

STATE OF ALABAMA)
COUNTY OF SHELBY)

3588

LEASE

THIS LEASE, made this 19th day of December, 1984, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation, first party (hereinafter called "Landlord"); and BRUNO'S, INC., an Alabama Corporation, second party, (hereinafter called "Tenant"); and TAYLOR & MATHIS V, a Georgia general partnership, third party, (hereinafter called "Agent");

W I T N E S S E T H:

That the Landlord, in consideration of the covenants of the Tenant, does hereby lease and demise unto said Tenant, and the Tenant hereby agrees to take and lease from the Landlord, for the term hereinafter specified, the following described premises:

PREMISES:

That certain store building, approximately 208 feet in width by 206 feet in depth, a motor room attached to the rear thereof of the approximate dimensions of 17 feet by 40 feet, a loading dock approximately 30 feet by 50 feet as shown on Exhibit "A" attached hereto, containing approximately 45,685 square feet measuring from center line to center line, (hereinafter collectively called the "premises," "demised premises" or the "leased premises"), which store building and related improvements are to be constructed by Landlord according to plans and specifications to be approved by the parties as herein provided, and shall be in the location and of the dimensions as outlined on the plot plan attached hereto, marked Exhibit "A" and by this reference made a part hereof. The demised premises are located in a shopping center to be known as Inverness Plaza,

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or such other name as Landlord may select, located in Shelby County, State of Alabama, the legal description of the Shopping Center being described in Exhibit "B" attached hereto and made a part hereof (the "Shopping Center").

TERM:

FOR THE TENANT TO HAVE AND TO HOLD from the date when Tenant opens said premises for the transaction of its business as hereinafter provided for an initial term beginning on the date when rent shall begin to accrue under this lease as hereinafter in Section 6 provided (hereinafter called the "Commencement Date") and ending on the date preceding the twentieth anniversary of the Commencement Date if the Commencement Date shall occur on the first day of a calendar month, and if not, such initial term shall end upon the last day of the calendar month in which occurs the twentieth anniversary of the Commencement Date. The parties agree to execute a supplemental agreement fixing the Commencement Date and termination date of the term hereof and other matters specified in Section 6 when the same shall have been determined as herein provided.

This lease is granted and accepted upon the foregoing and upon the following terms, covenants, conditions and stipulations:

1. USE:

(a) The demised premises shall be used for a retail food store commonly referred to as a supermarket, dealing primarily in, but not limited to foods and food products. Tenant shall not do or permit anything to be done in or about the premises, or the Shopping Center or bring or keep anything therein, which will in any way increase the rate of fire insurance upon the building wherein the premises are situated. Tenant shall promptly comply with all laws,

ordinances, orders and regulations affecting the premises and the Shopping Center, and the cleanliness, safety, occupation, and use of the same. No auction, fire or bankruptcy sales may be conducted in or on the premises without Landlord's consent. Tenant shall not permit any objectionable or unpleasant odors to emanate from the premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the premises or where the same can be seen or heard from outside the building; nor place any antenna, awning or other projection on the exterior of the premises; or take any other action which would constitute a nuisance or disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; or do anything which would tend to injure the reputation of the Shopping Center. Except for posters making civic, charitable and religious announcements and general merchandising and advertising signs other than an advertisement of specials or sales, no signs, window or door lettering, placards, decorations or advertising media of any type shall be erected, installed or displayed. No sales or displays of any kind shall be permitted outside the Store Building, including, but not limited to, vending machines, newsstands, or the like. Tenant will comply with all Rules and Regulations which Landlord may establish regarding the use of the Shopping Center.

(b) Tenant shall not perform any acts or carry on any practices which may injure the building of which the premises form a part or be a nuisance or menace to other tenants in the Shopping Center, and shall keep the premises and the walkways adjacent to the premises and any loading platform and service area and freight elevators allocated for the use of Tenant (whether or not such use be exclusive), clean, clear of merchandise, grocery carts, and supplies and free from rubbish and dirt at all times, and shall store

all trash and garbage within the premises and arrange for the regular pick-up of such trash and garbage at Tenant's expense. Tenant shall not burn any trash or garbage of any kind in or about the premises or Shopping Center. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall use its best efforts to cause all deliveries to be made at the service areas at the rear of the premises. Without limiting the generality of the foregoing, Tenant shall abide by the Rules and Regulations which shall be applicable to all tenants of the Shopping Center and which are attached hereto as Exhibit C.

