

# **EXHIBIT A**

COPY

ORIGINAL  
NUMBER 4 OF  
4 EXECUTED  
COUNTERPARTS

LEASE AGREEMENT

LESSOR -

DRR, L.L.C.

LESSEE -

FLEMING FOODS EAST, INC.

Premises:

Fox Valley Shops  
Wilmington, Delaware

NESC

## INDEX

<u>Section</u>	<u>Page</u>
NAME OF PARTIES .....	1
PREMISES LEASED .....	1
LAND DESCRIPTION .....	1
ARTICLE I. <u>OWNERSHIP</u> .....	2
Ownership .....	1.1 ..... 2
Impingement .....	1.2 ..... 3
ARTICLE II. <u>COMMON AREAS AND CHARGES</u> .....	3
Common Areas .....	2.1 ..... 3
Common Area Extended Hour Lighting .....	2.2 ..... 4
Common Area Maintenance .....	2.3 ..... 5
ARTICLE III. <u>TERM, COMMENCEMENT DATES, HOLDING OVER     AND OPTIONS</u> .....	7
Term .....	3.1 ..... 7
Rent Commencement Date .....	3.2 ..... 7
Lease Commencement Date .....	3.3 ..... 8
Holding Over .....	3.4 ..... 8
Failure to Open Premises .....	3.5 ..... 9
Renewal Options and Extensions .....	3.6 ..... 9
ARTICLE IV. <u>MINIMUM RENT FOR BUILDING IMPROVEMENTS,     PERCENTAGE RENT AND ADDITIONAL RENT</u> .....	10
Rent for Building .....	4.1 ..... 10

Rent for Improvements .....	4.2 .....	11
Percentage Rent .....	4.3 .....	12
Additional Rent .....	4.4 .....	13
Gross Sales .....	4.5 .....	13
Time for Payment .....	4.6 .....	15
ARTICLE V. <u>LESSOR MORTGAGE</u> .....		15
Lessor Mortgage .....	5.1 .....	15
ARTICLE VI. <u>TAXES &amp; ASSESSMENTS</u> .....		16
Taxes and Assessments .....	6.1 .....	16
Assessments Made During Lease Term .....	6.2 .....	17
ARTICLE VII. <u>LIABILITY INSURANCE AND HOLD HARMLESS</u> .....		18
Lessee's Responsibility .....	7.1 .....	18
Lessor's Responsibility .....	7.2 .....	18
Repayment and Set Off .....	7.3 .....	19
Lessor Hold Harmless .....	7.4 .....	19
Lessee Hold Harmless .....	7.5 .....	20
Additional Rent .....	7.6 .....	21
Insurance May Be Provided .....	7.7 .....	21
ARTICLE VIII. <u>WAIVER OF LIABILITY</u> .....		21
Waiver of Liability .....	8.1 .....	21
ARTICLE IX. <u>MAINTENANCE, CAPITAL IMPROVEMENTS AND WASTE</u> .....		22
Maintenance and Capital Improvements .....	9.1 .....	22
Capital Improvements .....	9.2 .....	22

Waste .....	9.3 .....	25
ARTICLE X. <u>SIGNS</u> .....		25
Signs .....	10.1 .....	25
ARTICLE XI. <u>FIRE AND EXTENDED COVERAGE, INSURANCE AND RENT</u> <u>ABATMENT</u> .....		26
Fire and Extended Coverage Insurance .....	11.1 .....	26
Rental Abatement Insurance .....	11.2 .....	28
Blanket Insurance .....	11.3 .....	29
ARTICLE XII. <u>DAMAGE AND DESTRUCTION</u> .....		29
Partial Damage and Destruction .....	12.1 .....	29
Total Damage and Destruction .....	12.2 .....	29
ARTICLE XIII. <u>CONDEMNATION</u> .....		32
Condemnation for Repairs .....	13.1 .....	32
Condemnation .....	13.2 .....	33
ARTICLE XIV. <u>DEFAULT</u> .....		35
Lessee Default .....	14.1 .....	35
Lessor Default .....	14.2 .....	37
ARTICLE XV. <u>LESSOR'S ADDITIONAL COVENANTS</u> .....		38
Parking Area .....	15.1 .....	38
Shopping Center Occupancy .....	N/A 15.2 .....	39
ARTICLE XVI. <u>EXCLUSIVE, RIGHT TO CLOSE, ASSIGNMENT</u> <u>AND SUBLETTING</u> .....		39
Exclusive .....	16.1 .....	39
Use of Premises and Right to Close Store .....	16.2 .....	39
Sublet or Assign .....	16.3 .....	41

ARTICLE XVII. <u>FORCE MAJEURE</u> .....	42
Force Majeure .....	17.1 42
ARTICLE XVIII. <u>MISCELLANEOUS PROVISIONS</u> .....	43
Removal .....	18.1 43
Lessor Entry .....	18.2 43
Showing By Lessor .....	18.3 43
Relationship .....	18.4 44
Utilities .....	18.5 44
Lease Applies Only to Business on Premises .....	18.6 44
Alterations or Additions .....	18.7 44
Special Sales Promotion .....	18.8 45
Lessor's Waiver .....	18.9 45
Notices .....	18.10 45
Captions .....	18.11 46
Advance Possession for Fixture Installation .....	18.12 46
Subordination .....	18.13 47
Estoppel Certificate .....	18.14 47
Hazardous Material .....	18.15 48
Binding .....	18.16 54
Merger .....	18.17 54
Time .....	18.18 54
Choice of Laws .....	18.19 54
Additional Costs .....	18.20 54
Consent of the Parties .....	18.21 54

Memorandum of Lease .....	18.22 .....	55
Counterparts .....	18.23 .....	55
Cleanliness .....	18.24 .....	55
Easement for Conduits: Reservation by Lessor .....	18.25 .....	55
Allocation .....	18.26 .....	56
EXHIBIT A-1 - PLOT PLAN .....		
EXHIBIT A-2 - COMMON AREAS SKETCH .....		
EXHIBIT B - SPECIFICATIONS .....		
EXHIBIT C - ESTOPPEL CERTIFICATE .....		
EXHIBIT D - CHECKLIST OF COMMON AREA MAINTENANCE EXPENSES .....		
EXHIBIT E - PERMITTED EXCEPTIONS .....		

## LEASE AGREEMENT

This Agreement is made and entered into this 26<sup>th</sup> day of January, 1994, by and between DRR, L.L.C. a Delaware limited liability company, whose address is Suite 3, 319 East Lea Boulevard, Wilmington, Delaware 19802, hereinafter called the LESSOR, and FLEMING FOODS EAST, INC., an Pennsylvania corporation with an office at Oaks, Pennsylvania, hereinafter called the LESSEE.

### WITNESSETH:

WHEREAS, the LESSOR is the owner of a building containing 132,068 square feet, of which 49,697 square feet is located in the middle level (said middle level space is hereinafter called "the premises") and constituting a part of the Fox Valley Shops containing 148,934 square feet (hereinafter called the "Shopping Center") which Shopping Center is located upon the following described real estate:

ALL that certain tract or parcel of land with a retail store building, automotive center building and other improvements thereon erected, situate in the City of Wilmington, New Castle County and State of Delaware, with an address of 4301 Market Street, all as shown on plan prepared by Howard L. Robertson, Inc. dated February 22, 1993, as revised, and being more particularly bounded and described as follows, to-wit:

BEGINNING at point, said point being the Southwesterly corner of a two feet square concrete base for a parking lot light at the point of intersection of the Northeasterly side of Lea Boulevard (100.00 feet wide R/W) with the Northwesterly side of Market Street (65.5 feet wide R/W), said point further being on the City Line of the City of Wilmington; thence, from said point of Beginning, leaving the aforementioned City Line of the City of Wilmington, along said Northeasterly side of Lea Boulevard, North 24 degrees 03 minutes 59 seconds West, 628.70 feet to a found pinch pipe approximately 1.2 feet below the surface of the sidewalk, a common corner for herein described property and lands now or formerly of Frank T. Wharton and Catherine L. Wharton; thence, leaving said Northeasterly side of Lea Boulevard, along said lands now or formerly of Frank T. Wharton and Catherine L. Wharton, North 58 degrees 24 minutes 46 seconds East, 145.88 feet to a set capped rebar stamped "Karins & Assoc.," a common corner for herein described property and lands now or formerly of Arthur W. Boswell and Carolyn S. Boswell; thence, thereby, North 57 degrees 16 minutes 11 seconds East, 143.40 feet to a found 3/4" inside diameter iron pipe, a common corner for herein described property and lands now or formerly of Oliverio D. Suazo and Gloria M. Suazo; thence, thereby, North 53 degrees 50 minutes 04 seconds East, 143.70 feet to a set capped rebar stamped "Karins & Assoc.," a common corner for herein described



property and lands now or formerly of Brian J. Feters and Margaret A. Feters; thence, thereby, North 50 degrees 38 minutes 04 seconds East, 118.97 feet to a set drill hole in a five feet wide concrete walk on the Southwesterly side of Hawthorne Drive (50.00 feet wide R/W); thence, thereby, South 19 degrees 11 minutes 35 seconds East, 101.64 feet to a set capped rebar stamped "Karins & Assoc.;" thence, leaving said Southwesterly side of Hawthorne Drive, along the terminus of said Hawthorne Drive, North 63 degrees 09 minutes 21 seconds East, 50.45 feet to a set capped rebar stamped "Karins & Assoc." on the Northeasterly side of Hawthorne Drive, a common corner for herein described property and lands now or formerly of First Assembly of God of Wilmington, Delaware; thence, leaving said Northeasterly side of Hawthorne Drive, along said lands now or formerly of First Assembly of God of Wilmington, Delaware, the two (2) following described courses and distances: (1) North 70 degrees 48 minutes 25 seconds East, 99.96 feet to a set capped rebar stamped "Karins & Assoc.," said point being on the City Line of the City of Wilmington; and (2) along the City Line of the City of Wilmington, South 19 degrees 11 minutes 35 seconds East, 100.46 feet to a found monument (rebar in 6" diameter concrete cylinder), a common corner for herein described property and lands now or formerly of Melaw Management Corp.; thence, along said lands now or formerly of Melaw Management Corp., along the City Line of the City of Wilmington, South 23 degrees 34 minutes 35 seconds East, 524.37 feet to a set drill hole in a concrete walk along the aforementioned Northwesterly side of Market Street; thence, thereby, along the City Line of the City of Wilmington, South 66 degrees 00 minutes 25 seconds West, 669.99 feet to the point and place of Beginning,

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

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

#### ARTICLE I. OWNERSHIP.

1.1 OWNERSHIP. The LESSOR covenants that it has 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 (subject to LESSOR'S reserved rights as landlord provided for herein) lawfully, peacefully, and quietly to have, hold, use, occupy, possess and enjoy the premises hereby leased and the non-exclusive right as to the common areas (as hereinafter defined) for and during the term hereof, without any hindrance eviction, molestation, or interruption of or by the LESSOR, or any person or persons claiming under or through LESSOR. LESSOR covenants that at the

commencement of this Lease, no zoning or other ordinance, law, regulation, or restrictive covenant prevents use of the premises for any lawful commercial purpose as contemplated by Section 16.2 hereof.

1.2 IMPINGEMENT. Except as herein provided for, LESSOR warrants and guarantees that there are no prior documents of record 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 said plot plan prepared by Howard L. Robertson, Inc. dated February 22, 1993, as revised, attached to and made a part of this lease as Exhibit "A-1", other than "Permitted Exceptions" appended hereto as Exhibit "E". LESSOR shall not make any deviations or variations in the construction or use of the plotted area from that shown and noted on said plot plan without the prior written consent of LESSEE, except for existing buildings or as required by law, and except for the area designated "Reserved for Future Use". As to this area, LESSOR agrees that any future use and development shall utilize its own parking only, shall be aesthetically compatible with all buildings in the Shopping Center and shall comply with all use limitations as hereinafter contained in this Lease. LESSOR covenants and agrees that no building in the Shopping Center, except for existing buildings, shall be higher than one (1) story in height, and no buildings hereafter constructed on any out parcels or pads or in the area "Reserved for Future Use" as designated on Exhibit "A-1" shall be higher than one (1) story, not exceeding seventeen (17) feet in height, inclusive of rooftop signs and HVAC systems or other rooftop equipment.

## ARTICLE II. COMMON AREAS AND CHARGES.

2.1 COMMON AREAS. The common areas are located as shown on the surveyor's sketch marked Exhibit "A-2", 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 and other tenants' customers, suppliers, visitors and invitees, of the common areas, employees' parking areas, service roads, sidewalks, and customers' parking areas, all as shown on said

Exhibit "A-2" and all future facilities and common areas designed for common use (including, inter alia, interior fire escapes), subject, however, to the terms and conditions hereinafter set forth; all of such areas and facilities being hereinafter collectively termed "common areas". The LESSOR also agrees that the LESSEE shall have the exclusive use of a loading dock to be constructed by LESSOR at its expense on the north side of the premises as shown on Exhibit "A". The cost to repair and/or replace such dock shall be the sole obligation of the LESSEE. The dock shall not be considered part of the 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, insofar as practical, conditions permitting, 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 on the southwest (Lea Boulevard) side of the premises well lighted during such hours of darkness as LESSEE shall remain open for business and for a period of one (1) hour thereafter. The term "well lighted" shall be satisfied by the lighting specifications described in the documents constituting Exhibit "B" hereto.

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

In the event LESSEE, in its sole discretion, desires to remain open for business after midnight, twelve o'clock a.m., then LESSEE shall provide LESSOR with written notice as to the periods of time after midnight that it intends to remain open and further agrees to pay on demand as additional rental, an amount which is computed by multiplying the number of hours (not exceeding eight hours daily) LESSEE remains open after midnight, twelve o'clock a.m., times the average hourly wattage of common area parking lot lighting (which LESSOR agrees to meter separately) times the rate actually charged to the LESSOR for such wattage. Provided, should other tenants in the Shopping Center remain open after midnight, twelve o'clock a.m., then LESSEE shall pay only a prorata amount arrived at by taking into consideration the number of hours such other tenant(s) remain open for business and the square footage of such tenant(s) leased premises. LESSOR shall be required to send LESSEE a monthly statement in appropriate detail 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 4.1C hereof.

**2.3 COMMON AREA MAINTENANCE COSTS.** LESSEE agrees to pay as additional rent, pursuant to Section 4.1D hereof, up to Seventy Six Thousand Seven Hundred Dollars (\$76,700.00) as LESSEE'S estimated annual prorata share [determined by the proportion which the number of square feet of floor space in the premises (which the parties agree shall be 49,697 square feet unless the premises are expanded as provided for herein) bears to the number of square feet in the Shopping Center as depicted on Exhibit "A-1" hereof as may be expanded as provided herein] of the expense of common area maintenance of the Shopping Center shown on Exhibit "A-2" attached, for the first year of the lease term. LESSEE'S prorata share shall be payable monthly in the amount of Six Thousand Three Hundred Ninety-One Dollars and Sixty-Seven Cents (\$6,391.67) on or before the first day of each month in advance.

LESSEE shall have the right to deduct one hundred percent (100%) of such common area maintenance charges from percentage rent as provided in Section 4.1B(1) hereof.

During succeeding years of the lease term and renewal terms, the above-described additional rental shall be calculated as hereinafter set forth. Within sixty (60) days after the end of each calendar year, during the original or any renewal term of this Lease, LESSOR agrees to furnish to LESSEE a statement itemized in reasonable detail, together with copies of paid receipts setting forth the total expenses for such common area maintenance 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, but otherwise the same shall be deemed correct forty-five (45) days after receipt by LESSEE. LESSOR shall also estimate in good faith 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.

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, but shall not include any of the following:

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

b. Charge for any item of equipment or capital improvements (capital improvements shall mean a valuable addition made to the premises and common areas in excess of ordinary repairs and maintenance) that is properly chargeable to capital expense or capital improvements under recognized and accepted accounting principles and standards and not properly chargeable to LESSEE under Section 9.2 hereof;d

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

d. Any charge to LESSEE for LESSOR'S administrative costs and expenses in administering the common area charges, in excess of Five Thousand Dollars (\$5,000.00) per lease year. Five Thousand Dollars (\$5,000.00) also shall be a cap for each lease year of the original term or any renewal term.

Should LESSOR fail to perform common area maintenance as herein provided, then, and in that event, upon prior written notice to the LESSOR, except for an emergency, and following LESSOR'S failure to perform within any cure period provided for herein, 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 14.2 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 14.2, but not the right to cancel and annul this Lease.

### ARTICLE III. TERM, COMMENCEMENT DATES, HOLDING OVER AND OPTIONS.

3.1 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.

3.2 RENT COMMENCEMENT DATE. The date LESSEE shall commence the payment of rent (RENT COMMENCEMENT DATE) shall be the earlier of: (a) on the first day the premises are

open for business or (b) sixty (60) days after LESSOR has delivered to LESSEE (i) the premises in a substantially completed condition, (ii) written notice that the work to be performed by LESSOR has been substantially completed, and (iii) a permanent certificate of occupancy (or its equivalent) if the same shall be issuable in accordance with local law or custom. 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 date of the twenty (20) year term hereafter, unless earlier terminated as provided for herein.

**3.3 LEASE COMMENCEMENT DATE.** The LEASE COMMENCEMENT DATE shall be set forth in a notification letter from LESSEE to LESSOR and endorsed by LESSOR which shall be executed by the parties within thirty (30) days from the LEASE COMMENCEMENT DATE and 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, including prorated common area maintenance charges shall be payable together with and at the time for the first payment of minimum rent hereunder as provided in Section 4.1 hereof and shall be computed by multiplying the amount of minimum monthly rental as set forth in Section 4.1A 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.

**3.4 HOLDING OVER.** It is agreed that if at the end of the original term of this Lease or any option hereof, LESSEE is not in default, then and in such event if 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, provided that it gives the

required advance notice and does not default during such holding over period. For any such extension period, the rent will be one and one-half (1.5) times the minimum monthly rent plus common area maintenance charges and percentage rent, duly prorated. LESSEE shall give LESSOR ninety (90) days prior written notice should such extension be necessary.

Except as provided above, if LESSEE wrongfully 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, with monthly rent to be payable in an amount twice the total monthly rent in effect at the end of the lease term.

**3.5 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 4.1B 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 LESSOR shall have the same rights as if LESSEE closed the store under Section 16.2 of this Lease, and 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.

**3.6 RENEWAL OPTIONS AND EXTENSIONS.** It is further agreed that, at the expiration of the original term, the LESSEE shall have the option at its sole discretion, to extend and renew this Lease for four (4) additional terms (hereinafter "renewal options") of five (5) years each, upon the same terms and conditions as provided in this Lease, except as provided hereafter. The LESSEE shall give the LESSOR written notice of the LESSEE'S intent to exercise its option to renew for the next succeeding option period at least six (6) months prior to the end of the original term or the then current



option period. The minimum rent shall increase by twenty-five cents (\$.25) per square foot of premises at the commencement of each additional term. Should LESSEE fail to exercise any of its renewal options in the manner and at the time above set forth, then this Lease shall terminate at the end of the then current term. It is further agreed that, except during the last additional term, 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 Sections 12.1 and 12.2 hereof. Any such extension to permit reconstruction and repair shall be deemed an election to exercise any renewal option that is wholly or partially encompassed within the time of such extension under Sections 12.1 or 12.2 and the minimum rent increase for such renewal option shall take effect at the same time and in the same manner as if the extension occurred solely by virtue of LESSEE'S renewal election hereunder. 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 14.2 hereof and to extend in the event of uninsured damage and destruction; 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 IV. MINIMUM RENT FOR BUILDING IMPROVEMENTS.

##### PERCENTAGE RENT AND ADDITIONAL RENT.

**4.1 RENT FOR BUILDING.** As rent for the unfinished premises in their present condition, without the improvements required to adapt them to the LESSEE'S purposes, the LESSEE agrees to pay to the LESSOR at Suite 3, 319 East Lea Boulevard, Wilmington, Delaware 19802, or such other place as is mutually agreed upon.

A. A minimum monthly rental of:

- (1) During years 1 through 20 inclusive of the original term, a minimum monthly rental of Four Thousand Nine Hundred Seventy Nine Dollars and Seventeen Cents (\$4,979.17)

- (2) During years 1 through 5 inclusive of the first extended renewal period, if exercised, a minimum monthly rental of Five Thousand One Hundred Three Dollars and Sixty Four Cents (\$5,103.64).
- (3) During years 1 through 5 inclusive of the second extended renewal period, if exercised, a minimum monthly rental of Five Thousand Two Hundred Twenty Eight Dollars and Thirteen Cents (\$5,228.13).
- (4) During years 1 through 5 inclusive of the third extended renewal period, if exercised, a minimum monthly rental of Five Thousand Three Hundred Fifty Two Dollars and Sixty Cents (\$5,352.60).
- (5) During years 1 through 5 inclusive of the fourth extended renewal period, if exercised, a minimum monthly rental of Five Thousand Four Hundred Seventy Seven Dollars and Eight Cents (\$5,477.08).

4.2 RENT FOR IMPROVEMENTS. As rent for the improvements to be made to the premises by the LESSOR for the purpose of adapting them to the LESSEE'S purposes, the LESSEE agrees to pay to the LESSOR at Suite 3, 319 East Lea Boulevard, Wilmington, Delaware 19802, or such other place as is mutually agreed upon;

A. A minimum monthly rental in the following amounts:

- (1) During years 1 through 20 inclusive of the original term, a minimum monthly rental of Thirty Four Thousand Eight Hundred Fifty Four Dollars and Sixteen Cents (\$34,854.16).
- (2) During years 1 through 5 inclusive of the first extended renewal period, if exercised, a minimum monthly rental of Thirty Five Thousand Seven Hundred Twenty Five Dollars and Fifty Three Cents (\$35,725.53).
- (3) During years 1 through 5 inclusive of the second extended renewal period, if exercised, a minimum monthly rental of Thirty Six Thousand Five Hundred Ninety Six Dollars and Eighty Seven Cents (\$36,596.87).
- (4) During years 1 through 5 inclusive of the third extended renewal period, if exercised, a minimum monthly rental of Thirty Seven Thousand Four Hundred Sixty Eight Dollars and Twenty Three Cents (\$37,468.23).
- (5) During years 1 through 5 inclusive of the fourth extended renewal period, if exercised, a minimum monthly rental of Thirty Eight Thousand Three Hundred Thirty Nine Dollars and Fifty Nine Cents (\$38,339.59).

4.3 PERCENTAGE RENT. In addition to the foregoing, as rent for the improvements to be made by LESSOR to the premises, LESSEE agrees to pay LESSOR the following percentage rent:

- (1) During years 1 through 20 inclusive of the original term, an amount equal to one-half of one percent (.50%) of annual gross sales, as defined herein, in excess of \$35,000,000.00 made from the premises.
- (2) During years 1 through 5 inclusive of the first extended renewal period, if exercised, an amount equal to one-half of one percent (.50%) of annual gross sales, as defined herein, in excess of \$35,875,000.00 made from the premises.
- (3) During years 1 through 5 inclusive of the second extended renewal period, if exercised, an amount equal to one-half of one percent (.50%) of annual gross sales, as defined herein, in excess of \$36,736,000.00 made from the premises.
- (4) During years 1 through 5 inclusive of the third extended renewal period, if exercised, an amount equal to one-half of one percent (.50%) of annual gross sales, as defined herein, in excess of \$37,580,000.00 made from the premises.
- (5) During years 1 through 5 inclusive of the fourth extended renewal period, if exercised, an amount equal to one-half of one percent (.50%) of annual gross sales, as defined herein, in excess of \$38,445,000.00 made from the premises.

Within sixty (60) days from the end of each calendar year LESSEE shall provide LESSOR with a written statement in appropriate detail of the amount of percentage rental due for the prior year.

Notwithstanding anything to the contrary set forth herein, LESSEE shall always have the right to close its store as provided in Section 16.2 hereof and upon said closing, LESSOR shall have no claim whatsoever to percentage rental or loss thereof under this Section 4.3.

