

## **EXHIBIT 2**

# **ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT**

(AR-084)

**THIS ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT** (“**Agreement**”) is made as of this 20th day of November, 2003, by and among Fleming Companies, Inc., an Oklahoma corporation, as debtor and debtor-in-possession operating under chapter 11 of the Bankruptcy Code (as hereinafter defined) (“**Assignor**”), and TFJ Nominee Trust (“**Assignee**”).

## **RECITALS**

A. Assignor is currently the tenant and Assignee is currently the landlord under that certain lease dated as of August 13, 1991 (such lease, as amended, modified, supplemented or restated is hereinafter referred to as the “**Lease**”) for the premises located in Van Buren, Arkansas and more specifically described in the Lease (the “**Premises**”). A copy of the Lease is attached hereto as Exhibit A;

B. Assignor is currently the sublandlord under that certain sublease of the Premises dated as of August 13, 1991 (such sublease, as amended, modified, supplemented or restated is hereinafter referred to as the “**Sublease**”). A copy of the Sublease is attached hereto as Exhibit B;

C. On April 1, 2003, Assignor and various of its affiliates filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C §§ 101 et. seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). Assignor continues to operate its business and manage its properties as a debtor-in-possession; and

D. Assignor desires to assign (i) all of Assignor’s right, title and interest as tenant under the Lease and (ii) all of Assignor’s right, title and interest as sublandlord under the Sublease to Assignee; and Assignee is desirous of assuming, pursuant to Section 365(f) of the Bankruptcy Code and on the terms and conditions set forth herein, all of Assignor’s obligations under the Lease and Sublease.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

### **1. Assignment and Assumption**

(a) Pursuant to the terms and conditions set forth in this Agreement, Assignor hereby grants, assigns, sets over and conveys to Assignee all of Assignor’s right, title, and interest in the Premises, the Lease and Sublease. Assignee hereby accepts the foregoing assignment, without any merger of title relative to such interest with any other interest of Assignee in the Lease or the Sublease, whether as landlord, sublandlord or otherwise, and assumes and agrees to perform and fulfill all of Assignor’s duties,

responsibilities and obligations under the Lease and the Sublease arising or occurring from and after the date hereof.

(b) Further, pursuant to Section 365(k) of the Bankruptcy Code, on and after the Closing, Assignor and its estate shall be relieved from any liability for any breach of the Lease or the Sublease occurring after the Closing, and Assignee agrees to defend and indemnify Assignor against, and hold Assignor harmless from, any and all claims, actions, proceedings, suits, costs, liabilities, losses, damages or expenses, arising or occurring after the Closing in connection with the performance or observance or the failure or refusal to perform or observe (i) any agreement or obligation of the tenant under the Lease or any term or provision thereof required to be performed by the tenant under the Lease after the date of this Agreement; or (ii) any agreement or obligation of the sublandlord under the Sublease or any term or provision thereof required to be performed by sublandlord under the Sublease after the date of this Agreement.

(c) Upon entry of the order of the Bankruptcy Court approving the assignment and assumption of the Lease and Sublease on the terms and conditions set forth herein (the “**Order**”), the parties shall attach a copy of the Order to this Agreement as Exhibit C, and the Closing shall occur in the manner provided herein.

2. Release. Assignee acknowledges and agrees that all payments due Assignee, as landlord under the Lease, all base rent, percentage rent, common area maintenance charges, taxes, insurance, additional rent, and all other sums payable under the Lease, however described or denominated (collectively, “**Rent**”), have been paid through the date hereof or hereby waived and released, with the result that Assignor shall not have any obligation whatsoever under the Lease (or with respect to the Premises) arising from and after the date hereof. Assignee, for itself, its successors and assigns, does hereby release, acquit, satisfy and forever discharge Assignor, Assignor’s affiliates, owners, parent companies and subsidiaries, and their respective past, present and future shareholders, officers, directors, employees, agents, attorneys, representatives, guarantors and predecessors (the “**Released Parties**”) from, and do hereby covenant and agree never to institute or cause to be instituted any suit or other form of action or proceeding of any kind or nature whatsoever, including, but not limited to those for rejection damages under Section 365 of the Bankruptcy Code, against the Released Parties based upon any claims, demands, indebtedness, agreements, promises, causes of action, obligations, damages or liabilities of any kind or nature whatsoever, in law or equity, whether or not known, suspected or claimed, that Assignee has ever had, claimed to have, now has or may hereafter have or claim to have, if any, against the Released Parties by reason of the matter, cause, thing, document, agreement, instrument, act or omission of the Released Parties, arising out of the Lease, the Sublease or the occupancy of the Premises.

3. Closing. The consummation of the assignment and assumption of the Lease and the Sublease pursuant to this Agreement (the “**Closing**”) shall take place not later than two (2) business days after the date of entry by the Bankruptcy Court of the Order, and shall be held at the offices of Assignor’s counsel or at such other location as Assignor shall reasonably designate.

4. Court Approval. Promptly following mutual execution and delivery of this Agreement, Assignor shall, at Assignor's sole cost and expense, file a motion with the Court seeking the Order and shall use its reasonable efforts to obtain the Order. This Agreement, however, shall constitute an irrevocable offer by Assignee to consummate the transactions described herein on the terms hereof.

5. Cure Costs. To the extent that the Sublease is subject to the payment of any cure costs (pursuant to Section 365 of the Bankruptcy Code and described in any Order of the Bankruptcy Court relating to such cure liability), Assignee shall be responsible for any such cure costs. Assignee hereby expressly waives any and all cure amounts related to the Lease and stipulates and agrees that no such cure amounts are due in connection with the assumption and assignment of the Lease to Assignee.

6. Remedies. If the Bankruptcy Court does not approve the assignment and assumption of the Lease and Sublease pursuant hereto for any reason other than a material breach of this Agreement by Assignee, or if Assignee and the subtenant under the Sublease are unable to agree on an amount, acceptable to Assignee, required to cure any defaults under the Sublease as required under Section 365(b) of the Bankruptcy Code, then this Agreement shall terminate and Assignee shall have no further claims against Assignor.

7. Free and Clear of Liens, Claims and Encumbrances. At Closing, the assignment and assumption of the Lease and Sublease shall be made free and clear of any liens, claims and encumbrances against Assignor's interest in (i) the Lease (other than any liens, claims and encumbrances of Assignee's lender or mortgagee) and (ii) the Sublease (other than any liens, claims and encumbrances of Assignee's or subtenant's lender or mortgagee), to the extent permitted under the Bankruptcy Code.

8. Adequate Assurance Data. If required by the Bankruptcy Court, Assignee shall promptly supply Assignor and the Bankruptcy Court with all documentation and information as may be reasonably requested by the Bankruptcy Court to demonstrate "adequate assurance of future performance" by Assignee.

9. Possession. Assignor agrees to provide Assignee with possession of the Premises at Closing, subject to the terms of the Sublease.

10. Representations and Warranties.

(a) Assignor. Assignor hereby represents and warrants to Assignee the following:

(i) Subject to the entry and effectiveness of the Order, this Agreement has been duly and validly executed and delivered by Assignor and constitutes a valid and binding agreement of Assignor, enforceable against Assignor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditor's rights generally from time to time in effect and to general equitable principles; and

(ii) The copy of the Lease attached hereto as Exhibit A is a true, accurate and complete copy of the Lease (and all amendments thereto).

(iii) The copy of the Sublease attached hereto as Exhibit B is a true, accurate and complete copy of the Sublease (and all amendments thereto).

(b) Assignee. Assignee hereby represents and warrants to Assignor the following:

(i) This Agreement has been duly and validly executed and delivered by Assignee and constitutes a valid and binding agreement of Assignee, enforceable against Assignee in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditor's rights generally from time to time in effect and to general equitable principles; and

(ii) The copy of the Lease attached hereto as Exhibit A is a true, accurate and complete copy of the Lease (and all amendments thereto).

11. "As Is" Transaction. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ASSIGNEE HEREBY ACKNOWLEDGES AND AGREES THAT, THE ASSIGNOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE INTEREST (INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PREMISES; THE PHYSICAL CONDITION OF THE PREMISES OR THE IMPROVEMENTS; THE SQUARE FOOTAGE OF THE PREMISES OR THE IMPROVEMENTS; THE PRESENCE OR ABSENCE OF ANY "HAZARDOUS MATERIALS" IN, ON OR ABOUT THE PREMISES OR ANY OTHER MATTER RELATING TO THE ENVIRONMENTAL CONDITION OF THE PREMISES; THE ZONING OF THE PREMISES; THE POSSIBILITY OF DEVELOPING OR USING THE PREMISES IN THE MANNER CONTEMPLATED BY ASSIGNOR OR OBTAINING ANY CONSENTS, PERMITS, APPROVALS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE INTEREST; THE FITNESS OF THE PREMISES FOR ANY PARTICULAR PURPOSE OR USE; THE ACCURACY, COMPLETENESS, OWNERSHIP OR TRANSFERABILITY OF ANY DOCUMENTS OR OTHER MATERIALS FURNISHED TO ASSIGNEE WITH RESPECT TO THE PREMISES (OR ANY PORTION THEREOF); THE TITLE OF THE PREMISES; OR ANY OTHER MATTER OR THING RELATING TO THE PREMISES OR THE INTEREST). ASSIGNEE ALSO ACKNOWLEDGES THAT ASSIGNEE HAS CONDUCTED OR WAIVED THE RIGHT TO AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PREMISES AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PREMISES AND/OR THE INTEREST AS ASSIGNEE DEEMED NECESSARY OR APPROPRIATE AND THAT ASSIGNEE IS ACQUIRING THE INTEREST HEREUNDER BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS OR ASSIGNEE'S INDEPENDENT JUDGMENT. ACCORDINGLY, ASSIGNEE HEREBY ACCEPTS THE PREMISES AND INTEREST "AS IS" AND "WITH ALL FAULTS."

12. Commission. The parties hereto represent and warrant to the other that there is no commission or other fee payable by as a result of this Agreement or the transactions contemplated hereunder.

13. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. The parties agree that the Bankruptcy Court shall have exclusive jurisdiction over any disputes hereunder, and they each hereby consent to such jurisdiction.

(b) This Agreement sets forth the entire agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes any prior instruments, arrangements and understandings relating to the subject matter hereof.

(c) Assignor may assign its rights and obligations hereunder to any trustee appointed by the Bankruptcy Court. Assignee may not assign its rights and obligations hereunder to any party without Assignor's written consent and, following Bankruptcy Court approval, any assignment of this Agreement by Assignee must also be permitted by the terms of the Lease or agreed to by the Landlord.

(d) This Agreement may be executed with counterpart signature pages or in more than one counterpart, all of which shall be deemed one and the same agreement.

(e) Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder ("**Notices**") shall be in writing and shall be given as follows: (i) by hand delivery; (ii) by Federal Express or other reputable express courier service; or (iii) by facsimile transmission (other than for notices of default):

If to Assignor:

Fleming Companies, Inc.  
1945 Lakepointe Drive  
Lewisville, Texas 75057  
Attention: Real Estate Department  
Facsimile: (972) 906-1405

With a copy to:

Kirkland & Ellis  
200 E. Randolph Drive  
Chicago, IL 60601  
Attention: Robert T. Buday, Esq.  
Facsimile: (312) 861-2200

If to Assignee:

TFJ Nominee Trust  
7707 "T" Street  
Little Rock, AR. 72227  
Attention: Dave Constien

or at such other address or to such other addressee or to such other facsimile number as the party to be served with Notice shall have furnished in writing to the party seeking or desiring to serve Notice as a place for the service of Notice. Notices shall be deemed to have been rendered or given on the date received or on the date they are deemed to be received as hereinafter set forth. The inability to deliver Notices because of changed address of which no notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as for the date of such inability to deliver or rejection or refusal to accept delivery.

(f) This Agreement can be amended only by a written instrument duly executed by each of the parties.

(g) The parties agree to execute such additional instruments as may be reasonably necessary to carry out the provisions of this Agreement.

(h) If any action is brought by either party against the other party, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees and costs actually incurred.

(i) This Agreement is deemed to have been drafted jointly by the parties, and any uncertainty or ambiguity shall not be construed for or against either party as an attribution of drafting to either party.

