

LEASE WITH  
**UTOTEM**

Utotem of Alabama, Inc.

STATE OF Alabama

COUNTY OF Shelby

} ss.

I. DENNEY BARROW and B.J. HARRIS

PARTIES. THIS LEASE, made and entered into by

herein called "LANDLORD" and Utotem of Alabama, Inc.

herein called "TENANT".

1980022200021190 Pg 1/8 .00  
Shelby Cnty Judge of Probate, AL  
02/22/1980 00:00:00 FILED/CERTIFIED

II.

PREMISES. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of TENANT to be observed and performed, LANDLORD demises and leases to TENANT, and TENANT rents from LANDLORD, the following described premises in the City of \_\_\_\_\_, County of Shelby, State of Alabama, together with all the rights, privileges and appurtenances thereunto belonging (the "Leased Premises"):

A 2400 square foot lease space located on the tract at the Northeast corner of the intersection of Valley Station Road and Alabama Highway #119; said tract also known as Lot 1-C VALLEY STATION, 1st sector, Shelby County, Alabama. The building is to be Air-conditioned with a 10 giant-door-walk-in cooler to be furnished by Tenant and installed by Landlord.

The Leased Premises are more fully described in Exhibit A attached hereto and made a part hereof. The Leased Premises are to be used and occupied by TENANT for the purpose of operating a mercantile business, including the sale of gasoline, fuel and related products or for any other lawful purpose.

III.

TERM. To have and to hold the same for the term of 20 years, commencing on May 1, 19 79, and expiring at 11:59 p.m. on April 30, 19 99. LANDLORD hereby grants TENANT the right and option to extend this lease for 2 successive 5-year periods from the expiration of the original term hereof, upon notice in writing to the LANDLORD given at least 45 days prior to the expiration of the preceding term. If such right and option be exercised by TENANT, all the terms and conditions contained in this lease including provisions respecting the amount of rent, shall remain in effect. If TENANT does not exercise its then-current option to extend, or after the expiration of the final renewal term hereof, as the case may be, this lease shall continue from year to year on the same terms and conditions as herein provided, unless and until either LANDLORD or TENANT terminates this lease at the end of the original or any renewal period or any subsequent year, by giving the other at least thirty (30) days written notice.

IV.

CONSTRUCTION OF IMPROVEMENTS.

(a) LANDLORD shall, at its sole expense and cost, proceed diligently to construct, in a first class workmanlike manner, the improvements upon the Leased Premises in accordance with the plans and specifications attached hereto as Exhibit B and made a part hereof. LANDLORD and TENANT have examined such plans and specifications and have indicated their approval of the same by affixing their signatures thereto. LANDLORD will construct and erect the improvements in compliance with all applicable deed covenants, federal, state and municipal laws and the rules and regulations of the departments and bureaus having jurisdiction thereof. LANDLORD will furnish TENANT satisfactory evidence of such compliance in the form of a certificate of occupancy issued by the appropriate municipal department having jurisdiction over the leased property, or, in the event such certificates are not issued by the municipal authorities, by a certificate of compliance issued by LANDLORD's architect.

(b) During the course of such construction, TENANT, its employees, agents and contractors may enter upon the Leased Premises at all reasonable times for the purpose of inspection and, as soon as possible after such construction is substantially completed, may enter upon the Leased Premises for the purpose of installing improvements, fixtures and other equipment and receiving and storing therein its merchandise and other property at its own risk, upon the condition that TENANT, its employees, agents and contractors will not unreasonably interfere with the completion of the construction of the improvements on the Leased Premises. Such use of the Leased Premises shall not be construed as acceptance of delivery thereof or as a waiver of any of the provisions of this lease.

(c) During construction TENANT shall be furnished from time to time upon request copies of all plans, shop drawings and specifications relating to such construction. In the event that, during such construction or at any time prior to the issuance of a final certificate of occupancy or compliance, TENANT shall determine that such improvements are not being constructed in accordance with the plans and specifications hereinabove referred to, prompt notice in writing shall be given to LANDLORD specifying in detail the particular deficiency, omission or other respect in which the TENANT claims construction does not accord with plans and specifications. Upon receipt of any such notice, LANDLORD shall take steps necessary to cause corrections to be made as to any deficiencies, omissions or otherwise. Failure of TENANT to conduct an inspection of the Leased Premises or to notify LANDLORD of any omission or deficiency in construction prior to acceptance of possession of the Leased Premises by TENANT shall not be deemed to be a waiver of any of the provisions of this lease.

(d) Possession of the leased premises shall be delivered, completed in accordance with the detailed plans and specifications, not later than May 1, 19 79, unless construction shall be delayed for causes beyond the LANDLORD'S control, in which event the time fixed to complete and deliver the premises shall be extended for a period equivalent to the time lost by reason of such delay, but in no event shall such grace period be extended for more than sixty (60) days.

(e) In the event that the improvements are not completed in accordance with the provisions of this paragraph 4 to TENANT'S satisfaction, TENANT may:

(i) By a notice in writing given to LANDLORD as herein provided, terminate this lease and its obligations and liability hereunder; and the term of this lease shall thereupon cease and the parties shall be under no further obligation or liability to each other; or

(ii) Cause the improvements to be completed in accordance with such plans and specifications by agents and contractors chosen by TENANT. TENANT shall have a contractual lien against the Leased Premises to secure repayment by LANDLORD of sums expended by TENANT in completing the improvements, and such lien may be foreclosed by public sale (at which TENANT may be the purchaser) or in any other manner provided by law. TENANT shall also have the right to offset against rentals accruing under this lease amounts expended by TENANT in completing the improvements plus interest at the rate of nine percent (9%) per annum.