(c) Tenant shall maintain all display windows in an attractive condition, and shall keep all display windows, exterior electric signs and exterior lighting under any canopy in front of the premises lighted from dusk until eleven p.m. (11:00 p.m.) every day, including Sundays and holidays.

(d) Tenant shall open for transaction of business in the premises under the name "Food World" or "Bruno's." Tenant shall not at any time leave the premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire premises the type of business for which the premises are leased. Tenant shall operate its business in an efficient, high-class and reputable manner so as to produce the maximum amount of sales from the premises, and shall, except during reasonable periods for repairing, cleaning and decorating, keep the premises open to the public for business with adequate personnel in attendance on all days and during all hours (including evenings) not less than the hours established by Landlord from time to time as store hours for the Shopping Center, and during any other hours when the Shopping Center generally is open to the public for business, except to the

extent Tenant may be prohibited from being open for business by applicable law, ordinance, or governmental regulation. The Landlord has established the initial store hours for the Shopping Center to be 8:00 a.m. to 10:00 p.m. Monday through Sunday, holidays for Thanksgiving, Christmas and Easter excepted.

2. EXCLUSIVE SUPER MARKET ETC.:

Landlord covenants and agrees that the Tenant shall have the exclusive right to operate a supermarket in the Shopping Center. Landlord further covenants and agrees that it will not directly or indirectly lease or rent any property located within the Shopping Center for occupancy as a supermarket, grocery store, meat, fish or vegetable market, unless leased to Tenant, nor will the Landlord permit any tenant or occupant of any such property to sublet in any manner, directly or indirectly, any part thereof to any person, firm or corporation engaged in any such business without written permission of the Tenant. Nothing in this Section 2 shall prevent Landlord from leasing space in the Shopping Center to tenants selling bakery products or operating restaurants or businesses selling prepared food for offsite consumption.

3. RENTAL:

(a) Minimum Guaranteed Rental. Tenant agrees to pay to Landlord as an annual minimum guaranteed rental for the demised premises during the term of this lease and any extensions thereof the sum of Two Hundred Twenty Eight Thousand Four Hundred Twenty Five ~~Thousand~~ Dollars (\$228,425). The ANNUAL minimum guaranteed rental shall be paid in twelve (12) equal monthly installments of Nineteen Thousand Thirty Five and 42/100 Dollars (\$19,035.42) per month, which installments shall be due and payable in advance on the first day of each

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and every calendar month of the lease term, and any extensions thereof. If the Commencement Date occurs on a date other than the first day of a calendar month, the first monthly installment of minimum guaranteed rental shall be increased to include any minimum guaranteed rental for the first fractional month.

(b) In addition to the minimum guaranteed rental, the Tenant agrees to pay to the Landlord a percentage rental equal to the amount, if any, by which one percent (1%) of Tenant's gross sales made from the demised premises in each fiscal year of Tenant (which for purposes of this lease shall mean a consecutive twelve-month period ending on each June 30), during the term of the lease and any extensions thereof exceeds the lesser of (i) the minimum guaranteed rental payable during such fiscal year, or (ii) the product of Five Dollars (\$5.00) multiplied by the gross area of the demised premises less any area subleased during said fiscal year pursuant to a sublease permitted by Section 27.