[Signature Page Follows]

**IN WITNESS WHEREOF**, this Agreement has been duly executed this \_\_\_\_\_ day of November, 2003.

**ASSIGNOR:**

FLEMING COMPANIES, INC., an Oklahoma corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

TFJ NOMINEE TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**Lease**

[See Attached]

**EXHIBIT B**

**Sublease**

[See Attached]

## **EXHIBIT C**

### **Order**

[See Attached]

**IN WITNESS WHEREOF**, this Agreement has been duly executed this \_\_\_\_\_ day of November, 2003.

**ASSIGNOR:**

FLEMING COMPANIES, INC., an Oklahoma corporation

By: J. Richard Hunt

Name: J. Richard Hunt

Title: Authorized Signatory

**ASSIGNEE:**

TFJ NOMINEE TRUST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been duly executed this \_\_\_\_\_ day of November, 2003.

**ASSIGNOR:**

FLEMING COMPANIES, INC., an Oklahoma corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

TFJ NOMINEE TRUST

By: Judith J. Scherer  
Name: Judith J. Scherer  
Title: co-trustee

*its successor is:*

THOMAS F. JAMES REALTY  
LIMITED PARTNERSHIP, LLLP  
By: THOMAS F. JAMES PROPERTIES, LLC  
Its General Partner

Judith J. Scherer  
By: JUDITH J. SCHERER  
Manager

## **EXHIBIT A**

BUILD AND LEASE AGREEMENT

THIS AGREEMENT is made and entered into this <sup>13<sup>th</sup></sup>~~24~~ day of <sup>August</sup>~~September~~ 1991, by and between THE TFJ NOMINEE TRUST OF SEPTEMBER 24, 1986, whose address is 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207, hereinafter called "LESSOR," and FLEMING COMPANIES, INC., an Oklahoma corporation with an office at Oklahoma City, Oklahoma, hereinafter called "LESSEE."

WITNESSETH:

WHEREAS, the LESSOR desires to construct and lease a building containing approximately 29,640 square feet, hereinafter referred to as the "building," together with parking, common, and service areas, hereinafter referred to as the "common area," upon the following described real estate, all of which is hereinafter together referred to as the "premises":

Tract 1: Part of the Southwest Quarter Northeast Quarter of Section 13, Township 9 North, Range 32 West Crawford County, Arkansas more particularly described as follows:

Beginning at the Southwest Corner of said Southwest Quarter Northeast Quarter. Thence South 88 degrees 04 minutes 48 seconds East, along the South line of said Forty, 560.74 feet to the point of beginning. Thence North 00 degrees 42 minutes 54 seconds East 465.0 feet. Thence South 88 degrees 04 minutes 48 seconds East 338.80 feet. Thence South 00 degrees 42 minutes 54 seconds West 465.0 feet to the South line of said Forty. Thence North 88 degrees 04 minutes 48 seconds West, along said South line, 338.80 feet to the point of beginning containing 3.62 acres more or less subject to existing Road Rights of Way and any Easements of record.

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:

1. OWNER. The LESSOR covenants that it has good title to 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, and may lawfully, peacefully, and quietly have, hold, use, occupy, possess and enjoy the premises hereby leased for and during the term hereof, without any hindrance, eviction, molestation, or interruption of or by the LESSOR, or any person or persons. LESSOR covenants that no zoning or other ordinance, law, regulation, or restrictive covenants prevent use of the premises for the intended purpose.

IMPINGEMENT. Except as herein provided for, LESSOR warrants and guarantees that there are no prior documents of record, or unrecorded documents within the knowledge of LESSOR, which will permit third parties to impinge upon the rights of LESSEE under this Lease by use or occupancy of adjacent property, or any portion of the premises as shown on the plot plan attached to and made a part of this Lease as Exhibit "A." LESSOR shall not make any deviations or variations in the construction or use of the plotted area from that shown on said plot plan without the prior written consent of LESSEE.



2. COMMON AREAS. The premises are located as approved by the parties as shown on the plot plan marked Exhibit "A," attached hereto and incorporated herein. LESSEE covenants and agrees that it shall maintain and make all ordinary repairs to the common parking and service areas of the premises necessary to preserve them in good order and condition, usual wear and tear and damage and destruction covered by insurance and condemnation excepted. Provided, however, notwithstanding the foregoing, LESSEE shall have no liability to repair any portion of the parking lot of the premises until the Warranty for the parking lot contained in the specifications (Exhibit B) expires. Furthermore, in the event it becomes necessary for LESSEE to replace all or a portion of the parking lot of the premises, LESSOR agrees to reimburse LESSEE no later than sixty (60) days prior to the termination or cancellation of this Lease, for the unamortized portion of the costs incurred by LESSEE in replacing all or a portion of the parking lot during the ten (10) year period prior to the termination or cancellation of this Lease. For purposes of the foregoing provision, the parking lot of the premises shall be amortized monthly on a straight line basis over a ten (10) year period of time (1/120th per month). LESSEE agrees to consult with LESSOR prior to replacing the parking lot of the premises, either in whole or in part, during the last five (5) years of this Lease, or if exercised, during any renewal periods. For purposes of this Lease, common area shall mean the entire premises excluding the building. The common area is

outlined and shown on the plot plan marked Exhibit "A," attached hereto and incorporated herein by reference.

3. CONSTRUCTION. The LESSOR agrees to cause construction of the building on the premises and other improvements on the premises including the common areas in accordance with the plot plan as approved by all governmental controlling jurisdictions, attached hereto as Exhibit "A," and the specifications marked Exhibit "B," attached or to be attached hereto and incorporated herein. This Lease shall not be effective until such specifications, Exhibit "B," and the plot plan, Exhibit "A," have been so attached and have been initialed by both parties. The LESSOR shall provide water, sewer, gas, electrical and other utilities. LESSEE shall have the right to review the elevation drawing.

The LESSOR agrees that, at the option of the LESSEE, this Lease shall become null and void if construction on the premises is not commenced on or before OCTOBER 1, 1991, and completed and ready for occupancy on or before April 1, 1992, causes or conditions beyond the control of LESSOR only excepted; provided, however, that if the premises are not ready for occupancy on or before OCTOBER 1, 1992, irrespective of cause, and irrespective of whether such cause is beyond the control of LESSOR, LESSEE, in its sole discretion, is hereby granted the option to cancel and terminate this Lease.

Construction of the premises shall not be considered complete until it is substantially completed in every respect ("substantially completed in every respect" shall mean complete

except for those items listed on the punch list, as hereinafter defined, which can be and will be corrected and completed within thirty (30) days by LESSOR in accordance with the specifications, Exhibit "B" hereof, none of which items would materially interfere with or impair the LESSEE'S use of the premises, and to an extent permissible with respect to necessary work to be performed by LESSEE in installing its trade fixtures and equipment), including, but not limited to, toilet facilities, office space, vinyl floor covering, automatic pressure-pad doors, light fixtures including tubes and globes, ~~halls~~ <sup>779</sup> enclosed machine rooms, curtain walls and partitions, and electrical and plumbing requirements complete to the point of connection of fixtures, equipment, checkstands and signs; interior and exterior decoration completed, parking areas completely surfaced, with adequate lighting and initial traffic control, service roads, sidewalks, loading facilities, all to be in accordance with specifications (Exhibit "B") to be supplied by LESSEE. LESSOR shall also construct a pylon base, together with underground electrical lines as shown on Exhibit "A," and LESSEE shall have the right to place on such pylon its sign identifying the building. LESSOR agrees no other sign other than LESSEE'S sign shall be permitted on the premises without LESSEE'S prior written consent being first obtained.

LESSEE agrees to accept the premises in the condition existing on the date of the commencement of the term, subject to LESSEE'S list of defective items (hereinafter called "punch list") being completed. In the event of LESSOR'S failure to complete said punch

list items within thirty (30) days after receipt of LESSEE'S notification to LESSOR, then at LESSEE'S sole option LESSEE may either complete such punch list items and deduct the cost thereof from rent, the costs of which are hereby agreed to in advance by the parties hereto to be reasonable and proper deductions, or require LESSOR'S specific performance of the same, or seek any other legal remedies available to LESSEE. LESSOR covenants that the premises to be constructed shall, at the commencement of the term hereof and subject to LESSEE'S punch list being completed, be structurally sound and in good tenantable condition, and that there shall be no latent defects therein. "Latent defect" as used herein is a defect which is a departure from plans and specifications not apparent upon an ordinary and reasonable inspection by a professional engineer qualified to make such inspection, normal wear and tear excepted. LESSOR further covenants that if any latent defects in the premises become apparent at any time during this Lease, and it shall appear that such latent defects existed at the beginning of the term hereof, or resulted from faulty design, workmanship or materials, then LESSOR shall cause the same, after receiving written notice from LESSEE, to be repaired and corrected with all reasonable speed. LESSEE shall have the benefit of all warranties accruing to the LESSOR by reason of construction of the premises and any installation of equipment thereon.

4. TERM. The LESSOR agrees to, and does hereby, lease the premises to the LESSEE for an original term of twenty (20) years, commencing on the earlier of the day the premises are opened

for business or thirty (30) days following the date when construction of the premises is completed in accordance with the terms of this Lease and the premises are ready for occupancy by LESSEE, except for punch list items, which can and will be completed within thirty (30) days, as aforesaid, and LESSOR notifies LESSEE of the foregoing, whichever is earlier. The commencement date of the term shall be endorsed at the end hereof, and the lease term shall terminate at 11:59 p.m. on the last day of the twentieth (20th) year term thereafter.

It is agreed that, if at the end of the original term of this Lease, or any option period hereof, LESSEE, in its sole discretion, shall deem it necessary to remain in occupancy of the premises beyond the termination date of the Lease, LESSEE may do so for a period of time up to one hundred twenty (120) days. For any such extension period, the rent will be one and one-half (1.5) times the minimum monthly rent. LESSEE shall give LESSOR sixty (60) days' notice should such extension be necessary. It is further understood and agreed that LESSEE shall not be obligated to open or operate a business on the premises nor shall the rent for the premises commence until all streets and highways and parking areas, shown on Exhibit "A" attached hereto, have been fully paved and are open for public use.

5. RENEWAL OPTIONS. It is further agreed that, at the expiration of the original term, the LESSEE shall have the right, exercisable at its sole option, to extend this Lease for four (4) additional term(s) of five (5) years each, upon the same terms and

conditions. The LESSOR shall be notified of the LESSEE'S intent to exercise such option at least six (6) months prior to the end of the then current term. It is further agreed that LESSEE shall have the right, at its sole option, to extend this Lease for an additional term not to exceed seven (7) years, if necessary, to permit reconstruction and repair of the building after its damage or destruction, in accordance with the provisions of Paragraph 16 hereof.

6. RENT. As rent for the premises, the LESSEE agrees to pay to the LESSOR at 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207, or at such other places as are mutually agreed upon, the following amounts:

- A. A minimum monthly rental of Fourteen Thousand Seventy-nine and 00/100 Dollars (\$14,079.00) plus an amount equal to 1% of annual gross sales, as defined herein, made from the premises in excess of Sixteen Million Eight Hundred Ninety-four Thousand Eight Hundred and no/100 Dollars (\$16,894.800.00).
- B. Reimbursement of taxes and assessments as set forth in Paragraph 8 hereof.
- C. Reimbursement of fire and extended coverage and rent interruption insurance annual premiums as set forth in Paragraph 16 hereof.

In addition to the foregoing items of rent, LESSEE agrees to be directly and primarily responsible for (A) obtaining and paying the premium for public liability and property damage insurance covering the premises as set forth in Paragraph 9 hereof and (B) repairs and maintenance to the premises as specified in Paragraph 2 and Paragraph 13 hereof.

GROSS SALES DEFINED. The term "gross sales," as used herein, shall include all sales of merchandise from, through, or off the premises, including the performance of any service for any customer or patron for compensation by the LESSEE or employee, and shall include all sales by every department thereof, for cash or on a charge basis, including all business in which orders come by mail, telephone, or telegraph, less credit for returned merchandise, merchandise trade-ins, and credits of a similar nature. "Gross sales" shall not include sales, luxury, excise or other taxes collected by LESSEE from customers and charged separately, merchandise transfers from one of the LESSEE'S or a SUBLESSEE'S stores to another, return or merchandise to a supplier, wholesale bakery or wholesale delicatessen sales, or receipts earned from any banking, financial, insurance or similar commercial enterprises; optical, dental or other professional services; dry cleaning, beauty salons or other non-professional services conducted in the premises; lottery tickets, money orders or other negotiable instruments, vending machines, arcade games, or leasing of equipment or products, or sales generated from licensed or sublet departments except to the extent LESSEE earns income from same.