Percentage rental, as specified in this Section 4.3 to be paid by LESSEE to LESSOR shall be reduced, in addition to those sums paid by LESSEE to cure LESSOR'S default pursuant to Section 14.2 hereof, by an amount (which shall be first applied in reduction of said percentage rental) but shall never be applied in reduction of minimum annual rent) equal to those sums paid by LESSEE against the following items during the year next preceding such percentage rent payment and if said percentage rent be insufficient to cover the full amount of said items for any year during the term of this Lease or any extension thereof, the resulting deficiency shall accumulate and as so accumulated shall be

deductible from percentage rent for the next succeeding year(s) until all of said items deductible hereunder have been fully deducted:

- (1) One hundred percent (100%) of common area maintenance charges required to be paid and actually paid by LESSEE pursuant to Section 2.3.
- (2) One Hundred percent (100%) of any taxes and assessments and lump sum assessment required to be and actually paid by LESSEE as provided in Sections 6.1 and 6.2.
- (3) One Hundred percent (100%) of the expense for capital improvements to the premises or Shopping Center required to be and actually paid by LESSEE as provided in Section 9.2.
- (4) One hundred percent (100%) of insurance expenses required to be and actually paid by LESSEE to LESSOR, as provided in Article VII and Sections 11.1 and 11.2.
- (5) The increase in the minimum annual rent required to be paid (and actually paid) during each of the Lease years in the option renewal periods, over the minimum annual rent required to be paid during the initial 20-year term.

**4.4 ADDITIONAL RENT** In addition to the foregoing, LESSEE agrees to pay LESSOR the following additional rent:

- (1) Payment of common area extended hourly lighting as provided in Section 2.2 hereof.
- (2) Common area maintenance charges, payable monthly as set forth under Section 2.3 hereof.
- (3) Taxes and assessments against the premises as provided in Section 6.1 hereof.
- (4) Public Liability and Property Damage Insurance payments as set forth in Article VII hereof.
- (5) Fire and Extended Coverage and Rent Abatement Insurance annual payments as provided in Sections 11.1 and 11.2 hereof.

**4.5 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 its employees, and shall include all sales from every department thereof, for cash or on a charge basis, and including all business in which orders come by mail, telephone or telegraph, less credit for returned merchandise, merchandise trade-ins, and credit of a similar nature. "Gross sales" shall not include sales, luxury, excise or other taxes collected by LESSEE from customers to be remitted to any governmental agency or unit; merchandise transfers not evasive of this Section from one of LESSEE'S or SUBLESSEE'S stores to another; sale of tobacco and tobacco products, lottery tickets, and proceeds and/or commissions paid to LESSEE as a result of the sale of winning lottery tickets; check cashing fees, or fees collected as a result of returned checks; return of merchandise to a supplier; sales at cost to non-profit organizations for charitable purposes; or sales such as money orders, Western Union 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. Further excepted are receipts from vending, game machines, coin telephones, postage stamp dispensers 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. Insofar as lawful, LESSEE will use reasonable efforts to use automated teller machines or similar devices supplied by any bank maintaining a branch at the Shopping Center to the extent practicable and which use will not interfere with its banking relationships, or those of its sublessee's.

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

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

4.6 TIME FOR PAYMENT. From and after the LEASE COMMENCEMENT DATE as defined in Section 3.3 hereof, minimum monthly rent for each calendar month, including LESSEE'S share of common area maintenance and other expenses, 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 3.2 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 3.3.

Payment of any additional percentage rental, as outlined in Section 4.1B herein, shall be paid on or before the twentieth (20th) day of the month following the ending of each annual period. Payment of those items of rental set forth in Sections 4.4 (1), (2), (3), (4) and (5) 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 14.2 hereof.

#### ARTICLE V. LESSOR MORTGAGE.

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

## ARTICLE VI. TAXES AND ASSESSMENTS.

6.1 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 or against rents paid under this Lease Agreement, exclusive of any realty transfer taxes which may be imposed pursuant to Section 18.23 herein, and of LESSEE'S prorata share (determined as hereinafter provided) of the taxes and assessments levied against the parking and common areas, as shown on Exhibit "A", of the Shopping Center, (exclusive of any inheritance, sales, use, franchise, gift, excise or profit taxes) that shall become due and payable during the original or any renewed term hereof. If the Shopping Center is taxed as a unit, the LESSEE shall be liable for only such prorata share of such taxes and assessments determined by the proportion that the number of square feet of floor space in the premises bears to the total number of square feet of floor space in the Shopping Center. Such taxes and assessments must be billed by LESSOR to LESSEE no later than one hundred eighty (180) days after receipt of notice by LESSOR from the local taxing authority. If such copy of the tax bill is not received by LESSEE within one hundred eighty (180) days after receipt of same by LESSOR, LESSEE'S obligation to pay such taxes and assessments will be considered to be null and void. LESSOR shall be required to send LESSEE receipted tax bills showing payment of taxes as well as all special assessments, within thirty (30) days after payment is due. Provided, however, that for any partial tax year occurring during the original or any renewed term hereof, the LESSEE shall be liable for only that proportion of such taxes and assessments as the number of days in such partial tax year bears to 365.

LESSEE shall further have the right to deduct one hundred percent (100%) of such taxes and assessments paid by LESSEE from percentage rent as provided in Section 4.3 hereof. LESSEE shall not be liable for any interest, penalty or late charges payable by LESSOR with respect to any taxes and assessments, unless the same are attributable to LESSEE'S default, and if a discount of any taxes and assessments is available by prompt payment, LESSEE'S pro rata share thereof shall be based on such

discounted amount, provided that LESSEE is not in default, regardless of whether prompt payment is made by LESSOR.

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

6.2 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. 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, provided that the same does not result in higher costs and expenses.

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 13.1 hereof. LESSEE shall further have the right to deduct one hundred percent (100%) of such lump sum assessment paid by LESSEE from percentage rent as provided in Section 4.3 hereof.

The LESSEE shall also pay all taxes levied and assessed upon property belonging to it or its SUBLESSEE and located upon the premises as well as all city, county or state license fees, business taxes, franchise taxes, gross receipts taxes and similar taxes imposed upon the LESSEE as they relate to LESSEE'S business, or imposed upon rents or other consideration paid by LESSEE under this Lease. In no event shall such tax payments by LESSEE for taxes levied and assessed upon its property be deducted from percentage rent.

#### ARTICLE VII. LIABILITY INSURANCE AND HOLD HARMLESS.

7.1 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 Delaware in which policy LESSOR shall be named as an additional named insured, 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 at least \$1,000,000.00 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.

7.2 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 Delaware 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 at least \$1,000,000.00 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.

**7.3 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 on like terms and issued by a Best rated B or better company. 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 such like insurance at a lower rate. LESSEE shall have the right to deduct one hundred percent (100%) of such pro rata share of premiums for insurance paid by LESSEE to LESSOR from percentage rent as provided in Section 4.1B(4).

**7.4 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 injuries which are caused, in

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. LESSOR shall use its best efforts to insure that its agents, contractors, servants or employees use reasonable caution not to damage or destroy any of the work or equipment installed by LESSEE. 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. All such work and storing of equipment shall be at the cost and sole risk of the LESSEE except for the gross negligence of the LESSOR, its agents, contractors, servants or employees. The LESSEE shall maintain adequate insurance during this interim period of time. any proportion by the negligent, intentional, or willful acts of the LESSEE, its agents, employees or invitees, or which arise from use of LESSEE'S loading dock or other areas primarily under its control.

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

7.6 ADDITIONAL RENT. Public Liability and Property Damage Insurance payments made by LESSEE pursuant to this Article VII shall be considered as payments of additional rental under Section 4.4(4) hereof.

7.7 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 7.1 above, by LESSEE or by an assignee or sublessee of LESSEE.

#### ARTICLE VIII. WAIVER OF LIABILITY.

8.1 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 any other property (real or personal) shall contain a proper provision, by endorsement or otherwise, whereby the insurance carrier issuing the same shall (i) acknowledge that the insured has waived and released its right

of recovery pursuant to this paragraph and (ii) waive the right of subrogation which such carrier might otherwise have had, all without impairment or invalidation of such insurance. The provisions of this paragraph shall be equally binding upon and inure to the benefit of any assignee or sublessee of LESSEE.

#### ARTICLE IX. MAINTENANCE, CAPITAL IMPROVEMENTS AND WASTE.

9.1 MAINTENANCE AND CAPITAL IMPROVEMENTS. Subject to LESSOR'S duty to perform common area maintenance as provided in Section 2.1 hereof, and LESSOR'S obligations with respect to repair, maintenance and/or replacement of the premises, and to maintain, repair and replace the roof, ceiling between floors, slab ,structural walls and all plumbing and utility lines outside of the premises, and LESSOR'S obligation to repair and rebuild as set forth in Articles XII and XIII hereof, LESSEE agrees, at its expense, to maintain the interior premises in good condition including, but not limited to, the plumbing, air conditioning and heating equipment. LESSEE shall have for this purpose the benefit of all contractors, manufacturers and sellers warranties and undertakings available to LESSOR, said warranties and undertakings being hereby specifically assigned to LESSEE for said purposes, except that both the LESSOR and LESSEE shall have the right to enforce such warranties and understandings, none of which may be waived or compromised by either party hereto without the prior written consent of the other .

