LESSOR** as insured or which would have been insured against under any insurance policy which this Lease requires **LESSOR** to carry. All policies of insurance written to insure all buildings, parking and common areas, service and delivery areas, improvements, contents, and all other such property (real or personal) shall contain a proper provision, by endorsement or otherwise, whereby the insurance carrier issuing the same shall (i) acknowledge that the insured has waived and released its right of recovery pursuant to this paragraph and (ii) waive the right of subrogation which such carrier might otherwise have had, all without impairment or

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invalidation of such insurance. The provisions of this paragraph shall be equally binding upon and inure to the benefit of any assignee or sublessee of **LESSEE** and to any assignee of **LESSOR**.

ARTICLE X. MAINTENANCE, CAPITAL IMPROVEMENTS AND WASTE.

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

10.2 **CAPITAL IMPROVEMENTS**. **LESSEE** shall have the right to make capital improvements to the premises as in this Lease provided, but shall have no obligation to make capital improvements either to the premises or Shopping Center except as hereinafter set forth. (For purposes of this Lease, the term "capital improvement" shall mean a value-adding addition or modification in excess of ordinary repairs and maintenance.)

In the event **LESSEE** shall be required by competent governmental authority to make capital improvements to the premises during the term of this Lease or any extension thereof, it shall proceed to do so forthwith.

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

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by arbitration under the procedures set forth in Article XIV hereof.

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

ARTICLE XI. SIGNS.

11.1 **SIGNS.** **LESSOR** shall have the sole right to approve the design and placement of any and all signs of any nature upon the exterior premises; provided that the size and advertising effect of any sign to be used by the **LESSEE** shall be substantially equal to any sign permitted to be used by other tenants in the Shopping Center and permitted by local law. **LESSEE** shall, at its own risk and expense, erect said sign and maintain the sign in a good state of repair. **LESSEE** hereby agrees to indemnify **LESSOR** against and save **LESSOR** harmless from any loss, cost or damage resulting from the erection, maintenance, existence or removal of such sign. Upon vacating the premises, **LESSEE** agrees, at its sole expense, to remove all signs and repair any and all damage caused by such removal, within thirty (30) days of vacating the premises. If permitted by local authorities, **LESSOR** shall also construct and maintain during the term of this Lease a sign, to be approved by the **LESSEE**, identifying the Shopping Center and **LESSEE** shall have the right to place on such sign identifying the Shopping Center its sign, which shall be of at least the same size and advertising effect as any sign placed on such sign identifying the Shopping Center by any other tenant in the Shopping Center. **LESSOR** covenants and agrees that neither it nor any other tenant in the Shopping Center shall construct a sign so as to impair the visibility of or access to the premises. All signs constructed or placed on said premises shall be in conformity with the specifications hereto attached as Exhibit "B".

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

12.1 **FIRE AND EXTENDED COVERAGE INSURANCE.** The **LESSOR** agrees to keep in effect, during the original or any renewed term of this Lease, a policy of fire, extended coverage, vandalism and malicious mischief and burglary insurance to cover damage to the building or the premises, written by a responsible insurance company authorized to do business within the state where the premises are located, for

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an amount equal to the full replacement cost of the premises. Such policy of insurance shall provide protection against the losses so insured against for the benefit of the **LESSOR**, **LESSEE**, and any mortgagee as their interests may appear under the terms of this Lease and any mortgage agreement, providing that such insurance shall not be cancelled except after thirty (30) days' notice to **LESSEE** and any mortgagee and shall contain the provision of endorsement required by Section 9.1 hereof. The **LESSOR** agrees to name the **LESSEE** and any mortgagee as additional named insureds and to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be cancelled except after thirty (30) days' written notice to **LESSEE** and mortgagee.

LESSEE agrees to remit to **LESSOR**, on an annual basis within thirty (30) days after being billed therefor, its pro rata share of the annual premium for insurance covering the premises for said policy(s) as hereinabove provided, subject to **LESSEE'S** right to obtain a like insurance coverage policy(s) covering the premises from a company authorized to transact business in the State of Pennsylvania, and of comparable quality and credit-worthiness as **LESSOR'S** insurance company, which company shall be reasonably acceptable to **LESSOR'S** mortgagee, should **LESSEE** be able to secure such policy(s) on the premises at a lower rate for like coverage. The premiums for such coverage shall not be based on **LESSEE'S** blanket insurance coverage. In the event **LESSEE** is able to obtain like insurance policy(s) covering the premises at a lower rate, **LESSEE** shall provide to **LESSOR** reasonable data supporting the availability of such like insurance policy(s) at a lower rate; whereupon receipt of such data, **LESSOR** shall have the option, exercisable in its sole discretion and within thirty (30) days after receipt of such data, to cancel its insurance policy(s) covering the premises and obtain **LESSEE'S** policy(s). Should **LESSOR** elect not to cancel its insurance policy(s) and obtain **LESSEE'S** policy(s), as aforesaid, **LESSOR** agrees to deduct, from amounts due from **LESSEE** in payment of **LESSOR'S** insurance policy(s) covering the premises and within said thirty (30) days, the difference between the premium paid or charged by **LESSOR** for its insurance policy(s) covering the premises and that which would have been paid by **LESSEE** for **LESSEE'S** policy(s) covering the premises.