Any percentage rental which may become due pursuant to this Section 3(b) shall be payable by the Tenant quarterly as follows: On or before the tenth day of each fiscal quarter (which for purposes of this lease shall mean each three-month period ending on September 30, December 31, March 31 and June 30), during the term of this lease, Tenant shall pay to Landlord, after deducting therefrom the minimum guaranteed rental paid for the preceding fiscal quarter, a sum of money equal to the product of the percentage rental rate specified multiplied by the total gross sales made in or from the premises during such fiscal quarter. In the event the total of the quarterly payments of the percentage rental for any fiscal year is not equal to the annual percentage rental computed on the amount of gross sales for such fiscal year in accordance with the specified rate, then Tenant shall pay to Landlord any deficiency or Landlord shall refund to Tenant any overpayment, as the case may be,

within sixty (60) days after the end of such fiscal year. In no event shall the rent to be paid by Tenant and retained by Landlord for any fiscal year be less than the annual minimum guaranteed rental herein specified. Both guaranteed rental and percentage rental for fractional years and fractional months and quarters occurring at the beginning and end of the term, or any extension thereof, shall be prorated on the basis of the fiscal quarterly rental.

(c) Gross Sales:

The term "gross sales" as used herein shall mean the aggregate gross sales price of all merchandise sold, and gross charges for all services rendered in or from the demised premises, both for cash and on credit; provided, however, such term shall not include (1) any sales tax, gross receipts tax, or similar tax by whatever name called, the amount of which is determined by the amount of sales made, and which Tenant may be required to collect the account for to any governmental agency; (2) transfers of merchandise made by the Tenant from the demised premises to any other stores or warehouses of Tenant or its affiliated companies where such exchanges are made solely for the convenient operation of the business of the Tenant and not for the purpose of consummating a sale which has heretofore been made in or from the premises and/or for the purpose of depriving Landlord from a sale; (3) credits or refunds made to customers for merchandise returned or exchanged; (4) accommodation sales, such as sales of postage stamps, government bonds or savings stamps or similar items; (5) returns of merchandise to suppliers or manufacturers; (6) net amount of discounts allowed to any customer, including discounts resulting from the issuance to customers of trading stamps, receipts or coupons for exchange of merchandise or other things of value; (7) merchandise or other things of value issued in redemption of trading stamps

or as a premium in connection with any sales promotion program; (8) receipts or commissions from public pay telephones; (9) sales, receipts, earnings, commissions, compensation or charges of any kind for services or activities of any nature rendered or performed by any subtenant under a sublease permitted by Section 27; (10) sales of fixtures, machinery or equipment after use thereof in the conduct of Tenant's business in the leased premises; (11) all sales at discount to Tenant's employees; (12) postage machine sales; and (13) all receipts from the sales of salvage cartons, meat scraps, suet and other salvage merchandise. Tenant makes no representation or warranty as to the amount of sales it expects to make in the demised premises.

(d) Record of Sales:

The Tenant shall keep complete and accurate books and records of its gross sales made from the demised premises, which books and records shall be kept by the Tenant at the office address hereinafter designated for notices. Within 10 days from the end of each fiscal quarter, or at the end of the leasehold, if it sooner occurs, and at such time as the percentage rental shall be payable by Tenant as hereinabove provided, the Tenant shall submit to the Landlord a written certified statement of the gross sales made by Tenant from the demised premises during the preceding fiscal quarter. Such statement of sales shall be in form reasonably satisfactory to Landlord and treated as confidential by the Landlord and shall be conclusive unless the Landlord, within ninety (90) days after receipt thereof, shall cause applicable records to be audited in a manner not to unreasonably interfere with Tenant's business by a certified public accountant employed and paid by the Landlord. If such audit shall disclose a liability for rent to the extent of three percent (3%) or more in excess of the rentals theretofore computed and paid

by Tenant for such period, Tenant shall promptly pay Landlord the cost of such audit in addition to the deficiency, which deficiency shall be payable in any event.

Landlord may disclose Tenant's sales statements to any present or future mortgagee or prospective purchase of the demised premises provided any such mortgagee or prospective purchaser shall treat said sales statements as confidential.

(e) Confidentiality:

Any information obtained by Landlord pursuant to the provisions of this paragraph shall be treated as confidential, except in any litigation or arbitration proceedings between the parties, and except further that Landlord may divulge such information to a prospective buyer or encumbrancer of the premises.

(f) