



STATE OF ALABAMA )  
JEFFERSON COUNTY )

LEASE

THIS LEASE, made as of the 30 day of July, 1990, by and between N&B Enterprises, Inc., an Alabama corporation, 1143 Country Club Circle, Birmingham, Alabama 35244 (hereinafter "Lessor") and Shop-A-Snak Food Mart, Inc., an Alabama corporation, 833 Green Springs Highway, Birmingham, Alabama 35209 (hereinafter "Lessee").

W I T N E S S E T H:

1. Premises.

IN CONSIDERATION of the rents, terms, covenants and agreements hereinafter set forth on the part of Lessee to be paid, kept and performed, Lessor demises and leases to Lessee, and Lessee accepts and leases from Lessor, the land described in Exhibit "A" attached hereto and the buildings and improvements now or hereafter erected thereon, with all of Lessor's appurtenances, rights, interests, easements and privileges in any wise appertaining thereto (collectively the "Premises"), subject to easements and restrictions of record or reflected on the topographic survey referred to in paragraph 3(a).

TO HAVE AND TO HOLD the premises for and during the terms hereinafter described.

2. Term and Renewal Options.

(a) The Lease term shall be fifteen (15) years commencing on a date (the "Commencement Date") as hereinafter defined and ending on the day preceding the 15th anniversary of the Commencement Date.

(b) Lessee shall have two (2) separate options to renew the Lease term. Each renewal term shall be for five (5) years commencing immediately on the expiration of the prior term and shall be on the same terms, covenants, conditions and provisions as in this Lease provided. To exercise any of such options, Lessee shall give written notice to Lessor prior to one hundred eighty (180) days before the expiration of the then current Lease term whether it be the original term or a renewal term. Nothing

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herein contained shall be deemed to prevent Lessee from exercising any one or more of such options at one time.

3. Construction of Premises.

(a) Promptly after the execution of this lease, Lessor shall provide Lessee, at Lessor's sole cost and expense, a topographic survey showing all property lines, abutting streets, the location of all utility lines, improvements and such other information as shall be necessary to prepare the site plan and obtain the building permits, as hereinafter provided.

(b) Lessee shall prepare, at its sole cost and expense, and submit to Lessor plans and specifications (the "Plans") within thirty (30) days after it receives the topographic survey. The Plans will include all above grade site improvements to be constructed, in the form and substance required to obtain the necessary building permits and approvals. Lessor shall prepare, at its sole cost and expense, and submit to Lessee for Lessee's review, plans and specifications ("Lessor's Plans") within thirty (30) days after the topographic survey has been received by Lessor. Lessor's Plans shall include all land preparations, including drainage requirements, paving, retaining wall construction and such other work and improvements which Lessor shall do and construct as specified in subparagraph (c) hereof. Lessor shall obtain, as a part of the Plans, all required approvals for the Plans and for the Lessor's Plans from the State of Alabama, the City of Hoover, and the Riverchase Architectural Committee and shall inform Lessee in writing of the obtaining of such approvals before the commencement of construction. Lessee shall obtain, as part of the Plans, as well as Lessor's Plans, all required approvals from Shelby County, Alabama, and shall inform Lessor in writing of the obtaining of such approvals before the commencement of construction.

(c) Lessor shall, at its sole cost and expense, enter into a construction contract with a contractor selected by Lessee and approved by Lessor, to construct and complete, with due diligence, the building and improvements to be erected above grade on the

Premises (the "Lessor's Work") in accordance with the Plans and all applicable codes of any municipal or other authority having jurisdiction over the Premises in a good and workmanlike manner. Lessor's Work does not include gasoline equipment normally associated with gasoline operations or installation except underground gasoline storage tanks, island canopy and island area paving as shown on the Plans. Lessee shall inspect and supervise Lessor's Work as the work progresses during construction except Lessor's Work as shown on Lessor's Plans. Lessor shall not permit any mechanic's or materialman's or other liens to stand against the Premises for any labor or material furnished for Lessor's Work.

(d) In the event that Lessor has not commenced construction within four (4) months after the date of this Lease, the Lessee may terminate this Lease by giving notice of such termination to Lessor and neither party shall be further obligated hereunder to the other.

4. Commencement Date; Delivery of Possession.

(a) The Lease term and the rentals herein reserved shall commence on the date (the "Commencement Date") which is the earlier of (i) the day that Lessee opens the Premises to the public for the conduct of its business, or (ii) thirty (30) days after the Lessor's Work is completed in accordance with the Plans, a certificate of Occupancy for the use of the Premises as a convenience store has been obtained, and possession of the Premises has been delivered to Lessee.

(b) In the event that the Commencement Date shall not have occurred by \_\_\_\_\_ for any cause, excluding the causes specified in Paragraph 28 hereof, then Lessee may terminate this Lease by giving written notice of such termination to Lessor at any time before possession of the Premises is tendered to and accepted by Lessee. If Lessee shall give such notice, then this Lease shall terminate on the date given in such notice with the same effect as if it were the date herein specified for the expiration of the Lease term and neither party shall be further obligated hereunder to the other.

(c) Lessee shall have access to the Premises prior to the Commencement Date for the purpose of inspection, measuring and installing, or arranging for the installation of Lessee's fixtures and equipment, but only to the extent such activity does not interfere or unnecessarily delay Lessor's Work. Lessor shall have no obligation or responsibility for damage to persons entering the Premises or injury to property brought in, or upon, the Premises for the purposes mentioned in this subparagraph (c).

5. Rent.

See Addendum attached hereto which shall become a part of this lease.

Rental shall be payable at the address of Lessor stated in paragraph 32, or at such other place of which Lessor shall have given Lessee written notice at least thirty (30) days in advance. If the Commencement Date shall be other than the first day of a calendar month, the first installment of rent shall be prorated to cover that period from and including such date to and including the last day of the calendar month in which the lease shall commence.

6. Taxes, Assessments and Utilities.

(a) If a separate tax assessment of the Premises is not in effect on the date hereof, Lessor, at its own expense, shall apply for and make reasonable and diligent efforts to obtain a separate tax assessment for the Premises, and shall notify, authorize and direct the taxing authorities to send to Lessee all tax bills and assessments.

(b) In addition, to the rent, Lessee shall pay all real estate taxes, governmental impositions, levies, and special or general assessments, including, without limitation, assessments or charges by the Riverchase Business Association (sometimes called collectively the "Imposition") which are levied or assessed against the Premises and which become payable during the Lease term. Notwithstanding the foregoing, Lessee shall not be charged with nor obligated to pay any income, inheritance, gift, franchise, corporate, gross receipts, capital levy, or estate tax

which may be at any time levied or assessed against, or become a lien upon, the Premises or the rents payable hereunder, but Lessor, at its own cost and expense, shall discharge same so as to keep the Premises free of the liens of same. It is the intent hereof that Lessee shall be required to pay only the Impositions which are properly known as real estate taxes or real estate assessments and are assessed against the real estate, including the buildings and improvements thereon.