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

Should the building covered by this Lease at the time of construction be rated deficient by the Insurance Service Organization, or any other rating bureau having jurisdiction, then

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

LESSOR agrees it shall not, and will use its best commercial efforts not to allow any other tenant(s) in the Shopping Center, to keep anything within their leased premises or on the Shopping Center, or use their leased premises or the Shopping Center for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the premises by **LESSEE**, such other tenant(s) or other parts of the Shopping Center. **LESSEE** agrees it shall not keep anything within its leased premises or on the Shopping Center for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy carried on the premises by **LESSOR**, such other tenant(s) or other parts of the Shopping Center.

12.2 **RENTAL ABATEMENT INSURANCE**. **LESSOR** agrees to provide rental abatement insurance, in an amount not to exceed one (1) year's annual minimum rental, as set forth under Section 5.1A hereof, in the event of damage or destruction of the premises. The proceeds of such policy to be payable monthly to the **LESSEE**, **LESSOR** or mortgagee, as their interest may appear in this Lease, in proportion to the extent of damage and destruction of the premises

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and during the period of reconstruction and repair of said premises which shall not exceed one (1) year from the date of occurrence. **LESSEE** agrees to remit to **LESSOR**, on an annual basis within thirty (30) days after being billed therefor, the annual premium for such insurance.

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

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

ARTICLE XIII. DAMAGE AND DESTRUCTION.

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

13.2 **TOTAL DAMAGE AND DESTRUCTION**. If, at any time during the original or any renewed term hereof, the premises shall be partially or wholly damaged by such insured casualty, and the extent of such damage shall be sufficient to deprive **LESSEE** of more than twenty-five percent (25%) of the floor space therein for its purpose, the **LESSEE** shall notify **LESSOR** thereof in writing and the rights and obligations of the parties shall be governed by the following:

A. If such damage shall occur during the first thirteen (13) years of the original term hereof, then at its expense, the **LESSOR** shall proceed to rebuild and repair such damage from the proceeds of insurance, and this Lease shall continue in full force and effect.

B. If such damage shall occur during the last seven (7) years of the original term hereof, or during any of the renewal terms available to **LESSEE** at its option under Section 4.6, and if within thirty (30) days after the occurrence of such damage, **LESSEE**

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

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

Whenever, under the foregoing provisions of this Article XIII, **LESSOR** shall have the obligation to rebuild and repair all or any portion of the premises or other building or buildings so to continue this Lease in full force and effect, the same shall be commenced within thirty (30) days after **LESSOR'S** obligation so to do becomes fixed by receipt of notice of such damage, or receipt of notice of **LESSEE'S** intent to exercise the necessary option to renew, or the exercise of **LESSOR'S** election to rebuild, as the case may be.

LESSOR shall prosecute such rebuilding and repairing diligently to the end that the premises, other building or buildings will be restored to substantially the same condition as

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Provided, however, in the event the premises or any part thereof are condemned as being unsafe or not in conformity with the applicable laws and regulations due to the defective condition or use of supplies, materials, and/or equipment owned or used by **LESSEE**, or due to a defective condition of common facilities or any part of the premises which **LESSEE** is required to maintain as herein provided, then, and in that event, **LESSEE**, at its own cost and expense up to but not to exceed the condemnation award so granted, if any, agrees to make such changes, alterations and repairs (structural or nonstructural) in the building and equipment or the use of the same as may be necessary to comply with such laws and regulations, or with the requirements of the authority, but **LESSEE** shall be entitled to any condemnation award made to **LESSOR** in respect thereto. If, during the time such changes, alterations, and/or repairs are being performed to the Shopping Center or to the premises, the premises are rendered untenantable for occupancy and use by **LESSEE**, the rent shall abate in proportion to the **LESSEE'S** deprivation of the use of the premises.

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

14.2 CONDEMNATION.

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

(B). If such part of the premises, including parking, entrances and exits, is so taken that same does not cause the termination of this Lease under subsection (A) of this Section 14.2, **LESSOR** (subject to the terms of subsection (C) of this Section 14.2) shall restore the building and other improvements upon the premises to a condition and to a size as nearly comparable

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as reasonably possible to the condition and size thereof immediately prior to the taking, and there shall be an equitable abatement of the minimum rent only according to the square footage of the floor area before and after the taking. In the event that the parties are unable to agree upon whether the remaining part of the premises, including parking, entrances and exits, is suitable for the economic operation of **LESSEE'S** business or in the event that the parties are unable to agree upon the amount of any such abatement of minimum rent, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction. Any such taking of parking outside of the Restricted Area, as designated on Exhibit "A" attached hereto, shall not give rise to an abatement of rents.

(C). **LESSEE** shall have the right to make a claim against the condemnor for the removal expenses, business dislocation damages, moving expenses and shall be entitled to any other claims or awards which are separately payable to **LESSEE** under the Eminent Domain Code or other condemnation statutes of Pennsylvania. If only part of the premises is taken and this Lease is not terminated pursuant to subsection (A) of this Section 14.2, the net proceeds of any condemnation award recovered by reason of any taking of the premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then current market value of the land taken (such excess being hereunder called the "net condemnation proceeds") shall be held in trust by **LESSOR** or any mortgagee of the premises and released for the purpose of paying the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking. In the event that the parties are unable to agree upon the portion of the award attributable to the then current market value of the land taken or in the event that the parties are unable to agree upon the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

If such taking does not prevent the practical use of the premises for the purposes of the **LESSEE**, then this Lease shall continue in full force and effect, but the rent shall abate proportionately, and such other adjustments shall be made as shall be just and equitable. Notwithstanding the foregoing, any such taking of parking outside of the Restricted Area, as designated on Exhibit "A" attached hereto, shall not give rise to an abatement of rent.

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ARTICLE XV. DEFAULT.

15.1 LESSEE DEFAULT. **LESSEE** further covenants with the **LESSOR** that if the **LESSEE** defaults by not paying the rent or any part thereof when it becomes due, and has not cured said default by making the required rental payment within ten (10) days of the receipt of written notice of said nonpayment, or in the event of default by **LESSEE** in violating or neglecting any other covenant, agreement or stipulation therein contained on **LESSEE'S** part to be kept, performed or observed, and any such default shall continue for thirty (30) days after receipt of written notice specifying such default or if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and **LESSEE** has not proceeded with reasonable diligence and good faith to complete the curing thereof, then, and in addition to the other remedies or courses of action now or hereafter provided by law, **LESSOR** may, at its option, (1) terminate, forfeit, cancel and annul this Lease, in which case neither **LESSOR** nor **LESSEE** shall have any further rights or obligations under this Lease as of the date of termination, forfeiture, cancellation and annulment except with respect to those amounts that **LESSEE** was obligated to pay to **LESSOR** prior to the date of termination forfeiture, cancellation and annulment; or (2) terminate **LESSEE'S** possessory rights, without terminating the term of this Lease, in which case **LESSOR** shall have the rights hereinafter set forth. **LESSOR** shall give written notice to **LESSEE** of **LESSOR'S** election.

If **LESSOR** elects to terminate **LESSEE'S** possessory rights, without terminating the term of this Lease, **LESSOR** shall have the right, after appropriate judicial hearing and process or with **LESSEE'S** consent, to enter and take possession of the premises immediately and may remove all persons, furniture, fixtures and equipment from the premises, at **LESSEE'S** sole expense, in order to recover at once, full and exclusive possession of the premises, and such entry shall not operate as a waiver or satisfaction, in full or in part, of any claim or demand arising out of or connected with, any breach, default, or violation by the **LESSEE** of any covenant or agreement on its part to be performed; provided that notwithstanding any of the foregoing **LESSOR** shall not have the right to repossess the premises in the event of a bona fide dispute as to the **LESSEE'S** liability, if any, to make repairs, except after such liability has been finally judicially determined, and so long as **LESSEE** continues to pay minimum rent as hereinabove provided in Section 5.1.A.

Should **LESSOR** elect to terminate **LESSEE'S** possessory rights, without terminating the term of this Lease, as hereinabove provided, **LESSOR** shall relet the premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as **LESSOR** may reasonably deem advisable. For the purpose of such reletting, **LESSOR** shall have the right to

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make reasonable alterations and repairs to the premises, and such releting shall not work a forfeiture of the rent to be paid by **LESSEE**; provided, that rentals received by **LESSOR** from any such releting shall be applied first, to the payment of any indebtedness other than rent due hereunder from **LESSEE** to **LESSOR**; second, to the payment of rent then due and unpaid hereunder; third, to the payment of any cost of such releting; fourth, to the payment of any alterations and repairs to the premises and the residue, if any, shall be held by **LESSOR** and applied in payment of future rent as the same may become due and payable hereunder, and if no future rent becomes due and payable hereunder, such residue shall be retained by **LESSOR**. Should such rentals received from such releting by **LESSOR** during any month be less than the minimum rental agreed to be paid hereunder during that month by **LESSEE**, then **LESSEE** shall upon receipt from **LESSOR** specifying the amount, pay the difference to **LESSOR**. Such difference shall be calculated and paid monthly.

No such termination of **LESSEE'S** possessory rights, without terminating the Lease term, shall be construed as an election on the part of **LESSOR** to terminate this Lease unless a written notice of such intention be given to **LESSEE** or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such releting without termination, **LESSOR** may at any time thereafter elect to terminate this Lease for such previous default, unless **LESSOR** has allowed **LESSEE** or **LESSEE'S** sublessee to reenter and relet the premises.

All rights and remedies of **LESSOR** herein created or otherwise existing at law or in equity are cumulative and may be exercised concurrently, whenever and as often as deemed desirable, and the exercise of one shall not be taken to exclude or waive the right to the exercise of any other.

The failure of **LESSOR** to insist upon strict performance by **LESSEE** of any of the covenants, conditions and agreements of this Lease or upon strict compliance by **LESSEE** shall not be deemed a waiver of any of **LESSOR'S** rights or remedies concerning any subsequent or continuing breach or default by **LESSEE** or any of the covenants, conditions and agreement of this Lease or any rule or regulation. No acceptance of full or partial rent or any other sum during the continuance of any non-monetary default shall constitute a waiver of any such default. No surrender of the Premises shall be effected by **LESSOR'S** acceptance of rental or by any other means whatsoever unless the same be evidenced by **LESSOR'S** written acceptance of such a surrender.

15.2 LESSOR DEFAULT. The **LESSOR** and any mortgagee covenant with the **LESSEE** that if **LESSOR** shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue

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for thirty (30) days after written notice thereof is given by **LESSEE** to **LESSOR**, specifying such default, except in the event of emergency when no such written notice shall be required, (provided, however, if such failure is incapable of being cured with diligence within such thirty (30) day period, and if **LESSOR** proceeds diligently to cure the same and thereafter prosecutes such curing with diligence to completion, then upon receipt by **LESSEE** of notice from **LESSOR** stating the reason such failure cannot be cured within said thirty (30) days, the time period for such curing shall be extended for such period as may be reasonably necessary to complete the curing) then, and in addition to the remedy of specific performance and other remedies and causes of action now or hereafter provided by law or in equity, **LESSEE** may, at its option, among other things, cancel and annul this Lease (if otherwise provided for herein as to certain defaults), or remedy the condition or need referred to in such notice, or make the payment which **LESSOR** has not made, but should have made, and deduct **LESSEE'S** actual cost or the amount of the payment together with interest at the then prevailing prime interest rate from subsequent payments of rental due **LESSOR** under this Lease. **LESSEE** shall have the right to withhold payment of rental in whole or in part until all of **LESSEE'S** costs attributable to such default together with all accrued interest have been fully recovered and **LESSEE** shall have the right to extend this Lease subject to the limitation for extension set forth in Section 4.6 hereof, for the period of time necessary to allow **LESSEE** to fully recoup the total amount of its costs and all accrued interest through such withholding, which costs are hereby agreed by the parties in advance to be reasonable and proper costs and deductions.

ARTICLE XVI. LESSOR'S ADDITIONAL COVENANTS.

16.1 PARKING AREA.

LESSOR agrees that at no time during the term of this Lease will the customer parking area, as shown as the Restricted Area, or the entrances and exits of the shopping area of the Shopping Center be reduced in size or significantly altered in configuration from that shown on the plot plan attached as Exhibit "A" unless such reduction is made necessary by the exercise of eminent domain by proper and duly constituted authority or authorities or is done only after **LESSOR** has obtained the prior written consent of **LESSEE**. The foregoing shall not restrict **LESSOR'S** ability to expand buildings to the rear or to the front (but not by more than fifty (50) feet to the front) nor shall **LESSOR** be restricted from erecting directional signs, moving or adding lighting or renovating the storefronts and canopies. This provision shall not be construed to restrict **LESSOR'S** ability to repair or maintain the common areas or comply with orders of governmental authorities. Any violation of this provision shall entitle the **LESSEE**, at **LESSEE'S** sole option, to treat such violation as a default with an

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option to cancel the Lease, or to require a proportionate reduction of rent, with full reservation of **LESSEE'S** right to damages (if any) and to equitable relief, including specific performance, together with a full reservation of any other right or remedy available to **LESSEE** at law or in equity.

16.2 **SHOPPING CENTER OCCUPANCY.** **LESSOR** further covenants that it will, simultaneously with the construction of the premises, construct other buildings in the Shopping Center of the size and to be, simultaneously with or previous to **LESSEE'S** occupancy under this Lease, occupied by the retail tenants indicated as follows:

Name of Tenant	Store Square Footage
	20,000 square feet

If **LESSOR** shall fail to so construct such other buildings, then at the sole option of the **LESSEE**, this Build and Lease Agreement may be declared null and void or **LESSEE** may be entitled to either pay percentage rental or the minimum fixed monthly rental, whichever is less, until the retail space is constructed as hereinabove set forth within this Article 16. **LESSOR** agrees, on the real estate of which the premises are a part, that the **LESSOR** now controls or on contiguous or adjacent real estate the **LESSOR** may at some later date control, that so long as **LESSEE** is operating a supermarket in the premises there will not be located on such real estate, a theatre, bowling alley, restaurant (in excess of 3,000 square feet), skating rink, offices (in excess of 2,000 square feet), training, educational, physical fitness or exercise facilities within two hundred (200) feet of the premises.

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

17.1 **EXCLUSIVE.** During the term of this Lease, and any renewal hereof, and so long as **LESSEE** is operating a supermarket, the **LESSOR** shall not rent, lease or give occupancy of any other property within the Shopping Center now or hereafter owned or controlled by or leased to it for use as a retail grocery, meat market, fish market, produce market, takeout delicatessen (takeout delicatessen as part of a sit down restaurant shall not be a violation of this clause), or bakery (not including a pizza, pretzel, doughnut or bagel shop). The provisions of this Section 17.1 shall be a covenant which shall run with the land, and shall continue to control any portion of the Shopping Center disposed of by the **LESSOR** and the assignee or transferee shall be bound by the provisions of this Section 17.1 and shall be deemed to have received notice thereof.

17.2 **USE OF PREMISES AND RIGHT TO CLOSE STORE.** **LESSOR** agrees that nothing in this Lease shall be construed as compelling **LESSEE**

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to operate any particular type of business or to keep the store in or upon the premises open for business and **LESSEE** shall have the privilege of operating the premises for any lawful retail purpose so long as said activity does not violate any ordinance, law, regulations, or restrictive covenant then in force and effect or violate any exclusive retail activity entitlement previously granted to any other tenant occupying space in said Shopping Center.

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

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

Notwithstanding anything to the contrary set forth in this Lease, **LESSEE** shall have the right to sublet or license a part of the premises for use as a bakery, bank or floral department.

17.4 **LESSOR RIGHTS AS TO LESSEE'S RIGHTS TO CLOSE, ASSIGNMENT AND SUBLETTING**. Notwithstanding anything to the contrary contained herein (i) should **LESSEE** opt to close the premises, it shall give the **LESSOR** ninety (90) days written notice and the **LESSOR** may, at any time thereafter, at its sole option, and following thirty (30) days written notice to **LESSEE**, terminate this Lease and take possession of the premises or (ii) should **LESSEE** desire to use, assign or sublet more than twenty percent (20%) of said premises for use other than a supermarket, it shall give the **LESSOR** one hundred eighty (180) days written notice and the **LESSOR** may within said notice period, at its sole option, and following thirty (30) days written notice, terminate this Lease and take possession of the premises. Upon such termination, all obligations and rights of the parties shall cease.

ARTICLE XVIII. FORCE MAJEURE.

18.1 **FORCE MAJEURE**. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations,

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hereto, creates a relationship other than the relationship of **LESSOR** and **LESSEE**.

19.5 **UTILITIES**. From and after the date upon which the premises are substantially complete, ready for fixturing and stocking and **LESSEE'S** refrigeration equipment is first turned on for the storage of goods but no later than two (2) weeks prior to the opening of the Demised Premises for business to the public, **LESSEE** agrees to pay all electric current, water, gas, and other fuel bills, as determined by separate meters for **LESSEE'S** space and use. **LESSOR**, at its sole expense, will provide any and all utility meters, utility hook-up or connection fees or charges for all utilities to the premises. **LESSEE** shall purchase such utilities directly from the utility company supplying such service at the then current rate charged by the utility company to its direct customers.

LESSOR shall not be liable to **LESSEE** for any damages, should the furnishing of any utilities by **LESSOR** be interrupted or required to be terminated because of necessary repairs or improvements or any cause beyond the reasonable control of **LESSOR**. Nor shall any such interruption or cessation be deemed an eviction or disturbance of **LESSEE'S** use or possession of the premises or any part thereof or relieve **LESSEE** from the performance of any **LESSEE'S** covenants, conditions and agreements under this Lease.

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

19.7 **ALTERATIONS OR ADDITIONS**. The **LESSEE** shall have the right to make alterations or additions to the premises, provided such alterations or additions are at its sole cost and expense, and that such alterations or additions shall be of good workmanship and material at least equal to that of the original construction, and that such alterations or additions neither shall reduce the size and strength of the existing building, nor adversely affect the market value of the premises; provided, however, that no such alterations or additions to the premises which shall cost more than One Hundred Thousand Dollars ($100,000.00) shall be made by the **LESSEE** without the written consent of the **LESSOR**. The **LESSEE** shall not be required to remove any such alterations or additions or to

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restore the building to its original condition at the termination of this Lease.

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

19.9 **ADDITIONAL LEASE SPACE**. Except as shown on the enclosed plot plan as Shops "A" or Shops "A" Expansion Area, **LESSOR** will not build any buildings in the area shown as Possible Supermarket Expansion on Exhibit "A: during the term of this Lease without first offering such space to **LESSEE**. Upon request by **LESSEE** to expand the premises, **LESSOR** will negotiate with **LESSEE** in good faith for the expansion of the premises on mutually acceptable terms. In the event that any buildings in the Possible Supermarket Future Expansion Area are leased to third parties, then upon such request for expansion by **LESSEE LESSOR** shall advise as to the expiration date of any such leases and offer such space to **LESSEE** on terms which are comparable to small shop rents which are then current in the Shopping Center upon the expiration of such leases. The existing small shop rents for the desired space shall be evidence of comparable rents but shall not be conclusive. If **LESSEE** fails to execute leases on such small shop space within sixty (60) days from such notice, the **LESSOR** may proceed to lease such space to third parties. Nothing herein shall be construed to guarantee that then current zoning ordinances or good building or good design practices will permit any such expansion. **LESSOR** shall not be required to remove the service drive around the rear of the Shopping Center. Nothing contained herein shall require **LESSOR** to hold space vacant or unleased for **LESSEE** while awaiting other space to become available.

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

19.11 **NOTICES**. Any notice required or desired to be given to either party shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier, such as Federal Express, or other comparable

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delivery service that provides proof of delivery. Any such notice to the **LESSOR** shall be addressed to it at Berger-Epstein Associates, Inc., 927 Hamilton Mall, Allentown, Pennsylvania 18101, Attention: William M. Berger or Jeff A. Epstein. Any such notice to **LESSEE** shall be addressed to it at Egypt and Greentree Roads, P.O. Box 935, Oaks, Pennsylvania 19456, Attention: Store Development, with a copy to **LESSEE** addressed to 6301 Waterford Boulevard, P.O. Box 26647, Oklahoma City, Oklahoma 73126, Attention: Store Development. The address of either party may be changed by written notice thereof to the other party.

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

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

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

When the performance of the **LESSOR'S** work has proceeded to the point where **LESSEE** can commence any portion of its work and the installation of **LESSEE'S** trade fixtures, furniture and equipment in the premises, in accordance with good construction practice together with adequate security of the premises, **LESSOR** shall notify **LESSEE** to that effect. **LESSEE** agrees to install its trade fixtures and equipment in the premises in a prompt and expeditious manner so as not to delay **LESSOR** in readying the premises for occupancy at the earliest possible date referred to hereinabove. **LESSEE** further agrees not to engage any persons in the installation of such fixtures and equipment which would result in a work stoppage by employees of the general contractor or any subcontractor engaged in readying the premises for occupancy. **LESSEE** shall assume all risk of damage or loss to any of **LESSEE'S** items brought onto the premises prior to completion of construction of the building by **LESSOR.**

19.14 SUBORDINATION. LESSEE agrees that this Lease shall be subordinate to any mortgage that may hereafter be placed upon the premises and to all renewals and extensions thereof to which **LESSEE**

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has given its written consent to be subordinate; provided that (a) the mortgagee named in such mortgages shall agree to recognize this Lease in the event of foreclosure if the **LESSEE** is not then in default, (b) in the event that premises are damaged or destroyed at a time when neither **LESSOR** nor **LESSEE** are in default under the terms of this Lease, and **LESSOR** is not in default under the terms of any such mortgages, any insurance proceeds that are available under the insurance policy(s) hereinabove required to be maintained under Section 12.1 are first applied to repair, replace or rebuild the premises so damaged or destroyed, if **LESSOR** and/or **LESSEE** under the terms of Article XIII above, either are required to or elect to repair, replace or rebuild the premises, and (c) any proceeds from condemnation awarded to **LESSEE** and/or its sublessee under Article XIV above shall be the sole property of **LESSEE** and/or its sublessee.

19.15 **ESTOPPEL CERTIFICATE**. **LESSEE** agrees that prior to commencement of the term hereof it shall furnish to **LESSOR'S** mortgagee a completed Estoppel Certificate in the form hereto attached as Exhibit "C".

19.16 **HAZARDOUS MATERIAL**.

19.16.1 Definitions. As used in this paragraph, the following terms shall have the following meanings:

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

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

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

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or after the term of this Lease as a result of the presence of any Hazardous Material in or on the premises introduced therein or thereon by **LESSEE** or its assignees, sublessees, licensees or concessionaires during the term of this Lease.

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

19.16.5 Remedial Action.

19.16.5.1 Development of Remedial Plan. If, at any time during the term of this Lease, **LESSEE** becomes aware of the presence or suspected presence of any Hazardous Material in or on the Property and determines that the presence of such Hazardous Material presents an actual or potential threat to the health or safety of any Indemnified Person or becomes aware of any pendency or threatened action by any federal, state or local governmental authority with respect thereto, **LESSEE** may so notify **LESSOR** and request that **LESSOR** institute remedial action. **LESSOR** and **LESSEE** shall confer on what remedial action may be appropriate and within twenty (20) days of **LESSOR'S** receipt of such notice, **LESSOR** shall deliver to **LESSEE** a written plan describing in detail the remedial action which is necessary to eliminate any actual or potential threat to the health or safety of any Indemnified Person. If, at any time during the term of this Lease, **LESSEE** becomes aware of any underground storage tank located on the Property **LESSEE** may so notify **LESSOR** and request that **LESSOR** institute remedial action. **LESSEE** and **LESSOR** shall confer on what remedial action may be appropriate, and within twenty (20) days of **LESSOR'S** receipt of such notice **LESSOR** shall deliver to **LESSEE** a written plan describing in detail the remedial action which is necessary to (i) remove any risk of any present or future leakage of substances from the tank into the Real Estate, and (ii) eliminate the possibility that the presence of such tank may, at any time during the term of this Lease, pose a threat to the health or safety of any Indemnified Person or may, at any time during the term of this Lease, require such maintenance, repair or other work so as to interfere with the conduct of business on the premises. Any plan developed pursuant to this paragraph shall, without limitation of the foregoing, cause the Property to comply with all applicable federal, state and local laws, ordinances and regulations and shall be sufficient to abate any pending or threatened action with respect to the Property by any federal, state or local governmental authority.

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

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

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

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

19.16.5.5 Maintenance. Throughout the term of this Lease **LESSOR** shall, at its sole cost and expense, maintain in good condition and repair any improvements to the Property made under this paragraph and shall continually cause the Property and such improvements to remain in compliance with all applicable federal, state and local laws and regulations. If at any time **LESSOR** fails to perform such maintenance, **LESSEE** may perform the same, in which event **LESSEE** shall be promptly reimbursed by **LESSOR** for all costs incurred in such work.

19.16.6 Remedies.

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

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

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

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

19.16.7 Environmental Audit. **LESSOR** represents, warrants and covenants to **LESSEE** that it has heretofore provided to **LESSEE** full, accurate and complete copies of any and all audits, reports, studies, and other information in its possession relating to the presence, or suspected presence, of any Hazardous Material on the Property, and **LESSOR** agrees that it will, promptly following its receipt thereof, furnish to **LESSEE** full, accurate and complete copies of any such reports, audits, studies and other information hereafter obtained by **LESSOR**. Without limitation of the foregoing, **LESSOR** represents, warrants and covenants to **LESSEE** that it has received and reviewed **LESSEE'S** environmental site assessment guidelines and that prior to, and as a condition of, **LESSEE'S** execution of this Lease **LESSOR** has provided **LESSEE** with an environmental report for **LESSEE'S** review in conformity with said guidelines.

19.17 SEPARABILITY-BINDING EFFECT. If any provision hereof or the application thereof to any person or circumstances shall to any extend be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforceable to the extent permitted by law. All provisions contained in the Lease shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and assigns of **LESSOR** and **LESSEE** to the same extent as if each successor and assign were named as party hereto. This Lease may not be changed, modified or discharged except by a writing signed by **LESSOR** and **LESSEE**.

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

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

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

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

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

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

19.24 **COUNTERPARTS**. This Lease may be executed in several counterparts and all such executed counterparts shall constitute one (1) agreement binding on all of the parties in spite of the fact that all of the parties have not signed the same counterpart.

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19.25 **FINANCING**. Since the construction of the Shopping Center is dependent upon **LESSOR** obtaining acceptable financing, **LESSOR** shall not be obligated to proceed with the construction of the premises unless and until financing acceptable to **LESSOR** is obtained. Should such financing not be obtained at any time prior to nine (9) months from the date hereof, **LESSOR** may notify **LESSEE** in writing of its inability to obtain such acceptable financing and of its intention to terminate this Lease, and this Lease shall thereupon cease and terminate and each of the parties hereto shall be released and discharged from any and all liability hereunder.