(f) Notwithstanding any other provision herein contained, rent shall abate during the period from the commencement of the initial term of this lease until \_\_\_\_\_ days after the earlier of:

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(ii) The date of issuance of the certificate referred to in paragraph 4 (a) hereof; or

(iii) The date on which TENANT commences business at the Leased Premises.

Rent for part of a month shall be prorated and paid on or before the first day of the following month.

V.

RENT. TENANT agrees to pay to LANDLORD a minimum monthly rental of One Thousand Two Hundred Fifty-Eight and No/100 Dollars (\$ 1258.00 ) (unless such rent shall be abated or diminished as in this lease elsewhere provided)

on the first day of each and every month during the term hereof for the current calendar month. All rents and rentals due to LANDLORD and any other monies due to LANDLORD under the terms of this lease shall be payable at Rt. 1 Box 306B

in the city of Helena, Alabama 35080, or to such other person and at such other place as shall be designated by LANDLORD in writing.

VI.

COVENANTS OF LANDLORD.

(a) Title. LANDLORD covenants that LANDLORD has good and merchantable title to the Leased Premises in fee simple absolute and that the same are subject to no leases, tenancies, agreements, encumbrances, liens or defects in title affecting the demised premises or the rights granted TENANT in this lease. LANDLORD further covenants that there are no restrictive covenants, zoning or other ordinances or regulations which will prevent TENANT from operating a convenience grocery store at the Leased Premises, including the sale of beer, wine and gasoline. LANDLORD agrees, prior to delivery by TENANT of an executed copy of this lease, to furnish to TENANT without cost to TENANT, proof satisfactory to TENANT that LANDLORD'S title is in accordance with the foregoing covenants and a recent survey of the premises satisfactory to TENANT.

(b) Quiet Enjoyment. So long as TENANT pays the rent reserved under this lease and fulfills the obligations on its part to be performed hereunder, TENANT shall peaceably hold and quietly enjoy the Leased Premises without interruption by the LANDLORD, any mortgagee, or any other person, firm or corporation claiming under either of them.

(c) Common Facilities. TENANT, its agents, employees and patrons shall at all times during the term of this lease have the nonexclusive right to use all common facilities provided at the premises of which the Leased Premises are a part, including the right of ingress and egress over and across the parking area adjacent to the building situated on the Leased Premises; provided, however, TENANT shall have the absolute right to prohibit the use of the parking area by any person except the patrons of any tenant in the building in which the Leased Premises are situated. LANDLORD covenants that during the term of this lease the driveways and parking areas described in the plans and specifications referred to in paragraph 4 of this lease will be kept free of all buildings and other structures not reflected in such plans and specifications. TENANT shall have the right to install in the parking area underground storage tanks, gasoline pumps and other station equipment for the purposes of selling fuel and gasoline products. LANDLORD acknowledges that free ingress and egress in the parking area by TENANT'S patrons is a prime factor in the operation of TENANT'S business and any defects in the parking area will be damaging to TENANT. LANDLORD therefore agrees to maintain the parking area and adjacent driveways, sidewalks, curbing, retaining walls and landscaped areas in good repair and condition.

(d) Exclusivity. LANDLORD agrees that it will not permit the operation on the premises of which the Leased Premises are a part of any other convenience grocery store, nor will it permit the sale of gasoline, beer, wine, liquor or ice, except by TENANT during the term of this lease. This provision is intended to be separable from all other provisions of this lease.

VII.

RIGHT TO CURE. LANDLORD agrees that if LANDLORD fails to pay any installment of taxes or assessments or any interest, principal, costs or other charges upon any mortgage or other lien or encumbrance affecting the Leased Premises and to which this lease may be subordinate when any of the same become due, or if LANDLORD fails to make any repairs or do any work required of LANDLORD by the provisions of this lease, or in any other respect fails to perform any covenant or agreement in this lease contained on the part of the LANDLORD to be performed, then and in any such event or events TENANT, after continuance of any such failure or default for ten (10) days after notice in writing thereof is given by TENANT to LANDLORD, may pay such taxes, assessments, interest, principal, costs and other charges, and cure such defaults all on behalf of and at the expense of LANDLORD, and do all necessary work, perform all necessary repairs and make all necessary payments in connection therewith including but not limiting the same to the payment of any counsel fees, costs and charges of or in connection with any legal action which may have been brought, and LANDLORD agrees to pay to TENANT forthwith the amount so paid by TENANT together with interest thereon at the greater of the rate of nine percent (9%) per annum or such rate as the debt discharged may have borne. LANDLORD agrees that TENANT may withhold any and all rental payments and other payments thereafter becoming due to LANDLORD pursuant to the provisions of this lease or any extension thereof and may apply the same to the payment of such indebtedness of LANDLORD to TENANT until such indebtedness is fully paid with interest thereon as herein provided. TENANT shall, at its election, be subrogated to all rights of any lienholder who has benefited by the payment of any obligations of LANDLORD hereunder, to the extent of the obligations discharged. Nothing herein contained shall preclude TENANT from proceeding to collect the amount so paid by it as aforesaid without waiting for rental offsets to accrue, and if at the expiration of this lease or any extension thereof there shall be any sums owing by LANDLORD to TENANT this lease may at the election of TENANT be extended and continue in full force and effect until such time as the indebtedness of LANDLORD to TENANT shall have been fully paid.