#### 9.2 CAPITAL IMPROVEMENTS.

A. LESSOR agrees at its expense to make capital improvements to the premises in accordance with the Standard Specifications for Store Development Building (1993 edition with addendum) insofar as such specifications are applicable to the construction to be performed by LESSOR in accordance with Exhibit "B", LESSOR'S work shall include all labor and materials necessary to comply with the local building codes and other applicable requirements, such as Americans with Disabilities Act, whether or not shown or indicated on such plans and specifications. LESSOR'S work shall not include LESSEE'S trade fixtures, furnishings and equipment such as (but not necessarily limited

to), shelves, counters, check-out equipment, decor, signage and applied graphics (except as specified, in Exhibit "B"), and coolers, refrigerators or freezers, except for partition walls enclosing built-in coolers, refrigerators and freezers. LESSOR and LESSEE shall cooperate diligently and in good faith to refine and finalize the plans and specifications as prepared by LESSOR'S architect and engineer ("Construction Documents") for said capital improvements prior to LESSOR'S commencement of construction. If changes and additions desired by LESSEE after review of said Construction Documents result in increased construction costs, these shall be handled and paid for by LESSEE pursuant to Section 1.5 of Exhibit "B" attached.

Notwithstanding anything contained herein to the contrary, LESSOR agrees during the first full lease year to make, at its sole cost, all repairs or replacements required to the premises as the result of faulty materials or workmanship in LESSOR'S construction or remodeling.

The parties hereto further expressly acknowledge and agree that the premises shall include all capital improvements made by LESSOR to serve the premises including, but not limited to, facilities and systems located outside the walls enclosing the space of the premises, such as (but not limited to) the loading dock and pipes, wires, ducts, lines, conduits, cables and other equipment (including, without limitation, HVAC components on the roof of the building in which the premises are located). The parties also acknowledge and agree that the space within the walls enclosing the premises shall be subject insofar as reasonably necessary (consistent with Exhibit "B" to unobtrusive, enclosed encroachment by duct work and chases for lines, conduits and cables serving other portions of the building in which the premises are located (such as basement floor below and the third floor above), and that LESSOR shall have the right to enter the premises from time to time (outside LESSEE'S business hours if possible and upon prior written notice, except in the event of emergencies) to service, maintain, repair and replace such duct work, conduits, cables and lines as necessary or reasonably desirable. All such work shall be done in a good and workmanlike manner with as little interference to LESSEE'S business as is possible under

the circumstances. LESSOR agrees to defend, indemnify and hold LESSEE harmless from and against loss resulting from the installation or servicing of any such pipes, wires, ducts, lines, conduits, cable or other equipment.

Subject to the prior written consent of LESSOR, 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 that competent governmental authority shall require that capital improvements be made to the premises during the term of this Lease or any extension thereof solely by reason of LESSEE'S specific use of the premises, LESSEE, shall proceed to do so forthwith and shall have the right to recoup up to one hundred percent (100%) of its costs and expenses for said capital improvements from percentage rent as provided in Section 4.3 hereof, provided such improvements were not made necessary by LESSEE'S negligence, abuse or other default under this Lease

In the event that competent governmental authority shall require that capital improvements be made 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 for common area capital improvements as hereinabove provided for determination of common area maintenance charges as provided in Section 2.3 hereof) promptly pay a proportionate share of said prorata share based on the proportion that the number of years remaining in the original term of this Lease and/or all renewal options then remaining available to LESSEE hereunder bears to the number of years of the asset life of said capital improvement

as determined by agreement of the parties or in absence of agreement, by arbitration under the procedures set forth in Article XIII hereof.

LESSEE shall have the right to recoup one hundred percent (100%) of its payment made to LESSOR for capital improvements to the Shopping Center as above provided by deducting such payments from percentage rent over the remainder of the term of this Lease and any extensions hereof as provided in Section 4.3 hereof.

9.3 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 8.1 hereof, and (5) other non-insurable casualties beyond the reasonable control of LESSEE.

#### ARTICLE X. SIGNS.

10.1 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. LESSOR shall install, at its expense, appropriate signs (identifying the building) on the front and rear of the building housing the premises. If LESSOR should construct during the term of this Lease a pylon type sign, identifying the Shopping Center then 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 other 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" except for temporary, wooden, promotional signs.

## ARTICLE XI. FIRE AND EXTENDED COVERAGE, INSURANCE

### AND RENT ABATEMENT.

**11.1 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 and financially solvent insurance company authorized to do business in the State of Delaware for an amount equal to the full replacement cost of the premises. Such policy of insurance shall provide protection against the losses so insured against for the benefit of the LESSOR, LESSEE, 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 or endorsement required by Section 8.1 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, the annual premium for insurance covering the premises and building in which the premises are located for said policy(s) as hereinabove provided, subject to LESSEE'S right to obtain a like insurance coverage policy(s) written by a responsible and financially solvent insurance company licensed to do business in the State of Delaware covering the premises should LESSEE be able to secure such policy(s) on the premises at a lower rate for like 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. LESSEE shall have the right to deduct one hundred percent (100%) of such premium for insurance covering the premises paid by LESSEE to LESSOR from percentage rent as provided in Section 4.3.

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

Should the building covered by this Lease be rated deficient by the Insurance Service Organization, or any other rating bureau having jurisdiction for reasons not caused by LESSEE or its sublessee, then 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 shall reimburse LESSEE and/or its SUBLESSEE for any differential amount it may incur, with the right reserved in LESSOR to minimize such differential amount by securing a like policy at a lesser premium. 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 renovations, LESSOR agrees to provide LESSEE with a rating sheet for LESSEE'S premises from said Insurance Service Organization or any other rating bureau having jurisdiction citing deficiencies, if any. LESSOR shall not be liable for any reimbursement of such differential if LESSOR has complied fully with the agreed plans and specifications of the premises and has complied with all of the Insurance Service Organization's or any other rating bureau having jurisdiction, recommendations and requirements, after its review of said architectural plans and related engineering drawings and specifications of the premises. Neither shall the LESSOR be liable for any reimbursement of any such differential due to the Insurance Service Organization's, or any other rating bureau having jurisdiction, subsequent change of standards of qualifications for full sprinkler credit pertaining to the standards of construction of the premises. LESSOR agrees that 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 keep, nor shall it allow any other tenant(s) in the Shopping Center to keep, anything within their leased premises or on the Shopping Center, or use their leased premises or the shopping center for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the premises by LESSEE, LESSOR or carried by such other tenant(s) or other parts of the Shopping Center.

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

annual premium for such insurance. LESSEE shall have the right to deduct one hundred percent (100%) of such premium paid by LESSEE to LESSOR from percentage rent as provided in Section 4.1B(4).

11.3 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. Any such insurance provided by LESSEE shall be subject to the reasonable approval of LESSOR and its mortgagee, if appropriate.

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 4.1 hereof.

## ARTICLE XII. DAMAGE AND DESTRUCTION

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

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

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

- B. If such damage shall occur during the last seven (7) years of the original term hereof, or during any of the renewal terms available to LESSEE at its option under Section 3.6, other than the last renewal term, and if within thirty (30) days after the occurrence of such damage, LESSEE shall further notify LESSOR of LESSEE'S intent to exercise options, then still available to it under Section 3.6, to extend the term hereof for a period of at least seven (7) years following such notification, then LESSOR, at its expense, shall proceed promptly to rebuild and repair such damage, and this Lease shall continue in full force and effect. If notice be not so given to LESSOR of LESSEE'S intent to exercise such options to so renew the term hereof for such period of at least seven (7) years, then LESSOR, at its sole option, may elect to rebuild and repair such damage at its expense, by written notice to LESSEE within thirty (30) days after the expiration of the thirty (30) day period, during which LESSEE may give LESSOR notice of election to renew the term hereof, upon the happening of which LESSOR shall so proceed to build and repair such damage, and this Lease shall continue in full force and effect. If LESSEE shall fail to so give LESSOR notice of LESSEE'S intent to exercise such option to so renew the term hereof, and LESSOR shall thereafter fail to so give LESSEE notice of LESSOR'S election to rebuild and repair such damage, then this Lease shall terminate as of the date of the occurrence of such casualty, the rental shall be adjusted accordingly, and neither party shall have further rights or obligations hereunder.