LESSOR shall have the right, at any time, but no more than once a year, and from time to time, 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 years shall be deemed to have been accepted by LESSOR and be incontestable.

LEASE YEAR DEFINED. The term "lease year," as used in this Lease means the following:

1. With reference to the first lease year, the period from the commencement date of the term of this Lease through the last day of the twelfth (12th) full calendar month thereafter.
2. With reference to any succeeding lease year (with the exception of the last lease year), twelve (12) full consecutive calendar months commencing on the first day of the calendar month next succeeding the last day of the preceding lease year.
3. With reference to the last lease year, the period commencing on the first day of the calendar month next succeeding the last day of the preceding lease years and terminating on the last day of the lease term.

TIME OF PAYMENT. The minimum monthly rent for each full calendar month, running from the first day of that month to the last day of that month, shall be paid on or before the Tenth (10th) day of that month.

If the commencement date of the term of this Lease shall be other than the first day of a calendar month, the rent for such partial month shall be calculated and paid on a proportionate basis, so that thereafter rent may be calculated and paid for even calendar months.

Payment of any additional percentage rental, as outlined in Paragraph 6A herein, shall be paid on or before the twentieth (20th) day of the month following the ending of each lease year.



7. LESSOR MORTGAGES. All mortgage payments or other charges required by LESSOR 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.

8. TAXES AND ASSESSMENTS. All taxes assessed against the premises or taxes assessed in substitution thereof, shall be paid by the LESSOR as the same shall become due. LESSEE agrees to pay all taxes assessed against property on the premises owned by it. 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 that shall become due and payable during the original or any exercised renewed term hereof . Such taxes and assessments must be billed by LESSOR to LESSEE no later than ninety (90) days after receipt of notice from the local taxing authority to LESSOR. LESSOR shall be required to send LESSEE receipted tax bill(s) showing payment for taxes as well as for special assessments. If such notice is not received by LESSEE within ninety (90) days, LESSEE'S obligation to pay such taxes and assessments will be considered to be null and void; 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.

ASSESSMENTS MADE DURING LEASE TERM. In the event during the term of this Lease or any extension thereof that an assessment is placed upon the premises 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 is proposed by any competent taxing authority during the term of this Lease or any extension thereof, then, upon the request of LESSEE, LESSOR and any mortgagee shall use their best efforts to obtain an assessment which is payable or may be paid in installments.

In the event during the term of this Lease or any extension thereof that an assessment is placed upon the premises by any taxing authority of competent jurisdiction, and such assessment is 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 which 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 Paragraph 18 hereof.

Any taxes and assessments levied and assessed against the premises that shall become due and payable during the term hereof and which LESSEE has agreed to pay may be contested by LESSEE, by 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 that it is based upon the payment of any assessments made by LESSEE.

9. 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 arising out of the use, occupancy or operation of the premises by the LESSEE and its sublessees, except such claims as arise out of the negligent, intentional or willful acts of the LESSOR.

PUBLIC LIABILITY INSURANCE OF PREMISES. 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 in which policy LESSOR, LESSEE and any mortgagee shall be named as additional named insureds, and to furnish current certificates evidencing the existence of such insurance providing that such insurance, shall not be canceled 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 One Million Dollars (\$1,000,000.00) single limit combined bodily injury

and property damage each occurrence, to cover all situations where any other person or persons claim bodily injury, death, or property damage in or upon the premises.

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

shall be equally binding upon and inure to the benefit of any assignee or sublessee of LESSEE.

11. 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 damage to the building resulting from such removal, usual wear and tear excepted.

12. LESSOR ENTRY. The LESSOR shall have the right to enter the premises including the building at any reasonable time for the purpose of inspecting the same, or for the purpose of doing anything that may be required under this Lease, or for the purpose of doing anything LESSEE may be required to do and shall fail to do. In the event that 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.

13. MAINTENANCE AND REPAIR. Except for the LESSOR'S obligations with respect to latent defects as set forth in Paragraph 3 and with the obligations to maintain in good condition the structural portions of the building, including foundation, roof, slabs, walls, and electrical and plumbing services to the building, LESSEE agrees at its expense to maintain all other portions of the building and to make all ordinary repairs (except

Lessee shall have no liability to make any capital expenditures except in regard to the parking lot following expiration of the warranty discussed above in paragraph 2) in and about the building necessary to preserve the building in good order and condition, including the air conditioning and heating equipment. Neither LESSOR nor LESSEE shall be responsible for the replacement of the air conditioning and heating equipment. LESSOR and LESSEE agree that if LESSEE or its agents damage the roof, LESSEE shall be responsible for repairing such damage to the roof caused by LESSEE or its agents. LESSEE shall be entitled to the bonds, warranties and guarantees for the heating and air conditioning equipment and roof specified in the Specifications (Exhibit B).

If, in the event of an emergency, it shall become necessary for one party to make any repairs hereby required to be made by the other party, the party requiring the repair may proceed forthwith to have such repairs made and pay the reasonable cost thereof, whereupon the party obligated to make such repair shall reimburse the party making such repair for the reasonable cost of such repairs on demand therefor.

The LESSEE shall receive all benefits which the LESSOR may be entitled to receive from any source on account of work in or on the building or any portion of the premises, including any equipment thereon, the maintenance of which is the responsibility of the LESSEE. Likewise, LESSOR shall receive all benefits which LESSEE may be entitled to receive from any source on account of work in or

about the building or any portion of the premises, the maintenance of which is the responsibility of LESSOR.

LESSEE further agrees that it shall also be obligated to repair and maintain at its sole expense all of the common area of the premises as set forth under Paragraph 2 hereof, following expiration of the warranty period for the parking lot stated in Exhibit B.

14. WASTE. The LESSEE shall not commit waste or permit waste to be committed in or upon the 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 Paragraph 10 hereof, and (5) other non-insured causes beyond the control of LESSEE.

15. SIGNS. LESSEE shall have the sole right to approve the design and placement of any and all signs of any nature upon the exterior of the building and on the common areas of the premises and that such approval shall not be unreasonably withheld.

16. FIRE AND EXTENDED COVERAGE INSURANCE. LESSOR agrees to keep in effect, at its expense, and 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, and a policy of rent interruption insurance policy for a one (1) year term for the minimum monthly rental to

cover the payment of rent in case of a partial destruction to the premises, written by a responsible insurance company authorized to do business within the state where the premises are located. The policy of fire and extended coverage shall be in an amount equal to not less than ninety percent (90%) of the replacement cost of the building, (with LESSEE to be furnished proof thereof); 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; and shall provide that such insurance shall not be cancelled except after thirty (30) days' notice to LESSEE and any mortgagee, and shall contain the provision of endorsement required by Paragraph 10 hereof.

The building to be constructed by LESSOR under this Lease are to be equipped with an automatic sprinkler system, which is more fully described in Exhibit B. LESSOR further understands that LESSEE'S SUBLESSEE is required to carry fire and extended coverage insurance covering all of its merchandise, furniture, fixture, and equipment located in and upon the building. Should the building covered by this Lease be rated deficient by the Insurance Service Organization, 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 agrees to reimburse LESSEE and/or its SUBLESSEE for any differential amount it may incur. Said differential amount shall be computed and paid annually using the then published insurance rates until the defects



are cured by LESSOR. Upon LESSOR'S receipt of notice of any deficiencies from the Insurance Service Organization, LESSOR agrees to immediately notify LESSEE in writing of said deficiencies. Upon completion of construction, LESSOR agrees to provide LESSEE with a rating sheet for LESSEE'S premises from said Insurance Service Organization citing deficiencies, if any.

SUBSEQUENT CHANGE OF STANDARDS. 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 recommendations and requirements, after its review of said architectural plans and related engineering drawings and specifications of the premises including the building. Neither shall the LESSOR be liable for any reimbursement of any such differential due to the Insurance Service Organization's subsequent change of standards of qualifications for full sprinkler credit pertaining to the standards of construction of the building.

LESSOR'S REIMBURSEMENT OF PREMIUMS. LESSEE agrees to remit to LESSOR, on an annual basis within thirty (30) days after being billed therefor, the annual premium or premiums for insurance covering the building, including rent interruption insurance for said policies as hereinabove provided, subject to LESSEE'S right to obtain a like insurance coverage policy(s) covering the building, should LESSEE be able to secure such policy(s) on the building at a lower rate for like coverage. In the event that LESSEE is able to obtain like insurance policy(s) covering the building at a lower

rate, LESSEE shall provide to LESSOR reasonable data supporting the availability of such like insurance policy(s) from a like insurance company at a lower rate; and upon 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 building 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 building and within said thirty (30) days, the difference between the premium paid or charged by LESSOR for its insurance policy(s) covering the building and that which would have been paid by LESSEE for LESSEE'S policy(s) covering the premises.

BLANKET INSURANCE. The insurance to be provided by LESSOR may be provided pursuant to a blanket insurance policy covering the building and other locations of LESSOR; provided, however, that in no event shall the protection afforded by such blanket insurance policy be less than that required hereunder.

LESSEE agrees it shall not keep anything within the building or use the premises for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the premises.

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 building, then LESSEE shall notify LESSOR thereof in writing, whereupon 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.

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 of the building for its purposes, 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 occurs during the last seven (7) years of the original term hereof or during any of the renewal terms, within thirty (30) days after the occurrence of such damage LESSEE may extend the term of this Lease for not less than seven (7) years by giving LESSOR notice of such extension. If LESSEE so extends this Lease, LESSOR, at its expense, shall promptly rebuild and repair such damage and this Lease shall continue in full force and effect. If LESSEE does not so extend the term of this Lease within thirty (30) days after the occurrence of such damage, LESSOR shall have thirty (30) days in which to continue the term of this Lease by giving LESSEE notice of such extension, in which event LESSOR shall promptly rebuild and repair such damage. If both LESSOR and LESSEE fail to exercise their rights to extend or continue the Lease pursuant to this Paragraph, this Lease shall terminate as of the date of the occurrence of such damage, and the rent shall be adjusted accordingly, and

neither party shall have further rights or obligations hereunder.

Whenever, under the foregoing provisions of this Paragraph 16, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, and 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 upon receipt of notice of LESSEE'S intent to exercise the necessary option to renew, or upon the exercise of LESSOR'S election to rebuild, as the case may be. LESSOR shall prosecute such rebuilding and repairing diligently and to the end that the premises, will be restored to substantially the same condition as existed before the occurrence of such damage. If, for any reason whatsoever, rebuilding and repairing is not completed within six (6) months after receipt of the applicable notices, unless LESSOR shall be prevented from completing such rebuilding and repairing by causes or conditions beyond its 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; and upon such happening 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.

Whenéver, under the foregoing provisions of this Paragraph 16, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, and so to continue this Lease in full

force and effect, the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such casualty to the date of completion of such rebuilding and repairing in proportion to LESSEE'S deprivation of use of the premises for its purposes, and during such period of time LESSOR shall receive its rent payments from the rent interruption insurance maintained on the premises.

Whenever, under the foregoing provision of this Paragraph 16, the premises shall not be rebuilt or this Lease shall be terminated by reason of the exercise or nonexercise 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.

17. CONDEMNATION FOR REPAIRS. The LESSOR agrees that if any authority condemns the premises or any part thereof, as being unsafe, or not in conformity with 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, that in the event the premises or any part thereof are condemned as being unsafe or not in conformity with 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 such common facilities or of 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 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, and LESSOR shall receive rent interruption insurance.

18. CONDEMNATION. Upon LESSOR'S receipt of notice from any condemning authority of a proposed condemnation, LESSOR shall immediately notify LESSEE in writing. If all of the building shall be taken under the right of eminent domain by any authority having the right of condemnation, or if a portion of the building is so condemned as will prevent the practical use of the building for LESSEE'S purposes, this Lease, and all obligations hereunder, shall terminate, on the date title vests pursuant to such proceedings. In the event the proper judicial authority does not divide the award to compensate the separate loss of each party, the total award made in such proceedings shall be equitably distributed between the

LESSOR and LESSEE, provided that if the parties cannot agree upon an equitable distribution of such award, either party may petition a court of competent jurisdiction in the state where the premises are located for equitable distribution of such award; and in the event no such court has jurisdiction to determine an equitable distribution of such awards, either party may request arbitration under the terms hereinafter set forth. If such taking does not prevent the practical use of the building 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. In any instance in this Agreement in which it is provided that a question shall be determined by arbitration, the following procedure shall govern:

The party desiring arbitration ("First Party") shall give written notice to that effect to the other party ("Second Party"), specifying in said notice the name and address of the person designated to act as arbitrator on its behalf. Within fifteen (15) days after the service of such notice, the Second Party shall give written notice to the First Party specifying the name and address of the person designated to act as arbitrator on its behalf. If the Second Party fails to notify the First Party of the appointment of its arbitrator, as aforesaid, within or by the time above specified, then the appointment of the second arbitrator shall be made in the same manner as is hereinafter provided for the appointment of a third arbitrator in a case where the two

eminent domain by proper and duly constituted authority or authorities, or is done at LESSEE'S request, or results from the exercise of any right granted LESSEE herein. Any violation of this provision shall entitle the LESSEE to either treat such violation as a default with an option to cancel the Lease or to require a proportionate reduction of rent, at LESSEE'S sole option.

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

24. LESSEE DEFAULT. LESSEE further covenants with the LESSOR that if LESSEE defaults by not paying the rent or any part thereof when it becomes due, or by violating or neglecting any covenant, agreement or stipulation therein contained on LESSEE'S part to be kept performed or observed; and should any such default continue for thirty (30) days after written notice specifying such default has been received by LESSEE, and LESSEE does not cure such default within said thirty (30) days; or if said default is of such 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, 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



of the third arbitrator and all other expenses, if any, shall be borne equally by both parties.

19. HOLDING OVER. Except as provided in Paragraph 4, if LESSEE remains in possession of the premises after the expiration of this Lease, 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.

20. 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 for the purpose of offering the premises for rent, subject to LESSEE'S rights, as set out in Paragraph 5.

21. 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.

22. PARKING AREA. LESSOR agrees that at no time during the term of this Lease will the customer parking area, entrances and exits and service area adjoining the premises be reduced in size or configuration from that shown on the plot plan attached as Exhibit A, unless such reduction is made necessary by the exercise of

arbitrators are appointed hereunder and the parties are unable to agree upon such third appointment. The arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed, and if, within thirty (30) days after the second arbitrator is appointed, said two arbitrators shall not agree upon the question in dispute, they shall themselves appoint a third arbitrator, who shall be a competent and impartial person; and in the event of their being unable to agree upon such appointment within ten (10) days after the time aforesaid, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the presiding Judge of the U.S. District Court for the Federal District in which the premises are located. In the event of the failure, refusal, or inability of any arbitrator to act, a new arbitrator shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such arbitrator so failing, refusing or unable to act. The decision of the arbitrators so chosen shall be given within a period of thirty (30) days after the appointment of such third arbitrator. The decision in which any two arbitrators so appointed and acting hereunder concur shall in all cases, be binding and conclusive upon the parties. Each party shall pay the fees and expenses of one of the two original arbitrators appointed by such party, or in whose stead as above provided such arbitrator was appointed, and the fees and expenses

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 in lieu thereof, to enter and take possession of the premises immediately, and may remove all persons, furniture, fixtures and equipment from the premises, at LESSEE'S sole expense, in order to recover at once full and exclusive possession of the premises, and such entry shall not operate as a waiver or satisfaction, in full or in part, of any claim or demand arising out of or connected with any breach, default, or violation by the LESSEE of any covenant or agreement on its part to be performed; provided that, notwithstanding any of the foregoing, LESSOR shall not have the right to repossess the premises in the event of a bonafide dispute as to the LESSEE'S liability, if any, to make repairs, except after such liability has been finally judicially determined, or so long as LESSEE continues to pay minimum rent as hereinabove provided in Paragraph 6.

Should LESSOR elect to terminate LESSEE'S possessory rights, without terminating the term of this Lease, as hereinabove

provided, LESSOR shall, with the prior written consent of LESSEE, which consent shall not be unreasonably withheld, relet the premises or any part thereof for such term or terms, at such rental or rentals, and upon such other terms and conditions as LESSOR may deem advisable, and LESSOR shall have the right to make, with the prior written consent of LESSEE, which consent shall not be unreasonably withheld, reasonable alterations and repairs to the premises. 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. 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; if no future rent becomes due and payable hereunder, such residue shall be retained by LESSOR. Should such rentals received from such reletting by LESSOR to which LESSEE has given its written consent, during any month, be less than the minimum rental agreed to be paid hereunder during that month by LESSEE, then LESSEE shall, upon receipt from LESSOR specifying the amount, pay the difference to LESSOR. Such difference shall be calculated and paid monthly. No such termination of LESSEE'S possessory rights, without termination of 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 is 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.

25. LESSOR DEFAULT. The LESSOR further covenants 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 LESSOR does not cure such default within thirty (30) days or if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and LESSOR 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, LESSEE may, at its option, among other things, (1) cancel and annul this Lease, (2) remedy the condition or need referred to in such notice, (3) make the payment which LESSOR has not made, but should have made, if any, or (4) remedy the condition or need referred to in such notice and deduct LESSEE'S actual cost or the amount of the payment thereof from subsequent installments of rent. In the event of any dispute between the parties as to the right of LESSEE to such deduction, LESSOR further covenants and agrees that it will

not give LESSEE any notice of default or termination of this Lease unless LESSEE shall fail to pay to LESSOR the amount of any such deduction within ten (10) days after receipt of notice by LESSEE of a final and unappealable judgment with respect thereto in favor of LESSOR.

26. 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 Paragraph 33 of this Lease.

27. INSURANCE MAY BE PROVIDED BY SUBLESSEE OR ASSIGNEE. It is further understood that LESSEE at all times shall maintain the insurance coverage it is required to carry hereunder 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 Paragraph 9 above, by LESSEE or by an assignee or sublessee of LESSEE.

28. EXCLUSIVE. LESSOR covenants that it will not permit any person other than the LESSEE to operate a retail food store of any nature on the premises, or on any adjoining property owned by LESSOR, his assignee, or his transferee, without first obtaining the LESSEE'S prior written consent.

29. ALTERATIONS OR ADDITIONS. The LESSEE shall have the right to make alterations or additions to or expand the premises, provided such alterations or additions or expansion is at its sole cost and expense, and that such alterations or additions or expansion is of good workmanship and material at least equal to that of the original construction, and that such alterations or additions or expansion shall neither reduce the size and strength of the existing building or adversely affect the market value of the premises. The LESSEE shall not be required to remove any such alterations or additions or expansion or to restore the building to its original condition at the termination of this Lease.

30. 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.

31. OCCUPANCY. LESSOR agrees, on the premises which the LESSOR now controls or on contiguous or adjacent real estate which the LESSOR may at some later date control, that there will not be

located on such real estate a theater, bowling alley, or skating rink, without LESSEE'S prior written consent.

32. 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 closing said store at any time, provided that LESSEE shall continue to pay the ~~minimum~~ monthly rental as set forth in this Lease.

33. SUBLET OR ASSIGN. The LESSEE shall have the right, during the term of this Lease, to sublet all or a portion of the premises, or to assign this Lease, either in whole or in part; but no such subletting or assignment shall release the LESSEE from any of the obligations under the terms of this Lease. 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.

34. 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 subtenants, 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 that there is a mortgage on the premises, the LESSOR shall obtain the same waiver from the mortgagee.



35. NOTICES AND DELIVERY OF ITEMS SENT BY MAIL. Any notice required or desired to be given to either party shall be in writing and be sent by registered or certified mail, postage prepaid. Any such notice to the LESSOR shall be addressed to it at 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207. Any such notice to the LESSEE shall be addressed to it in care of the Store Development Department at Fleming Companies, Inc., P. O. Box 26647, Oklahoma City, Oklahoma 73126-0647. The address of either party may be changed by written notice thereof to the other party.

With respect to all notices and all other items, including rental, which may be or are required to be sent by mail, registered or otherwise, the placing of any such item in the United States mail, being properly addressed, postage prepaid by the sender, shall constitute delivery to the other party unless another provision of this Lease specifically states to the contrary what constitutes delivery of said item.

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

37. 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 building 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 building, in accordance with good construction practice, together with adequate security of the building, is commenced, LESSOR shall notify LESSEE to that effect. LESSEE agrees to install its trade fixtures and equipment in the building in a prompt and expeditious manner so as not to delay LESSOR in readying the building for occupancy at the earliest possible date referred to hereinabove. LESSEE further agrees not to engage any persons in the installation of such fixtures and equipment which would result in a work stoppage by employees of the general contractor or any subcontractor engaged in readying the building or any other part of the premises for occupancy.

38. 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 the 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 Paragraph 16 are first applied to repair, replace or rebuild

the premises so damaged or destroyed, if LESSOR and/or LESSEE under the terms of Paragraph 17 and Paragraph 18 above, either are required to elect to repair, replace or rebuild the premises; and (c) any proceeds from condemnation awarded to LESSEE and/or its sublessee under Paragraph 17 and Paragraph 18 above shall be the sole property of LESSEE and/or its sublessee.

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

40. 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.

41. 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.

42. CHOICE OF LAWS. This agreement shall be construed under and in accordance with the laws of the State of Arkansas and all obligations of the parties created hereunder are performable in Arkansas.

43. MECHANICS' LIENS. LESSEE shall not suffer any mechanics' or materialmen's lien to be filed against the premises by reason of work, labor, services or materials performed or furnished to LESSEE or anyone holding any part of the premises under LESSEE. If any such lien shall at any time be filed as aforesaid, LESSEE may contest the same in good faith but notwithstanding such contest,

LESSEE shall, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise. In the event of LESSEE'S failure to release of record any such lien within the aforesaid period, LESSOR may remove said lien by paying the full amount thereof or by bonding or in any other manner LESSOR deems appropriate, without investigating the validity thereof, LESSEE, upon demand, shall pay LESSOR the amount so paid out by LESSOR in connection with the discharge of said lien, together with reasonable expenses incurred in connection therewith, including reasonable attorneys' fees.

LESSOR shall not suffer any mechanics' or materialmen's lien to be filed against the premises by reason of work, labor, services or materials performed or furnished to LESSOR or anyone holding any part of the Premises under LESSOR. If any such lien shall at any time be filed as aforesaid, LESSOR may contest the same in good faith but notwithstanding such contest, LESSOR shall, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise. In the event of LESSOR'S failure to release of record any such lien within the aforesaid period, LESSEE may remove said lien by paying the full amount thereof or by bonding or in any other manner LESSEE deems appropriate, without investigating the validity thereof, LESSOR, upon demand, shall pay LESSEE the amount so paid out by LESSEE in connection with the

discharge of said lien, together with reasonable expenses incurred in connection therewith, including reasonable attorneys' fees.

44. 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, casualties, strikes, lockouts, labor troubles, inability to produce materials, restrictive governmental laws or regulations, or other cause without fault and beyond the reasonable control of the party obligated (financial inability excepted), then upon written notice to the other party, 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. Notwithstanding the foregoing, LESSOR and LESSEE agree that irrespective of force majeure, the completion date of construction for occupancy as last set forth under Paragraph 3 hereof shall not be extended beyond said date unless agreed to in writing between the parties hereto.

45. MORTGAGEE'S NOTICE TO LESSEE. If LESSOR shall at any time give a first mortgage upon the premises, the holder of such

mortgage may give written notice to LESSEE that such holder has acquired a mortgage on the premises (any such holder who have given such a notice to LESSEE is herein called "MORTGAGEE"). Notwithstanding any other provision of the Lease, LESSEE agrees that it will not terminate the Lease or withhold any rent due thereunder because of any default by LESSOR in the performance of its obligations thereunder until the LESSEE has first given written notice to any MORTGAGEE at the address of such MORTGAGEE last furnished to LESSEE, specifying the nature of such default and allowing such MORTGAGEE the right but not the obligation to cure such default thirty (30) days after the date of receipt of such notice and a reasonable period of time in addition thereto if circumstances are such that said default can be cured, but cannot reasonably be cured within the said thirty (30) day period, provided the same are undertaken by MORTGAGEE with good faith efforts, due diligence and MORTGAGEE gives written notice to LESSEE of its intentions to cure or not cure the default.

46. ESTOPPEL CERTIFICATE. Within ten (10) days after written request by LESSOR, LESSEE shall execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the premises, an estoppel certificate, in the form customarily used by such proposed mortgagee or purchaser, stating among other things: (i) whether the Lease is in full force and effect; (ii) whether the Lease has been modified or amended, and if so, identifying and describing any such modification or amendment; (iii) the date to which rent and any other charges have been paid; and (iv) whether

LESSEE knows of any default on the part of LESSOR or has any claim against LESSOR and if so, specifying the nature of such default or claim.