VIII.

MAINTENANCE OF PREMISES. LANDLORD agrees to make and pay for (a) all repairs, structural or otherwise, to the exterior of the building on the premises or of which the Leased Premises are a part, including, but not limited to the foundation, exterior walls, roof, other structural components of the building, sidewalks, parking areas and curbs, and (b) all repairs to the improvements on the Leased Premises occasioned by defective materials or workmanship in the construction of such improvements, and (c) all necessary repairs to and servicing of the air-conditioning system to maintain the same in good operating condition throughout the term hereof, and (d) all rebuilding, alteration or repair of the improvements on the premises of which the Leased Premises are a part, which are ordered or required by any law, ordinance or regulation or any governmental agency, unless due to an unusual use of the premises by TENANT.

Anything in this lease to the contrary notwithstanding, LANDLORD agrees that if in an emergency it shall become necessary to promptly make any repairs hereby required to be made by LANDLORD, TENANT may upon reasonable notice to LANDLORD proceed forthwith to have such repairs made and pay the cost thereof. LANDLORD agrees to pay TENANT the cost of such repairs on demand and that if not so paid TENANT may deduct the amount so expended by it from rent due or to become due. In the event TENANT shall elect not to make such repairs, it will promptly notify LANDLORD of the need for such repairs.

TENANT agrees to make any and all ordinary repairs to the interior of the Leased Premises, including plumbing, glass and electrical systems, which it deems necessary to keep the same in a good state of repair except such repairs as are herein provided to be made by LANDLORD.

TENANT further covenants and agrees that it will, at all times, keep the premises in a neat, clean and sanitary condition and that it will comply with all valid federal, state, county and city laws and ordinances and all rules and regulations of any duly constituted authority, present or future, affecting or respecting the use or occupancy of the Leased Premises by TENANT or the business at any time thereon transacted by TENANT.

Upon termination of this lease or any extension hereof TENANT shall surrender peaceably the premises to LANDLORD in good condition, wear and tear and damage by fire, other casualty or any other cause not directly attributable to the negligence of TENANT excepted.

IX.

ALTERATIONS AND IMPROVEMENTS. TENANT may, at its own expense, make such alterations, improvements, additions and changes to the leased premises as it may deem necessary or expedient in the operation of its business at the premises; provided that TENANT, without the written consent of LANDLORD, shall not demolish any of the improvements on the premises or make any material change or alteration in such improvements which, when completed, would substantially diminish the value of the Leased Premises. TENANT agrees that all alterations, additions and changes made by it will be erected or made in a first class workmanlike manner, and the parties agree that TENANT shall neither have the right nor the obligation at the end of the term of this lease or any extension thereof to remove the same or to change such structure or restore the premises to the condition in which they were originally, except as provided in paragraph X. hereof.

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**SIGNS AND FIXTURES.** TENANT may place and maintain on the Leased Premises such appropriate signs advertising its business, including the usual pole, canopy and roof signs. Such signs shall substantially conform to the signs and advertising displayed by TENANT in its other stores. No signs shall be placed on the improvements which will in any manner cause a structural injury to the building. TENANT may also install or attach such other trade fixtures, equipment or other property installed in or attached to the Leased Premises by and at the expense of TENANT, and LANDLORD agrees that TENANT shall have the right, but not the obligation, at any time and from time to time, to remove any and all of its trade fixtures, equipment and other property which it may have stored or installed in the Leased Premises, including but not limiting the same to signs, counters, shelving, show cases, mirrors, refrigerators, freezers, vaults, gasoline storage and dispensing equipment, movable machinery and other articles used by TENANT in its business. LANDLORD agrees not to mortgage or pledge TENANT's trade fixtures, equipment or other property.

**xi. See Addenda.**

**CASUALTY TO PREMISES.** LANDLORD agrees that it will keep the improvements on the Leased Premises insured against loss or damage by fire with extended coverage endorsement in an amount to prevent LANDLORD from becoming a co-insurer under the terms of the applicable policies but, in any event, in an amount not less than 80 percent of the full insurable value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in the state where the Leased Premises are located. TENANT agrees to reimburse LANDLORD for any increase in insurance premium due solely to the nature of TENANT'S use of the Leased Premises.

If the improvements on the Leased Premises shall be totally or substantially destroyed by fire or other casualty so that the Leased Premises shall be wholly untenable and unfit for the conduct of TENANT'S business, then TENANT shall have the right, by giving notice to LANDLORD, to terminate this lease and all rents and other charges shall be adjusted to the date of such destruction.

If the improvements on the premises are damaged or destroyed by fire or through any other cause at any time after the date of this lease and this lease shall not have been terminated under the preceding subparagraph, LANDLORD will proceed with due diligence to repair or restore the same to the same condition as existed before such damage or destruction and will return possession of the same to TENANT without diminution or change of location.

In the event of damage or destruction of the Leased Premises, all rent shall abate from the date of such damage or destruction until LANDLORD has repaired or restored the improvements and has delivered the Leased Premises to TENANT in the manner and in the condition provided by this paragraph XI.

To the extent permissible under applicable insurance policies, LANDLORD and TENANT and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the Leased Premises, or covered by insurance in connection with property on or activities conducted on the Leased Premises, regardless of the cause of loss or damage.

**XII.**

**INDEMNITY.** TENANT agrees to hold and save LANDLORD harmless from any and all damages or claims for damages arising due to TENANT'S negligence, including the death of or injury to any person and any damage to property, in or about the Leased Premises during the term of this lease. LANDLORD agrees to hold TENANT harmless from all damages of every kind and nature, including the death of or injury to any person and any damage to property, that may be claimed or accrue by reason of any occurrence in or about the Leased Premises and arising from LANDLORD'S negligent act or omission or arising on or out of use of any common facilities. For such purpose the parties agree during the term hereof to maintain comprehensive public liability insurance (with limits of liability not less than \$300,000/\$500,000 for personal injury and death and \$100,000 for property damage) with reputable insurance companies approved by the other and to furnish each other with certificates of insurance properly executed by their respective insurance companies evidencing such fact, giving ten (10) days notice to the other in the event of cancellation or material alteration of such coverage.

**XIII.**

**UTILITIES.** LANDLORD shall install or cause to be installed public utility meters for the sole use of TENANT, and TENANT agrees to pay all public utility charges for heat, electricity, gas, water, sewer and any and all other utilities used by it in connection with the Leased Premises.

**XIV.**

**TAXES.** During the original term or any extension or renewals of this lease, LANDLORD shall pay and discharge all ad valorem, special assessments, or other taxes levied or assessed against the Leased Premises or any part thereof, provided, however, that TENANT agrees to pay its pro rata portion of any increase in ad valorem taxes assessed against the premises of which the Leased Premises are a part over and above the "Basic Ad Valorem Tax" as hereinafter defined. TENANT'S pro rata portion of any such increase of ad valorem taxes shall be that fractional portion of the increase which the total square footage of the Leased Premises bears to the total square footage of space in the entire premises. The term "Basic Ad Valorem Tax" as used in this paragraph is defined to mean the second full year's real property ad valorem taxes assessed against the entire premises following the completion of the improvements on the entire premises, or if the Leased Premises are an existing structure, following commencement of business by TENANT at the Leased Premises.

**XV.**

**HOLDING OVER.** Any holding over by TENANT at the expiration or termination of this lease shall not operate as a renewal of this lease, but during the period of such holding over TENANT shall be a tenant at the will of LANDLORD and shall pay the sum of thirty-five dollars (\$35.00) per day for each day TENANT is in occupancy of the Leased Premises.

**XVI.**

**RIGHT OF FIRST REFUSAL.** If LANDLORD shall at any time prior to the termination of the original or any renewal or extension term of this lease desire to dispose of the demised premises or any part thereof by sale, transfer or otherwise (including the merger of LANDLORD into, or consolidation with, any other corporation or the sale or transfer of all or substantially all of the assets of LANDLORD or the sale or transfer of controlling interest in the capital stock of LANDLORD, but not including any transfer to members of LANDLORD'S immediate family) it shall give TENANT prior to any such disposition written notice stating the name of the proposed purchaser and the proposed terms and conditions of such disposition and TENANT shall thereupon have the right, exercisable by written notice delivered to LANDLORD within ten (10) days of receipt of LANDLORD'S notice, to elect to purchase the Leased Premises at its option at the same price and no less favorable terms and conditions as the proposed sale or other transfer, which shall be set forth in LANDLORD'S notice. If TENANT shall elect not to exercise such option, LANDLORD shall have the right to consummate such disposition of the Leased Premises within one hundred (100) days after receipt by TENANT of LANDLORD'S notice, but only on the terms and conditions specified in such notice. Any disposition after such period or on different terms and conditions from those specified in such notice shall require additional prior notice to TENANT as provided herein. The failure of TENANT to elect to exercise any such option shall not constitute a waiver of its preferential right and option to purchase the Leased Premises prior to any subsequent disposition thereof or at the termination of the lease.

**XVII.**

**RIGHTS ON DEFAULT.**

(a) It is mutually agreed that in the event TENANT shall default in the payment of rent herein reserved when due, LANDLORD shall forward notice in writing of such default to TENANT; and failure of TENANT to cure such default within thirty (30) days after the date of receipt of such notice shall at the option of the LANDLORD work as a forfeiture of this lease.

(b) It is mutually agreed that if TENANT shall be in default in performing any of the terms or provisions of this lease other than the provision requiring the payment of rent, and if the LANDLORD shall give the TENANT notice in writing of such default and if the TENANT shall fail to cure such default within thirty (30) days after the date of receipt of such notice or if the default is of such a character as to require more than thirty (30) days, then if TENANT shall fail to use reasonable diligence in curing such default then, and in any such events, LANDLORD may cure such default for the account of and at the cost and expense of the TENANT and the sum so expended by LANDLORD shall be deemed to be additional rent and on demand shall be paid by TENANT on the day when rent shall next become due and payable. LANDLORD agrees that in no event shall any default other than nonpayment of rent herein reserved be the basis of a forfeiture of this lease or otherwise result in the eviction of TENANT or the termination of this lease.

(c) If TENANT shall default in payment of any installment of rent, such installment shall bear interest at the rate of nine percent (9%) per annum from maturity until actually paid. In like manner, all other obligations, benefits and monies which may become due to LANDLORD from TENANT under the terms hereof shall bear interest at the rate of nine percent (9%) per annum from the due date until paid.

**XVIII.**

**EMINENT DOMAIN.** If the whole of the Leased Premises, or such portion thereof (including the parking area and access thereto) as will make the Leased Premises unsuitable in the sole judgment of TENANT for the operation of a convenience grocery store, shall be taken for any

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to use or by any legally constituted authority, then in case of such events this lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between the LANDLORD and TENANT as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either LANDLORD or TENANT to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

If any part of the Leased Premises shall be so taken and this lease shall not terminate under the provisions of the preceding subparagraph, then the minimum rental shall be equitably apportioned according to the space so taken and LANDLORD shall, at its own cost and expense, restore the remaining portion of the Leased Premises to the extent necessary to render it reasonably suitable for the purposes for which it was leased, and shall make all repairs to the driveways, parking lot and the buildings on the premises to the extent necessary to constitute the building a complete architectural unit and to restore the Leased Premises as nearly as possible to their prior condition.

TENANT shall have the right to notice and to participate in all eminent domain proceedings, together with LANDLORD and any mortgagee. LANDLORD shall not settle any such eminent domain proceedings or sell the leased property or any part thereof under threat of such proceedings without the prior written consent of TENANT.

XIX.

**WAIVER.** No acceptance of rent by LANDLORD or delay in enforcing any obligation shall be construed as a waiver of any default then, theretofore, or thereafter existing in the performance of any other obligation undertaken by TENANT; provided, that any rental payments or other payment becoming due to LANDLORD pursuant to the provisions of this lease or any extension hereof which remain unpaid and for which no claim has been made in writing by LANDLORD to TENANT within one (1) year after the date such payment was due, shall be deemed and hereby is waived by LANDLORD. No forfeiture of this lease shall release TENANT from responsibility or liability to LANDLORD for rents theretofore due and unpaid, nor from the performance of any of said covenants, agreements, or stipulations herein by the TENANT undertaken to be kept and performed which is a liability at the time of said forfeiture.

XX.

**INSOLVENCY.** In the event of bankruptcy or insolvency on the part of TENANT, or in case of any receiver being appointed to take charge of the property, or any portion of the property of TENANT in or upon the premises hereby leased, then in such event LANDLORD may, at its option, declare this lease terminated and forfeited by TENANT; and LANDLORD shall be entitled in such event to immediate possession of such premises, and no receiver, trustee in bankruptcy or assignee for the benefit of creditors shall acquire in any such case any of the rights of TENANT hereunder; any lien, however, of LANDLORD upon the property of TENANT on and in said premises in any such event shall not cease, and the liability of TENANT for damages on account of any breach of any obligations to be performed by TENANT under the terms of this lease shall continue and remain in full force and effect.

XXI.

**NOTICE.** Whenever in the provisions of this lease notice is required to be given by either party herein, it shall be given in writing by depositing the same in the post office with postage paid in a sealed envelope and addressed to such other party and sent by certified or registered mail, or such notice may be delivered personally.

Notice to TENANT shall be given at:

P.O. Box 6462  
Birmingham, Alabama 35217

with a copy to UtoteM, P.O. Box 22794, Houston, Texas 77027, Attention: Manager, Real Estate Department; and notice to LANDLORD shall be given at:

Rt. 1 Box 306B  
Helena, Alabama 35080

XXII.

**ASSIGNMENT.**

(a) In the event of any change in or transfer of title of LANDLORD in or to the Leased Premises or any part thereof, whether voluntary or involuntary, or by the act of LANDLORD or by operation of law, TENANT shall be under no obligation to pay rents thereafter accruing until notified in writing of such change in title and being given satisfactory proof thereof, and that the withholding of such rents in the meantime shall not be deemed a default on the part of TENANT.

(b) LESSEE may assign this lease without LANDLORD'S consent to any business organization affiliated with TENANT or to any business organization with or into which TENANT may merge or consolidate (provided that the resulting business organization controls substantially all the TENANT'S store operations), or to any business organization which acquires substantially all of the TENANT'S store operations. With LANDLORD'S consent, which will not be unreasonably withheld, TENANT may assign this lease or may sublet all or any part of the Leased Premises, provided that such assignment or subletting in all respects is subject to and governed by the terms of this lease and TENANT shall remain liable for the full performance of all conditions of this lease and the payment of all rents hereunder, and further provided that no part of the Leased Premises shall be occupied or permitted to be occupied for any business or purpose deemed to be extra hazardous or illegal.

XXIII.

**BUSINESS INTERRUPTION.** Should TENANT be prevented from establishing or continuing the business of operating a convenience grocery store including the sale of beer and wines on the whole or any part of the Leased Premises, due to any law, ordinance or municipal authority or restriction on said premises and said restriction is not removed within ninety (90) days from the date thereof then and in any of such events TENANT may terminate this lease by giving LANDLORD thirty (30) days written notice of termination in which event TENANT shall be relieved of all obligations under this lease including all liability for rent from the date TENANT was prevented in any manner from continuing such business and all rental obligations shall be adjusted between the parties of such date. Nothing in this paragraph shall be construed to allow TENANT to terminate this lease for any cause exclusively within TENANT'S control or due to negligence of TENANT, its employees or contractors. Should TENANT in any manner attempt to operate under any such restriction, on an experimental basis, this shall not constitute an agreement by TENANT to waive this provision, and it is further understood that TENANT is not obligated to make immediate notice of any such restriction to LANDLORD, but may elect to invoke the terms of this provisions at any time justified.

XXIV.

**RIGHTS OF ASSIGNEE.** This lease and each and every condition and agreement herein contained shall be binding upon and inure to the benefit of the respective successors in interest and assigns of LANDLORD and TENANT.

XXV.

**LANDLORD TO JOIN IN APPLICATIONS.** LANDLORD agrees upon request by TENANT to execute or join in the execution of any application of petition to allow TENANT:

(i) to secure from any governmental authority having jurisdiction thereover any permits or licenses which may be necessary in connection with the construction of any new building or the making of any alterations, additions, changes and repairs; and

(ii) to commence and prosecute any appropriate proceedings to contest the amount or validity of any real property ad valorem tax upon the Leased Premises or the premises of which the Leased Premises are a part.

XXVI.

**SUBORDINATION OF LEASE.** TENANT agrees that this lease shall be subordinate to any mortgages or trust deeds presently or henceforth placed upon the Leased Premises, or any part thereof, and to any and all advances, past or future, made thereunder, and to the interest thereon and all renewals, replacements and extensions thereof, provided the mortgagee or beneficiary therein shall agree to recognize the rights of TENANT hereunder in the event of foreclosure if TENANT is not then in default. If any mortgagee or beneficiary elects to have this lease superior to its mortgage or trust deed by notice to TENANT, then this lease shall be deemed superior to the lien of any such mortgage or trust deed, whether this lease is dated or recorded before or after such mortgage or trust deed.

XXVII.

**INTEGRATION.** This lease, including any short form lease or notice of lease prepared for recording purposes, is and shall be considered to be the only agreement between the parties hereto. All negotiations and oral agreements acceptable to both parties are included herein. LANDLORD by the execution hereof acknowledges full performance to the date hereof of all covenants required to be performed by TENANT under all prior leases, contracts and agreements of every kind and nature whatsoever affecting the Leased Premises or the property of which the Leased Premises are a part. LANDLORD further releases TENANT from the performance of any and all obligations of every kind and nature whatsoever under said leases, contracts and agreements, all of which are hereby cancelled and terminated, except such obligations as are expressly included in this lease.

GENERAL PROVISIONS. LANDLORD agrees to pay all fees and commissions for bringing about the execution and delivery of this lease, and agrees to indemnify TENANT and save TENANT harmless of and from all and any claims for such fees and commissions.

It is further agreed between the parties hereto that the signing of this agreement by LANDLORD does not constitute a completed transaction until such time as this lease shall have been accepted by TENANT and executed by its proper officers.

For purposes of recording, the parties hereto have simultaneously with the execution and delivery of this lease executed and delivered a short form lease or notice of lease in which this lease may be referred to as the "Agreement".

The captions of this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

Wherever the word "building" or "improvements" is used in this lease it is intended that the same shall include any building, buildings, structure or structures which are now on or which may hereafter be erected on the Leased Premises or on premises of which the Leased Premises may be a part.

If more than one person or corporation is named as LANDLORD in this lease and executes the same as such, then and in such event, the word "LANDLORD" wherever used in this lease, is intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this lease shall be joint and several.

LANDLORD and TENANT agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof.

Should any part of this lease violate or be prohibited by any code, regulation, statute or law of any state, country or other political subdivision in which it is intended to operate, that portion shall be deemed in such subdivision to be void and of no effect, without affecting the remaining provisions of this lease.

#### Addenda

1. Notwithstanding the terms of section XI, TENANT agrees to pay its pro rata portion of any increase in the fire and extended insurance premium for the policy covering the premises of which the Leased Premises are a part over and above the premium during the first year of this lease.
2. Tenant agrees, and hereby consents, that Landlord may use the east wall of the Leased Premises as a party wall or common wall with another commercial building to be constructed on the east side of the Leased Premises, provided such use of such wall does not interfere with the use thereof by Tenant.
3. Notwithstanding the terms of Section VIII hereof, Landlord shall only be responsible for repairs to the improvements on the Leased Premises constructed, built or furnished by Landlord occasioned by defective materials or workmanship in the construction of such improvements.
4. Notwithstanding the terms of Section X, Tenant's signs shall be limited to one attached to the Leased Premises and one located in the parking area as shown by the plat plan and front elevation furnished to Tenant by Landlord.
5. The parties acknowledge that the sale of wine is not allowed on the Leased Premises and all references thereto in this lease shall be disregarded.
6. Notwithstanding any other provision of this lease, if Tenant accepts the Leased Premises and occupies them prior to May 1, 1979, Tenant shall pay the monthly rent (or a prorata portion thereof for any part of a month) provided for in this lease, but the lease term hereof shall not be changed by such occupancy prior to May 1, 1979.
7. The parties acknowledge that the Leased Premises will be constructed by Landlord without the services of an architect and that the Leased Premises are not located within a municipality; therefore, it will not be possible for the Landlord to furnish either of the certificates referred to in the last sentence of Section IV(a) of this lease. Notwithstanding such provision of Section IV(a), Landlord shall be deemed to have complied with Section IV(a) when Landlord shall certify to such compliance.

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## ADDENDA

ADDITIONAL RENT. On or before the 10th day of May, 19 80, TENANT shall furnish to LANDLORD a statement of the gross sales of all business operated by TENANT in the Leased Premises for the period from the commencement of this lease to and including the last day of February, 19 80; and then if in an amount equal to 3 % of such gross sales shall be more than the minimum rental for such period as set forth in paragraph V. of this lease, for such period, TENANT shall contemporaneously pay to LANDLORD an amount equal to the difference of such minimum rental and the amount equal to 3 % of such gross sales. Thereafter, on the 10th day of May of each year of the term of this lease, TENANT shall furnish to LANDLORD a statement of the gross sales of all businesses operated by TENANT in said premises for the 12 months ending on the last day of February of such year; and then, if an amount equal to 3 % of such gross sales shall be more than the minimum rental for such period as set forth in paragraph V of this lease, TENANT shall contemporaneously therewith pay to LANDLORD an amount equal to the difference in such minimum rental and the amount equal to 3 % of such gross sales. In like manner, within ten (10) days after the expiration of the final term of this lease, TENANT shall furnish to LANDLORD a statement of the gross sales of all businesses operated by TENANT in said premises for the period from the closing date of the last statement to the end of the term of the lease; and then, if an amount equal to 3 % of such gross sales shall be more than the minimum rental for such period required to be paid by paragraph V hereof, TENANT shall contemporaneously pay to LANDLORD an amount equal to the difference of such minimum rental and the amount equal to 3 % of the gross sales.

In computing its "gross Sales" for the purpose of this Addendum, TENANT shall take the total amount realized as the result of sales of merchandise (except sales of gasoline on or from the Leased Premises and income derived from the issuance of money orders and except sales of and payments received from all concessionaires, subtenants or licensees) made by it at the Leased Premises and deduct therefrom the following to the extent that the same are included in the computation of sales: all credits and refunds made to customers for merchandise returned or exchanged; all sums and credits received in settlement of claims for loss or damage to merchandise; and all taxes upon the receipt or purchases of merchandise by TENANT and all occupational sales taxes and other taxes upon or based upon the gross receipts of TENANT or upon the sale or sales price of merchandise and which must be paid by TENANT whether or not collected by TENANT from its customers and whether or not the same may be commonly known as a "sales tax". The taxes to which reference is hereinabove made may be deducted regardless of whether imposed under any existing or future orders, regulations, laws or ordinances.

LANDLORD or LANDLORD'S agents may inspect the TENANT'S records of sales made at the Leased Premises annually at TENANT'S area office at 5200 West Loop South, Houston, Tx. 77027, provided such inspection is made within sixty (60) days after the statement of gross sales is mailed or delivered by TENANT to LANDLORD and is limited to the period covered by such statement. TENANT makes no representation or warranty as to the sales which it expects to make in the Leased Premises.

EXECUTED IN QUADRUPPLICATE ORIGINALS THIS, the 22 day of December, A.D. 19 78.

By Denney Barrow  
Landlord DENNEY BARROW

ATTEST: \_\_\_\_\_

By B.J. Harris  
Landlord B.J. HARRIS

By \_\_\_\_\_  
Landlord

ATTEST: [Signature]  
Secretary

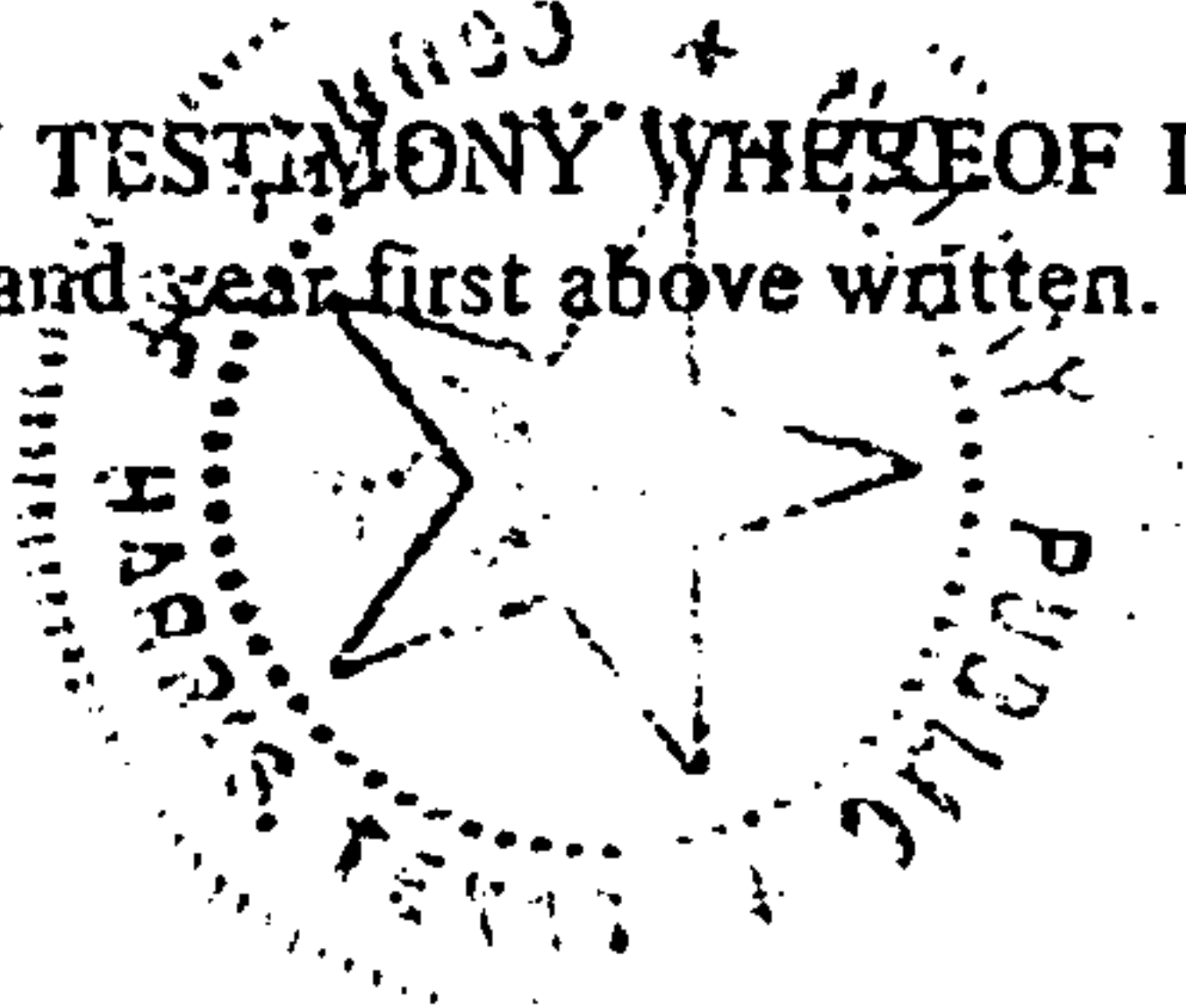
By [Signature]  
Tenant  
UtoteM of Alabama, Inc.  
LeRoy Melcher, Jr., Vice-President

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STATE OF TEXAS } SS.  
COUNTY OF HARRIS

On this 22<sup>ND</sup> day of DECEMBER, 19 78, before me appeared LeRoy Melcher, Jr., to me personally known, who, being by me duly sworn, did say that he is the Vice-President of UtoteM of Alabama, Inc., a corporation of the State of Alabama, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said LeRoy Melcher, Jr. acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.



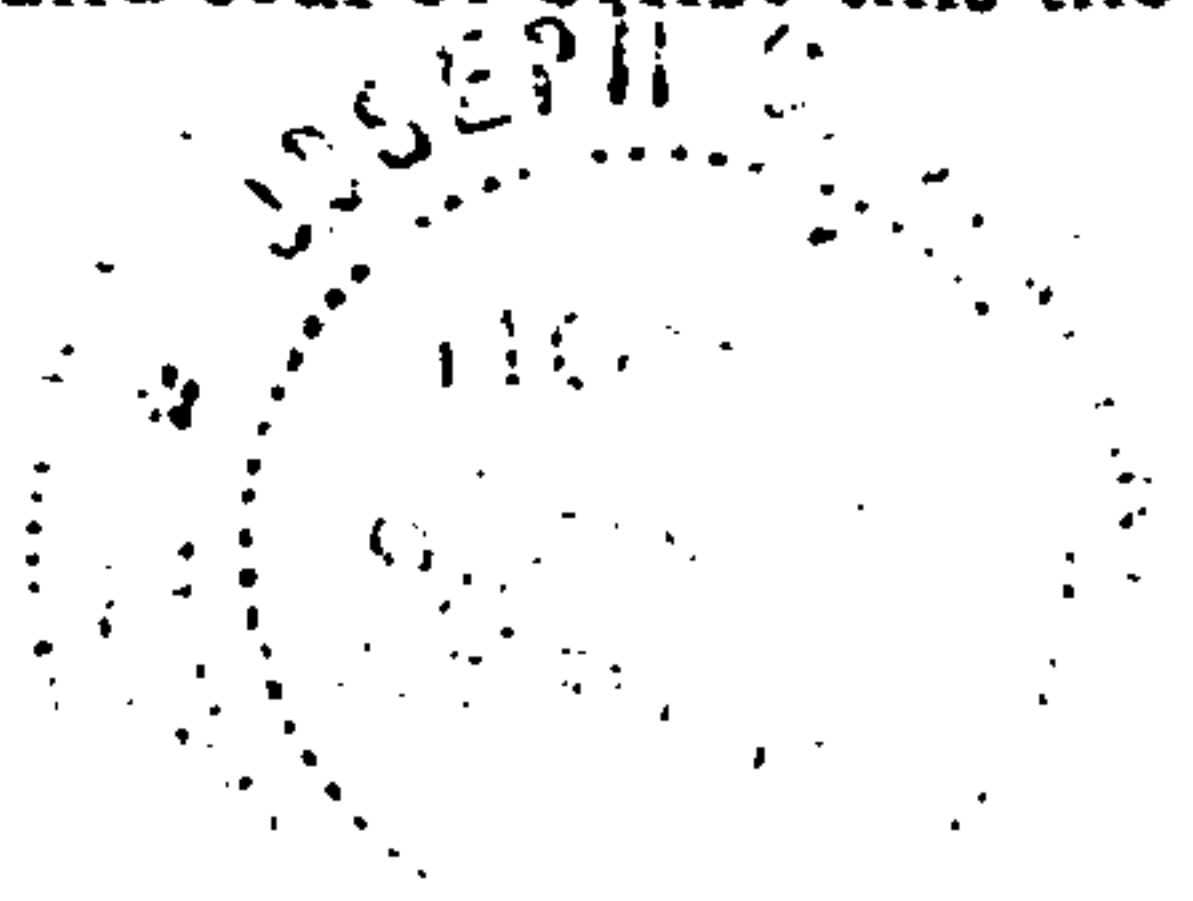
Charles Clifford Jeter  
Notary Public in and for Harris County,

STATE OF Alabama } SS.  
COUNTY OF Jefferson

BEFORE ME, the undersigned authority, a Notary Public in and for Jefferson County, on this day personally appeared Denney Barrow

known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument, and acknowledged to me that he (they) executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 20<sup>th</sup> day of December, A.D. 19 78.



Joseph A Stewart  
Notary Public in and for Jefferson County,