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

Whenever, under the foregoing provisions of this Article XII, 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 before the

occurrence of such damage, subject to LESSOR'S reasonable business judgment, as aforesaid. If, for any reason whatsoever, rebuilding and repairing is not completed within six (6) months after receipt of the applicable notices, unless LESSOR be prevented from completing such rebuilding and repairing by causes or conditions beyond its reasonable control, then, and in either such events, LESSEE may, at its sole option, terminate this Lease by written notice to LESSOR of its intention to do so, upon the happening of which, rental shall be adjusted as of the date of termination, LESSEE shall have no further rights hereunder, and LESSEE shall have no further interest in the proceeds of said insurance.

Whenever, under the foregoing provisions of this Article XII, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, other building and buildings, so to continue this Lease in full force and effect, the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such casualty to the date of completion of such rebuilding and repairing in proportion to LESSEE'S deprivation of use of the premises for its purposes.

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

Should LESSOR fail to repair or reconstruct said premises as in this Article XII required, then, and in that event, LESSEE may, at its sole option and in addition to the remedy of specific performance and all other remedies available to LESSEE hereunder, undertake to perform said repairs or reconstruction and pursue all remedies available to it under Section 14.2 hereof, including deduction of its costs and expenses from those certain items due or to become due LESSOR during the term of this Lease or any extension thereof as specified in said Section 14.2.

### ARTICLE XIII. CONDEMNATION.

13.1 CONDEMNATION FOR REPAIRS. The LESSOR agrees that if any authority condemns the Shopping Center or any part thereof, other than the premises, as being unsafe, or not in conformity with the applicable laws or regulations, the LESSOR, at its own cost and expense, will promptly make such changes, alterations or repairs (structural or nonstructural) as may be necessary to comply with such laws and regulations, or with the requirements of the authority. If, during the time such changes, alterations or repairs are being performed, the premises are rendered unsuitable for occupancy and use by the LESSEE, the rent shall abate, and if only a portion of the premises is rendered unsuitable for such occupancy and use, then the rent shall abate proportionately. Provided, however, in the event the premises or any part thereof are condemned as being unsafe or not in conformity with the applicable laws and regulations due to the defective condition or use of supplies, materials, and/or equipment owned or used by LESSEE, or due to a defective condition of common facilities or any part of the premises which LESSEE is required to maintain as herein provided, then, and in that event, LESSEE, at its own cost and expense up to but not to exceed the condemnation award so granted, 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 untenable for occupancy and use by LESSEE, the rent shall abate in proportion to the LESSEE'S deprivation of the use of the premises, unless the condemnation necessitating such changes, alterations or repairs was caused as aforesaid by LESSEE.

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 14.2 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 14.2. LESSEE shall also, in the event of LESSOR'S breach, have the benefit of all monies received by LESSOR, if any, from any condemnation award for the purpose of making such repairs required to be made by LESSOR hereunder.

### 13.2 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 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 13.2, LESSOR (subject to the terms of subsection (C) of this Section 13.2), using such net condemnation proceeds as may be available, shall restore the building and other improvements upon the premises to a condition and to a size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the taking, and there shall be an equitable abatement of the minimum rent and other charges which are based on the square footage of the premises, and equitable reduction in the gross sales required for percentage rent, 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 rent, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the



determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

(C). If otherwise permitted by law, 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 the state of Delaware, and which do not diminish the amount of award due LESSOR. If only part of the premises is taken and this Lease is not terminated pursuant to subsection (A) of this Section 13.2, the net proceeds of any condemnation award recovered by reason of any taking of the premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then current market value of the land taken (such excess being hereunder called the "net condemnation proceeds") shall be held in trust by LESSOR or any Mortgagee of the premises and released for the purpose of paying the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking. In the event that the parties are unable to agree upon the portion of the award attributable to the then current market value of the land taken or in the event that the parties are unable to agree upon the fair and reasonable cost of restoring the building and other improvements damaged by reason of the taking, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

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

#### ARTICLE XIV. DEFAULT.

**14.1 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 fifteen (15) 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, but shall have no obligation to, 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 Article IV, and all other undisputed amounts.

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

LESSEE plus (b) the amounts set forth in clauses "third" and "fourth" above, pro-rated as set forth below, then LESSEE shall upon receipt from LESSOR specifying the amount, pay the difference to LESSOR. Such difference shall be calculated and paid monthly, and for the purpose of such calculation, the amounts set forth in clauses "third" and "fourth" above shall be pro-rated over the term of the reletting of the premises.

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

**14.2 LESSOR DEFAULT.** The LESSOR and any Mortgagee covenant with the LESSEE that if LESSOR shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice thereof is given by LESSEE to LESSOR and Mortgagee, if any, for whom the LESSEE has received written notification specifying such default, except in the event of emergency when no such written notice shall be required, (provided, however, if such failure is incapable of being cured with diligence within such thirty (30) day period, and if LESSOR proceeds diligently to cure the same and thereafter prosecutes such curing with diligence to completion, then upon receipt by LESSEE of notice from LESSOR or Mortgagee stating the reason such failure cannot be cured within said thirty (30) days, the time period for such curing shall be extended for such period as may be reasonably necessary to complete the curing) then, and in addition to the remedy of specific performance and other remedies and causes of action now or hereafter provided by law or in equity, LESSEE may, at its option, among other things, 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, but LESSEE shall not cancel or terminate this Lease without giving written notice to LESSOR'S Mortgagee of which LESSEE has knowledge as provided in the form of Estoppel Certificate attached hereto as Exhibit "C". Subject to the prior rights of LESSOR'S Mortgagee, 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 3.6 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. LESSEE shall, however, have the right to deduct from percentage rental due, if any, as provided for herein.

#### ARTICLE XV. LESSOR'S ADDITIONAL COVENANTS.

15.1 PARKING AREA. LESSOR agrees that at no time during the term of this Lease, will the customer parking area, entrances and exits and service areas of the Shopping Center be reduced in size or configuration from that shown and noted on the plot plan attached as Exhibit "A" without LESSEE'S prior written consent, unless such reduction is made necessary by the exercise of eminent domain by proper and duly constituted authority or authorities, or required by law or regulation, or is done at LESSEE'S request, or results from the exercise of any right granted LESSEE herein. Any violation of this provision shall entitle the LESSEE, at LESSEE'S sole option, to treat such violation as a default with an option to cancel the Lease or to require a proportionate reduction of rent, with full reservation of LESSEE'S right to damages (if any) and to equitable relief, including specific performance, together with a full reservation of any other right or remedy available to LESSEE at law or in equity.

**15.2 SHOPPING CENTER OCCUPANCY.** LESSOR agrees that, on the real estate of which the premises are a part, the LESSOR now controls or on contiguous or adjacent real estate the LESSOR may at some later date control, that there will not be located on such real estate, a theatre, bowling alley, or skating rink within three hundred (300) feet of the premises, and further no restaurant, offices, training, educational, physical fitness or exercise facilities having their primary entrances on the southwest (Lea Boulevard) side of the premises. Nothing herein shall preclude any use of existing buildings in the Shopping Center for a library, restaurant, fast food or food catering facility, and/or offices having their primary entrances on the northeasterly side of the Shopping Center, nor shall out parcels or the land designated "Reserved for Future Use", as noted on Exhibit "A-1", be prohibited from use for a bank, restaurant, drug store, nursery or fast food purposes.

**ARTICLE XVI. EXCLUSIVE, RIGHT TO CLOSE, ASSIGNMENT AND SUBLETTING.**

**16.1 EXCLUSIVE.** LESSOR covenants that, provided and for so long as LESSEE operates the premises as a retail food store, it will not permit any person other than the LESSEE to operate a retail food store of any nature in the Shopping Center of which the premises are a part or on any adjoining property owned by LESSOR, its assignee, or its transferees, without first obtaining the LESSEE'S prior written consent. The provisions of this Section 16.1 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 16.1 and shall be deemed to have received notice thereof.

**16.2 USE OF PREMISES AND RIGHT TO CLOSE STORE.** LESSOR agrees that nothing in this Lease shall be construed as compelling LESSEE to operate any particular type of business or to keep the store in or upon the premises open for business and LESSEE shall have the privilege of operating the premises for any lawful commercial 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 for which LESSEE shall have been given written notice; provided, however, that if LESSEE indefinitely closes the premises, or ceases to operate the premises as a retail food store, (except for periods of restoration, renovation, repair or maintenance) LESSEE shall so notify LESSOR in writing and LESSOR shall, no later than ninety (90) days after receipt of said notice, notify LESSEE of LESSOR'S election to terminate the Lease as of the last day of the month one (1) month subsequent to the month in which LESSOR so notifies LESSEE. Notwithstanding the foregoing, LESSEE may nullify LESSOR'S termination right by notice to LESSOR within thirty (30) days after receipt of LESSOR'S termination notice that LESSEE will open its store within sixty (60) days thereafter, followed by such opening. LESSOR'S failure to exercise the right of termination granted in this Section 17.2 during any period of discontinued operations shall not constitute a waiver of its right of termination during a subsequent period of discontinued operations. Moreover, at any time after receiving notice that LESSEE has indefinitely or permanently closed the premises, and while such premises remain closed (other than for restoration, repair or maintenance), LESSOR may elect to terminate the Lease upon written notice to LESSEE, which termination LESSEE may nullify as aforesaid.

Subject to the foregoing provisions, LESSEE shall always have the privilege of closing said store at any time, provided it shall continue to pay the rental as set forth in Section 4.1 of this Lease; provided, however, that if LESSEE permanently closes the premises, or ceases to operate the premises as a retail food store, (except for periods of restoration, renovation, repair or maintenance) LESSEE shall so notify LESSOR in writing and LESSOR shall, no later than thirty (30) days after receipt of said notice, notify LESSEE of LESSOR'S election to terminate the Lease as of the last day of the month one (1) month subsequent to the month in which LESSOR so notifies LESSEE. Notwithstanding the foregoing, LESSEE may nullify LESSOR'S termination right by notice to LESSOR within thirty (30) days after receipt of LESSOR'S termination notice that LESSEE will open its store within sixty (60) days

thereafter. LESSOR'S failure to exercise the right of termination granted in this Section 17.2 during any period of discontinued operations shall not constitute a waiver of its right of termination during a subsequent period of discontinued operations.

In the event that LESSEE proposes to change the use of the premises LESSEE shall so notify LESSOR in writing and LESSOR shall, no later than thirty (30) days after receipt of said notice, notify LESSEE in writing of LESSOR'S election to terminate this Lease as of the last day of the month one (1) month subsequent to the month in which LESSOR so notifies LESSEE. If LESSOR does not so notify LESSEE of LESSOR'S election to terminate this Lease within said thirty (30) day period, LESSOR shall be deemed to have consented to such proposed use and shall have waived its right of termination. In the event LESSOR elects to terminate this Lease as aforesaid, then upon such termination neither party shall have any further liability or obligation to the other under this Lease, except for matters that have accrued prior to and as of the date of such termination.

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 4.1 of this Lease; provided, however, that in no event upon such closing shall LESSEE have any obligation to pay percentage rental provided in Article IV hereof and LESSOR shall have no claim against LESSEE under Article IV arising out of or as a result of such closing. At any time while the premises are closed, LESSOR may seek another tenant or buyer for the premises, may show the premises to third parties and upon written notice to LESSEE, may terminate the Lease as hereinabove provided.

**16.3 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, provided that such subletting or assignment is for a legal purpose and does not violate the rights of other tenants, but no such subletting or assignment shall release the LESSEE, or guarantor, if any, from any of the obligations under the terms of this Lease and guaranty, 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, ATM bank machine or floral department (but not a nursery). In the event Wilmington Trust Company or other bank does not operate a full service banking facility in the Shopping Center, then following receipt of written notice from LESSOR to such effect LESSEE shall have the right to sublet or license a part of the premises for use as a bank.

Notwithstanding the above, in the event that LESSEE desires to assign this Lease or sublet all or a portion of the premises for any other use other than that which is permitted herein, LESSEE shall so notify LESSOR in writing and LESSOR shall, no later than thirty (30) days after receipt of said notice, notify LESSEE of LESSOR'S election to terminate this Lease within said thirty (30) day period, LESSOR shall be deemed to have consented to such proposed use and shall have waived its right of termination. In the event LESSOR elects to terminate this Lease as aforesaid, then upon such termination, neither party shall have any further liability or obligation to the other under this Lease, except for matters that have accrued prior to and as of the date of such termination.

#### ARTICLE XVII. FORCE MAJEURE.

17.1 FORCE MAJEURE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted) said obligated party shall immediately furnish written notice to the other party stating clearly the reason for delay and the date when performance is to re-commence and the re-scheduled date for completion. Thereafter, the performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however,

LESSEE or LESSOR shall exercise its best efforts to remedy any such cause of delay or cause-preventing performance, and nothing in this paragraph shall excuse LESSEE from the prompt payment of any rental or other charges required of LESSEE except as may be expressly provided elsewhere in this Lease and except where the Commencement Date of this Lease is delayed in which latter case rent shall not be payable hereunder until the date of such delayed Commencement Date.

#### ARTICLE XVIII. MISCELLANEOUS PROVISIONS.

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

18.2 LESSOR ENTRY. The LESSOR shall have the right to enter the premises at any reasonable time upon prior notice and accompanied by a representative of LESSEE, for the purpose of inspecting the same, or for the purpose of doing anything that may be required under this Lease, or for the purpose of doing anything LESSEE may be required to do and shall fail to do, but no such notice or representative shall be required in case of an emergency. In the event it is reasonably necessary for the LESSOR to make any repairs to the premises that the LESSEE is responsible for, but which the LESSEE has failed to make, LESSEE shall reimburse the LESSOR for the cost thereof on demand, and the LESSOR shall not be responsible to the LESSEE for any loss or damage that the LESSEE may suffer from such repairs, provided that such loss or damage is reasonable under the circumstances.

18.3 SHOWING BY LESSOR. LESSOR may, at any time within six (6) months before the expiration of this Lease, enter the premises at all reasonable hours upon prior notice and accompanied by a representative of LESSEE, for the purpose of offering the premises for rent or sale, subject to LESSEE'S rights, as set out in Section 3.6. LESSOR may, at any time upon reasonable prior written

notice, show the premises to an appraiser, prospective mortgagee, architect, engineer, contractor, insurer or government official.

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

18.5 UTILITIES. LESSEE agrees to pay all electric current, water, sewer, gas, and other fuel bills, as determined by separate meters for LESSEE'S space and use which bills must be billed directly from the utility company to the LESSEE. LESSOR, at its sole expense, will provide any and all utility meters, utility hook-up or connection fees or charges (but not deposits) 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.

18.6 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 Article IV or Section 16.3 of this Lease.

18.7 ALTERATIONS OR ADDITIONS. The LESSEE shall have the right to make nonstructural interior 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 Seventy Five Thousand Dollars (\$75,000.00) shall be made by the LESSEE without the prior written consent of the LESSOR. The LESSEE shall not be required to remove any such alterations or additions or to restore the building to its original condition at the termination of this Lease. LESSEE shall pay any and all increased taxes and insurance premiums resulting from any such alterations or additions.

**18.8 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.

**18.9. 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 use its best efforts to obtain the same waiver from the mortgagee and will execute a landlord's waiver in favor of any lender who may finance any of the equipment, fixtures, machinery, furniture, supplies or inventory of the LESSEE.

**18.10 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 delivery service that provides proof of delivery. Any such notice to the LESSOR shall be addressed to it at the same address to which rent is to be paid. 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. The LESSOR shall also provide notice to any sublessee whose name and address has previously been provided in writing by the LESSEE. The address of any party may be changed by written notice thereof to the other party.

Any such notice to the LESSOR may be sent by LESSEE'S agent, including, but not limited to, any attorney employed by BOROFF, HARRIS & HELLER, P.C., or its successor, 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.

18.11 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.

18.12 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. LESSOR shall

use its best efforts to insure that its agents, contractors, servants or employees use reasonable caution not to damage or destroy any of the work or equipment installed by LESSEE. 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. All such work and storing of equipment shall be at the cost and sole risk of the LESSEE except for the gross negligence of the LESSOR, its agents, contractors, servants or employees. The LESSEE shall maintain adequate insurance during this interim period of time.

18.13 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 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 11.1 are first applied to repair, replace or rebuild the premises so damaged or destroyed, if LESSOR and/or LESSEE under the terms of Article XII 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 XIII above shall be the sole property of LESSEE and/or its sublessee. LESSEE agrees to attorn to LESSOR'S Mortgagee, designee and/or purchaser of the premises at a foreclosure sale.

18.14 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".

## 18.15 HAZARDOUS MATERIAL.

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

18.15.1.1 "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.).

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

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

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

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

18.15.2 Representations and Warranties. LESSOR represents and warrants to LESSEE that to the best of its actual knowledge and belief (i) any handling, transportation, storage, treatment or usage of Hazardous Material that has occurred on the Property has been in compliance with all applicable federal, state and local laws, regulations and ordinances, (ii) no leak, spill, release, discharge, emission or disposal of any Hazardous Material has occurred on the Property, (iii) to the extent required by law, the Property is free of any Hazardous Material and will be free of any Hazardous Material as of the date the term of this Lease commences, and (iv) there are no underground storage tanks located on the Property.

18.15.3 Indemnification. LESSOR hereby agrees to indemnify, defend and hold each Indemnified Person harmless from any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of (i) the presence or suspected presence at any time of any Hazardous Material in or on the Property, regardless (except as set forth below) of the source of such Hazardous Material, (ii) the presence at any time of any underground storage tank on the Property, or (iii) LESSOR'S misrepresentation of its knowledge and belief, as set forth in the preceding paragraph. The costs covered by the LESSOR'S indemnification include, without limitation, reasonable costs incurred in the investigation of site conditions, reasonable fees of attorneys, engineers and other consultants, costs and expenses incurred by LESSEE in exercising any of its rights under paragraph 18.15.5 hereof and any damages suffered as a result of any termination of this Lease in accordance with paragraph 18.15.5 hereof. Excluded from the LESSOR'S indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Property by any tenant or any sublessee or any director, officer, employee, agent or invitee of LESSEE or any sublessee.

LESSEE agrees that it will not bring onto the premises, nor will it permit any assignee, sublessee, licensee or concessionaire, or any of its or their agents, employees or invitees to bring onto the premises, any Hazardous Material, other than inventory, cleaning supplies and other materials in



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

18.15.4 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.

18.15.5 Remedial Action.

18.15.5.1 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, or such longer time as may with reasonable diligence be necessary, 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. LESSOR and LESSOR shall confer on what remedial action may be appropriate, and within twenty (20) days of LESSOR'S receipt of such notice, or such longer time as may with reasonable diligence be necessary,

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 be deemed sufficient if it causes the Property to comply with all applicable federal, state and local laws, ordinances and regulations and abates any pending or threatened action with respect to the Property by any federal, state or local governmental authority.

18.15.5.2 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 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.

18.15.5.3 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.

18.15.5.4 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.

18.15.5.5 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.

18.15.6 Remedies.

18.15.6.1 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.

18.15.6.2 Termination. Notwithstanding any other provision herein, in the event LESSOR has materially misrepresented its knowledge and belief as set forth above so as to prevent the utilization of the premises by the LESSEE for its business purposes, LESSEE may by sixty (60) days prior written notice to LESSOR, terminate this Lease as of the date specified in such notice. 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 sixty (60) days prior written notice to LESSOR, undertake such remedial or maintenance work on its own, and offset the cost of the same against future rents.

18.15.6.3 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 18.15.3 hereof.

18.15.6.4 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.

18.15.7 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 LOOSES review in conformity with said guidelines. Unless required by law, ordinance or regulation to the contrary, all information provided by LESSOR to LESSEE hereunder shall be confidential, and may not be disclosed to anyone without LESSOR'S approval.

18.15.8 Reciprocal Provisions. The provisions of 18.15.5.1 through 18.15.5, 18.15.6.2 and 18.15.6.4 shall be deemed reciprocal provisions in which the references to

"LESSEE" and "LESSOR" are reversed as to any Hazardous Material affecting the Property for which LESSEE is responsible upon request of LESSOR in writing. LESSEE shall annually make in writing the representations to LESSOR that are required of LESSOR under 18.15.2, except subsection (iv).

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

18.16 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.

18.18 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.

18.19 CHOICE OF LAWS. This agreement shall be construed under and in accordance with the laws of the State of Delaware and all obligations of the parties created hereunder are performable in New Castle County.

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

18.21 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 withheld, delayed, conditioned or charged for, except for good and substantial reason(s), stated in writing. Moreover, if any party hereto shall remain in default hereunder

after receiving written notice and the opportunity to cure such default allowed herein (if any), it shall be deemed to have waived the right to require that its prior consent, approval, permission or other action to be obtained by the other party under this Lease, for and during such period of time as such default remains uncured, and the other party may withhold its consent, approval, permission or other requested action while such default remains uncured.

**18.22 MEMORANDUM OF LEASE.** It is the intention of the parties hereto not to record this Lease. However, should recordation of this Lease be desired by either party hereto, or required by applicable law, each party, at the request of the other, shall execute a Short Form Lease, or Memorandum of Lease, stating the Lease term as well as any other terms necessary for recording. In the event of the recordation of any such Short Form or Memorandum of Lease, the party desiring same shall be 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 taxes and realty transfer taxes imposed by the state or local government, or any other agency or authority, upon the transfer of or interest in real property.

**18.23 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.

**18.24 CLEANLINESS.** LESSEE shall at all times keep the premises, loading dock and common areas under its control in a reasonably clean, neat and tidy condition, free of insects, vermin, rot, garbage, trash and offensive odors. All refuse shall be kept in enclosed receptacles located at the site or other location reasonably agreeable to LESSOR, and shall be emptied as frequently as necessary to preserve the cleanliness of the Shopping Center and prevent offensive sights and smells.

**18.25 EASEMENT FOR CONDUITS: RESERVATION BY LESSOR.** LESSOR reserves the right to require of LESSEE that all pipes, wires, ducts and other conduits located in, on or through

the leased premises once installed, remain in place, undisturbed by LESSEE and be used to distribute energy, water or other utilities not only to the leased premises but (if appropriate) to other premises and/or common areas located in the building where the leased premises are situate. Further, if in order to service such other premises and/or common areas LESSOR determines that installation of additional pipes, wires and conduits is necessary in, on or through the leased premises, the right to install the same is reserved unto the LESSOR provided that (i) no pipes, wires, or conduits may be installed in any exposed portions of the leased premises; (ii) all such installation shall comply with the Building Code of the City of Wilmington and the requirements of any and all insurance companies that insure the Shopping Center against fire, and (iii) all work must be done in a manner so as to cause the least inconvenience practicable to the LESSEE'S business. LESSOR agrees to indemnify and save LESSEE harmless against loss or damage resulting from any such installation.

18.26 ALLOCATION. In determining the minimum rentals due hereunder, the parties agree that eighty-seven and one-half percent (87 1/2%) thereof is allocable to Landlord improvements and twelve and one-half percent (12 1/2%) thereof is allocable to the building itself.

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

LESSOR -  
DRR, L.L.C.,  
a Delaware limited liability company

Witness: Miriam R. French

By: [Signature]  
Manager

LESSEE -  
FLEMING FOODS EAST, INC.

Attest: [Signature]  
(Seal)

By: [Signature]

The commencement date of this Lease, as provided in Article III, Page 6 hereof, is agreed to be

the                      day of                      , 19                      .

LESSOR -  
DRR, L.L.C.,  
a Delaware limited liability company

Witness: William F. French

By: Debra Paul  
Manager

LESSEE -  
FLEMING FOODS EAST, INC.

Attest: James M. Walker  
(Seal)


By: Donald Egan



STATE OF Oklahoma :  
COUNTY OF Oklahoma : SS.

BE IT REMEMBERED, that on this 26<sup>th</sup> day of January, A.D., 19 94, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Donald N. Eyles Vice, President of FLEMING FOODS EAST, INC., a corporation duly organized, incorporated and existing under the by virtue of the laws of Pennsylvania, and James M. Wallace Secretary of said corporation, who are personally known to me to be the same persons who execute, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

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

  
Notary Public

(SEAL)

My Commission Expires: 9-8-94

STATE OF

*Pa.*

COUNTY OF

*Montg.*

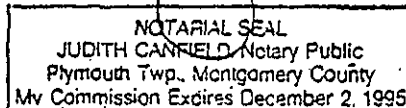
SS.

BE IT REMEMBERED, that on this *17* day of *Sept*, A.D., 19 *93*, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came *Ralph Paul* manager of DRR, L.L.C., a Delaware limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

*Judith Canfield*  
Notary Public

(SEAL)



My Commission Expires: -