19.26 **LIMITATION OF LIABILITY**. Anything contained in this Lease to the contrary notwithstanding, **LESSEE** agrees that subsequent to: (a) the completion of all of **LESSOR'S** Work and/or punch list items, (b) the issuance of a permanent certificate of occupancy (or its equivalent) and (c) the **LEASE COMMENCEMENT DATE**, **LESSEE** shall look solely to the estate and property of the **LESSOR** in the land and buildings comprising the Shopping Center of which the premises forms a part, together with any insurance or condemnation proceeds to which **LESSOR** may be entitled, but only as and when such proceeds are received by **LESSOR**, for the collection of any judgment (or other judicial process) requiring the payment of money by **LESSOR** for any default or breach by **LESSOR** of any of its obligations under this Lease subject, however, to the prior rights of any ground or underlying landlord or the holder of any mortgage covering the Shopping Center or of **LESSOR'S** interest therein. It is agreed that **LESSOR** (and its shareholders, venturers and partners, and their shareholders, venturers and partners and all of their officers, directors and employees) will never be personally liable for any such judgment. No other assets of the **LESSOR** shall be subject to levy, execution or other judicial process for the satisfaction of **LESSEE'S** claim. The provisions contained in this paragraph are not intended to, and will not, limit any right that **LESSEE** might otherwise have to obtain legal (but not including personal collection or enforcement of any judgment against **LESSOR**, its shareholders, venturers, partners and their shareholders, venturers, and partners and all of their officers, directors and their employees or their assets beyond their respective or collective interests in the land and buildings comprising the Shopping Center) equitable or injunctive relief against **LESSOR**, or to offset or deduct from rent.

19.27 **COLLATERAL AGREEMENT WITH SUBLESSEE AND RENT CREDIT**. **LESSEE** has entered into a sublease of the premises with Landis Supermarkets, Inc., a Pennsylvania corporation, hereinafter called the **SUBLESSEE**. **LESSOR** and **SUBLESSEE** have entered into a Lease Termination and Collateral Agreement bearing even date herewith, said agreement being hereinafter referred to as the **COLLATERAL AGREEMENT**. Provided that **SUBLESSEE**, or any substituted sublessee or assignee (at **LESSEE'S** sole discretion) has funded all required construction contributions as specified more particularly in the

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COLLATERAL AGREEMENT then **LESSOR** shall grant to **LESSEE** a rent credit as follows:

LESSEE may deduct from each of its payments of minimum rent for each of the first twelve (12) consecutive months following the **RENT COMMENCEMENT DATE** that the **SUBLESSEE** is open for business to the public as a full line retail supermarket without pharmacy with snack-bar an amount equal to one twelfth (1/12) of **SUBLESSEE'S REPAYABLE CONSTRUCTION CONTRIBUTION**. As used herein, **SUBLESSEE'S REPAYABLE CONSTRUCTION CONTRIBUTION** shall be the principal amount of Two Hundred Sixty Five Thousand Dollars ($265,000.00) amortized together with interest at one percentage point in excess of the prime rate as reported by the Wall Street Journal on the date of execution of this Lease in twelve (12) equal monthly installments. No such deduction shall be made for any months during which the **SUBLESSEE** is not open for business as aforesaid or for which the **SUBLESSEE** or the **LESSEE** is otherwise in default of the **COLLATERAL AGREEMENT** or of this Lease respectively. **LESSOR, LESSEE** and **SUBLESSEE** shall execute a letter agreement within two (2) weeks after the execution of this Lease specifying the exact amount of the rent credit to be offset against the first twelve (12) monthly installments of minimum annual rent.

19.28 **PREVAILING PARTY**. If **LESSOR** and **LESSEE** litigate any provision of this Lease or the subject matter of this Lease, the non-prevailing party shall be obligated to pay the prevailing party's costs and expenses, including reasonable and customary attorney's fees and court costs, incurred by the prevailing party at trial and on any appeal.

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

LESSOR -
BERGER-EPSTEIN ASSOCIATES, INC.

Attest: _____ By: _____

(Corporate Seal)

LESSEE -
FLEMING FOODS EAST, INC.

Attest: _____ By: _____
Vice President

(Corporate Seal)

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

LESSOR -
BERGER-EPSTEIN ASSOCIATES, INC.

Attest: By:

Corporate Seal)

LESSEE -
FLEMING FOODS EAST, INC.

Attest: By: Vice President

(Corporate Seal)

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STATE OF Pennsylvania :
: SS.
COUNTY OF Lehigh :

BE IT REMEMBERED, that on this 23rd day of December , A.D., 19 92 , before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jeff A. Epstein , President of **BERGER-EPSTEIN ASSOCIATES, INC.**, a corporation duly organized, incorporated and existing under ~~the by virtue~~ of the laws of Pennsylvania , and William M. Berger , 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.

Jean M. Morgan
Notary Public

(SEAL)

JEAN M. MORGAN, Notary Public
Allentow , Lehigh County, Pa.
My Commission Expires Nov. 14, 1996

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