(c) If at any time during the lease term the present method of taxation or assessment shall be changed so that the whole or any part of the Impositions, now levied, assessed, or imposed on the real estate and the buildings and improvements thereon shall be, in lieu thereof, imposed, assessed, or levied wholly or partially as a capital levy or otherwise upon the rents reserved herein, or as a tax, corporation franchise tax, assessment, levy, or charge, measured by or based upon, in whole or in part, the Premises or on the rents derived therefrom and imposed on Lessor, then Lessee shall pay the Impositions, or the part thereof so measured or based. Lessee shall not, in any event, be obligated to pay in respect thereof any Impositions in an amount in excess of the amount which would have been payable by reason of such change in the method of taxation or assessment had the rents upon which such tax or excise was imposed been the sole taxable income, or the Premises the sole asset, of Lessor for the relevant year in question.

(d) If payment of the Impositions is permitted or provided to be made in installments over a period of years, Lessee shall be obligated to pay only those installments which are required to be paid during such time as this Lease is in force and effect. If Lessee shall desire to contest the validity or amount of the Impositions, Lessee shall notify Lessor in writing of its intention to contest the Impositions, and Lessee shall not be required to pay, discharge, or remove the Impositions, so long as it shall in good faith and at its own expense contest the Impositions or the validity thereof by appropriate proceedings, in

the name of Lessor, if necessary. Pending any such proceedings, Lessor shall not have the right to pay, remove, or discharge the Impositions thereby contested, and Lessee's delaying paying the Impositions until final determination of such disputed matter shall not be deemed a default under this Lease. If such delay exposes the Premises to sale for such nonpayment, Lessee shall pay, under protest, reserving its rights hereunder, the Impositions, and if Lessee fails to pay, Lessor shall have the right to do so and upon such payment by Lessor, under protest, Lessee shall immediately after proof of such payment shall have been submitted to it by Lessor, and on demand therefor, pay Lessor the amount of any such payment so made by Lessor.

(e) Any refunds or rebates on account of the Impositions paid by Lessee shall belong to Lessee. Lessor shall sign any receipt which may be necessary to secure the payment of any such refund or rebate and pay over to Lessee such refund or rebate as received by Lessor.

(f) Lessee shall pay for all heating, cooling, water, electricity, gas and other utilities consumed by Lessee at the Premises.

7. Use and Occupancy.

Lessee may use and occupy the Premises or any portion thereof for any and all lawful purposes except for real estate sales offices, pizza restaurants, beauty shops, physician offices, veterinarian clinics, or dry cleaning plants. (The foregoing exception shall not prohibit use of the Premises as a dry cleaning pick up and drop off store.) This restriction shall also apply to any Lessee assignment or subletting rights as written in Article 20 of this Lease

8. Compliance with Laws.

(a) Lessee shall comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the governmental authorities having jurisdiction over the Premises or any of their departments, bureaus, boards, commissions and officials thereof with respect to Lessee's use of the Premises

after the Commencement Date, provided, however, Lessee shall not be obligated to make any structural changes nor incur expenses of a capital nature in order to comply with such laws, ordinances, orders, rules, regulations and requirements.

(b) Lessee shall have the right to contest by appropriate legal proceedings which shall be conducted diligently and in good faith in the name of Lessor or Lessee or both, and without cost or expense to Lessor, the validity or applicability of any law, ordinance, order, rule or regulation of the nature hereinabove referred to, and Lessee shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, provided that observance and compliance therewith pending the prosecution of such proceeding may be legally delayed without subjecting Lessor to any liability or fine.

9. Trade Fixtures, Machinery and Equipment.

Lessee shall have the right to install on the Premises any trade fixtures, machinery, equipment, furniture, or other property of whatever kind and nature (the "Equipment") which Lessee may deem necessary for its use and occupancy of the Premises, and any Equipment installed or brought onto the Premises shall not become or be deemed to be a part of the real estate, no matter how affixed to or installed upon the Premises, but shall remain the property of Lessee, and may be removed from the Premises by Lessee at any time during the Lease term or within a reasonable time after the expiration or sooner termination of this Lease, provided, Lessee promptly repairs any damage caused by such removal. Lessor covenants that any interest it may now or hereafter have in the Premises, and any rights incident thereto, shall be subordinate to the interest of any secured party, vendor, lessor or owner of any Equipment pursuant to an agreement with Lessee which relates to the Equipment.

10. Alterations by Lessee.

Lessee shall have the right at any time and from time to time during the Lease term to make, at its sole cost and expense, such



alterations, installations, decorations, additions, substitutions or improvements (collectively called the "Alterations") in, to, or of the Premises as Lessee may deem desirable or necessary, provided, however, in all cases the Alterations shall be made in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws; shall, when completed, be of such a character as not to reduce the value of the Premises below its value immediately before such Alteration; and the cost of the Alterations shall be paid so that the Premises shall be free of liens for labor and materials supplied to the Premises. The exterior walls and roof colors shall remain the same throughout the Lease term.

**11. Maintenance and Repairs of Premises.**

(a) Lessee shall keep in good order, condition and repair (which repair shall mean replacement, if necessary) the structural portions of the Premises, including, but not limited to, the foundation, the exterior walls, the roof, the plumbing and sewage systems outside the building on the Premises and the parking area serving the Premises except if damage occurs as a result of or caused by a deficiency or failure in any of Lessor's Work as contained in Lessor's Plans, then Lessor shall be responsible for the repair, which repair could mean replacement, if necessary.

(b) Lessee shall keep and maintain in good order, condition and repair (which repair shall mean replacement, if necessary) the exterior and interior portion of all doors, windows, plate glass, interior walls, floors, ceilings and the heating, ventilation, air conditioning, plumbing and sewage facilities within the building on the Premises and the underground tanks for the storage of petroleum products on the Premises. If Lessee refuses or neglects to commence or complete repairs promptly and adequately, Lessor may, but shall not be required to, make or complete said repairs and Lessee shall pay the cost thereof to Lessor upon demand.

(c) Lessor shall keep and maintain in good order, condition and repair (which repair shall mean replacement, if necessary) the retaining wall and drainage requirements related thereto, as

contained in Lessor's Plans, throughout the lease term and optional periods, if any.

**12. Liability Insurance.**

Lessee shall, at its sole cost and expense, obtain and maintain in full force and effect, for the mutual benefit of Lessor and Lessee, comprehensive public liability insurance in the amount of \$1,000,000, combined single limit coverage, subject to Lessee's right to secure such coverage with a self-insurance rider or proviso allowing a minimum \$50,000.00 deductible. The policy shall insure against claims for bodily injury, death or property damage arising out of the use and occupancy of the Premises. In addition, Lessee shall, at its sole cost and expense, obtain and maintain an excess or umbrella liability policy in the amount of at least \$5,000,000 for the mutual benefit of Lessor and Lessee. Certificates of such insurance shall be furnished to Lessor at the commencement of the Lease term and such renewal certificates of such policies shall be furnished to Lessor at least fifteen (15) days prior to the expiration of the policy it renews. Each such policy of insurance shall contain an agreement by the insurer, if obtainable, that such policy shall not be cancelled without ten (10) days prior written notice to Lessor. Such insurance may be in the form of a general coverage, floater policy or so-called blanket policy issued by insurers of recognized responsibility. Lessor may, at its discretion, maintain additional liability insurance for its protection.

**13. Casualty Insurance.**

(a) Lessee shall, at its sole cost and expense, obtain and maintain casualty and property insurance on the Premises and the buildings and improvements thereon in an amount equal to the actual replacement cost of the same. All insurance policies carried by Lessee on the Premises and the improvements and buildings thereon shall be issued in the name of Lessee and Lessor, as their respective interests may appear. Lessee shall have the right to adjust all losses and execute all proofs of loss in its name and/or in Lessor's name. The proceeds of such

insurance shall be payable to and used by Lessee as set forth in Paragraph 14.

(b) Lessor shall not carry or permit to be carried any additional or other insurance of any kind or character covering any interest in the Premises, or the buildings and improvements thereon without Lessee's knowledge and written consent.

(c) Lessee may maintain its own account for insurance whether or not required by this Lease with greater coverage in scope and amounts, and the proceeds thereof shall belong to Lessee.

(d) Lessee, in its discretion, may carry such insurance under a blanket fire and other hazards insurance policy or policies. However, a certificate or true copy thereof evidencing said insurance shall be delivered to Lessor. At Lessee's option, any of the insurance with Lessee is required to procure under the provisions of this Paragraph 13 may include an amount not in excess of \$50,000 as a deductible for each loss thereunder.

**14. Damage or Destruction.**

(a) In the event of damage to or destruction of the buildings or improvements on the Premises by fire or other casualty, Lessee shall promptly repair and restore the same so that after such repair and restoration the building and improvements shall at least equal in value the building and improvements prior to such damage or destruction. All insurance proceeds received by Lessor pursuant to the provisions of this Lease shall be paid to Lessee to be applied to the cost of repairs and restoration, and if the insurance proceeds are insufficient to pay the full cost of repair or restoration, Lessee shall pay the deficiency. If the insurance proceeds exceed the cost, the excess shall be paid to Lessee.

(b) If the damage or destruction shall occur during the last three (3) years of the original term of this Lease or at any time during any renewal term and the cost of repairs or restoration shall exceed fifty percent (50%) of the replacement value of the building and improvements (exclusive of foundations and footings)

in their condition just prior to the occurrence of the damage, Lessee may, no later than sixty (60) days following the damage, give Lessor notice that it elects to terminate this Lease. If such notice shall be given, (i) this Lease shall terminate on the date given in such notice with the same effect as if it were the date herein specified for the expiration of the Lease term; (ii) Lessee shall surrender possession of the Premises within a reasonable time thereafter; (iii) any rent paid for any portion of the Lease term beyond said date shall be repaid to Lessee; and (iv) Lessor shall be entitled to the insurance proceeds plus, from the Lessee, the amount of any deductible on such insurance maintained by Lessee.

(c) In any case in which the use of the Premises is affected by any damage to the building and improvements, the rent payable by Lessee shall be reduced or abated in any equitable fashion until the building and improvements have been repaired and restored.

15. Condemnation.

(a) If the entire Premises shall be taken by condemnation or the exercise of the right of eminent domain or by purchase in lieu thereof, this Lease shall terminate on the date when title shall vest in the appropriate authority or, at Lessee's option, on the date when possession of the Premises is required to be surrendered.

(b) If a part of the Premises shall be taken and (i) the part so taken includes any building or improvements thereon, or (ii) the part so taken shall remove any part of the parking area or any parking area which is not a part of the Premises but is shared in common with others, or (iii) there is a permanent deprivation of access to the Premises from streets or highway abutting same, and vice-versa, (permanent being defined as a continuous period in excess of six months), or (iv) the streets or highways abutting the Premises are raised or lowered above or below their present level in excess of three (3) feet, then Lessee shall have the right to terminate this lease on thirty (30) days'

written notice to Lessor to be given after the date when title to the portion so taken shall vest in the appropriate authority, or at Lessee's option, on the date physical possession is required to be surrendered in the case of terms (i) and (ii) hereof.

(c) On any taking, Lessor and Lessee shall pursue, in their respective individual and separate names and rights, unless otherwise required by law, such remedies and make such claims as they may have against the authority exercising such right of eminent domain or other lawful taking as if this Lease and the term hereof had not expired (whether or not such expiration shall have occurred on account of such taking). The award of damages for such taking, if made payable to Lessor and Lessee jointly, shall be apportioned between the parties on equitable and just principles in accordance with their respective interests, it being understood that Lessee shall be entitled to that award or portion of award for damages to its leasehold and nonremovable fixtures and the loss of value of its leasehold estate for the unexpired Lease term, including renewals. Rent shall be apportioned to the date this Lease terminates.

(d) If Lessee shall not cancel the Lease as hereinabove provided in subparagraph (b), this lease shall not terminate, but the rental for the land constituting the Premises shall be reduced, as of the date when title shall vest in the appropriate authority, in proportion to the value of the Premises before the taking bears to the value of the Premises after the taking, and Lessor shall, at its own cost and expense and with reasonable promptness, restore the remaining portion of the Premises to the extent necessary to reconstitute the improvements thereon to a complete architectural unit, susceptible to the same use as that which was in effect immediately prior to such taking.

**16. Default Provisions.**

(a) If Lessee shall default in payment of any installment of rent or any other sum herein specified to be paid by Lessee and such default shall continue for fifteen (15) days after written notice from Lessor that said payment has become past due; or if

Lessee shall default in the performance of a material covenant, agreement or other obligation on its part to be performed hereunder and such default shall continue for thirty (30) days after written notice from Lessor specifying the default, (it being intended, however, that a default not susceptible of being cured by Lessee within thirty (30) days that the time to cure shall be extended for such time as may be necessary to cure same with due diligence); or if Lessee files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent; or if a receiver is appointed for, or execution is levied upon, all or substantially all of Lessee's business or assets or Lessee's leasehold interest hereunder; or if a trustee is appointed for Lessee after a petition has been filed for Lessee's reorganization under the Bankruptcy Act of the United States; or if Lessee shall make an assignment for the benefit of its creditors, Lessor may, by written notice given to Lessee, terminate this lease effective as of the day of the event of default.

BOOK 348 PAGE 717 (b) Upon any termination of this lease, Lessee shall promptly surrender and deliver possession of the Premises to Lessor and Lessee hereby grants the Lessor full and free license to enter into and upon the Premises in such event, and, with process of law, to repossess the Premises and to expel or remove Lessee and any others who may be occupying the Premises, and to remove therefrom any and all property (except as provided in Paragraph 9), without relinquishing any right given to Lessor hereunder or by operation of law.

(c) If this lease shall be terminated as herein provided, Lessor shall be entitled to recover from Lessee all sums due and payable to Lessor up to the date of such termination, and damages which shall accrue by reason of Lessee's default hereunder.

**17. Representations and Warranties.**

(a) Lessor represents and warrants to Lessee that:

(i) Lessor is the owner of good and marketable fee simple title to the Premises.

(ii) The Premises are not subject to any prior lease or claims of parties in possession except for the lease with Junior Food Stores, Inc. (the "Existing Lease"), the existence of which has been disclosed to Lessee.

(iii) There is no pending condemnation action or agreement in lieu thereof which will or may affect the Premises in any respect whatsoever.

(iv) There is no action, suit or proceedings, pending or threatened, against or affecting the Premises.

(v) The execution, delivery and performance of this Lease by Lessor has been duly authorized and this Lease is valid and enforceable in accordance with its terms.

(vi) Lessor has no knowledge of any fact, action or proceedings, whether actual, pending or threatened, which could result in the modification or termination of the present zoning classification of the Premises, or the termination of full, free and adequate access to and from the Premises and the public highways and roads.

(vii) Lessor has not made a contract to lease or convey all or any part of the Premises or any interest herein, or granted to any person or entity any right with respect to the Premises or any part thereof except for the Existing Lease.

(viii) The Premises are not subject to any restrictions, building and zoning laws or ordinances, or other laws, ordinances, rules, regulations and requirements of any governmental authority having jurisdiction which would prohibit the use of the Premises as a convenience store or the sale of beer, wine or gasoline therefrom.

(ix) The character, materials, designs, construction and location of the improvements and



utilities on the Premises are in full compliance with all applicable buildings, health and zoning laws and ordinances.

Lessor hereby acknowledges that Lessee is relying upon all of the foregoing representations and warranties in executing this Lease and that matters so represented and warranted are material ones, and Lessor accordingly agrees that any misrepresentation or breach of such warranty will be grounds for Lessee to terminate this Lease.

(x) Lessor has no knowledge that (a) the Premises has previously been used as a landfill or as a dump for garbage or refuse or (b) the Premises or the ground water under and about the Premises has been contaminated with any hazardous substances or materials or (c) the Premises is in any manner in violation of any local, state or federal environmental laws, rules or regulations.

(b) Lessee represents and warrants to Lessor that:

(i) There is no action, suit, or proceedings, pending or threatened, against the Lessee which would affect its occupancy of the Premises or prevent it from obtaining any required licenses to operate the Premises as a convenience store or the sale of beer, wine or gasoline therefrom.

(ii) The execution, delivery and performance of this Lease by Lessee has been duly authorized and this Lease valid and enforceable in accordance with its terms.

(c) Lessor represents and warrants to Lessee, and Lessee represents and warrants to Lessor, that it has not retained a broker to act for it in connection with the negotiation of the Lease, and each agrees to hold the other harmless against and from any claim by a third party for a broker's fee arising out of this Lease.



**18. Covenants of Lessor.**

Lessor covenants with Lessee that:

(a) Lessor, from the date hereof until the Commencement Date, will not lease or convey all or any portion of the Premises, or any interest therein, or enter into any agreement granting to any person or entity any right with respect to the Premises, or any part thereof.

(b) Lessor, so long as this Lease remains in effect, shall not file, or permit to be filed, any application to change the present zoning classification of the Premises.

(c) Lessor shall take, or cause to be taken, all the action necessary to obtain a Certificate of Occupancy for Lessee's use, as contemplated herein, and shall execute any papers which may be necessary or proper to obtain such other permits and licenses for Lessee's use and occupancy of the Premises.

**19. Conditions.**

(a) This Lease and Lessee's obligations hereunder are subject to the satisfaction, before the Lessor shall be obligated to commence the Lessor's Work, of all of the following conditions, any one of which may be waived in writing by Lessee prior to the commencement of the Lessor's Work:

(i) Lessee's leasehold interest hereunder shall be insurable by a title company, selected by Lessee, at the title company's regular rates, free and clear of any and all liens, charges, encumbrances and exceptions.

(ii) There shall be delivered to Lessee copies of all necessary final approvals of site plans, building permits and environmental factors, and the time for making any administrative appeal or protest with respect thereto shall have expired.

(iii) Lessee shall have received copies of final approval by the appropriate authorities of the curb cuts and accesses to and from the Premises as and where requested by Lessee.

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(iv) Any required subdivision of the Premises shall have been accomplished and the time for making any appeal or protest with respect thereto shall have expired.

(v) The Premises shall be zoned category planned commercial under the zoning ordinance of the authorities having jurisdiction without there being a right of any person, party, or entity, to make or take an administrative appeal or protest. If the Premises are not zoned properly for Lessee's proposed use, Lessor shall, at its cost and expense, within thirty (30) days after all of the above conditions set forth in this Paragraph 19 have been fulfilled, apply to such authorities as may have jurisdiction of the Premises for such appropriate zoning. Zoning for the purpose of this subparagraph (e) shall also include such approvals as shall be necessary to permit the commencement of the construction of buildings and improvements upon the Premises. Such zoning shall be deemed to have been obtained at such time as there shall be no right on the part of any person, party or entity to protest or appeal (irrespective of whether the same shall be administrative, equitable or otherwise). Lessee agrees to join with Lessor to accomplish the purposes set forth in this subparagraph (v) hereof.

(vi) Lessee shall have obtained, without unusual cost, any and all permits, licenses or qualifications from the government authorities having jurisdiction over the Premises, required for the sale of beer, wine and gasoline from the Premises.

(vii) Lessor shall permit Lessee and its agents to enter upon the Premises for inspection, soil tests, soil and water analysis for petroleum hydrocarbons and contaminants, examination and land use planning. No such examination will be deemed to constitute a waiver

or relinquishment on the part of Lessee of its rights to rely on the covenants, representations, warranties or agreements made by Lessor. Lessee shall bear the costs of all such tests.

(viii) Lessor shall have obtained from the lessee under the Existing Lease an agreement to terminate the Existing Lease.

If all of the items described in this Paragraph 19 have not been fulfilled on or before 90 days from the date of execution of this lease, Lessee shall have the right to terminate this Lease and be relieved of any and all obligations hereunder.

(b) This Lease and the Lessor's obligations hereunder are subject to Lessor's obtaining a commitment for permanent financing of the building and improvements to be constructed on the Premises in the principal amount of at least \$350,000 on terms satisfactory to Lessor before the Lessor shall be obligated to commence the Lessor's Work.

**20. Assignment and Subletting.**

Lessee shall have the right at any time during the lease term, without the consent of the Lessor, to transfer and assign this Lease, sublease all or any portion of the Premises, and to grant licenses, franchises, or concessions with respect to the use and occupancy of the Premises, but in any such event, Lessee shall not be relieved of its obligations under this lease to the Lessor. Lessee shall give Lessor written notice of such an assignment or sublease within thirty (30) days thereafter, together with the name and address of the assignee or sublease.

**21. Right of First Refusal.**

(a) If Lessor shall receive a bona fide offer to purchase the Premises, or Lessor's leasehold interest created during the lease term or any renewal thereof, any contract which may be entered into between Lessor and a third party purchaser shall provide that the sale shall be subject to Lessee's right of refusal as in this Paragraph 21 set forth. If Lessor shall receive such offer or execute such contract, Lessor shall send to

Lessee a true and complete copy of the executed contract or the complete terms of the offer with Lessor's certification that it proposes to accept the offer, and Lessee shall have the option to be exercised within sixty (60) days after receipt thereof to make a contract with Lessor on the same terms and conditions set forth in such third party contract or offer. If Lessee, after receipt of the third party contract or the terms of the offer acceptable to Lessor, shall fail to exercise its option within the sixty (60) day period, Lessor shall have the right to conclude the proposed sale on the same terms and no other as in the offer or contract originally forwarded to Lessee, provided the sale shall close within sixty (60) days after the period within which Lessee is required hereby to exercise its option. If the sale shall not close within said sixty (60) days, Lessor shall repeat the procedure specified in this Paragraph 21 before it can conclude any sale of the Premises. Notwithstanding Lessee's failure to exercise its option, any sale of the Premises shall be subject to this Lease; Lessee's option shall remain in force and be binding on any subsequent owner of the Premises to the same extent as if said subsequent owner were Lessor herein; and said subsequent owner shall be required to do all of the things required of Lessor in this Lease prior to any such sale of the Premises.

(b) If any third party contract or offer for the Premises shall include other property than the Premises, Lessee's right of first refusal shall be applicable to the Premises only at a purchase price which shall be that part of the price offered by the third party, which the value of the Premises shall bear to the value of all the property included in such third party contract of offer.

(c) Lessee's right to purchase shall not be extinguished, cancelled, or called into operation by any offer, contract or conveyance which is between a nominee and his principal, or a sole shareholder and his corporation, or a corporation and its subsidiary or affiliate.

**22. Competition.**

Lessor agrees to enter into a restrictive covenant, which shall be executed by Lessor and delivered to Lessee, pursuant to which any real properties owned by Lessor, as of this date or subsequently acquired by Lessor, which are within seven hundred (700) feet of any boundary of the Premises, including, but not limited to, that certain parcel which is described on the attached Exhibit "B", shall be restricted as follows:

The subject property shall not be improved, occupied, or used in any manner as a business or as an appurtenance to a business which is similar to or competes with the usual and customary operation of a convenience type store as normally recognized within the convenience store industry, which business includes, but is not limited to, the sale of products such as sundry groceries, any alcoholic beverages for off premises consumption, or the retail sale of gasoline.

The foregoing restrictive covenant shall be filed of record, pursuant to a written instrument executed by Lessor, specifically identifying the parcel described on the attached Exhibit "B", which covenant shall be drafted in such manner that it shall bind and run with the affected parcel for the term of this Lease Agreement and be binding upon all future owners thereof, and enforceable by Lessee. The right of Lessee to the enforcement of said restrictive covenant shall be included within the leasehold title insurance policy to be issued pursuant to this instrument in the form of an appropriate provision of affirmative coverage. In addition, Lessor agrees that neither Lessor nor any entity in which Lessor might become financially interested, shall in any manner compete with Lessee's operation on any property which is located within seven hundred (700) feet of the Premises.

**23. Estoppel Certificates.**

Each party shall, at any time and from time to time, within thirty (30) days after request by the other party, certify in writing that this Lease is unmodified and in full force and effect, (or, if there has been a modification, that the same is in full force and effect as modified and stating the modification); the dates, if any, to which the rent, Imposition, and other charges hereunder have been paid in advance; whether Lessor or

Lessee (as the case may be) is or is not in default in the performance of any covenant, condition or agreement on its part to be performed and the nature of such default, if any; and such other pertinent information as may be reasonably requested.

**24. Subordination; Attornment.**

(a) This Lease shall not be subject or subordinate to any present or future lease, or to any mortgage unless there shall have been delivered to Lessee an executed counterpart of such lease or mortgage and a separate agreement executed by the Lessor of any such lease or by the holder of any such mortgage, as the case may be, in recordable form, containing provisions providing in substance that as long as Lessee is not in default in the performance of the terms, covenants and conditions to be performed on its part under this Lease within the applicable grace periods therefor, this Lease and all of the terms, provisions and conditions thereof shall remain in full force and effect and neither this Lease or Lessee's rights to, or possession of, the Premises will be disturbed during the original term or any renewal term thereof, notwithstanding any termination of any lease or the foreclosure of any mortgage, and Lessee will not be named as a party defendant in any foreclosure proceedings or in any summary proceedings brought for the recovery of possession.

(b) Lessee, for the benefit of the Lessor of any lease or holder of any mortgage to which this Lease may be subject and subordinate, shall attorn upon the terms and conditions of this Lease and pay rent to any such Lessor or mortgagee in the event of the termination of any lease, or in the event of the institution of any foreclosure proceedings by any mortgagee, as the case may be.

**25. Quiet Enjoyment.**

Lessee shall peaceably and quietly have, hold and enjoy the Premises for the term and extensions thereof granted without molestation or disturbance.

**26. Surrender.**

Upon the termination of the Lease term, Lessee shall quit and surrender the Premises and all buildings and improvements thereon in good condition and repair, except for reasonable wear and tear, permitted alterations, damage caused by Acts of God, due to causes beyond the reasonable control of Lessee, or which Lessee need not repair or restore under this Lease.

**27. Holdover.**

If Lessee shall hold over after the expiration of the Lease term, then such tenancy shall be deemed to be on a month-to-month basis on all the terms, covenants and conditions herein provided except the monthly rental shall be increased by fifty percent (50%) above the monthly rental due for the last month of the Lease term.

**28. Force Majeure.**

Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, Acts of God, governmental regulation or control, or other causes beyond the reasonable control of said party, and in any such event the time for performance shall be extended for the amount of time said party is so delayed.

**29. Memorandum of Lease.**

At Lessee's request, Lessor shall execute a memorandum of this Lease duly acknowledged and in recordable form setting forth, among other things, the names and addresses of the parties, a reference to this Lease and its date, the description of the Premises, the date of the commencement and termination of this Lease, and, to the extent this Lease contains provisions in respect thereto, Lessee's option to renew the original term, Lessee's right of first refusal, Lessee's right to build, alter, repair, improve, structures and improvements, and such other facts as may be required by law to give appropriate notice pursuant to the recording acts. Lessee shall pay the costs and expenses of recording this Lease or the memorandum thereof.



30. Partial Invalidity.

If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which this Lease is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

31. Binding on Successors and Assigns.

Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors, and assigns. The word "Lessee", as used in this lease, means only the owner, for the time being, of Lessee's interest in this Lease. In the event of any assignment of this Lease, Lessee shall be and hereby is, entirely freed and relieved of all obligations of Lessee hereunder thereafter accruing, except as otherwise specifically provided in this Lease.

32. Written Notices.

(a) Whenever under the terms of this lease a written notice is required, or whenever a written notice or communication is sent, the same shall be accomplished by Certified Mail Return Receipt, postage prepaid, addressed as follows:

To Lessor: N&B Enterprises, Inc.  
1143 Country Club Circle  
Birmingham, Alabama 35244

To Lessee: Shop-A-Snak Food Mart, Inc.  
833 Green Springs Highway  
Birmingham, Alabama 35209

(b) Notices served by mail shall be deemed complete when deposited with the United States Postal Service. Any change of address shall not be effective unless served upon the parties in the same manner as the notice referred to herein.



33. Applicable Law.

This Lease shall be construed in accordance with the laws of the State of Alabama.

34. Entire Agreement.

This Lease contains the entire agreement of the parties hereto with respect to the letting and hiring of the Premises, may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, their respective successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year written below.

WITNESS:

L B Asset

\_\_\_\_\_

WITNESS:

L B Asset

\_\_\_\_\_

LESSOR: 1

N&B Enterprises, Inc.

By: S. H. Harris

Per. 7/30/90  
Date of Execution by Lessor

LESSEE:

Shop-A-Snak Food Mart, Inc.

By: E. J. Munn

VICE-PRESIDENT  
Date of Execution by Lessee

BOOK 348 PAGE 728

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that E. J. Marino, Jr., whose name as Vice-President of Shop-A-Snak Food Mart, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 30 day of July, 1990.

[NOTARIAL SEAL]

Annette Springer  
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES OCTOBER 21, 1992

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that B.J. HARRIS, whose name as President of N&B Enterprises, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 30 day of July, 1990.

[NOTARIAL SEAL]

Annette Springer  
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES OCTOBER 21, 1992

BOOK 348 PAGE 729

ADDENDUM

RENT

*BAD.*  
*OEM*

BASE RENT.

Lessee shall pay Lessor a monthly BASE RENTAL as follows:

PRIMARY LEASE TERM

First sixty (60) months	\$2,037.00
Second sixty (60) months	2,337.00
Third sixty (60) months	2,637.00

OPTIONAL LEASE TERM

First sixty (60) months	\$2,937.00
Second sixty (60) months	3,237.00

ADDITIONAL RENT.

Lessee shall pay Lessor a monthly rental, in addition to the Base Rental, an amount equal to a twelve percent (12%) annual return on its investment in the Project.

Monthly rental in addition to the Base Rental shall be as follows:

PRIMARY LEASE TERM

First one hundred eighty (180) months	\$3,140.00
---------------------------------------	------------

OPTIONAL LEASE TERMS

First sixty (60) months	\$3,140.00
Second sixty (60) months	\$3,140.00

BOOK 348 PAGE 730

EXHIBIT "A"

*B. H. E. M.*

The following is a description of a tract of land situated in the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the NW corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$ ; thence South along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$ , 680.66 feet to the point of beginning; thence  $121^{\circ}58'35''$  left, 19.05 feet; thence  $89^{\circ}36'50''$  right, 285.08 feet to the Northerly right-of-way of Valleydale Road; thence  $84^{\circ}17'22''$  right, along said right-of-way, 91.96 feet; thence  $10^{\circ}59'20''$  left, along said right-of-way 104.40 feet; thence  $16^{\circ}41'58''$  right, along said right-of-way 33.10 feet to the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$ ; thence  $122^{\circ}21'45''$  right, leaving said right-of-way and North along said  $\frac{1}{4}$  -  $\frac{1}{4}$  line, 384.01 feet to the point of beginning and containing 34,850 square feet or 0.80 acres, more or less.

Said property to be known as Lot 6-F, according to the Resurvey of Lot 6-F, of Riverchase East, First Sector, said Resurvey to be filed in the Probate Court of Shelby County, Alabama.

BOOK 348 PAGE 731

EXHIBIT B

*W. H. E. M.*

Lot 6G, according to the resurvey of Lot 6E, Riverchase East first Sector, as recorded in Map Book 6, Page 139, and resurveyed in Map Book 7, Page 106, in the Office of the Judge of Probate of Shelby County, Alabama.

BOOK 348 PAGE 732

STATE OF ALABAMA )  
JEFFERSON COUNTY )

FIRST AMENDMENT TO LEASE

This instrument is entered into as of the 19<sup>th</sup> day of SEPTEMBER, 1990, by and between N&B Enterprises, Inc., an Alabama corporation, (hereinafter "Lessor") and Shop-A-Snak Food Mart, Inc., an Alabama corporation, (hereinafter "Lessee").

WITNESSETH:

Lessor and Lessee have previously entered into that certain lease (hereinafter the "Lease") dated as of the 30th day of July, 1990, and affecting the premises (hereinafter the "Premises") located on Valleydale Road in Shelby County, Alabama, as more particularly described in the Lease. Lessor is also the owner of unincumbered fee simple title to another tract of real property (the "Adjacent Property") which is located immediately adjacent to the Premises. Lessor and Lessee have agreed that, in addition to the rights granted to Lessee pursuant to the Lease, Lessee shall have and Lessor shall grant to Lessee the non-exclusive right of ingress and egress across a portion of the Adjacent Property. The purpose of this instrument is to amend the Lease to provide for said additional right of ingress and egress.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, the mutual covenants and conditions herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned, it is hereby agreed that the Lease is amended, as of the effective date of this instrument, as follows:

1. Ingress and Egress Easement. Lessor does hereby grant, lease and convey unto Lessee and any assignees, sublessees and other successors to the interests of Lessee under the Lease, for and during the entire term of the Lease, as same might be renewed or otherwise extended, for the purpose of serving all or any portion of the Premises, the non-exclusive right of ingress and egress over and across the following described portion of the Adjacent Property (hereinafter the "Easement Area"):

Part of Lot 6 G, Resurvey of Lot 6 E, Riverchase East, First Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 7, Page 106, being more particularly described as follows: Beginning at the most Southerly corner of said Lot 6 G, run in a Northwesterly direction along the Southwest line of said Lot 6 G, for a distance of 130 feet; thence turn an angle to the right of 90° and run in a Northeasterly direction for a distance of 45.0 feet; thence turn an angle to the right of 90° and run in Southeasterly direction for a distance of 125.50 feet to a point on the Northwest right-of-way line of Valleydale Road; thence turn an angle to the right and run in a Southwesterly direction along said Northwest right-of-way line for a distance of 45.22 feet, more or less to the point of beginning.

2. Premises. The term "Premises", as defined in the Lease, is hereby amended to add to the definition thereof the non-exclusive right of ingress and egress described in paragraph number 1 of this instrument.

3. Rights Reserved Unto Lessor. Lessor shall have and hereby reserves unto itself the right to use, jointly with Lessee, the Easement Area for ingress to and egress from the Adjacent Property. Lessor shall not, however, permit any obstruction of any kind to or across the Easement Area, or permit any other use of the Easement Area which would in any manner interfere with the use thereof by Lessee for ingress and egress.

4. Maintenance. Lessee shall be responsible for the maintenance and repair of the Easement Area except that, with respect to any maintenance or repair that (i) becomes necessary as the result of any damage caused thereto by Lessor or any employees, agents or tenants of Lessor (other than Lessee) or (ii) results from the improper construction of the driveway and related improvements situated within and about the Easement Area, any expenses associated therewith shall be the responsibility of Lessor.

5. Binding Effect. The provisions of this instrument shall run with the lands described in and affected hereby and shall be binding upon and enure to the benefit of Lessor, Lessee and their respective successors and assigns.

6. Survival. Except as modified by the terms and provisions of this instrument, the terms and provisions of the Lease shall remain in full force and effect.

Executed by each of the undersigned under seal effective the same date as first hereinabove written.

LESSOR:

N&B ENTERPRISES, INC.

WITNESS

ALB. Deebert

By:

B. J. Harris  
Its: B. J. Harris

LESSEE:

SHOP-A-SNAK FOOD MART, INC.

WITNESS

ALB. Deebert

By:

E. Maunio Jr  
Its: vice - President



STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that B.J. HARRIS, whose name as President of N&B Enterprises, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 19 day of September 1990.

Annette Springer  
Notary Public

MY COMMISSION EXPIRES OCTOBER 21, 1992

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

[NOTARIAL SEAL]

STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that E.J. MARINO, JR., whose name as Vice-President of Shop-A-Snak Food Mart, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 19 day of September 1990.

Annette Springer  
Notary Public

MY COMMISSION EXPIRES OCTOBER 21, 1992

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

[NOTARIAL SEAL]

**SECOND AMENDMENT TO LEASE**

This second amendment to lease agreement is entered into as of the 29 day of Oct, 1990, by and between N&B Enterprises, Inc., an Alabama corporation, (the "Lessor") and Shop-A-Snak Food Mart, Inc., an Alabama corporation, (the "Lessee").

**WITNESSETH:**

Lessor and Lessee entered into a lease dated as of July 30, 1990, as amended by first amendment to lease dated as of Sept. 19, 1990 (together the "Lease") and affecting the premises located on Valleydale Road in Shelby County, Alabama, as more particularly described in the Lease. Lessor and Lessee have agreed that the amount of the rent to be paid under the terms of the Lease should be adjusted to take into affect increases in mortgage interest rates that the Lessor may incur in the future. The Lessor and the Lessee desire to amend the Lease to provide for such additional rent.

NOW, THEREFORE, in consideration of the sum of ten dollars, the mutual covenants and conditions herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned, it is hereby agreed that the Lease is amended as of the effective date of this second amendment to lease, as follows:

1. The addendum to the Lease is hereby deleted and the addendum to this second amendment to lease is hereby substituted in lieu thereof as the addendum to the lease.

2. Except as modified by the terms and provisions of this second amendment to lease, the terms and provisions of the Lease shall remain in full force and effect.

Executed by each of the undersigned under seal as of the day and year first above written.

**LESSOR:**

N&B Enterprises, Inc.

By: [Signature]  
Its: [Signature]

(SEAL)

**ATTEST:**

[Signature]  
Its: [Signature]

BOOK 348 PAGE 737

(SEAL)

LESSEE:

Shop-A-Snak Food Mart, Inc.

By: Imanoff  
Its: Vice-President

ATTEST:

[Signature]  
Its: \_\_\_\_\_

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that B. J. Harris, whose name as President of N&B Enterprises, Inc., a corporation, is signed to the foregoing Amendment, and who is known to me acknowledged before me, on this day, that being informed of the contents of such Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

October, 1990. Given under my hand and official seal, this the 29<sup>th</sup> day of

Betty Chandler  
Notary Public

My Commission Expires:

June 25, 1994

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that E. J. Marino, Jr., whose name as Vice-President of Shop-A-Snak Food Mart, Inc., a corporation, is signed to the foregoing Amendment, and who is known to me acknowledged before me, on this day, that being informed of the contents of such Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

October, 1990. Given under my hand and official seal, this the 29<sup>th</sup> day of

Betty Chandler  
Notary Public

My Commission Expires:

June 25, 1994

BOOK 348 PAGE 738

**ADDENDUM**

**RENT**

**BASE RENT.**

Lessee shall pay Lessor a monthly BASE RENTAL as follows:

**PRIMARY LEASE TERM**

First sixty (60) months	\$2,037.00
Second sixty (60) months	2,337.00
Third sixty (60) months	2,637.00

**OPTIONAL LEASE TERM**

First sixty (60) months	\$2,937.00
Second sixty (60) months	3,237.00

**ADDITIONAL RENT.**

Lessee shall pay Lessor a monthly rental, in addition to the Base Rental, an amount equal to a twelve percent (12%) annual return on its investment in the Project.