47. NONDISTURBANCE. If MORTGAGEE shall acquire the premises by foreclosure or conveyance in lieu of foreclosure, then if and so long as LESSEE is not in default in the performance or observance of the covenants and provisions of the Lease, MORTGAGEE will recognize the rights of LESSEE under the Lease and will not disturb LESSEE'S quiet and peaceful possession under the Lease. Subject to the provisions hereof, LESSEE agrees to attorn to MORTGAGEE in the event of foreclosure or by conveyance in lieu of foreclosure, and subject to the provisions of Paragraph 38 of this Lease to be subordinate to any first mortgagee on the premises (or any part thereof) held by any MORTGAGEE.

48. RESPONSIBILITY FOR HAZARDOUS MATERIAL AND UNDERGROUND STORAGE TANKS.

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

48.1.1 "Hazardous Material" means any substance, material or waste which is or at any time hereafter becomes regulated as "hazardous" or "toxic" or under any other similar designation by any local, state or federal governmental authority having jurisdiction over the Property. Such term includes, without limitation, (i) asbestos, (ii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.),

(iii) any material, substance or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.) or (iv) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U.S.C. § 6991, et seq.).

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

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

48.1.4 "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.

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

48.2 Representations and Warranties. LESSOR represents and warrants to LESSEE that to the best of its 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) 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.

48.3 Indemnifications.

48.3.1 Indemnification by LESSOR: 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) the inaccuracy of any of the representations and warranties set forth in the preceding paragraph. The costs covered by the LESSOR's indemnification include, without limitations, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, costs and expenses incurred by LESSEE in exercising any of its rights under paragraph 48.5 hereof and any damages suffered as a result of any termination of this Lease in accordance with paragraph 48.5 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 Indemnified Person.

48.3.2 Indemnification by LESSEE. 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 introduction of any Hazardous Material in or on the Property by any Indemnified Person. The costs covered by LESSEE's indemnification include, without limitation, costs incurred in the investigation of site conditions and fees of attorney's, engineers and other consultants.

48.4 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.

48.5 Remedial Action.

48.5.1 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 as soon as reasonably practical and in any event (i) within ninety (90) days after LESSOR's receipt of such notice from LESSEE and (ii) not later than the expiration of any period of time to formulate a remedial plan which may be prescribed by any federal, state or local governmental authority having jurisdiction over the Property, LESSOR shall deliver to LESSEE a written plan describing in detail

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

48.5.2 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 acceptable to LESSEE in all respects 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 20 days of LESSEE's receipt of such plan (or, if LESSOR fails to provide such plan, within 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.

48.5.3     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 10 days of LESSEE's notice to LESSOR that the plan is acceptable (or LESSEE's failure to terminate this Lease prior to the expiration of the time for LESSEE to do so), LESSOR will, 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.

48.5.4     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, unless such action results from an event as to which LESSEE has indemnified LESSOR under Paragraph

48.3.2 hereof, LESSOR shall promptly reimburse LESSEE for all costs incurred in such action.

48.5.5 Maintenance. Throughout the term of this Lease, LESSOR shall 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, unless such work relates to an event as to which LESSEE has indemnified LESSOR under paragraph 48.3.2 hereof.

48.5.6 Costs. LESSOR shall pay all costs and expenses incurred under this paragraph other than costs and expenses resulting from an event as to which LESSEE has indemnified LESSOR under paragraph 48.3.2 hereof, which costs and expense shall be paid by LESSEE.

48.6 Remedies.

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

48.6.2 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 48.3.1 hereof.

48.6.3 Nonexclusive Remedies. Neither LESSOR nor LESSEE shall be under any obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice any other remedy available hereunder or under law. 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.

48.7 Environmental Studies and Reports. LESSOR represents to LESSEE that it has heretofore provided to LESSEE full, accurate and complete copies of any all reports, studies, and other information in its possession relating to the issue of the presence or suspected presence of any Hazardous Material on the Property and agrees that it will promptly following its receipt thereof, furnish to LESSEE full, accurate and complete copies of any such reports, studies and other information hereafter obtained by LESSOR. Without limitation of the foregoing, LESSOR represents and warrants to LESSEE that it has received and reviewed LESSEE'S environmental site assessment guidelines and that it has provided LESSEE with an environmental report complying with such guidelines. LESSEE hereby acknowledges its receipt and acceptance of such report.

49. Execution of ECR. On or before the date LESSOR acquires fee simple title to the premises, LESSOR and Highland Partnership, an Arkansas partnership, will have entered into, executed and filed in the real estate records of Crawford County, Arkansas, the Easements with Covenants and Restrictions Affecting Land (ECR) agreement, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

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

LESSOR  
THE TFI NOMINEE TRUST

BY Thomas F. James  
Thomas F. James, Trustee

LESSEE

FLEMING COMPANIES, INC.

SEAL  
Attest:

James M. Hallam  
Asst. Secretary

BY James Clark  
VICE PRES

The commencement date of this Lease, as provided in Paragraph 4, Page 7 hereof, is agreed to be the 27 day of February, 1992.

LESSOR  
THE TFI NOMINEE TRUST

BY Thomas F. James  
Thomas F. James, Trustee

LESSEE

SEAL  
Attest:

James M. Haller  
Asst. Secretary

FLEMING COMPANIES, INC.

By James W. Clark  
VICE PRES



ACKNOWLEDGMENTS

STATE OF Ark )  
COUNTY OF Pulaski ) ss.

BE IT REMEMBERED, that on this date personally appeared before me, a Notary Public, duly commissioned, qualified and acting in and for the State and county aforesaid, THOMAS F. JAMES, personally well known to me, who stated on oath that he is the duly appointed, constituted and acting Trustee of THE TFJ NOMINEE TRUST dated September 24, 1986, and that, pursuant to the terms of said Trust, he is authorized to execute legal documents on behalf of the Trust for the sale and purpose of or other transactions relating to real estate, and that he had so acted on behalf of the Trust in his capacity of Trustee, in executing the foregoing document for the considerations and purposes therein mentioned and set forth.

My Commission Expires:

1-1-93

Margaret E. Wheeler  
Notary Public

STATE OF OKLAHOMA )  
COUNTY OF OKLAHOMA ) ss.

BE IT REMEMBERED, that on this 13<sup>th</sup> day of August, 1991, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came, James W. Clark Vice President of FLEMING COMPANIES, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Oklahoma, and James M. Wallace, Assistant Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

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

My Commission Expires:

9/8/94

Renee Lane  
Notary Public

## **EXHIBIT B**

## **EXHIBIT 2**

BUILD AND LEASE AGREEMENT

THIS AGREEMENT is made and entered into this <sup>13<sup>th</sup></sup>~~24~~ day of <sup>August</sup>~~September~~ 1991, by and between THE TFJ NOMINEE TRUST OF SEPTEMBER 24, 1986, whose address is 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207, hereinafter called "LESSOR," and FLEMING COMPANIES, INC., an Oklahoma corporation with an office at Oklahoma City, Oklahoma, hereinafter called "LESSEE."

WITNESSETH:

WHEREAS, the LESSOR desires to construct and lease a building containing approximately 29,640 square feet, hereinafter referred to as the "building," together with parking, common, and service areas, hereinafter referred to as the "common area," upon the following described real estate, all of which is hereinafter together referred to as the "premises":

Tract 1: Part of the Southwest Quarter Northeast Quarter of Section 13, Township 9 North, Range 32 West Crawford County, Arkansas more particularly described as follows:

Beginning at the Southwest Corner of said Southwest Quarter Northeast Quarter. Thence South 88 degrees 04 minutes 48 seconds East, along the South line of said Forty, 560.74 feet to the point of beginning. Thence North 00 degrees 42 minutes 54 seconds East 465.0 feet. Thence South 88 degrees 04 minutes 48 seconds East 338.80 feet. Thence South 00 degrees 42 minutes 54 seconds West 465.0 feet to the South line of said Forty. Thence North 88 degrees 04 minutes 48 seconds West, along said South line, 338.80 feet to the point of beginning containing 3.62 acres more or less subject to existing Road Rights of Way and any Easements of record.

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:

1. OWNER. The LESSOR covenants that it has good title to 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, and may lawfully, peacefully, and quietly have, hold, use, occupy, possess and enjoy the premises hereby leased for and during the term hereof, without any hindrance, eviction, molestation, or interruption of or by the LESSOR, or any person or persons. LESSOR covenants that no zoning or other ordinance, law, regulation, or restrictive covenants prevent use of the premises for the intended purpose.

IMPINGEMENT. Except as herein provided for, LESSOR warrants and guarantees that there are no prior documents of record, or unrecorded documents within the knowledge of LESSOR, which will permit third parties to impinge upon the rights of LESSEE under this Lease by use or occupancy of adjacent property, or any portion of the premises as shown on the plot plan attached to and made a part of this Lease as Exhibit "A." LESSOR shall not make any deviations or variations in the construction or use of the plotted area from that shown on said plot plan without the prior written consent of LESSEE.

2. COMMON AREAS. The premises are located as approved by the parties as shown on the plot plan marked Exhibit "A," attached hereto and incorporated herein. LESSEE covenants and agrees that it shall maintain and make all ordinary repairs to the common parking and service areas of the premises necessary to preserve them in good order and condition, usual wear and tear and damage and destruction covered by insurance and condemnation excepted. Provided, however, notwithstanding the foregoing, LESSEE shall have no liability to repair any portion of the parking lot of the premises until the Warranty for the parking lot contained in the specifications (Exhibit B) expires. Furthermore, in the event it becomes necessary for LESSEE to replace all or a portion of the parking lot of the premises, LESSOR agrees to reimburse LESSEE no later than sixty (60) days prior to the termination or cancellation of this Lease, for the unamortized portion of the costs incurred by LESSEE in replacing all or a portion of the parking lot during the ten (10) year period prior to the termination or cancellation of this Lease. For purposes of the foregoing provision, the parking lot of the premises shall be amortized monthly on a straight line basis over a ten (10) year period of time (1/120th per month). LESSEE agrees to consult with LESSOR prior to replacing the parking lot of the premises, either in whole or in part, during the last five (5) years of this Lease, or if exercised, during any renewal periods. For purposes of this Lease, common area shall mean the entire premises excluding the building. The common area is

outlined and shown on the plot plan marked Exhibit "A," attached hereto and incorporated herein by reference.

3. CONSTRUCTION. The LESSOR agrees to cause construction of the building on the premises and other improvements on the premises including the common areas in accordance with the plot plan as approved by all governmental controlling jurisdictions, attached hereto as Exhibit "A," and the specifications marked Exhibit "B," attached or to be attached hereto and incorporated herein. This Lease shall not be effective until such specifications, Exhibit "B," and the plot plan, Exhibit "A," have been so attached and have been initialed by both parties. The LESSOR shall provide water, sewer, gas, electrical and other utilities. LESSEE shall have the right to review the elevation drawing.

The LESSOR agrees that, at the option of the LESSEE, this Lease shall become null and void if construction on the premises is not commenced on or before OCTOBER 1, 1991, and completed and ready for occupancy on or before April 1, 1992, causes or conditions beyond the control of LESSOR only excepted; provided, however, that if the premises are not ready for occupancy on or before OCTOBER 1, 1992, irrespective of cause, and irrespective of whether such cause is beyond the control of LESSOR, LESSEE, in its sole discretion, is hereby granted the option to cancel and terminate this Lease.

Construction of the premises shall not be considered complete until it is substantially completed in every respect ("substantially completed in every respect" shall mean complete

except for those items listed on the punch list, as hereinafter defined, which can be and will be corrected and completed within thirty (30) days by LESSOR in accordance with the specifications, Exhibit "B" hereof, none of which items would materially interfere with or impair the LESSEE'S use of the premises, and to an extent permissible with respect to necessary work to be performed by LESSEE in installing its trade fixtures and equipment), including, but not limited to, toilet facilities, office space, vinyl floor covering, automatic pressure-pad doors, light fixtures including tubes and globes, ~~halls~~<sup>779</sup>, enclosed machine rooms, curtain walls and partitions, and electrical and plumbing requirements complete to the point of connection of fixtures, equipment, checkstands and signs; interior and exterior decoration completed, parking areas completely surfaced, with adequate lighting and initial traffic control, service roads, sidewalks, loading facilities, all to be in accordance with specifications (Exhibit "B") to be supplied by LESSEE. LESSOR shall also construct a pylon base, together with underground electrical lines as shown on Exhibit "A," and LESSEE shall have the right to place on such pylon its sign identifying the building. LESSOR agrees no other sign other than LESSEE'S sign shall be permitted on the premises without LESSEE'S prior written consent being first obtained.

