

## **EXHIBIT 5**

# **ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT**

(ID-023)

**THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT** (“**Agreement**”) is made as of this 14th 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**” or “**Fleming**”), and Montpelier Food Corporation, an Idaho corporation (“**Assignee**” or “**MFC**”) (Fleming and MFC, each a “**Party**” and collectively, the “**Parties**”).

## **RECITALS**

A. Assignor, as an assignee of the original tenant, was, prior to the “**Lease Transaction**” (as defined herein), tenant under that certain lease dated as of September 1, 1976 between S.S. Properties Associates II, a New Jersey limited partnership (the “**Initial Landlord**”), as lessor, and Safeway Stores, Incorporated, a Maryland corporation, as lessee (such lease and the Estoppel Certificate (as defined herein), as amended, modified, supplemented or restated are jointly hereinafter referred to as the “**Lease**”) for the premises located at Montpelier, Idaho and more specifically described in the Lease (the “**Premises**”). A copy of the Lease is attached hereto as Exhibit A. The successor landlord to the Initial Landlord and the present owner of the Premises is Janess Associates, a general partnership (the “**Landlord**”);

B. On March 3, 2003, Fleming and MFC entered into a Lease Purchase and Assignment Transaction (the “**Lease Transaction**”), copies of the relevant documents are attached hereto as Exhibit B. The purpose and intent of the Lease Transaction was to convey Fleming’s leasehold interest in the Lease to MFC. Prior to the Lease Transaction, Fleming was a sublessor of the Premises and MFC was a further sublessor of Fleming’s interest in the Premises, which sublease was terminated as part of the Lease Transaction;

C. The Landlord was aware of and consented to the Lease Transaction, including signing a certain Estoppel Certificate for Fleming Companies, Inc. and Montpelier Food Corporation, dated February 26, 2003 (the “**Estoppel Certificate**”);

D. Notwithstanding Fleming’s assignment of certain of its rights and obligations under the Lease to MFC as part of the Lease Transaction, Fleming retained a right of re-entry, remained a party to the Lease and retained its primary liability thereunder;

E. 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

F. Assignor desires to assign (i) all of Assignor’s remaining right, title and interest under the Lease 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.

**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 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 and the Lease. Assignee hereby accepts the foregoing assignment, without any merger of title relative to such interest with any other interest of Assignee in the Lease, 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 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 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 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.

(c) Upon entry of the order of the Bankruptcy Court approving the assignment and assumption of the Lease 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. Releases.

(a) 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 does 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 or the occupancy of the Premises.

3. Closing. The consummation of the assignment and assumption of the Lease 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. Remedies. If the Bankruptcy Court does not approve the assignment and assumption of the Lease pursuant hereto for any reason other than a material breach of this Agreement by Assignee, then this Agreement shall terminate and Assignee shall have no further claims against Assignor.

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

7. Adequate Assurance Data. Prior to or with the execution of this Agreement by Assignee, Assignee shall supply Assignor with (i) the full name and identity of Assignee; (ii) a current financial statement or such other proof of financial condition of Assignee; (iii) a written statement of Assignee’s expected use of the Premises; (iv) such other information relating to the proposed business to be conducted at the Premises and retail experience of Assignee; (v) a projection of gross sales, if the Lease contains a percentage rent provision; and (vi) such other documentation as may be reasonably requested by the Bankruptcy Court to demonstrate “adequate assurance of future performance” by Assignee.

8. 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;

(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); and

(iii) The copies of the Lease Transaction documents attached hereto as Exhibit B are a true, accurate and complete copies of the same (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;

(ii) That Assignee will, at all times after the date of this Agreement, be able to demonstrate "adequate assurance of future performance" under the Lease as that term is defined in Section 365 of the Bankruptcy Code; and

(iii) The copies of the Lease Transaction documents attached hereto as Exhibit B are true, accurate and complete copies of the same (and all amendments thereto).

9. "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."

10. Commission. The Parties 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.

11. Cure Costs. Although the Parties are not aware of any outstanding cure costs or cure claims relating to the Lease, Assignee shall be responsible for any and all cure costs or cure claims, in the event the Landlord makes any such claim in the future.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. 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 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:

Montpelier Food Corporation  
130 South 4<sup>th</sup> Street  
Montpelier, Idaho 83254

Attention: Debra J. Peterson

With copies to:

Terry W. Rogers  
9027 S. Cobble Canyon Lane  
Sandy, UT 84093

Durham Jones & Pinegar  
111 East Broadway, Suite 900  
Salt Lake City, UT 84111  
Attention: Ryan L. Jensen, Esq.  
Facsimile: (801) 415-3500

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 \_\_\_\_\_, 2003.

**ASSIGNOR:**

\_\_\_\_\_, a(n) \_\_\_\_\_

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

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

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

**ASSIGNEE:**

Montpelier Food Corporation, an Idaho  
Corporation

By: Debra J. Peterson

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

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

IN WITNESS WHEREOF, this Agreement has been duly executed this 14th day of November 2003.

ASSIGNOR:

Fleming  
Companies, Inc., a(n) Oklahoma corporation

By: David F. Stegmann

Name: DAVID F. STEGMANN

Title: DIRECTOR OF FACILITIES

ASSIGNEE:

Montpelier Food Corporation, an Idaho  
Corporation

By: Debra J. Peterson

Name: Debra Peterson

Title: owner

**EXHIBIT A**

**Lease**

[See Attached]

# **EXHIBIT A**

Idaho

LEASE

between

S. S. PROPERTIES ASSOCIATES II ,  
as Lessor

And

SAFEWAY STORES, INCORPORATED,  
as Lessee

Dated as of September 1, 1976

## TABLE OF CONTENTS

ARTICLE FIRST (Property Description).....	1
ARTICLE SECOND (Rent).....	1
ARTICLE THIRD (Taxes, utility charges, etc.).....	2
ARTICLE FOURTH (Installation and signs, etc.; removal of fixtures; painting).....	3
ARTICLE FIFTH (Lessee's assumption of liability).....	4
ARTICLE SIXTH (Repairs, alterations, and improvements; state of repair on termination; future development and Lessee's options with respect thereto)...	4
ARTICLE SEVENTH (Assigning and subletting).....	8
ARTICLE EIGHT (Holding over).....	9
ARTICLE NINTH (Quiet possession).....	9
ARTICLE TENTH (Lessee's default).....	10
ARTICLE ELEVENTH (Damage by fire, etc.).....	13
ARTICLE TWELFTH (Condemnation).....	16
ARTICLE THIRTEENTH (Notices).....	19
ARTICLE FOURTEENTH (Lessee's right of termination).....	19
ARTICLE FIFTEENTH (Bankruptcy).....	21
ARTICLE SIXTEENTH (Lessee's option privileges).....	24
ARTICLE SEVENTEENTH (Compliance with laws).....	25
ARTICLE EIGHTEENTH (Remedies Cumulative).....	25
ARTICLE NINETEENTH (Additional Rent).....	25
ARTICLE TWENTIETH (No Waiver).....	26
ARTICLE TWENTY-FIRST (Definitions).....	26
ARTICLE TWENTY-SECOND (Article headings).....	26
ARTICLE TWENTY-THIRD (Separability).....	26
ARTICLE TWENTY-FOURTH (Successors and Assigns).....	26
ARTICLE TWENTY-FIFTH (Lessee's obligation to complete the improvements).....	27
ARTICLE TWENTY-SIXTH (Purchase at expiration of original term)	28
ARTICLE TWENTY-SEVENTH (Use of leased premises).....	29
ARTICLE TWENTY-EIGHTH (Rule Against Perpetuities).....	29
SCHEDULE A	
SCHEDULE B	

THIS LEASE, dated as of September 1, 1976, between S. S. PROPERTIES ASSOCIATES II, a New Jersey limited partnership (hereinafter referred to as Lessor), having an address c/o Financial Packaging Corporation, 605 Third Avenue, New York, New York 10016, and SAFEWAY STORES, INCORPORATED, a Maryland corporation (hereinafter referred to as Lessee), having its principal place of business at Fourth and Jackson Streets, Oakland, California 94604:

WITNESSETH: That in consideration of the mutual agreements herein contained, the parties hereto do hereby covenant to and with each other as follows:

ARTICLE FIRST (Property Description): Lessor does hereby lease to Lessee the real property described in Schedule B hereto and the buildings, structures and other improvements thereon (including all building equipment and building fixtures owned by Lessor, if any, but excluding Lessee's trade equipment and trade fixtures).

Said premises are leased subject to such defects in Lessor's title, encumbrances, covenants, conditions, restrictions, easements, reservations and rights of way, if any, as are now existing with respect to said premises, any state of facts an accurate survey might show, zoning rules, restrictions, regulations, resolutions and ordinances, and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authorities having jurisdiction.

TO HAVE AND TO HOLD the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for a preliminary term commencing with the 16th day of November, 1976, and extending to and including the last day of November 1976, and for an original term of twenty (20) years, commencing with the first day of December 1976, and extending to and including the last day of November, 1996.

ARTICLE SECOND (Rent): Lessee does hereby agree to pay without offset to Lessor, as the rent of the leased premises:

- (a) For the period from November 16, 1976 through November 30, 1976, the amount of \$2910.60 payable on December 1, 1976;
- (b) For the period from December 1, 1976 through November 30, 1996, the amount of \$81,897.92 per annum payable in equal quarter-annual instalments of \$20,474.48 payable on the last day of each February, May, August and November during such period.

Said payments shall be made to Shawmut Bank of Boston, N.A., as trustee (the Trustee) under the Trust Indenture, dated as of September 1, 1976, from First Brandywine Store Properties Corp., and mailed to it at Corporate Trust Department, Fourth Floor, P.O. Box 2176, Boston, Massachusetts 02106, in such manner that the Trustee shall have "collected funds" on the date on which such sums are due and payable, or by checks or drafts made payable to any other payee or mailed to any other address which Lessor, or any successor in interest of Lessor, may in writing designate.

ARTICLE THIRD (Taxes, utility charges, etc.):

Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes, assessments, personal property taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every instalment thereof, which shall or may during the term hereof be charged, laid, levied, assessed, imposed, become due and payable, or liens upon, or arise in connection with the use, occupancy or possession of or grow due or payable out of, or for the leased premises during the lease term or any renewal thereof. Lessee further agrees to pay all taxes which may be levied, assessed or imposed by the state in which said premises are located or by any political or taxing subdivision thereof, upon or measured by the rents hereunder or the income arising therefrom, to the extent and only to the extent that such taxes are in lieu of or a substitute for any tax upon said premises which, if such tax were in effect, would be payable by Lessee under the provisions hereof, but it is not intended that Lessee shall be required to pay any taxes of Lessor which are presently denominated as income or franchise taxes or excise taxes imposed on Lessor's privilege to do business, provided that Lessee shall pay all general excise or other taxes (save and except net income taxes) measured by and payable with respect to this Lease,



may obliterate any signs or color effects installed by it. Any damage caused the leased premises by the removal of such property or the obliteration of any signs or color effects shall be repaired by Lessee at its expense. Any trade fixtures or personal property not used in connection with the operation of the leased premises and belonging to Lessee or to any subtenant, if not removed within twenty (20) days after expiration or the sooner termination of this Lease, shall be deemed abandoned and shall become the property of Lessor without any payment or offset therefor.

ARTICLE FIFTH (Lessee's assumption of liability): Lessee agrees that it will indemnify and save Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks. Lessee further agrees to indemnify and save Lessor harmless from any and all liability arising from any failure by Lessee to perform any of the agreements, terms, covenants or conditions of this Lease on Lessee's part to be performed.

ARTICLE SIXTH (Repairs, alterations, and improvements; state of repair on termination; future development and Lessee's options with respect thereto): Lessee acknowledges receipt of the leased premises in good condition and repair and that there are no defects of any kind with respect thereto, Lessee agrees that Lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises, or to the improvements thereon, during the lease term or any renewal thereof. Lessee shall, at all times during the lease term or any renewal thereof, and at its own cost and expense, put, keep, replace and maintain in thorough repair and good, safe and substantial order and condition, except for ordinary wear and tear, all buildings and improvements erected on the leased premises, or forming a part thereof (including all building equipment which is an integral part of the building structures), both inside and outside, structural and non-structural, extraordinary and ordinary. Lessor agrees that Lessee may make or permit to be made such alterations and improvements to the leased premises as Lessee may deem desirable for the use thereof and may, at Lessee's option and without cost to Lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following, to wit:

- I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely affected thereby; and/or
- II. Construct an addition, or additions thereto; and/or
- III. Raze any building or improvement situated on the leased premises and erect on the leased premises a new building or improvement which shall be of a value not less than the market value of the building or improvement so razed at the time of its demolition; and/or
- IV. Construct an additional new building or buildings on the leased premises;

provided that Lessee shall first obtain any building and alteration permits that may be required by any governmental authorities having jurisdiction and provided further that Lessee shall complete construction of the new building or improvement required by clause III above within one year (which period shall be extended for delays, other than financial delays, beyond the reasonable control of Lessee) after any building or improvement shall have been razed pursuant to said clause III. At the expiration or termination of this Lease, or any extension or renewal thereof, Lessee shall leave the leased premises in good condition, allowance being made for ordinary wear and tear and damage by fire, or by earthquake, or by the elements, excepted, and Lessee shall not be required to restore the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that Lessor shall accept the leased premises with such alterations, remodeling, additions, or new construction, as may have been made pursuant to the authorization contained in this paragraph. Lessee agrees that it will not permit any mechanics', materialmen's or other liens to stand against the leased premises for work or materials furnished Lessee in connection with any such alterations, remodeling, additions or new construction (including any completion of construction under Article twenty-fifth), it being provided, however, that Lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, Lessee shall immediately pay any judgment or decree rendered against Lessee,

with all proper costs and charges, and shall cause any such lien to be released of record without cost to Lessor.

Should Lessee, during the original term hereof, alter, remodel or add to the improvements or construct new improvements either on the leased premises pursuant to the provisions of subparagraphs I, II, III and/or IV hereof or upon land acquired contiguous to the leased premises (such alteration, remodeling, addition, construction and contiguous land acquisition being herein called the Additions), and provided the cost of the Additions is TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000), or more, Lessee may, on completion of said Additions, give written notice thereof to Lessor after November 30, 1979, and require that Lessor and Lessee enter into negotiations with respect to the financing of such cost provided that such cost has been incurred during a period which shall be not longer than twenty-four (24) consecutive months and which shall not have ended earlier than six (6) months prior to the date of such notice. Within sixty (60) days of the date of such notice, Lessor and Lessee shall enter into good faith negotiations looking toward the execution and delivery of a written agreement of modification of this Lease, which agreement shall provide for (1) a payment by Lessor to Lessee of such cost within forty-five (45) days after the date on which such negotiations commenced, (2) an increase of the annual extended term rentals provided for in Article Sixteenth hereof by an amount equal to such cost, multiplied by the applicable rental rate as provided for in said Article Sixteenth, (3) an extension of the original term to a date not earlier than the maturity date of the Improvement Notes hereinafter referred to and an increase in the quarter-annual original term rental sufficient to reimburse Lessor for such cost, together with interest at a rate sufficient to finance said additional payments, during the original term as so extended, (4) increases in the purchase prices set forth in Schedule A attached hereto and hereby made a part hereof which shall be sufficient, at any given time, to allow Lessor to recover the unamortized amount of such cost, together with accrued interest thereon at a reasonable rate, and (5) such other changes and amendments to this Lease as may be necessary and appropriate in view of such payment by Lessor to Lessee. Since Lessor's most likely source of

funds to make payment for such cost will be the issuance and sale of notes (herein called Improvement Notes), the parties agree that the obligation of Lessor to make such payment shall be conditioned upon the sale of Improvement Notes and that the changes and amendments to this Lease will be of such nature as will (a) permit Lessor to sell Improvement Notes, and (b) provide increases in the original term rents and the purchase prices set forth in Schedule A, so as to assure the purchasers of Improvement Notes the payment of interest and principal due thereon during the original term. If (i) Lessor and Lessee are unable to agree upon the terms of modification of this Lease, (ii) Lessee shall have delivered to Lessor an executed copy of a bona fide offer (the Other Offer) from an investor or investors to make (pursuant to the purchase of notes in a lease financing arrangement based upon Lessee's lease credit and the sale of Lessor's notes in the same manner as in the Basic Financing, as hereinafter defined) such payment for such Additions (the Additional Payment) upon terms and conditions more advantageous to Lessee than those which Lessor offered to Lessee and (iii) Lessor does not, within 30 days after receipt of the Other Offer, make an offer upon substantially the same terms and conditions contained in the Other Offer with respect to the Additional Payment, then Lessor and Lessee shall use their best efforts to cause the Additions to be financed pursuant to the Other Offer and, in such connection, enter into a written agreement of the nature described in the second sentence of this paragraph. It is understood and agreed by Lessor and Lessee, in connection with all of the foregoing, that (a) the manner in which Lessor shall finance the cost of acquiring the leased premises will be to issue its non-recourse Improvement Notes, mortgage its interest in the leased premises and assign its rights under this lease to a third-party corporation, which, in turn, will finance its acquisition of Improvement Notes by a sale of its secured notes and assignment of its rights in the Improvement Notes, mortgage and assignment made to it by Lessor to an institutional lender (the Basic Financing), (b) the consummation of the financing of any of the Additions is contingent upon the satisfaction of certain terms and provisions of the Basic Financing related thereto whether or not the financing of any such new improvements shall occur which, inter alia,

contemplate the continuation of the Basic Financing and (c) that Lessor and Lessee are familiar with such terms and provisions of the Basic Financing, which are not in conflict with the terms and provisions hereof. Notwithstanding any of the provisions of this Article, if Lessor does not make a payment to Lessee pursuant to this Article Sixth, this Lease shall continue in effect without any modification or change whatsoever.

In the event that payment of the cost of Additions located in whole or in part upon and comprising in part land contiguous to the leased premises is made by Lessor to Lessee pursuant to this Article Sixth, Lessee shall, at the time such payment is made, convey or cause to be conveyed to Lessor such contiguous land by an instrument of conveyance which grants to Lessor a good and marketable fee simple title thereto, and said amendments to this Lease shall include such contiguous land as a part of the leased premises subject to this Lease. In the event that an addition or additions to any building or improvement on the leased premises are constructed in whole or in part upon land contiguous to the leased premises and payment of the cost is not made by Lessor to Lessee pursuant to this Article Sixth, then at or prior to the expiration or earlier termination of this Lease, and provided that Lessee has not purchased the leased premises pursuant to any provision of this Lease, Lessee at its election shall, without additional cost to Lessor, either (i) restore the buildings or improvements located on the leased premises to an architectural condition capable of being operated as a separate economic unit or (ii) convey or cause to be conveyed to Lessor said additions and said contiguous land and such further land, if any, as shall be required in order to comply with any then applicable laws, regulations, rules, ordinances, covenants and restrictions, and to enable Lessor to enjoy the normal use of such addition or additions, by an instrument of conveyance which grants to Lessor a good and marketable fee simple title thereto.

ARTICLE SEVENTH (Assigning and subletting):

Lessee shall have the right to assign this Lease or to sublet the whole or any part of said leased premises for a period not extending beyond the expiration of the original term of this Lease or of any renewal term then in effect.

Should Lessee assign this Lease or sublet the whole or any part of said leased premises, it shall nevertheless remain primarily liable to Lessor as a principal and not as a guarantor or a surety for full payment of the rent and the performance and observance of Lessee's other obligations under this Lease. Lessee agrees to notify Lessor in writing of any assignment or subletting, within thirty (30) days thereafter, and, on request of Lessor, to furnish Lessor with a conformed copy of any sublease which may be made. In the event of Lessee's default in any of the provisions hereof, after the leased premises have been sublet by Lessee, Lessor may collect rent from the sublessee but any collection of rent from an assignee or sublessee shall not be deemed a waiver of the primary liability of Lessee or as an acceptance by Lessor of the assignee or sublessee as lessee. Any such sublease shall be subject to termination by Lessor at its option on termination of this Lease except in the instance in which this Lease is terminated and the leased premises purchased by Lessee.

ARTICLE EIGHT (Holding over): If Lessee holds over or remains in possession of the leased premises after expiration of this Lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being exercised by written notice, such holding over or continued possession shall, if rent is paid by Lessee and accepted by Lessor for or during any period of time Lessee holds over or remains in possession, create only a month-to-month tenancy at the last quarter-annual rental (pro-rated) and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

ARTICLE NINTH (Quiet possession): Lessor covenants that Lessor is seized of the leased premises and has full right to make this Lease, and that so long as Lessor is the owner of the leased premises, Lessee shall have quiet and peaceful possession thereof as against any adverse claim of Lessor or any party claiming under Lessor, subject to all exceptions to the title in the title policy to the leased premises to be issued to Lessor or any mortgagee (or assignee

thereof) of Lessor in connection with its acquisition of title to said premises and the other exceptions and restrictions listed in Article First hereof.

ARTICLE TENTH (Lessee's default): In case Lessee shall fail to pay any instalment of rent or any tax, assessment, water rent or sewer rent for ten (10) days after written notice from Lessor that the same is due and payable, or to pay any other additional rent or to comply with any of the other terms, covenants, conditions or obligations of this Lease for thirty (30) days after written notice from Lessor or the agent or attorney of Lessor, then Lessor, at the option of Lessor, may cancel and terminate this Lease, as well as all of the right, title and interest of Lessee hereunder, by giving to Lessee not less than five (5) days' notice of such cancellation and termination, and upon the expiration of the time fixed in such notice this Lease and the term hereof, as well as all of the right, title and interest of Lessee hereunder, shall expire in the same manner and with the same force and effect, except as to Lessee's liability, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term originally demised; and Lessor may re-enter upon the leased premises either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by Lessor of the right to terminate this Lease shall not be a bar to or prejudice in any way any other legal remedies available to Lessor.

In the event of any such failure by Lessee to pay or to comply as aforesaid, in which case each such failure shall be a default hereunder by Lessee and a breach of this Lease, Lessor shall immediately and ipso facto, notwithstanding any other provisions of this Lease to the contrary and without any notice or other action by Lessor, become entitled to recover from Lessee, and Lessee shall pay to Lessor, as liquidated damages for such breach the sum of (a) 25% of the Applicable Amount (the Applicable Amount) for the Initial Period as set forth in Column 2 of Schedule A hereto, discounted at the rate of 5% per annum from November 30, 1996 to the date of such breach and (b) all rent and other sums payable hereunder due and payable to the date of payment, together with a sum equal to the amount by which the rent and additional rent reserved hereunder from the date of

such breach to the date of expiration of the term of this Lease exceeds the fair and reasonable rental value of the leased premises for the same period, both discounted to the date of such breach at the rate of five per cent (5%) per annum. Such accrued rent and damages shall become due and payable to Lessor immediately upon such breach and without regard to whether this Lease be terminated or not, and if this Lease be terminated, without regard to the manner in which it shall be terminated. In determining the fair and reasonable rental value of the leased premises, the rental realized by any reletting, if any reletting be accomplished by Lessor before presentation of proof of such liquidated damages shall be required, shall be deemed prima facie to be the fair and reasonable rental value of the leased premises or the portion thereof so relet, as the case may be. If and so long as the term of this Lease shall continue, the rent reserved herein for the unexpired term of this Lease after any such breach shall be reduced by the amount of such liquidated damages as may be paid to Lessor, such reduction being applied proportionately to each instalment of rent and additional rent thereafter becoming due. During the continuance of this Lease after such a breach and until such damages shall have been paid to Lessor, the whole amount of each instalment of rent and additional rent herein reserved shall be due and payable at the time herein specified, and if by reason of the subsequent payment of liquidated damages, and the resulting reduction in rental, Lessor shall have received a sum in excess of all instalments as so reduced, becoming due after the breach and before the collection of such damages, such excess shall be refunded to Lessee upon the receipt of such liquidated damages.

If Lessor shall so re-enter, Lessor may repair and alter the leased premises in such manner as to Lessor may seem necessary or advisable, and/or let or relet the leased premises or any parts thereof for the whole or any part of the remainder of the term herein originally leased or for a longer period, in Lessee's name, or as the agent of Lessee, and out of any rent so collected or received Lessor shall: first, pay to itself the cost and expense of retaking, repossessing, repairing and/or altering the leased premises, and the cost and expense of removing all persons and property therefrom; second, pay to itself the cost and expenses



sustained in securing any new tenants, and if Lessor shall maintain and operate the leased premises the cost and expense of operating and maintaining the leased premises; and, third, pay to itself any balance remaining on account of the liability of Lessee to Lessor for the sum equal to all rent and additional rent reserved herein and unpaid by Lessee for the remainder of the term herein originally leased. Any entry or re-entry by Lessor, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Lessee from liability hereunder.

Should any rent so collected by Lessor after the aforementioned payments be insufficient fully to pay to Lessor a sum equal to all such rent and additional rent reserved herein, the balance or deficiency shall be paid by Lessee on the rent days herein specified, that is, upon each of such rent days Lessee shall pay to Lessor the amount of the deficiency then existing; and Lessee shall be and remain liable for any such deficiency, and the right of Lessor to recover from Lessee the amount thereof, or a sum equal to all such rent and additional rent reserved herein, if there shall be no reletting, shall survive the issuance of any dispossessory warrant or other cancellation or termination hereof; and Lessee hereby expressly waives any defense that might be predicated upon the issuance of such dispossessory warranty or other cancellation or termination hereof.

Suit or suits for the recovery of such deficiency or damages, or for a sum equal to any instalment or instalments of rent and additional rent hereunder, may be brought by Lessor, from time to time at Lessor's election, and nothing herein contained shall be deemed to require Lessor to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by Lessee or no such cancellation or termination.

Lessee hereby expressly waives service of any notice of intention to re-enter. Lessee hereby waives any and all rights to recover or regain possession of the leased premises or to reinstate or to redeem this Lease or other right of redemption as permitted or provided by or under any statute, law or decision now or hereafter in force and effect, in case Lessee shall be dispossessed by a judgment or by warrant of any court or judge.

In the event of a breach or a threatened breach by Lessee of any of the agreements, terms, covenants or conditions hereof, Lessor shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

In case Lessor shall default in the performance of any covenant or agreement herein contained, and such default shall continue for thirty (30) days after receipt by Lessor of written notice thereof given by Lessee, its agents or attorney, then Lessee, at its option, may (1) cease paying rent for such time as such default shall continue or (2) pay any sums necessary to perform any obligations of Lessor hereunder with respect to which Lessor shall be in default and deduct such sums from the rents thereafter to become due hereunder or (3) declare the term ended and vacate the leased premises and be relieved from all further obligations under this Lease. Except to the extent otherwise expressly provided in this Lease, this Lease shall not terminate nor shall Lessee be entitled to any abatement of rent or reduction thereof, nor shall the respective obligations of Lessor and Lessee be otherwise affected, by reason of damage to or destruction of all or any part of the leased premises from whatever cause, the taking of said premises or any portion thereof by condemnation or otherwise, the lawful prohibition of Lessee's use of the premises, the interference with such use by any private person or corporation, or by reason of any eviction by paramount title, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding.

ARTICLE ELEVENTH (Damage by fire, etc.): Lessee agrees that it will, during the preliminary and original terms hereof and during any renewal terms, at its expense, take out and keep in effect upon the leased premises, fire insurance with extended coverage endorsement, in an amount sufficient to prevent Lessor and Lessee from becoming co-insurers under provisions of applicable policies of insurance but in any event, in an amount equal to not less than eighty per centum (80%) of the "insurable value" of the building improvements thereon; general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the leased premises

and to afford protection of not less than \$500,000 with respect to bodily injury or death to any one person, not less than \$1,000,000 with respect to any one accident and not less than \$250,000 with respect to property damage, and boiler and pressure vessel insurance on all equipment, parts thereof and appurtenances attached or connected to the leased premises which by reason of their use or existence are capable of bursting, erupting, collapsing or exploding, in the minimum amount of \$500,000 for damage to property resulting from such perils, in each case written by a responsible insurance company or insurance companies authorized to do an insurance business in the state in which the leased premises are located; said policy or policies of insurance to bear a first mortgage endorsement in favor of the Trustee, together with each other person and/or organization acting together with the Trustee and to provide that payment for any losses covered under or by said policy or policies of insurance shall be made to Lessor and/or Lessee and/or any such Trustee and/or any mortgagee and/or assignee designated by Lessor from time to time, as their respective interests may appear. Lessee agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the preliminary or original terms or any renewal term, Lessee shall rebuild or repair said building improvements or construct a new building on the leased premises, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. In such event the building improvements as reconstructed by Lessee shall be a value not less than the value of the building improvements as of the date of the casualty and the building improvements as reconstructed shall immediately become part of the realty and the property of Lessor. Any building permit that may be required shall be obtained by Lessee. Notwithstanding any other provision of this Article Eleventh to the contrary, should such fire or other casualty occur at any time during the preliminary or the original term and should the leased premises be so damaged or destroyed in any single casualty that they shall be economically unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business, as certified by a Vice President of Lessee, then at Lessee's option, in lieu of rebuilding or repairing the leased premises,

Lessee may, within ninety (90) days after such loss or damage, give written notice to Lessor of Lessee's intention to terminate this Lease as provided for in Article Fourteenth hereof, and as a part of said notice shall offer to purchase the leased premises upon the terms set out in said Article. Said notice shall be accompanied by a certificate of Lessee, signed by a vice president thereof, stating that the leased premises are economically unsuitable for Lessee's continued use and occupancy in Lessee's business by reason of such damage or destruction. In the event said offer to purchase is accepted by Lessor and said property purchased by Lessee, all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. However, should said offer to purchase not be accepted by Lessor and this Lease be terminated as in said Article Fourteenth provided, Lessee shall be deemed to and does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to Lessor by said insurance company or companies. In the event any mortgagee and/or assignee thereof requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such mortgagee and/or assignee thereof upon condition that said mortgagee and/or assignee thereof shall agree to pay the said proceeds to Lessee upon the restoration of the leased premises as in this Article provided or upon the purchase of the leased premises by Lessee as provided for in Article Fourteenth hereof.

Regardless of the cost of rebuilding or repairing said building improvements, should the fire or other casualty occur during a renewal option term, Lessee shall have the right to elect to rebuild or repair said building improvements, in which event all insurance proceeds shall be paid to Lessee as hereinabove set forth. Should Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage, give to Lessor thirty (30) days' notice in writing, cancelling and terminating the renewal term then in effect. On expiration of said thirty (30) days' notice, the renewal term shall cease and terminate and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

Lessee shall procure policies for such insurance for a period of not less than one (1) year and shall procure renewals thereof from time to time at least twenty (20) days before the expiration thereof and shall deliver to Lessor certificates of such policies and renewals.

No abatement, diminution or reduction of rent, charges or other compensation shall be claimed by or allowed to Lessee, or any persons claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to any buildings now on or which may hereafter be erected on the leased premises, by virtue of or arising from, and during the restoration of the leased premises after the destruction or damage thereof by fire or other cause.

ARTICLE TWELFTH (Condemnation): Lessor hereby empowers Lessee, from time to time during the preliminary and the original terms of this Lease and during any renewal terms: (a) to grant easements affecting the leased premises; (b) to dedicate or convey, as required, portions of the leased premises for road, highway and other public purposes; and (c) to execute petitions to have the leased premises or a portion or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. If any monetary consideration is received by Lessee as a result of the granting of any such easement or the dedication or conveyance of any portion of the leased premises as hereinabove provided, such consideration shall be retained by Lessee. Notwithstanding the granting of any such easement or such dedication or conveyance, the rents and the amounts set forth in Schedule A shall continue in effect without any modification. The powers hereinabove granted to Lessee shall be exercised by Lessee without the joinder of Lessor, but Lessor agrees to cooperate fully with Lessee if for any reason it is necessary or desirable under the laws of the state in which the leased premises is located for Lessor to join in the execution of any instrument or to cooperate with Lessee in any other way in order for said powers to be effectively exercised. As a condition precedent to the exercise by Lessee of any of the powers granted to Lessee in this Article, Lessee shall inform Lessor in writing of the action to be taken and shall certify

to Lessor, in a certificate executed by a vice president of Lessee, that in Lessee's opinion, such action will not adversely affect either the market value of the leased premises or the use of the leased premises as a grocery supermarket.

In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the preliminary or the original term hereof condemn and acquire title to any portion of the leased premises, or to any easement therein, in or by condemnation proceedings pursuant to any law, general, special or otherwise, which condemnation shall make the leased premises unsuitable for use as a grocery supermarket, Lessee may elect within thirty (30) days after such condemnation or acquisition of title by such person or corporation, to give written notice to Lessor of its intention to terminate this Lease as provided for in Article Fourteenth hereof, and as a part of said notice shall furnish a certification, executed by a vice president of Lessee, to the effect that such condemnation has made the leased premises unsuitable for use as a retail food supermarket, and shall offer to purchase the leased premises from Lessor upon the terms set out Article Fourteenth hereof. In the event such offer to purchase is accepted by Lessor within the time and in the manner in Article Fourteenth provided, and said leased premises are purchased by Lessee, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment as may be made. Should said offer to purchase not be accepted by Lessor and this Lease be terminated as provided for in said Article, any and all award or payment made in such condemnation proceedings in respect only of the leased premises shall be paid to Lessor; provided, however, that Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest. Should Lessee, however, remain in possession and not elect to give such notice of termination of this Lease, this Lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, or in the event of any condemnation of any portion of the leased premises, or any easement therein, which shall not entitle

Lessee to give notice of its intention to terminate this Lease as hereinabove provided, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to Lessee, Lessee shall pay all appraisal fees, attorneys' fees and other expense connected with said condemnation proceedings and shall make all repairs or alterations (if any) to the leased premises made necessary by such condemnation; should such expense and the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall keep the remaining balance of such award or payment (such remaining balance being hereinafter referred to as net surplus award). Notwithstanding any such condemnation, the rents and purchase prices referred to in Article Fourteenth and set forth in Schedule A attached hereto and made a part hereof, shall continue in effect without any modification.

Should the entire leased premises be condemned at any time during the preliminary or the original term hereof and this Lease be terminated either by operation of the law or through the exercise of Lessee's option to terminate as hereinabove provided, then, and in such event, Lessee shall be entitled to the entire condemnation award and Lessee shall pay to Lessor an amount equivalent to the applicable purchase price determined in the manner provided in Article Fourteenth, as of the date of termination of this Lease.

Should the condemnation occur during an optional renewal term, Lessee shall, within thirty (30) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair and alter the leased premises to the extent made necessary by such condemnation. If Lessee elects to terminate the renewal term, Lessee shall give to Lessor thirty (30) days' notice, in writing, cancelling and terminating such renewal term. On expiration of said thirty (30) days' notice, the renewal term shall cease and terminate. In such event, Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold

interest and Lessor shall be entitled to receive and retain any award or payment made in respect of the leased premises. Should Lessee, however, elect to remain in possession, the renewal term shall continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to Lessee, Lessee shall pay all appraisal fees, attorneys' fees and other expenses connected with said condemnation proceedings and shall make all repairs or alterations (if any) to the leased premises made necessary by such condemnation; should such expense and the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to the Lessor the remaining balance of such award or payment.

ARTICLE THIRTEENTH (Notices): Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, addressed, if to Lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to Lessee, to it at Oakland, California 94660. The person and the place to which notices are to be mailed may be changed from time to time by either party by written notice given to the other party.

ARTICLE FOURTEENTH (Lessee's right of termination): Lessor agrees that if Lessee has discontinued or determines to discontinue its use of the leased premises as a grocery supermarket, Lessee shall have the right, subject to the following conditions, at its option, to terminate this Lease. Except where the right accrued pursuant to the provisions of Article Eleventh or Article Twelfth, such option to terminate shall not be exercised prior to the expiration of the fifth year of the original term. In the event Lessee desires to exercise this option and to terminate this Lease, it shall give written notice to Lessor of its intention to terminate this Lease, it shall offer to purchase the leased premises at the Purchase Price hereinafter set



forth, and, as a part of such notice, Lessee shall furnish Lessor a certification executed by a vice president of Lessee, stating that (i) the leased premises have become uneconomic or unsuitable for the continued use in Lessee's business and (ii) Lessee will discontinue its use of the leased premises as a grocery supermarket within ninety (90) days after purchase of the leased premises from Lessor for the applicable price computed in accordance with the schedule attached hereto and marked Schedule "A" (herein referred to as the "Purchase Price").

Unless Lessor shall reject such offer to purchase not later than the 90th day after the date of Lessee's notice to Lessor (provided that the rejection of such offer shall be of no effect unless accompanied by the written consent thereto of the Trustee), then Lessor shall be conclusively presumed to have accepted such offer and Lessor shall open or cause an escrow to be opened with a title insurance company approved by the Trustee and doing business in the area in which the leased premises are located and shall deposit in said escrow a properly executed grant or warranty deed, and such other instruments and authorizations as may be necessary to convey to, and vest in, Lessee such title to the leased premises as will enable Lessee, upon the escrow completion, to obtain from a title insurance company satisfactory to Lessee, an owner's policy of title insurance in the amount of the purchase price paid by Lessee, insuring Lessee, or if title insurance is not available, a title opinion written by an attorney designated by Lessee substantiating that it is the unencumbered fee title owner of the leased premises, free and clear of any mortgage or deed of trust (which shall be released or reconveyed of record by Lessor in the escrow settlement) and free and clear of any other liens, charges, encumbrances or exceptions, except such as may have been in existence at the time of Lessor's acquisition of title to the leased premises, provided, however, and Lessee agrees, that Lessee will take title to the leased premises subject also to any other liens, encumbrances and exceptions not caused or created by any lessor, and to all zoning rules and restrictions, regulations and ordinances that are applicable to the leased premises on the date of conveyance thereof to Lessee and subject to any violations of building codes, fire laws and other laws and regulations that are in existence as of said date. Lessor shall notify Lessee of the opening of the escrow and of its

deposit therein of the deed and other instruments and authorizations, if any, necessary to convey to Lessee title to the leased premises as hereinabove provided, and Lessee shall, at or prior to the expiration of one hundred twenty (120) days from the date of Lessee's notice to Lessor, deliver to the escrow holder the Purchase Price, with its instructions for the completion of the escrow in accordance with the terms hereof. If Lessee purchases the leased premises as herein provided, Lessee shall pay rent to the date of its purchase of the leased premises and the charges covering the escrow fee, recording fee, premium for an owner's policy of title insurance, and the cost of any applicable documentary stamps and any applicable state and local stamp taxes and other like costs and charges.

Should Lessor have rejected the offer of Lessee to purchase the leased premises (provided that such rejection shall have been accompanied by the written consent thereto of the Trustee) or should Lessor, after having accepted Lessee's offer to purchase fail, or be unable within one hundred twenty (120) days after said date of Lessee's notice to Lessor, to deposit with said escrow holder such deed, instruments and authorizations as may be necessary to vest such title to the leased premises in Lessee as is hereinabove provided for, then this Lease shall terminate at the expiration of such one hundred twenty (120) day period. In the event of such termination, all parties hereto shall be discharged from their liability by reason of this Lease and the provisions with respect to the purchase of the premises herein contained, and this Lease shall be of no further force or effect. Lessee shall pay rent to the date of termination and shall vacate and remove its property from the leased premises by such date of termination, and as of such date proper adjustment shall be made in respect of taxes and unexpired insurance premiums.

ARTICLE FIFTEENTH (Bankruptcy): If (i) Lessee should make an assignment for the benefit of creditors or file any petition or institute any proceedings under the Bankruptcy Act, either as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any other act or acts, either as a bankrupt or as an insolvent, wherein or whereby Lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts,

or to effect a plan of reorganization, or for any other similar relief, or if a receiver, trustee or liquidator for all or a substantial part of the business of Lessee should be appointed by any court upon the petition of Lessee, or (ii) any such petition or proceedings of the same or similar kind or character be filed or taken against Lessee, or (iii) any receiver, trustee or liquidator for all or a substantial part of the business of Lessee should be appointed by any court in any proceeding brought against Lessee and such petition or proceedings should not be set aside or dismissed or the appointment of said receiver, trustee or liquidator revoked within ninety (90) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this Lease on the giving to Lessee of thirty (30) days' notice in writing and upon the expiration of the time fixed in such notice this Lease and the term hereof, as well as all of the right, title and interest of Lessee hereunder, shall expire in the same manner and with the same force and effect, except as to Lessee's liability, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term herein originally leased.

In any such event, each of which shall be a default hereunder by Lessee and a breach of this Lease and in the event of any other default hereunder or breach hereof, Lessor shall immediately and ipso facto, notwithstanding any other provisions of this Lease to the contrary and without any notice or other action by Lessor, become entitled to recover from Lessee, and Lessee shall pay to Lessor, as liquidated damages for such breach, all rent and other sums payable hereunder due and payable to the date of payment, together with the sum of (a) 25% of the Applicable Amount for the Initial Period as set forth in Column 2 of Schedule A hereto, discounted at the rate of 5% per annum from November 30, 1996 to the date of such breach and (b) the amount by which the rent and additional rent reserved hereunder from the date of such breach to the date of expiration of the term of this Lease exceeds the fair and reasonable rental value of the leased premises for the same period, both discounted to the date of such breach at the rate of five per cent (5%) per annum. Such accrued rent and damages shall become due and payable to Lessor immediately upon such breach and without regard to whether this Lease be terminated

or not, and if this Lease be terminated, without regard to the manner in which it shall be terminated. In determining the fair and reasonable rental value of the leased premises, the rental realized by any reletting, if any reletting be accomplished by Lessor before presentation of proof of such liquidated damages shall be required, shall be deemed prima facie to be the fair and reasonable rental value of the leased premises or the portion thereof so relet, as the case may be. If and so long as the term of this Lease shall continue, the rent reserved herein for the unexpired term of this Lease after any such breach shall be reduced by the amount of such liquidated damages as may be paid to Lessor, such reduction being applied proportionately to each instalment of rent and additional rent thereafter becoming due. During the continuance of this Lease after such a breach and until such damages shall have been paid to Lessor, the whole amount of each instalment of rent and additional rent herein reserved shall be due and payable at the time herein specified, and if by reason of the subsequent payment of liquidated damages, and the resulting reduction in rental, Lessor shall have received a sum in excess of all instalments as so reduced, becoming due after the breach and before the collection of such damages, such excess shall be refunded to Lessee upon the receipt of such liquidated damages.

Nothing in this Article Fifteenth contained shall limit or prejudice the right of Lessor to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to in the preceding paragraph. The termination of this Lease pursuant to this Article Fifteenth shall not be construed as a waiver by Lessor of any right to any such damages that may be proved on the rejection or termination of this Lease through such bankruptcy, insolvency, receivership or dissolution proceedings on the part of Lessee or its representatives in interest, the receiver, custodian, trustee or other parties in interest, through the court having jurisdiction in the proceeding.

In the event of any default hereunder or breach of this Lease by Lessee, Lessor shall, in addition to the rights set forth above in this Article Fifteenth, have the right to require that Lessee purchase the leased premises at a price determined in accordance with Schedule A hereto on a date specified by Lessor which is not later than 60 days following written notice of such requirement from Lessor to Lessee. Lessor shall transfer and convey the leased premises to Lessee on such date upon the terms and provisions set forth in Article Fourteenth hereof as if Lessor had accepted an offer by Lessee to purchase the leased premises; except, however, that (A) the time periods referred to in Article Fourteenth shall be adjusted to effectuate said purchase on the date determined pursuant to this Article Fifteenth and (B) this Lease shall in no event terminate until the leased premises shall have been conveyed and the purchase price thereof and all other sums due under this Lease shall have been paid.

ARTICLE SIXTEENTH (Lessee's option privileges):  
Lessor hereby grants to Lessee, the right, at Lessee's option, to extend the term of this Lease for eight (8) separate and additional periods of five (5) years each after the expiration of the term hereof at an annual rental which shall be payable in equal quarter-annual instalments, in arrears, and which shall be equivalent to five per centum (5%) of the aggregate of (a) the Applicable Amount for the Initial Period as set forth in Column 2 of Schedule A hereto and (b) any payment made by Lessor to Lessee under Article Sixth hereof for the first and second extended terms and three per centum (3%) of the aggregate of (a) and (b) hereof for the remaining extended terms, and upon the terms (other than length of term and quarter-annual rental) herein specified. These options shall be exercised by written notice given to Lessor or delivered or mailed to Lessor, at the address at which the rent is then payable, at least sixty (60) days before the expiration of the original term hereof, or, in the event Lessee has previously exercised one or more options herein given, such notice shall be given at least sixty (60) days before the expiration of the option term then in effect. The parties hereto agree that a new lease need not be executed upon the exercise of any of these options, but that this Lease will remain in full force and

effect, changed only as to the matters specified in this Article, except that there shall be no option of further renewal following the expiration of the eighth renewal term, and except that Lessee may, on the giving to Lessor of a six (6) month's written notice, cancel any option term then in effect.

ARTICLE SEVENTEENTH (Compliance with laws):

Lessee agrees throughout the preliminary or the original term of this Lease or any renewal thereof to comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction of the leased premises, including, without limitation, those requiring structural changes. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold Lessor harmless against the consequences of any violation thereof by Lessee. Upon the written request of Lessor at any time or from time to time, Lessee will furnish to Lessor copies of all certificates of occupancy and building permits which it shall have obtained with respect to the leased premises, and an opinion of its counsel to the effect that all applicable zoning ordinances and regulations and requirements applicable to the leased premises have been complied with.

ARTICLE EIGHTEENTH (Remedies Cumulative): No remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE NINETEENTH (Additional rent): This is a net lease, it being the intention of the parties hereto that Lessee shall pay as additional rent, without offset, all costs of maintenance, taxes and other charges that are assessed or levied against said premises, including without limitation the costs, taxes and charges set forth in this Lease. All taxes, charges, costs and expenses which Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, all other damages, costs and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Lessee on Lessee's part to comply

with the covenants, agreements, terms and conditions of this Lease on Lessee's part to be performed, and each or any of them, shall be deemed to be additional rent and in the event of non-payment Lessor shall have all the rights and remedies herein provided in the case of non-payment of rent.

ARTICLE TWENTIETH (No Waiver): The failure of Lessor or Lessee to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that Lessor or Lessee may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

ARTICLE TWENTY-FIRST (Definitions): The term "Lessor" as used herein shall mean only the owner or the mortgagee in possession for the time being of the leased premises, so that in the event of any sale or sales of the leased premises the preceding Lessor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of lessor hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser at any such sale that such purchaser has assumed and agreed to carry out any and all agreements, covenants and obligations of lessor hereunder.

The term "insurable value" shall mean, with respect to the building improvements located on the leased premises, the replacement value less depreciation of such building improvements at the time of loss thereof or damage thereto by fire or other casualty.

ARTICLE TWENTY-SECOND (Article headings): The article headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor in any way affect the terms and provisions hereof.

ARTICLE TWENTY-THIRD (Separability): If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

ARTICLE TWENTY-FOURTH (Successors and Assigns): Each and all of the covenants, terms, agreements and obligations of this Lease shall extend to and bind and inure to

the benefit of the successors and/or assigns of said parties hereto; herein the singular number includes the plural and the masculine gender includes the feminine and the neuter.

ARTICLE TWENTY-FIFTH: (Lessee's obligation to complete the improvements): Lessee will complete, not later than one hundred eighty (180) days after the first day of the preliminary term of this Lease, the construction of the buildings and improvements on the leased premises which have not been completed as of the commencement of the preliminary term of this Lease, in conformity with the requirements of Article Sixth, to the same extent as if such construction were alterations made under the provisions of Article Sixth. Lessee will deliver to Lessor promptly after completion of such construction, but in no event later than the expiration of such 180-day period, (A) an as built survey, certified by a surveyor or surveyors licensed in the state in which the leased premises is located, showing the buildings and improvements within the boundary lines of the leased premises and (B) a certificate of Lessee, executed by a vice president of Lessee, (i) to the effect that such construction has been completed, (ii) setting forth in reasonable-detail the aggregate cost to Lessee of completing such construction, (iii) if such aggregate cost exceeds the Applicable Amount for the Initial Period (as set forth in Column 2 of Schedule A hereto), certifying that Lessee has paid, in full, such excess and (iv) to the effect that all building permits and certificates of occupancy, if any are required, have been obtained and all applicable zoning and use laws, ordinances, regulations and agreements have been complied with. If the aggregate cost as certified pursuant to clause (ii) of this Article Twenty-fifth is less than the Applicable Amount for the Initial Period (as set forth in Column 2 of Schedule A hereto), Lessee shall pay to Lessor at the time of the delivery of Lessee's certificate referred to in this Article Twenty-fifth an amount of money equal to the difference between the Applicable Amount for the Initial Period (as set forth in Column 2 of Schedule A hereto) and the cost as certified pursuant to clause (ii) of this Article Twenty-fifth, then: (1) each Applicable Amount (as set forth in Column 2 of Schedule A hereto) shall be reduced by the amount of such payment and (2) each instalment of rent payable pursuant to Article Second during the original term



of this Lease and at least three months subsequent to the date of such payment shall be reduced by 2.64% of such payment. If the aggregate cost as certified pursuant to clause (ii) of this Article Twenty-fifth exceeds the Applicable Amount for the Initial Period (as set forth in Column 2 of Schedule A hereto) by \$250,000 or more, Article Sixth shall be applicable.

If such construction is not completed during the period ending 180 days after the first day of the preliminary term of this Lease, or if, Lessee before the expiration of such 180-day period shall not have delivered to Lessor the certificate referred to above, then Lessee shall, at the request of Lessor, on a date specified by Lessor which is not later than 90 days after the date for the completion of such construction, purchase the leased premises at a price determined in accordance with Schedule A hereto. Lessor shall transfer and convey the leased premises in accordance with the provisions of Article Fourteenth hereof as if Lessor had accepted an offer by Lessee to purchase the leased premises; except, however, that (A) the time periods referred to in Article Fourteenth shall be adjusted to effectuate said purchase on the date determined pursuant to this Article Twenty-fifth, (B) this Lease shall in no event terminate until the leased premises shall have been conveyed to Lessee and the purchase price thereof and all other sums due under this Lease shall have been paid and (C) the provisions of Article Fourteenth relative to Lessee discontinuing the use of the leased premises as a retail food supermarket shall be inapplicable. If Lessor does not make such request of Lessee to purchase the leased premises, then this Lease shall continue in full effect and Lessee shall thereafter proceed with due diligence to complete the construction of the buildings and improvements on the leased premises.

ARTICLE TWENTY-SIXTH: (Purchase at expiration of original term): Lessee hereby makes an irrevocable offer to purchase the leased premises on November 30, 1996 at a price determined in accordance with Schedule A hereto. Unless Lessor shall have rejected such offer to purchase by notice to Lessee given not later than four (4) months prior to such purchase date or if Lessor makes such rejection without the consent of the Trustee, then Lessor shall be conclusively presumed to have accepted such offer to purchase, and Lessor

shall convey the leased premises in accordance with the provisions of Article Fourteen hereof, as if Lessor had accepted an offer by Lessee to purchase the leased premises; except, however, that (A) the time periods referred to in Article Fourteenth shall be adjusted to effectuate said purchase on the date determined pursuant to this Article Twenty-sixth, (B) this Lease shall in no event terminate until the leased premises shall have been conveyed to Lessee and the purchase price thereof and all other sums due under this Lease shall have been paid and (C) the provisions of Article Fourteenth relative to Lessee discontinuing the use of the leased premises as a retail food supermarket shall be inapplicable. If Lessor shall have rejected such offer in accordance with the provisions of this Article Twenty-sixth, this Lease shall continue in full effect as if no such offer had been made pursuant to this Article Twenty-sixth.

ARTICLE TWENTY-SEVENTH: (Use of leased premises):  
The leased premises are leased exclusively for business, commercial, manufacturing, mercantile or industrial purposes, as distinguished from residence purposes.

ARTICLE TWENTY-EIGHTH: (Rule Against Perpetuities):  
If and to the extent that any of the rights granted to Lessor or Lessee under Articles Sixth, Eleventh, Twelfth, Fourteenth, Fifteenth, Twenty-Fifth or Twenty-Sixth of this Lease would, in the absence of the limitation imposed by this Article, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of interests in or the suspension of the power of alienation of property, then and only in such case, and, notwithstanding any other provision of this Lease, said rights (subject to the respective conditions set forth in said Articles governing the exercise of such rights), shall be exercisable by Lessee and Lessor only during the period which shall end twenty (20) years and six (6) months after the date of death of the last survivor of the following named persons:

<u>Name</u>	<u>Approximate Age</u>	<u>Address</u>
Lauren C. Gloster	4	311 Alida Road Braintree, Massachusetts 02184
Craig P. Sabbey	3	124 Woodbine Circle Needham, Massachusetts 02191
Elizabeth C. Belanger	2	85 Beachwood Road Wellesley Hills, Massachusetts 02181
Amanda J. Smith	2	23 Fire Cut Lane Sudbury, Massachusetts 01776

Montpelier, Idaho

SCHEDULE A

Upon the purchase of the leased premises pursuant to this Lease, the purchase price payable shall be an amount equal to the sum of (i) the Applicable Amount set forth in Column 2 below opposite the period in which the date of purchase occurs (the Initial Period being the period commencing with and including the first day of the preliminary term of this Lease and ending on and including November 30, 1976, period 1 being the period commencing with December 1, 1976, and ending on and including February 28, 1977, and each succeeding period being each following three-month period of the original term of this Lease), (ii) if such date of purchase is not a date upon which a payment of rent is due, interest at the rate of 9.00% per annum on the amount determined as provided in clause (i) above for the period beginning on the date upon which a payment of rent was due immediately preceding such date of purchase (or beginning on and including the first day of the Initial Period, if such date of purchase occurs during the Initial Period) and ending on and including such date of purchase, (iii) if such purchase is made pursuant to Articles Eleventh or Twelfth of this Lease, \$31,680, plus a premium equal to one per centum of the amount determined pursuant to clause (i) above, (iv) if such purchase is made pursuant to Article Twenty-fifth of this Lease, \$15,840, and (v) if such purchase is made pursuant to Article Fourteenth of this Lease, \$31,680, plus a premium equal to a per centum of the amount determined pursuant to clauses (i) and (ii) above in accordance with the following schedule:

<u>Year</u>	<u>Percentage</u>
1981	4.0%
1982	3.0%
1983	2.0%
1984	1.0%
1985	0.0%

255  
deline

SCHEDULE A (Continued)

Column 1	Column 2
<u>Period in which purchase occurs</u>	<u>Applicable Amount</u>
Initial Period	776,160.00
1	773,149.12
2	770,070.50
3	766,922.61
4	763,703.89
5	760,412.75
6	757,047.56
7	753,606.65
8	750,088.32
9	746,490.83
10	742,812.39
11	739,051.19
12	735,205.36
13	731,273.00
14	727,252.16
15	723,140.85
16	718,937.04
17	714,638.64
18	710,243.53
19	705,749.53
20	701,154.41
21	696,455.90
22	691,651.68
23	686,739.36
24	681,716.52
25	676,580.66
26	671,329.24
27	665,959.67
28	660,469.28
29	654,855.36
30	649,115.13
31	643,245.74
32	637,244.29
33	631,107.81
34	624,833.26
35	618,417.53
36	611,857.44
37	605,149.75
38	598,291.14
39	591,278.21
40	584,107.49
41	576,775.43
42	569,278.40
43	561,612.68
44	553,774.49
45	545,759.94
46	537,565.06
47	529,185.79
48	520,617.99
49	511,857.41
50	502,899.72
51	493,740.48
52	484,375.16
53	474,799.12
54	465,007.62
55	454,995.81
56	444,758.74
57	434,291.33
58	423,588.40
59	412,644.66
60	401,454.68

SCHEDULE A (Continued)

Column 1	Column 2
<u>Period in which purchase occurs</u>	<u>Applicable Amount</u>
61	390,012.93
62	378,313.74
63	366,351.32
64	354,119.74
65	341,612.95
66	328,824.76
67	315,748.84
68	302,378.71
69	288,707.75
70	274,729.19
71	260,436.12
72	245,821.45
73	230,877.95
74	215,598.22
75	199,974.70
76	183,999.65
77	167,665.16
78	150,963.15
79	133,885.34
80	116,423.28

SCHEDULE B

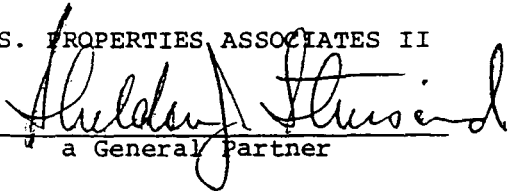
Montpelier, Bear Lake,  
County, Idaho  
Store No. 255

Lots 5 and 6, Block 13, of the Original Townsite  
of the City of Montpelier, according to Montpelier Plat A.

IN WITNESS WHEREOF, Lessor has caused this Lease to be duly executed and Lessee has caused this Lease to be executed and its corporate seal to be hereunto affixed by its duly authorized officers, as of the day and year first above set forth.

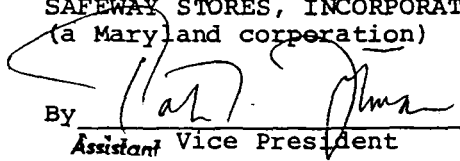
S. S. PROPERTIES ASSOCIATES II

By

  
a General Partner

SAFEWAY STORES, INCORPORATED  
(a Maryland corporation)


By

  
Assistant Vice President

[Seal]

Attest:

By

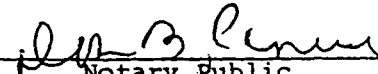
  
Assistant Secretary



STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK)

On this 15 day of October, 1976, before me personally in said County and State appears SHELDON J. STREISAND, to me personally known and known to me to be a general partner of S. S. PROPERTIES ASSOCIATES II, a New Jersey limited partnership named in and executing the foregoing instrument, which instrument was produced to me in said County and State aforesaid by the said general partner, known to me to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its general partner, who by me being duly sworn, did severally depose, say and acknowledge, on his oath, in said County and State aforesaid, that he is a general partner of said partnership and that said partnership executed said instrument; that he, being informed of the contents of said instrument, signed said instrument and that he executed the same in the name and on behalf of said partnership, being duly authorized to do so; that he executed the same as, and said instrument is, his free and voluntary act and deed and the free and voluntary act and deed of said partnership for the consideration, uses and purposes therein set forth and expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

  
Notary Public

My Commission Expires:

(Seal)

DON B. PANUSH  
Notary Public, State of New York  
No. 41-3009665  
Qualified in Queens County  
Commission Expires March 30, 1977

State of California )  
 ) ss.:  
County of Alameda )

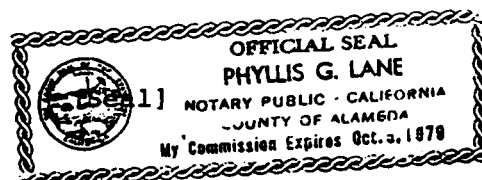
On this 15th day of October, 1976, before me, PHYLLIS G. LANE, a Notary Public in and for the said County and State, personally in said County and State appeared PATRICK S. TOTMAN and RICHARD H. COSTELLO, to me personally known and known to me to be the Assistant Vice President and Assistant Secretary, respectively, of SAFEWAY STORES, INCORPORATED, a corporation named in and executing the foregoing instrument, which instrument was produced to me in said County and State aforesaid by the said Assistant Vice President and Assistant Secretary, who are known to me to be the identical persons who subscribed the name of the maker thereof to the foregoing instrument as its Assistant Vice President and Assistant Secretary, respectively, who by me being duly sworn, did severally depose, say and acknowledge, in their several oaths, in said County and State aforesaid, that they are the Assistant Vice President and Assistant Secretary, respectively, of said corporation and that said corporation executed said instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that they, being informed of the contents of said instrument, signed and sealed said instrument and that they executed the same in the name and on behalf of said corporation by order, authority and resolution of its Board of Directors and that they signed their names thereto by like order; that they executed the same as, and said instrument is, their free and voluntary act and deed and the free and voluntary act and deed of said corporation for the consideration, uses and purposes therein set forth and expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and my official seal in the County and State aforesaid on the day and year first above written.

W. Phillips G. Lane  
Notary Public

My Commission Expires:

October 5, 1979



ASSIGNMENT AND ASSUMPTION

Safeway Stores, Incorporated, A Maryland Corporation ("Assignor") hereby assigns, sets over and transfers to Safeway Stores 53, Inc., A Delaware Corporation ("Assignee"), its successors and assigns, all of Assignor's estate, right, title and interest in, to and under that certain LEASE dated September 01, 1976 by and between S S Properties Associates II and Safeway Stores Incorporated, as such lease may have been from time to time modified, ("said Lease"), and all, if any, relative options, easements, licenses, subleases and other agreements (collectively "Related Agreements"). Said Lease pertains to that real property situated in the City of MONTPELIER, County (Parish) of BEAR LAKE, State of ID, as more particularly described in said Lease. Assignor shall have continued liability under said Lease to the extent and in the manner provided therein.

Assignee hereby accepts said assignment and covenants with Assignor and the lessor of said Lease, and for the benefit of any assignee or successor in interests of said lessor, that Assignee, its successor and assigns, hereby assumes and will henceforth perform or cause to be performed all of the obligations of every nature contained in said Lease and Related Agreements which, by the terms thereof, are imposed upon Assignor.

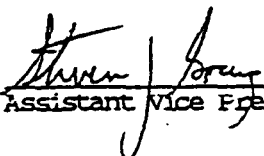
Assignee hereby agrees that the assignment set forth herein is subject and subordinate to the terms of said Lease.

This Assignment and Assumption shall be effective as of November 35, 1986.

Executed as of November / , 1986.

("Assignee")

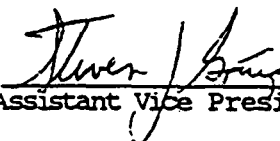
Safeway Stores 53, Inc.  
A Delaware Corporation

By   
Assistant Vice President

By   
Assistant Secretary

("Assignor")

Safeway Stores, Incorporated,  
A Maryland Corporation

By   
Assistant Vice President

By   
Assistant Secretary

FACILITY #: 0255  
ADDRESS: 130 SO 4TH ST  
MONTPELIER, ID

SL-23

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Borman's, Inc.  
P.O. Box 33446  
Detroit, Michigan 48232-5446  
Attention: President

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Store 255

ASSIGNMENT OF LEASE

THIS ASSIGNMENT is as of made this 27th day of April, 1987, between SAFEWAY STORES 53, INC., a Delaware corporation ("Assignor") and S E G STORES, INC., a Delaware corporation ("Assignee").

R E C I T A L S

A. Pursuant to the lease(s) and other documents listed in Exhibit "A", attached hereto and incorporated herein by this reference, as amended to date, true and complete copies of which are attached hereto as Exhibit B (collectively, the "Lease"), Safeway Stores, Incorporated, a Maryland corporation or its predecessor in interest (the "Original Tenant"), leased and acquired other rights in certain premises located at 130 South 4th Street, Montpelier, Idaho, as more particularly described in the Lease (the "Premises").

B. Assignor obtained the Original Tenant's interest in the Lease pursuant to an Assignment and Assumption Agreement dated as of November 1, 1986.

C. Pursuant to that certain Asset Purchase Agreement dated as of April 27, 1987 between Safeway Stores, Incorporated, Safeway Stores 51, Inc., Safeway Stores 52, Inc., Safeway Stores 53, Inc., Safeway Stores 54, Inc., Safeway Stores 55, Inc., and Safeway Stores 57, Inc. as Seller, S E G Stores, Inc. as Buyer, and Borman's, Inc., Assignor desires to assign the Lease to Assignee, and Assignee desires to accept an assignment of the Lease, together with all right, title and interest of Assignor thereunder as hereinafter provided.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the premises and the mutual covenants, conditions and agreements contained herein and in the Asset Purchase Agreement, the parties agree as follows:

1. Assignment: Assignor hereby transfers, sets over and assigns to Assignee all right, title and interest of Assignor in and to the Lease, TO HAVE AND TO HOLD the same to Assignee, its successors and assigns forever, together with any and all options in favor of Assignor under the lease, including, without limitation, any options to extend the term of the Lease, to terminate the term thereof, to expand the improvements on the Premises or to purchase the interest of Landlord in the Premises, and all rights of Assignor in or to any deposits and advance payments, if any, made by Assignor under the Lease; SUBJECT, HOWEVER, to each and every

provision of the Lease and as hereinafter provided; provided, further, that Assignor represents and warrants that nothing contained in the Lease precludes or prevents any holder of the interest of any tenant other than the original tenant named therein from exercising or enjoying any renewal options.

2. Acceptance of Assignment: Assignee accepts the within assignment and agrees to perform and discharge all of the covenants, terms, conditions and provisions to be kept, observed and performed by Assignor as tenant under the Lease from and after the Effective Date as defined in Paragraph 3 hereinbelow, including, without limitation, the payment of all rents, additional rents and other charges reserved in and by the Lease. Nothing herein shall obligate Assignee to assume or pay any rent, fee, charge, expense or adjustment attributable to any obligations of Assignor under the Lease which shall have arisen or accrued prior to the Effective Date.

3. Effective Date: This Assignment shall be effective April 27, 1987 (the "Effective Date").

4. Delivery of Premises. Assignor shall deliver full and unhindered possession of the premises to Assignee on the Effective Date.

5. Notice. Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing and delivered personally or mailed

by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged), as follows:

If to Assignor, addressed to:

Safeway Stores, Inc.  
201 Fourth Street  
Oakland, California 94660  
Attention: Manager, Real Estate Law Division

With a copy to:

Latham & Watkins  
555 South Flower Street  
Suite 4300  
Los Angeles, California 90071  
Attention: Michael C. Kelcy, Esq.

If to Assignee by mail, addressed to:

Borman's  
P.O. Box 33446  
Detroit, Michigan 48232-5446  
Attention: President

If to Assignee by personal service, addressed to:

Borman's  
18718 Borman Avenue  
Detroit, Michigan 48228  
Attention: President

With a copy to:

Stein Simpson & Rosen  
1370 Avenue of the Americas  
New York, New York 10019  
Attention: David Simpson, Esq.

or to such other place and with such other copies as either party may designate as to itself by written notice to the others.

6. Counterparts. This Agreement may be executed in one or more counterparts by the parties hereto. All


counterparts shall be construed together and shall constitute one agreement.

7. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.


ASSIGNOR:

SAFEWAY STORES 53, INC.,  
a Delaware corporation

By:   
Philip G. Horton  
Its Vice President

ASSIGNEE:

S E G STORES, INC.  
a Delaware corporation

By:   
Ted J. Simon  
Its Vice President

Address: Borman's, Inc.  
P.O. Box 33446  
Detroit, Michigan  
48232-5446  
Attention: President



EXHIBIT "A"

Lease dated September 1, 1976 between SouthSouth Properties Associates II and Safeway Stores, Incorporated, a Maryland corporation. The Lessee's interest in the Lease was assigned by Assignment and Assumption Agreement dated November 1, 1986 between Safeway Stores, Incorporated and Safeway Stores 53, Inc., a Delaware corporation.

Related Agreements:

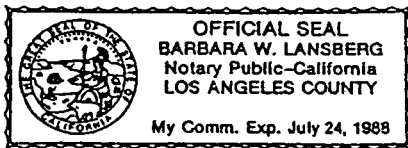
Grant of Easement (Utility) dated October 21, 1976 between Safeway Stores, Incorporated and The Mountain States Telephone and Telegraph Company, a Colorado corporation.

Grant of Easement (Utility) dated February 9, 1977 between Safeway Stores, Incorporated and City of Montpelier, Idaho.

STATE OF CALIFORNIA     )  
                                      ) ss.  
COUNTY OF LOS ANGELES )

On April 26, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared PHILIP G. HORTON personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of SAFEWAY STORES 53, INC., a Delaware corporation, the corporation that executed the within instrument and acknowledged to me that he subscribed his name thereto as Vice President of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.

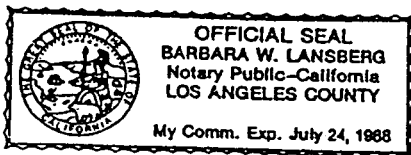


Barbara W. Lansberg  
Notary Public in and for  
said County and State

STATE OF CALIFORNIA     )  
                                  ) ss.  
COUNTY OF LOS ANGELES )

On April 26, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared TED J. SIMON personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of S E G STORES, INC., a Delaware corporation, the corporation that executed the within instrument, and acknowledged to me that he subscribed his name thereto as Vice President of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.



Barbara W. Lansberg  
Notary Public in and for  
said County and State

5673

AL-87

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, SEG Stores, Inc., a Delaware corporation, whose address is 331 Bearcat Drive, P. O. Box 30001, Salt Lake City, Utah 84130 ("Assignor"), hereby assigns, transfers and conveys, upon the terms and conditions contained herein, to Fleming Companies, Inc., an Oklahoma corporation and Fleming Foods West, Inc., a California corporation, whose address is 2205 West 1500 South, Salt Lake City, Utah 84126 (collectively "Assignee"), all of Assignor's right, title and interest, as tenant, in and to that certain lease more fully described in Exhibit 1 to this Assignment and Assumption Agreement ("Lease").

The terms and conditions above-referred to are as follows:

1. This Assignment and Assumption Agreement shall be effective as of the date hereof, and incorporates all the representations and warranties relating to the Lease made by Assignor to Assignee in that certain Agreement of Purchase and Sale between Assignor and Assignee dated February 22, 1988.
2. Assignee hereby assumes and agrees to perform and observe all of the obligations of the tenant under the Lease, which obligations are in respect of the period from and after the date of this Assignment and Assumption Agreement and Assignee hereby indemnifies and agrees to defend and hold harmless Assignor against all liabilities in connection with such obligations.
3. Assignor hereby indemnifies and agrees to defend and hold harmless Assignee against all liabilities in connection with the obligations of the tenant under the Lease in respect of the period subsequent to April 26, 1987 and prior to the date of this Assignment and Assumption Agreement.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been executed on the \_\_\_\_ day of March, 1988.

SEG Stores, Inc.  
A Delaware Corporation ("Assignor")

By: [Signature]  
Ted J. Simon, Vice President

Fleming Companies, Inc.  
An Oklahoma Corporation ("Assignee")

By: [Signature]  
Its: [Signature]

Fleming Foods West, Inc.,  
an Oklahoma corporation ("Assignee")

By: [Signature]  
Its: [Signature]

STATE OF UTAH                    )  
  SS  
COUNTY OF SALT LAKE        )

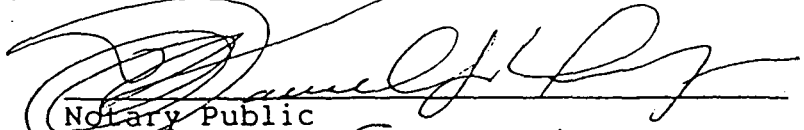
On the 15 day of March, 1988, personally appeared before me Ted J. Simon, who being by me duly sworn, did say that he is the Vice President of SEG Stores, Inc., a Delaware corporation, and that said instrument was signed in behalf of said corporation by the authority of its bylaws or of a resolution of its board of directors, and said Ted J. Simon acknowledged to me that said corporation executed the same.

[Signature]  
Notary Public  
Residing in Salt Lake

My Commission expires:  
3-11-91

STATE OF UTAH                     )  
  )SS  
COUNTY OF SALT LAKE         )

On the 25 day of March, 1988, personally appeared before me  
Stephen Mangold, who being by me duly sworn, did say that he is  
the \_\_\_\_\_ of Fleming Companies, Inc., an Oklahoma  
corporation, and that said instrument was signed in behalf of said  
corporation by the authority of its bylaws or of a resolution of  
its board of directors, and said \_\_\_\_\_ acknowledged to  
me that said corporation executed the same.

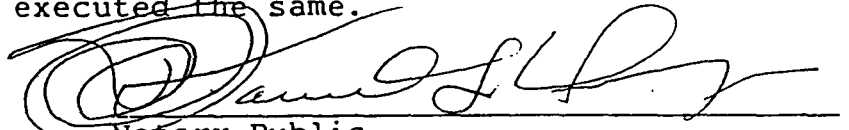
  
\_\_\_\_\_  
Notary Public  
Residing in Salt Lake

My Commission expires:

3-11-90

STATE OF UTAH                     )  
  )SS  
COUNTY OF SALT LAKE         )

On the 25 day of March, 1988, personally appeared before me  
Stephen Mangold, who being by me duly sworn, did say that he is  
the \_\_\_\_\_ of Fleming Foods West, Inc., a California  
corporation, and that said instrument was signed in behalf of said  
corporation by the authority of its bylaws or of a resolution of  
its board of directors, and said \_\_\_\_\_ acknowledged to  
me that said corporation executed the same.

  
\_\_\_\_\_  
Notary Public  
Residing in Salt Lake

My Commission expires:

3-11-90

wp:borflemexa

EXHIBIT 1

Store #255 - 130 So. 4th St.  
Montpelier, Idaho

Lease dated September 1, 1976 between S.S. Properties Associates II and Safeway Stores, Incorporated, a Maryland corporation. The Lessee's interest in the Lease was assigned by Assignment and Assumption Agreement dated November 1, 1986 between Safeway Stores, Incorporated and Safeway Stores 53, Inc., a Delaware corporation, and by Assignment of Lease dated April 27, 1987, between Safeway Stores 53, Inc., a Delaware corporation, and SEG Stores, Inc., a Delaware corporation.

SL-23

Store No. 255

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Fleming Companies, Inc., an Oklahoma corporation, whose address is P. O. Box 26647, Oklahoma City, Oklahoma 73126 ("Assignor"), hereby assigns, transfers and conveys to Fleming Foods West, Inc., a California corporation, whose address is 2205 West 1500 South, Salt Lake City, Utah 84126 ("Assignee"), all of Assignor's right, title and interest in and to that certain lease more fully described in Exhibit 1 to this Assignment and Assumption Agreement ("Lease").

Assignee hereby assumes and agrees to perform and observe all of the obligations of the tenant under the Lease, which obligations are in respect of the period from and after the date of this Assignment and Assumption Agreement, and Assignee hereby indemnifies and agrees to defend and hold harmless Assignor against all liabilities in connection with such obligations.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been executed on the 31<sup>st</sup> day of May, 1989, and is to be effective as of March 25, 1988.

FLEMING COMPANIES, INC., an  
Oklahoma corporation

ATTEST:

James W. Clark  
Secretary  
[Seal]

By: Allen S. Marshall  
Vice President

FLEMING FOODS WEST, INC., a  
California corporation

ATTEST:

James W. Clark  
Secretary  
[Seal]

By: Allen S. Marshall  
Vice President



STATE OF OKLAHOMA     )  
                                  ) ss:  
COUNTY OF OKLAHOMA    )

The foregoing instrument was acknowledged before me  
this 31<sup>st</sup> day of May, 1989, by Stephen H. Mangold, Vice Presi-  
dent of Fleming Companies, Inc. an Oklahoma corporation, on  
behalf of the corporation.

Nelda L. Trease  
Notary Public

My commission expires:  
11-15-92.

(Seal)

STATE OF OKLAHOMA     )  
                                  ) ss:  
COUNTY OF OKLAHOMA    )

The foregoing instrument was acknowledged before me  
this 31<sup>st</sup> day of May, 1989, by Stephen H. Mangold, Vice Presi-  
dent of Fleming Foods West, Inc. a California corporation, on  
behalf of the corporation.

Nelda L. Trease  
Notary Public

My commission expires:  
11-15-92.

(Seal)

CALA:FLEMING\_A\_A\_AGMT\_255

EXHIBIT 1

Store #255        -        130 So. 4th St.  
                              Montpelier, Idaho

Lease dated September 1, 1976 between S.S. Properties Associates II and Safeway Stores, Incorporated, a Maryland corporation. The Lessee's interest in the Lease was assigned by Assignment and Assumption Agreement dated November 1, 1986 between Safeway Stores, Incorporated and Safeway Stores 53, Inc., a Delaware corporation, and by Assignment of Lease dated April 27, 1987, between Safeway Stores 53, Inc., a Delaware corporation, and SEG Stores, Inc., a Delaware corporation.

EXHIBIT 1  
(Continued)

The previously described lease covers certain real property more particularly described as:

Lots 5 and 6, Block 13, of the Original Townsite of the City of Montpelier, Idaho according to Montpelier Plat A.

Located in Bear Lake County

ASSIGNMENT AND ASSUMPTION OF LEASES

KNOW ALL MEN BY THESE PRESENTS: That for good and valuable consideration, receipt and adequacy of which is hereby acknowledged, S.S. PROPERTIES ASSOCIATES II, a New Jersey Limited Partnership ("Assignor"), having an office care of Financial Packaging Corporation, 205 East 42nd Street, Suite 1919, New York, New York 10017, hereby transfers, assigns, sells and sets over unto JANESS ASSOCIATES, a New York partnership, ("Assignee"), having an office at 77 Tarrytown Road, Suite 100, White Plains, New York 10607-1620, from and after May 30, 1996, all of the right, title, and interest of the Landlord under all leases of space and other rights of occupancy or use covering any portion of the premises located in the County of Bear Lake, State of Idaho ("Premises"), as described on Exhibit "A" hereto, including without limitation that certain Lease ("Lease") dated September 1, 1976, by and between S.S. Properties Associates II, a New Jersey limited partnership, as Landlord, and Safeway Stores, Incorporated, a Maryland corporation, as Tenant, as disclosed by Memorandum of Lease dated September 1, 1976 recorded as Microfilm Instrument No. 109987, Records of Bear Lake County, Idaho, together with all rents, issues, and profits to be derived therefrom and all powers and privileges relating thereto.

Assignor hereby indemnifies Assignee with respect to any and all obligations of the Landlord under the Lease which may arise on or before May 29, 1996. Assignee hereby assumes all of the obligations of the Landlord under the Lease which may arise from and after May 30, 1996, and hereby indemnifies Assignor with respect to any and all such obligations which may arise from and after May 30, 1996.

Assignor hereby agrees and confirms that all rentals to be paid by the Tenant under the Lease are being paid (pursuant to collateral assignment of lease dated September 1, 1976 recorded as Microfilm Instrument No. 109989, Records of Bear Lake County, Idaho, from S.S. Properties Associates II and Safeway Stores, Incorporated to First Brandywine Store Properties Corp., a Delaware corporation, and Shawmut Bank of Boston, N.A. and W.B. Wadland, Trustees, as reassigned to Shawmut Bank of Boston, N.A. and W.B. Wadland, Trustees by instrument dated September 1, 1976, recorded as Microfilm Instrument No. 109991, Records of Bear Lake County, Idaho) and shall continue to be paid by such Tenant directly to the holder ("Mortgagee") of that certain Deed of Trust ("Mortgage") covering the Premises which is dated September 1, 1976, recorded as Microfilm Instrument No. 109988, Records of Bear Lake County, Idaho, from S.S. Properties Associates II to Title and Trust Company, as Trustee, and First Brandywine Store Properties Corp., as Beneficiary, and Shawmut Bank of Boston, N.A. and W.B. Wadland, as Indenture Trustees, which Mortgage was assigned to Shawmut Bank of Boston, N.A. and W.B. Wadland, as Trustees by instrument dated September 1, 1976, recorded as Microfilm Instrument No. 109990, Records of Bear Lake County, Idaho. It expressly is understood and agreed by and between Assignor and Assignee that from the date hereof up to and including May 29, 1996, that all rentals payable under the Lease shall be paid to Shawmut Bank, N.A. under all circumstances. It is expressly understood and agreed by the parties hereto that for the period from the date hereof to and including May 29, 1996, any excess

of such rentals, after deduction by the Mortgagee of the amounts necessary to service the indebtedness evidenced by the Note secured by the Mortgage and all expenses incurred by the Mortgagee with respect to the Mortgage, shall be paid by the Mortgagee directly to Assignor. Any such excess rents from and after May 30, 1996 shall be paid by the Mortgagee directly to Assignee. Assignor further agrees that Assignor shall make no change to the aforesaid rental directions without the prior written consent of all parties constituting the Assignee.

The parties hereto agree that in the event the date of May 29, 1996 shall be accelerated pursuant to the provisions of that certain Two-Party Agreement ("Agreement") dated as of even date herewith between Assignor and Assignee, all of the rights and obligations of the Landlord under the Lease shall automatically revert to Assignee.

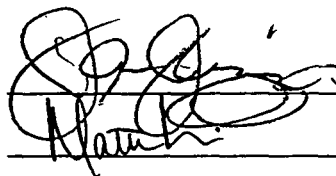
This Assignment shall be under and subject to the Agreement.

The terms and provisions of this Assignment shall inure to the benefit of the parties hereto and their respective successors and assigns.

This instrument may be executed in any number of counterparts each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment of Lease as of the 30th day of November, 1990.

WITNESS:

  
\_\_\_\_\_

S.S. PROPERTIES ASSOCIATES II, a New Jersey limited partnership

By:   
Sheldon J. Streisand,  
general partner

By: S.D. ASSOCIATES, a partnership,  
general partner

By:   
Robert Sylvor, partner

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

JANESS ASSOCIATES, a New York partnership

By: \_\_\_\_\_  
Sanford Sandelman, Partner

By: \_\_\_\_\_  
Susan Sandelman, Partner

Prepared by:

Howard E. Heller, Esq.  
Kin Properties, Inc.

77 Tarrytown Road, Suite 100, White Plains, NY 10607

of such rentals, after deduction by the Mortgagee of the amounts necessary to service the indebtedness evidenced by the Note secured by the Mortgage and all expenses incurred by the Mortgagee with respect to the Mortgage, shall be paid by the Mortgagee directly to Assignor. Any such excess rents from and after May 30, 1996 shall be paid by the Mortgagee directly to Assignee. Assignor further agrees that Assignor shall make no change to the aforesaid rental directions without the prior written consent of all parties constituting the Assignee.

The parties hereto agree that in the event the date of May 29, 1996 shall be accelerated pursuant to the provisions of that certain Two-Party Agreement ("Agreement") dated as of even date herewith between Assignor and Assignee, all of the rights and obligations of the Landlord under the Lease shall automatically revert to Assignee.

This Assignment shall be under and subject to the Agreement.

The terms and provisions of this Assignment shall inure to the benefit of the parties hereto and their respective successors and assigns.

This instrument may be executed in any number of counterparts each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment of Lease as of the 30th day of November, 1990.

WITNESS:

S.S. PROPERTIES ASSOCIATES II, a New Jersey limited partnership

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Sheldon J. Streisand,  
general partner

By: S.D. ASSOCIATES, a partnership,  
general partner

By: \_\_\_\_\_  
Robert Sylvor, partner

WITNESS:

JANESS ASSOCIATES, a New York partnership

Nancy J. Mallett

By: Sanford Sandelman  
Sanford Sandelman, Partner

Deborah S. Paul

By: Susan Sandelman  
Susan Sandelman, Partner

Prepared by:

Howard E. Heller, Esq.  
Kin Properties, Inc.

77 Tarrytown Road, Suite 100, White Plains, NY 10607

EXHIBIT "A"


LEGAL DESCRIPTION

Lots 5 and 6, Block 13, of the Original  
Townsite of the City of Montpelier, ac-  
cording to the official plat thereof.

STATE OF NEW YORK       )  
COUNTY OF ~~NASSAU~~       ) SS.  
                  New York

On this 29 day of November, in the year 1990, before me, a Notary Public, personally appeared Sheldon J. Streisand, known or identified to me to be the general partner of S.S. Properties Associates II, the New Jersey limited partnership that executed the above instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public

My commission expires \_\_\_\_\_

RINA FONTANA  
Notary Public, State of New York  
No. 41-4879765  
Qualified in Queens County  
Commission Expires December 16, 1990

STATE OF NEW YORK       )  
COUNTY OF NEW YORK       ) SS.

On this 29 day of November, in the year 1990, before me, Iris S. Richman, a Notary Public, personally appeared Robert Sylvor, known or identified to me to be the partner of S.D. Associates, the partnership that executed this instrument acting in its capacity as general partner of S.S. Properties Associates II, the New Jersey limited partnership that executed the above instrument or the person who executed the instrument on behalf of said partnership acting in its capacity as general partner of said limited partnership and acknowledged to me that such limited partnership executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public

My commission expires \_\_\_\_\_

IRIS S. RICHMAN  
Notary Public, State of New York  
No. 31-4786411  
Qualified in New York County  
Commission Expires Dec. 31 1991



STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) SS.

On this            day of            , in the year 1990, before me, Mary D. Martin, a Notary Public, personally appeared Sanford Sandelman and Susan Sandelman, known or identified to me to be the sole partners of Janess Associates, the New York partnership that executed the above instrument or the persons who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

# Fleming Companies, Inc.

6301 Waterford Blvd.  
P.O. Box 26647  
Oklahoma City, OK 73126-0647  
405/840-7200

CORPORATE STAFF

July 16, 1996

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Janess Associates  
C/O Kin Properties, Inc.  
77 Tarrytown Road, #100  
White Plains, NY 10607  
Attn: Jeffrey Sandelman

Re: Lease Renewal Notification  
ID-023; Peterson's IGA  
130 South 4th Street  
Montpelier, ID 83254

Dear Mr. Sandelman:

Reference is hereby made to the Lease Agreement dated September 1, 1976, ("Lease"), by and between Janess Associates, successor in interest to S.S. Properties Associates II, ("Lessor"), and Fleming Companies, Inc., successor by merger to Fleming Foods West, Inc., successor in interest to SEG Stores, Inc., successor in interest to Safeway Stores 53, Inc., successor in interest to Safeway Stores, Inc., ("Lessee").

Please take notice that Fleming Companies, Inc. hereby exercises it's option to renew the term of the above-referenced Lease for a period of five (5) years, commencing December 1, 1996 and terminating on November 30, 2001, under the same terms and conditions except for rent, which shall be \$38,808.00 dollars annually, payable at \$3,234.00 per month.

Please acknowledge your receipt of this notice of renewal by signing and dating the enclosed copy of this letter in the space provided. Thereafter, please return the copy to us in the pre-addressed, postage pre-paid envelope enclosed.

Sincerely,

FLEMING COMPANIES, INC.



Robert W. Smith  
Sr. Vice President

Receipt of the Notice of Renewal of the Lease on the above-referenced premises is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 1996.

JANESS ASSOCIATES

By: \_\_\_\_\_  
(Title)

RWS:sck

cc: Don Bradley, Jim McIntyre, Jim Costello