Monthly rental in addition to the Base Rental shall be as follows:

**PRIMARY LEASE TERM**

First one hundred eighty (180) months	\$3,140.00
---------------------------------------	------------

**OPTIONAL LEASE TERMS**

First sixty (60) months	\$3,140.00
Second sixty (60) months	\$3,140.00

**INTEREST ADJUSTMENT RENT**

In addition to the Base Rent and the Additional Rent, as provided above, Lessee shall pay Lessor a monthly rental in an amount equal to fifty percent (50%) of the increase in monthly mortgage payments, if any, incurred by Lessor on and after the fifth anniversary of the mortgage placed on the leased premises by Lessor incurred as a result of the interest increase on any such mortgage above 10 3/4 percent per annum (the "Interest Adjustment Rent"). Lessor shall give written notice to Lessee of any such Interest Adjustment Rent and the amount thereof at least fifteen (15) days prior to the effective date of any such increase. If, after any such increase in interest rate on the mortgage, a lower interest rate is obtained by Lessor, the Interest Adjustment Rent shall be reduced or eliminated, and Lessor shall give Lessee prompt notice thereof.

BOOK 348 PAGE 739

THIRD AMENDMENT TO LEASE

This third amendment to lease agreement is entered into as of the 5<sup>th</sup> day of MARCH, 1991, by and between N&B Enterprises, Inc., an Alabama corporation, (the "Lessor") and Shop-A-Snak Food Mart, Inc., an Alabama corporation, (the "Lessee").

**WITNESSETH:**

Lessor and Lessee entered into a lease dated as of July 30, 1990, as amended by first amendment to lease dated as of September 19, 1990, and second amendment to lease dated as of October 29, 1990, (together the "Lease") and affecting the premises located on Valleydale Road in Shelby County, Alabama, as more particularly described in the Lease. Lessor and Lessee have agreed that the amount of the rent to be paid under the terms of the Lease should be adjusted to reflect increased construction costs incurred by the Lessor and to clarify certain language in the Interest Adjustment Rent provision. The Lessor and the Lessee desire to amend the Lease to provide for such adjustment and clarification.

NOW, THEREFORE, in consideration of the sum of ten dollars, the mutual covenants and conditions herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned, it is hereby agreed that the Lease is amended as of the effective date of this third amendment to lease, as follows:

1. The addendum to the Lease is hereby deleted and the addendum to this third amendment to lease is hereby substituted in lieu thereof as the addendum to the Lease.

2. Except as modified by the terms and provisions of this third amendment to lease, the terms and provisions of the Lease shall remain in full force and effect.

Executed by each of the undersigned under seal as of the day and year first above written.

(SEAL)

ATTEST:

Its: \_\_\_\_\_

(SEAL)

ATTEST:

Edward J. Mairns  
Its: President

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that B. J. Harris, whose name as President of N&B Enterprises, Inc., a corporation, is signed to the foregoing Amendment, and who is known to me acknowledged before me, on this day, that being informed of the contents of such Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 15<sup>th</sup> day of March, 1991.

Betty Chandler  
Notary Public

My Commission Expires:

June 25, 1994

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that E. Mairns, Jr., whose name as Vice President of Shop-A-Snak Food Mart, Inc., a corporation, is signed to the foregoing Amendment, and who is known to me acknowledged before me, on this day, that being informed of the contents of such Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 5<sup>th</sup> day of March, 1991.

Betty Chandler  
Notary Public

My Commission Expires:

June 25, 1994

ADDENDUM

RENT

BASE RENT.

Lessee shall pay Lessor a monthly BASE RENTAL as follows:

PRIMARY LEASE TERM

First sixty (60) months	\$2,037.00
Second sixty (60) months	2,337.00
Third sixty (60) months	2,637.00

OPTIONAL LEASE TERM

First sixty (60) months	\$2,937.00
Second sixty (60) months	3,237.00

ADDITIONAL RENT.

Lessee shall pay Lessor a monthly rental, in addition to the Base Rental, an amount equal to a twelve percent (12%) annual return on its investment in the Project.

Monthly rental in addition to the Base Rental shall be as follows:

PRIMARY LEASE TERM

First one hundred eighty (180) months	\$3,174.80
---------------------------------------	------------

OPTIONAL LEASE TERMS

First sixty (60) months	\$3,174.80
Second sixty (60) months	\$3,174.80

INTEREST ADJUSTMENT RENT

In addition to the Base Rent and the Additional Rent, as provided above, Lessee shall pay Lessor a monthly rental in an amount equal to fifty percent (50%) of the increase in monthly mortgage payments, if any, incurred by Lessor on and after the fifth anniversary of the mortgage placed on the leased premises by Lessor incurred as a result of the interest increase on any such mortgage above 10 3/4 percent per annum (the "Interest Adjustment Rent"). Lessor shall give written notice to Lessee of any such Interest Adjustment Rent and the amount thereof at least fifteen (15) days prior to the effective date of any such increase. If, after any such increase in interest rate on the mortgage, a lower interest rate is obtained by Lessor, the Interest Adjustment Rent shall be reduced by fifty percent (50%) of the amount of any such reduction or eliminated, and Lessor shall give Lessee prompt notice thereof.

N & B ENTERPRISES  
1143 COUNTRY CLUB CIRCLE  
BIRMINGHAM, ALABAMA 35244

May 30, 1991

Shop A Snack  
833 Greensprings Highway  
Birmingham, Alabama 35209

RE: Lease Agreement of July 31, 1990

As stipulated in Article IV of the above referenced lease, the commencement date has been determined to be May 25, 1991.

From May 25, 1991 forward we request that you issue two monthly rental checks of equal amounts, with the total being in agreement with the amount specified in the above referenced lease agreement, one check each to Owners (Lessors), B.J. Harris, N & B Enterprises 1143 Country Club Circle Birmingham, Alabama 35244 and Lawrence Weygand, 1402 Sautter Road Homewood, Alabama 35209.

Rights Of First Refusal, as stipulated in the above referenced lease, Article 21, survived the closing of the sale of one-half interest to Mr. Weygand and remain in full force effect.

Sincerely,

B.J. Harris  
N&B Enterprises

Laurence Weygand

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

91 JUN 17 PM 2:49

JUDGE OF PROBATE

1	Dual Fee	542.00
2		97.50
3		5.00
4		1.00
5		1.00
6		1.00
Total		743.50