LESSEE agrees to accept the premises in the condition existing on the date of the commencement of the term, subject to LESSEE'S list of defective items (hereinafter called "punch list") being completed. In the event of LESSOR'S failure to complete said punch



list items within thirty (30) days after receipt of LESSEE'S notification to LESSOR, then at LESSEE'S sole option LESSEE may either complete such punch list items and deduct the cost thereof from rent, the costs of which are hereby agreed to in advance by the parties hereto to be reasonable and proper deductions, or require LESSOR'S specific performance of the same, or seek any other legal remedies available to LESSEE. LESSOR covenants that the premises to be constructed shall, at the commencement of the term hereof and subject to LESSEE'S punch list being completed, be structurally sound and in good tenantable condition, and that there shall be no latent defects therein. "Latent defect" as used herein is a defect which is a departure from plans and specifications not apparent upon an ordinary and reasonable inspection by a professional engineer qualified to make such inspection, normal wear and tear excepted. LESSOR further covenants that if any latent defects in the premises become apparent at any time during this Lease, and it shall appear that such latent defects existed at the beginning of the term hereof, or resulted from faulty design, workmanship or materials, then LESSOR shall cause the same, after receiving written notice from LESSEE, to be repaired and corrected with all reasonable speed. LESSEE shall have the benefit of all warranties accruing to the LESSOR by reason of construction of the premises and any installation of equipment thereon.

4. TERM. The LESSOR agrees to, and does hereby, lease the premises to the LESSEE for an original term of twenty (20) years, commencing on the earlier of the day the premises are opened

for business or thirty (30) days following the date when construction of the premises is completed in accordance with the terms of this Lease and the premises are ready for occupancy by LESSEE, except for punch list items, which can and will be completed within thirty (30) days, as aforesaid, and LESSOR notifies LESSEE of the foregoing, whichever is earlier. The commencement date of the term shall be endorsed at the end hereof, and the lease term shall terminate at 11:59 p.m. on the last day of the twentieth (20th) year term thereafter.

It is agreed that, if at the end of the original term of this Lease, or any option period hereof, LESSEE, in its sole discretion, shall deem it necessary to remain in occupancy of the premises beyond the termination date of the Lease, LESSEE may do so for a period of time up to one hundred twenty (120) days. For any such extension period, the rent will be one and one-half (1.5) times the minimum monthly rent. LESSEE shall give LESSOR sixty (60) days' notice should such extension be necessary. It is further understood and agreed that LESSEE shall not be obligated to open or operate a business on the premises nor shall the rent for the premises commence until all streets and highways and parking areas, shown on Exhibit "A" attached hereto, have been fully paved and are open for public use.

5. RENEWAL OPTIONS. It is further agreed that, at the expiration of the original term, the LESSEE shall have the right, exercisable at its sole option, to extend this Lease for four (4) additional term(s) of five (5) years each, upon the same terms and

conditions. The LESSOR shall be notified of the LESSEE'S intent to exercise such option at least six (6) months prior to the end of the then current term. It is further agreed that LESSEE shall have the right, at its sole option, to extend this Lease for an additional term not to exceed seven (7) years, if necessary, to permit reconstruction and repair of the building after its damage or destruction, in accordance with the provisions of Paragraph 16 hereof.

6. RENT. As rent for the premises, the LESSEE agrees to pay to the LESSOR at 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207, or at such other places as are mutually agreed upon, the following amounts:

- A. A minimum monthly rental of Fourteen Thousand Seventy-nine and 00/100 Dollars (\$14,079.00) plus an amount equal to 1% of annual gross sales, as defined herein, made from the premises in excess of Sixteen Million Eight Hundred Ninety-four Thousand Eight Hundred and no/100 Dollars (\$16,894.800.00).
- B. Reimbursement of taxes and assessments as set forth in Paragraph 8 hereof.
- C. Reimbursement of fire and extended coverage and rent interruption insurance annual premiums as set forth in Paragraph 16 hereof.

In addition to the foregoing items of rent, LESSEE agrees to be directly and primarily responsible for (A) obtaining and paying the premium for public liability and property damage insurance covering the premises as set forth in Paragraph 9 hereof and (B) repairs and maintenance to the premises as specified in Paragraph 2 and Paragraph 13 hereof.

GROSS SALES DEFINED. The term "gross sales," as used herein, shall include all sales of merchandise from, through, or off the premises, including the performance of any service for any customer or patron for compensation by the LESSEE or employee, and shall include all sales by every department thereof, for cash or on a charge basis, including all business in which orders come by mail, telephone, or telegraph, less credit for returned merchandise, merchandise trade-ins, and credits of a similar nature. "Gross sales" shall not include sales, luxury, excise or other taxes collected by LESSEE from customers and charged separately, merchandise transfers from one of the LESSEE'S or a SUBLESSEE'S stores to another, return or merchandise to a supplier, wholesale bakery or wholesale delicatessen sales, or receipts earned from any banking, financial, insurance or similar commercial enterprises; optical, dental or other professional services; dry cleaning, beauty salons or other non-professional services conducted in the premises; lottery tickets, money orders or other negotiable instruments, vending machines, arcade games, or leasing of equipment or products, or sales generated from licensed or sublet departments except to the extent LESSEE earns income from same.

LESSOR shall have the right, at any time, but no more than once a year, and from time to time, 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 years shall be deemed to have been accepted by LESSOR and be incontestable.

LEASE YEAR DEFINED. The term "lease year," as used in this Lease means the following:

1. With reference to the first lease year, the period from the commencement date of the term of this Lease through the last day of the twelfth (12th) full calendar month thereafter.
2. With reference to any succeeding lease year (with the exception of the last lease year), twelve (12) full consecutive calendar months commencing on the first day of the calendar month next succeeding the last day of the preceding lease year.
3. With reference to the last lease year, the period commencing on the first day of the calendar month next succeeding the last day of the preceding lease years and terminating on the last day of the lease term.

TIME OF PAYMENT. The minimum monthly rent for each full calendar month, running from the first day of that month to the last day of that month, shall be paid on or before the Tenth (10th) day of that month.

If the commencement date of the term of this Lease shall be other than the first day of a calendar month, the rent for such partial month shall be calculated and paid on a proportionate basis, so that thereafter rent may be calculated and paid for even calendar months.

Payment of any additional percentage rental, as outlined in Paragraph 6A herein, shall be paid on or before the twentieth (20th) day of the month following the ending of each lease year.

7. LESSOR MORTGAGES. All mortgage payments or other charges required by LESSOR 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.

8. TAXES AND ASSESSMENTS. All taxes assessed against the premises or taxes assessed in substitution thereof, shall be paid by the LESSOR as the same shall become due. LESSEE agrees to pay all taxes assessed against property on the premises owned by it. 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 that shall become due and payable during the original or any exercised renewed term hereof . Such taxes and assessments must be billed by LESSOR to LESSEE no later than ninety (90) days after receipt of notice from the local taxing authority to LESSOR. LESSOR shall be required to send LESSEE receipted tax bill(s) showing payment for taxes as well as for special assessments. If such notice is not received by LESSEE within ninety (90) days, LESSEE'S obligation to pay such taxes and assessments will be considered to be null and void; 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.

ASSESSMENTS MADE DURING LEASE TERM. In the event during the term of this Lease or any extension thereof that an assessment is placed upon the premises 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 is proposed by any competent taxing authority during the term of this Lease or any extension thereof, then, upon the request of LESSEE, LESSOR and any mortgagee shall use their best efforts to obtain an assessment which is payable or may be paid in installments.

In the event during the term of this Lease or any extension thereof that an assessment is placed upon the premises by any taxing authority of competent jurisdiction, and such assessment is 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 which 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 Paragraph 18 hereof.

Any taxes and assessments levied and assessed against the premises that shall become due and payable during the term hereof and which LESSEE has agreed to pay may be contested by LESSEE, by 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 that it is based upon the payment of any assessments made by LESSEE.

9. 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 arising out of the use, occupancy or operation of the premises by the LESSEE and its sublessees, except such claims as arise out of the negligent, intentional or willful acts of the LESSOR.

PUBLIC LIABILITY INSURANCE OF PREMISES. 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 in which policy LESSOR, LESSEE and any mortgagee shall be named as additional named insureds, and to furnish current certificates evidencing the existence of such insurance providing that such insurance, shall not be canceled 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 One Million Dollars (\$1,000,000.00) single limit combined bodily injury



and property damage each occurrence, to cover all situations where any other person or persons claim bodily injury, death, or property damage in or upon the premises.

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

shall be equally binding upon and inure to the benefit of any assignee or sublessee of LESSEE.

11. 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 damage to the building resulting from such removal, usual wear and tear excepted.

12. LESSOR ENTRY. The LESSOR shall have the right to enter the premises including the building at any reasonable time for the purpose of inspecting the same, or for the purpose of doing anything that may be required under this Lease, or for the purpose of doing anything LESSEE may be required to do and shall fail to do. In the event that 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.

13. MAINTENANCE AND REPAIR. Except for the LESSOR'S obligations with respect to latent defects as set forth in Paragraph 3 and with the obligations to maintain in good condition the structural portions of the building, including foundation, roof, slabs, walls, and electrical and plumbing services to the building, LESSEE agrees at its expense to maintain all other portions of the building and to make all ordinary repairs (except

Lessee shall have no liability to make any capital expenditures except in regard to the parking lot following expiration of the warranty discussed above in paragraph 2) in and about the building necessary to preserve the building in good order and condition, including the air conditioning and heating equipment. Neither LESSOR nor LESSEE shall be responsible for the replacement of the air conditioning and heating equipment. LESSOR and LESSEE agree that if LESSEE or its agents damage the roof, LESSEE shall be responsible for repairing such damage to the roof caused by LESSEE or its agents. LESSEE shall be entitled to the bonds, warranties and guarantees for the heating and air conditioning equipment and roof specified in the Specifications (Exhibit B).

If, in the event of an emergency, it shall become necessary for one party to make any repairs hereby required to be made by the other party, the party requiring the repair may proceed forthwith to have such repairs made and pay the reasonable cost thereof, whereupon the party obligated to make such repair shall reimburse the party making such repair for the reasonable cost of such repairs on demand therefor.

The LESSEE shall receive all benefits which the LESSOR may be entitled to receive from any source on account of work in or on the building or any portion of the premises, including any equipment thereon, the maintenance of which is the responsibility of the LESSEE. Likewise, LESSOR shall receive all benefits which LESSEE may be entitled to receive from any source on account of work in or

about the building or any portion of the premises, the maintenance of which is the responsibility of LESSOR.

LESSEE further agrees that it shall also be obligated to repair and maintain at its sole expense all of the common area of the premises as set forth under Paragraph 2 hereof, following expiration of the warranty period for the parking lot stated in Exhibit B.

14. WASTE. The LESSEE shall not commit waste or permit waste to be committed in or upon the 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 Paragraph 10 hereof, and (5) other non-insured causes beyond the control of LESSEE.

15. SIGNS. LESSEE shall have the sole right to approve the design and placement of any and all signs of any nature upon the exterior of the building and on the common areas of the premises and that such approval shall not be unreasonably withheld.

16. FIRE AND EXTENDED COVERAGE INSURANCE. LESSOR agrees to keep in effect, at its expense, and 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, and a policy of rent interruption insurance policy for a one (1) year term for the minimum monthly rental to

cover the payment of rent in case of a partial destruction to the premises, written by a responsible insurance company authorized to do business within the state where the premises are located. The policy of fire and extended coverage shall be in an amount equal to not less than ninety percent (90%) of the replacement cost of the building, (with LESSEE to be furnished proof thereof); 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; and shall provide that such insurance shall not be cancelled except after thirty (30) days' notice to LESSEE and any mortgagee, and shall contain the provision of endorsement required by Paragraph 10 hereof.

The building to be constructed by LESSOR under this Lease are to be equipped with an automatic sprinkler system, which is more fully described in Exhibit B. LESSOR further understands that LESSEE'S SUBLESSEE is required to carry fire and extended coverage insurance covering all of its merchandise, furniture, fixture, and equipment located in and upon the building. Should the building covered by this Lease be rated deficient by the Insurance Service Organization, 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 agrees to reimburse LESSEE and/or its SUBLESSEE for any differential amount it may incur. Said differential amount shall be computed and paid annually using the then published insurance rates until the defects

are cured by LESSOR. Upon LESSOR'S receipt of notice of any deficiencies from the Insurance Service Organization, LESSOR agrees to immediately notify LESSEE in writing of said deficiencies. Upon completion of construction, LESSOR agrees to provide LESSEE with a rating sheet for LESSEE'S premises from said Insurance Service Organization citing deficiencies, if any.

SUBSEQUENT CHANGE OF STANDARDS. 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 recommendations and requirements, after its review of said architectural plans and related engineering drawings and specifications of the premises including the building. Neither shall the LESSOR be liable for any reimbursement of any such differential due to the Insurance Service Organization's subsequent change of standards of qualifications for full sprinkler credit pertaining to the standards of construction of the building.

LESSOR'S REIMBURSEMENT OF PREMIUMS. LESSEE agrees to remit to LESSOR, on an annual basis within thirty (30) days after being billed therefor, the annual premium or premiums for insurance covering the building, including rent interruption insurance for said policies as hereinabove provided, subject to LESSEE'S right to obtain a like insurance coverage policy(s) covering the building, should LESSEE be able to secure such policy(s) on the building at a lower rate for like coverage. In the event that LESSEE is able to obtain like insurance policy(s) covering the building at a lower

rate, LESSEE shall provide to LESSOR reasonable data supporting the availability of such like insurance policy(s) from a like insurance company at a lower rate; and upon 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 building 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 building and within said thirty (30) days, the difference between the premium paid or charged by LESSOR for its insurance policy(s) covering the building and that which would have been paid by LESSEE for LESSEE'S policy(s) covering the premises.

BLANKET INSURANCE. The insurance to be provided by LESSOR may be provided pursuant to a blanket insurance policy covering the building and other locations of LESSOR; provided, however, that in no event shall the protection afforded by such blanket insurance policy be less than that required hereunder.

LESSEE agrees it shall not keep anything within the building or use the premises for any purpose which will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the premises.

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 building, then LESSEE shall notify LESSOR thereof in writing, whereupon 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.

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 of the building for its purposes, 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 occurs during the last seven (7) years of the original term hereof or during any of the renewal terms, within thirty (30) days after the occurrence of such damage LESSEE may extend the term of this Lease for not less than seven (7) years by giving LESSOR notice of such extension. If LESSEE so extends this Lease, LESSOR, at its expense, shall promptly rebuild and repair such damage and this Lease shall continue in full force and effect. If LESSEE does not so extend the term of this Lease within thirty (30) days after the occurrence of such damage, LESSOR shall have thirty (30) days in which to continue the term of this Lease by giving LESSEE notice of such extension, in which event LESSOR shall promptly rebuild and repair such damage. If both LESSOR and LESSEE fail to exercise their rights to extend or continue the Lease pursuant to this Paragraph, this Lease shall terminate as of the date of the occurrence of such damage, and the rent shall be adjusted accordingly, and



neither party shall have further rights or obligations hereunder.

Whenever, under the foregoing provisions of this Paragraph 16, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, and 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 upon receipt of notice of LESSEE'S intent to exercise the necessary option to renew, or upon the exercise of LESSOR'S election to rebuild, as the case may be. LESSOR shall prosecute such rebuilding and repairing diligently and to the end that the premises, will be restored to substantially the same condition as existed before the occurrence of such damage. If, for any reason whatsoever, rebuilding and repairing is not completed within six (6) months after receipt of the applicable notices, unless LESSOR shall be prevented from completing such rebuilding and repairing by causes or conditions beyond its 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; and upon such happening 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.

Whenéver, under the foregoing provisions of this Paragraph 16, LESSOR shall have the obligation to rebuild and repair all or any portion of the premises, and so to continue this Lease in full

force and effect, the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such casualty to the date of completion of such rebuilding and repairing in proportion to LESSEE'S deprivation of use of the premises for its purposes, and during such period of time LESSOR shall receive its rent payments from the rent interruption insurance maintained on the premises.

Whenever, under the foregoing provision of this Paragraph 16, the premises shall not be rebuilt or this Lease shall be terminated by reason of the exercise or nonexercise 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.

17. CONDEMNATION FOR REPAIRS. The LESSOR agrees that if any authority condemns the premises or any part thereof, as being unsafe, or not in conformity with 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, that in the event the premises or any part thereof are condemned as being unsafe or not in conformity with 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 such common facilities or of 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 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, and LESSOR shall receive rent interruption insurance.

18. CONDEMNATION. Upon LESSOR'S receipt of notice from any condemning authority of a proposed condemnation, LESSOR shall immediately notify LESSEE in writing. If all of the building shall be taken under the right of eminent domain by any authority having the right of condemnation, or if a portion of the building is so condemned as will prevent the practical use of the building for LESSEE'S purposes, this Lease, and all obligations hereunder, shall terminate, on the date title vests pursuant to such proceedings. In the event the proper judicial authority does not divide the award to compensate the separate loss of each party, the total award made in such proceedings shall be equitably distributed between the

LESSOR and LESSEE, provided that if the parties cannot agree upon an equitable distribution of such award, either party may petition a court of competent jurisdiction in the state where the premises are located for equitable distribution of such award; and in the event no such court has jurisdiction to determine an equitable distribution of such awards, either party may request arbitration under the terms hereinafter set forth. If such taking does not prevent the practical use of the building 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. In any instance in this Agreement in which it is provided that a question shall be determined by arbitration, the following procedure shall govern:

The party desiring arbitration ("First Party") shall give written notice to that effect to the other party ("Second Party"), specifying in said notice the name and address of the person designated to act as arbitrator on its behalf. Within fifteen (15) days after the service of such notice, the Second Party shall give written notice to the First Party specifying the name and address of the person designated to act as arbitrator on its behalf. If the Second Party fails to notify the First Party of the appointment of its arbitrator, as aforesaid, within or by the time above specified, then the appointment of the second arbitrator shall be made in the same manner as is hereinafter provided for the appointment of a third arbitrator in a case where the two

eminent domain by proper and duly constituted authority or authorities, or is done at LESSEE'S request, or results from the exercise of any right granted LESSEE herein. Any violation of this provision shall entitle the LESSEE to either treat such violation as a default with an option to cancel the Lease or to require a proportionate reduction of rent, at LESSEE'S sole option.

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

24. LESSEE DEFAULT. LESSEE further covenants with the LESSOR that if LESSEE defaults by not paying the rent or any part thereof when it becomes due, or by violating or neglecting any covenant, agreement or stipulation therein contained on LESSEE'S part to be kept performed or observed; and should any such default continue for thirty (30) days after written notice specifying such default has been received by LESSEE, and LESSEE does not cure such default within said thirty (30) days; or if said default is of such 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, 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

of the third arbitrator and all other expenses, if any, shall be borne equally by both parties.

19. HOLDING OVER. Except as provided in Paragraph 4, if LESSEE remains in possession of the premises after the expiration of this Lease, 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.

20. 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 for the purpose of offering the premises for rent, subject to LESSEE'S rights, as set out in Paragraph 5.

21. 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.

22. PARKING AREA. LESSOR agrees that at no time during the term of this Lease will the customer parking area, entrances and exits and service area adjoining the premises be reduced in size or configuration from that shown on the plot plan attached as Exhibit A, unless such reduction is made necessary by the exercise of

arbitrators are appointed hereunder and the parties are unable to agree upon such third appointment. The arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed, and if, within thirty (30) days after the second arbitrator is appointed, said two arbitrators shall not agree upon the question in dispute, they shall themselves appoint a third arbitrator, who shall be a competent and impartial person; and in the event of their being unable to agree upon such appointment within ten (10) days after the time aforesaid, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the presiding Judge of the U.S. District Court for the Federal District in which the premises are located. In the event of the failure, refusal, or inability of any arbitrator to act, a new arbitrator shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such arbitrator so failing, refusing or unable to act. The decision of the arbitrators so chosen shall be given within a period of thirty (30) days after the appointment of such third arbitrator. The decision in which any two arbitrators so appointed and acting hereunder concur shall in all cases, be binding and conclusive upon the parties. Each party shall pay the fees and expenses of one of the two original arbitrators appointed by such party, or in whose stead as above provided such arbitrator was appointed, and the fees and expenses

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 in lieu thereof, to enter and take possession of the premises immediately, and may remove all persons, furniture, fixtures and equipment from the premises, at LESSEE'S sole expense, in order to recover at once full and exclusive possession of the premises, and such entry shall not operate as a waiver or satisfaction, in full or in part, of any claim or demand arising out of or connected with any breach, default, or violation by the LESSEE of any covenant or agreement on its part to be performed; provided that, notwithstanding any of the foregoing, LESSOR shall not have the right to repossess the premises in the event of a bonafide dispute as to the LESSEE'S liability, if any, to make repairs, except after such liability has been finally judicially determined, or so long as LESSEE continues to pay minimum rent as hereinabove provided in Paragraph 6.

Should LESSOR elect to terminate LESSEE'S possessory rights, without terminating the term of this Lease, as hereinabove



provided, LESSOR shall, with the prior written consent of LESSEE, which consent shall not be unreasonably withheld, relet the premises or any part thereof for such term or terms, at such rental or rentals, and upon such other terms and conditions as LESSOR may deem advisable, and LESSOR shall have the right to make, with the prior written consent of LESSEE, which consent shall not be unreasonably withheld, reasonable alterations and repairs to the premises. 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. 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; if no future rent becomes due and payable hereunder, such residue shall be retained by LESSOR. Should such rentals received from such reletting by LESSOR to which LESSEE has given its written consent, during any month, be less than the minimum rental agreed to be paid hereunder during that month by LESSEE, then LESSEE shall, upon receipt from LESSOR specifying the amount, pay the difference to LESSOR. Such difference shall be calculated and paid monthly. No such termination of LESSEE'S possessory rights, without termination of 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 is 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.

25. LESSOR DEFAULT. The LESSOR further covenants 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 LESSOR does not cure such default within thirty (30) days or if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and LESSOR 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, LESSEE may, at its option, among other things, (1) cancel and annul this Lease, (2) remedy the condition or need referred to in such notice, (3) make the payment which LESSOR has not made, but should have made, if any, or (4) remedy the condition or need referred to in such notice and deduct LESSEE'S actual cost or the amount of the payment thereof from subsequent installments of rent. In the event of any dispute between the parties as to the right of LESSEE to such deduction, LESSOR further covenants and agrees that it will

not give LESSEE any notice of default or termination of this Lease unless LESSEE shall fail to pay to LESSOR the amount of any such deduction within ten (10) days after receipt of notice by LESSEE of a final and unappealable judgment with respect thereto in favor of LESSOR.

26. 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 Paragraph 33 of this Lease.

27. INSURANCE MAY BE PROVIDED BY SUBLESSEE OR ASSIGNEE. It is further understood that LESSEE at all times shall maintain the insurance coverage it is required to carry hereunder 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 Paragraph 9 above, by LESSEE or by an assignee or sublessee of LESSEE.

28. EXCLUSIVE. LESSOR covenants that it will not permit any person other than the LESSEE to operate a retail food store of any nature on the premises, or on any adjoining property owned by LESSOR, his assignee, or his transferee, without first obtaining the LESSEE'S prior written consent.

29. ALTERATIONS OR ADDITIONS. The LESSEE shall have the right to make alterations or additions to or expand the premises, provided such alterations or additions or expansion is at its sole cost and expense, and that such alterations or additions or expansion is of good workmanship and material at least equal to that of the original construction, and that such alterations or additions or expansion shall neither reduce the size and strength of the existing building or adversely affect the market value of the premises. The LESSEE shall not be required to remove any such alterations or additions or expansion or to restore the building to its original condition at the termination of this Lease.

30. 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.

31. OCCUPANCY. LESSOR agrees, on the premises which the LESSOR now controls or on contiguous or adjacent real estate which the LESSOR may at some later date control, that there will not be

located on such real estate a theater, bowling alley, or skating rink, without LESSEE'S prior written consent.

32. 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 closing said store at any time, provided that LESSEE shall continue to pay the ~~minimum~~ monthly rental as set forth in this Lease.

33. SUBLET OR ASSIGN. The LESSEE shall have the right, during the term of this Lease, to sublet all or a portion of the premises, or to assign this Lease, either in whole or in part; but no such subletting or assignment shall release the LESSEE from any of the obligations under the terms of this Lease. 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.

34. 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 subtenants, 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 that there is a mortgage on the premises, the LESSOR shall obtain the same waiver from the mortgagee.

35. NOTICES AND DELIVERY OF ITEMS SENT BY MAIL. Any notice required or desired to be given to either party shall be in writing and be sent by registered or certified mail, postage prepaid. Any such notice to the LESSOR shall be addressed to it at 1900 North Bryant, Suite 300, Little Rock, Arkansas 72207. Any such notice to the LESSEE shall be addressed to it in care of the Store Development Department at Fleming Companies, Inc., P. O. Box 26647, Oklahoma City, Oklahoma 73126-0647. The address of either party may be changed by written notice thereof to the other party.

With respect to all notices and all other items, including rental, which may be or are required to be sent by mail, registered or otherwise, the placing of any such item in the United States mail, being properly addressed, postage prepaid by the sender, shall constitute delivery to the other party unless another provision of this Lease specifically states to the contrary what constitutes delivery of said item.

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

37. 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 building 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 building, in accordance with good construction practice, together with adequate security of the building, is commenced, LESSOR shall notify LESSEE to that effect. LESSEE agrees to install its trade fixtures and equipment in the building in a prompt and expeditious manner so as not to delay LESSOR in readying the building for occupancy at the earliest possible date referred to hereinabove. LESSEE further agrees not to engage any persons in the installation of such fixtures and equipment which would result in a work stoppage by employees of the general contractor or any subcontractor engaged in readying the building or any other part of the premises for occupancy.

38. 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 the 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 Paragraph 16 are first applied to repair, replace or rebuild

the premises so damaged or destroyed, if LESSOR and/or LESSEE under the terms of Paragraph 17 and Paragraph 18 above, either are required to elect to repair, replace or rebuild the premises; and (c) any proceeds from condemnation awarded to LESSEE and/or its sublessee under Paragraph 17 and Paragraph 18 above shall be the sole property of LESSEE and/or its sublessee.

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

40. 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.

41. 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.

42. CHOICE OF LAWS. This agreement shall be construed under and in accordance with the laws of the State of Arkansas and all obligations of the parties created hereunder are performable in Arkansas.

43. MECHANICS' LIENS. LESSEE shall not suffer any mechanics' or materialmen's lien to be filed against the premises by reason of work, labor, services or materials performed or furnished to LESSEE or anyone holding any part of the premises under LESSEE. If any such lien shall at any time be filed as aforesaid, LESSEE may contest the same in good faith but notwithstanding such contest,



LESSEE shall, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise. In the event of LESSEE'S failure to release of record any such lien within the aforesaid period, LESSOR may remove said lien by paying the full amount thereof or by bonding or in any other manner LESSOR deems appropriate, without investigating the validity thereof, LESSEE, upon demand, shall pay LESSOR the amount so paid out by LESSOR in connection with the discharge of said lien, together with reasonable expenses incurred in connection therewith, including reasonable attorneys' fees.

LESSOR shall not suffer any mechanics' or materialmen's lien to be filed against the premises by reason of work, labor, services or materials performed or furnished to LESSOR or anyone holding any part of the Premises under LESSOR. If any such lien shall at any time be filed as aforesaid, LESSOR may contest the same in good faith but notwithstanding such contest, LESSOR shall, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise. In the event of LESSOR'S failure to release of record any such lien within the aforesaid period, LESSEE may remove said lien by paying the full amount thereof or by bonding or in any other manner LESSEE deems appropriate, without investigating the validity thereof, LESSOR, upon demand, shall pay LESSEE the amount so paid out by LESSEE in connection with the

discharge of said lien, together with reasonable expenses incurred in connection therewith, including reasonable attorneys' fees.

44. 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, casualties, strikes, lockouts, labor troubles, inability to produce materials, restrictive governmental laws or regulations, or other cause without fault and beyond the reasonable control of the party obligated (financial inability excepted), then upon written notice to the other party, 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. Notwithstanding the foregoing, LESSOR and LESSEE agree that irrespective of force majeure, the completion date of construction for occupancy as last set forth under Paragraph 3 hereof shall not be extended beyond said date unless agreed to in writing between the parties hereto.

45. MORTGAGEE'S NOTICE TO LESSEE. If LESSOR shall at any time give a first mortgage upon the premises, the holder of such

mortgage may give written notice to LESSEE that such holder has acquired a mortgage on the premises (any such holder who have given such a notice to LESSEE is herein called "MORTGAGEE"). Notwithstanding any other provision of the Lease, LESSEE agrees that it will not terminate the Lease or withhold any rent due thereunder because of any default by LESSOR in the performance of its obligations thereunder until the LESSEE has first given written notice to any MORTGAGEE at the address of such MORTGAGEE last furnished to LESSEE, specifying the nature of such default and allowing such MORTGAGEE the right but not the obligation to cure such default thirty (30) days after the date of receipt of such notice and a reasonable period of time in addition thereto if circumstances are such that said default can be cured, but cannot reasonably be cured within the said thirty (30) day period, provided the same are undertaken by MORTGAGEE with good faith efforts, due diligence and MORTGAGEE gives written notice to LESSEE of its intentions to cure or not cure the default.

46. ESTOPPEL CERTIFICATE. Within ten (10) days after written request by LESSOR, LESSEE shall execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the premises, an estoppel certificate, in the form customarily used by such proposed mortgagee or purchaser, stating among other things: (i) whether the Lease is in full force and effect; (ii) whether the Lease has been modified or amended, and if so, identifying and describing any such modification or amendment; (iii) the date to which rent and any other charges have been paid; and (iv) whether

LESSEE knows of any default on the part of LESSOR or has any claim against LESSOR and if so, specifying the nature of such default or claim.

47. NONDISTURBANCE. If MORTGAGEE shall acquire the premises by foreclosure or conveyance in lieu of foreclosure, then if and so long as LESSEE is not in default in the performance or observance of the covenants and provisions of the Lease, MORTGAGEE will recognize the rights of LESSEE under the Lease and will not disturb LESSEE'S quiet and peaceful possession under the Lease. Subject to the provisions hereof, LESSEE agrees to attorn to MORTGAGEE in the event of foreclosure or by conveyance in lieu of foreclosure, and subject to the provisions of Paragraph 38 of this Lease to be subordinate to any first mortgagee on the premises (or any part thereof) held by any MORTGAGEE.

48. RESPONSIBILITY FOR HAZARDOUS MATERIAL AND UNDERGROUND STORAGE TANKS.

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

48.1.1 "Hazardous Material" means any substance, material or waste which is or at any time hereafter becomes regulated as "hazardous" or "toxic" or under any other similar designation by any local, state or federal governmental authority having jurisdiction over the Property. Such term includes, without limitation, (i) asbestos, (ii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.),

(iii) any material, substance or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.) or (iv) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U.S.C. § 6991, et seq.).

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

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

48.1.4 "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.

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

48.2 Representations and Warranties. LESSOR represents and warrants to LESSEE that to the best of its 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) 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.

48.3 Indemnifications.

48.3.1 Indemnification by LESSOR: 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) the inaccuracy of any of the representations and warranties set forth in the preceding paragraph. The costs covered by the LESSOR's indemnification include, without limitations, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, costs and expenses incurred by LESSEE in exercising any of its rights under paragraph 48.5 hereof and any damages suffered as a result of any termination of this Lease in accordance with paragraph 48.5 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 Indemnified Person.

48.3.2 Indemnification by LESSEE. 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 introduction of any Hazardous Material in or on the Property by any Indemnified Person. The costs covered by LESSEE's indemnification include, without limitation, costs incurred in the investigation of site conditions and fees of attorney's, engineers and other consultants.

48.4 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.

48.5 Remedial Action.

48.5.1 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 as soon as reasonably practical and in any event (i) within ninety (90) days after LESSOR's receipt of such notice from LESSEE and (ii) not later than the expiration of any period of time to formulate a remedial plan which may be prescribed by any federal, state or local governmental authority having jurisdiction over the Property, LESSOR shall deliver to LESSEE a written plan describing in detail

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

48.5.2 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 acceptable to LESSEE in all respects 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 20 days of LESSEE's receipt of such plan (or, if LESSOR fails to provide such plan, within 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.

48.5.3     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 10 days of LESSEE's notice to LESSOR that the plan is acceptable (or LESSEE's failure to terminate this Lease prior to the expiration of the time for LESSEE to do so), LESSOR will, 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.

48.5.4     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, unless such action results from an event as to which LESSEE has indemnified LESSOR under Paragraph

48.3.2 hereof, LESSOR shall promptly reimburse LESSEE for all costs incurred in such action.

48.5.5 Maintenance. Throughout the term of this Lease, LESSOR shall 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, unless such work relates to an event as to which LESSEE has indemnified LESSOR under paragraph 48.3.2 hereof.

48.5.6 Costs. LESSOR shall pay all costs and expenses incurred under this paragraph other than costs and expenses resulting from an event as to which LESSEE has indemnified LESSOR under paragraph 48.3.2 hereof, which costs and expense shall be paid by LESSEE.

48.6 Remedies.

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

48.6.2 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 48.3.1 hereof.

48.6.3 Nonexclusive Remedies. Neither LESSOR nor LESSEE shall be under any obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice any other remedy available hereunder or under law. 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.

48.7 Environmental Studies and Reports. LESSOR represents to LESSEE that it has heretofore provided to LESSEE full, accurate and complete copies of any all reports, studies, and other information in its possession relating to the issue of the presence or suspected presence of any Hazardous Material on the Property and agrees that it will promptly following its receipt thereof, furnish to LESSEE full, accurate and complete copies of any such reports, studies and other information hereafter obtained by LESSOR. Without limitation of the foregoing, LESSOR represents and warrants to LESSEE that it has received and reviewed LESSEE'S environmental site assessment guidelines and that it has provided LESSEE with an environmental report complying with such guidelines. LESSEE hereby acknowledges its receipt and acceptance of such report.

49. Execution of ECR. On or before the date LESSOR acquires fee simple title to the premises, LESSOR and Highland Partnership, an Arkansas partnership, will have entered into, executed and filed in the real estate records of Crawford County, Arkansas, the Easements with Covenants and Restrictions Affecting Land (ECR) agreement, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

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

LESSOR  
THE TETJ NOMINEE TRUST

BY Thomas F. James  
Thomas F. James, Trustee

LESSEE

FLEMING COMPANIES, INC.

SEAL  
Attest:

James M. Hallam  
Asst. Secretary

BY James W. Clark  
VICE PRES

The commencement date of this Lease, as provided in Paragraph 4, Page 7 hereof, is agreed to be the 27 day of February, 1992.

LESSOR  
THE TETJ NOMINEE TRUST

BY Thomas F. James  
Thomas F. James, Trustee

LESSEE

SEAL  
Attest:

James M. Haller  
Asst. Secretary

FLEMING COMPANIES, INC.

By James W. Clark  
VICE PRES

ACKNOWLEDGMENTS

STATE OF Ark )  
COUNTY OF Pulaski ) ss.

BE IT REMEMBERED, that on this date personally appeared before me, a Notary Public, duly commissioned, qualified and acting in and for the State and county aforesaid, THOMAS F. JAMES, personally well known to me, who stated on oath that he is the duly appointed, constituted and acting Trustee of THE TFJ NOMINEE TRUST dated September 24, 1986, and that, pursuant to the terms of said Trust, he is authorized to execute legal documents on behalf of the Trust for the sale and purpose of or other transactions relating to real estate, and that he had so acted on behalf of the Trust in his capacity of Trustee, in executing the foregoing document for the considerations and purposes therein mentioned and set forth.

My Commission Expires:

1-1-93

Margaret E. Wheeler  
Notary Public

STATE OF OKLAHOMA )  
COUNTY OF OKLAHOMA ) ss.

BE IT REMEMBERED, that on this 13<sup>th</sup> day of August, 1991, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came, James W. Clark Vice President of FLEMING COMPANIES, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Oklahoma, and James M. Wallace, Assistant Secretary of said corporation, who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

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

My Commission Expires:

9/8/94

Renee Lane  
Notary Public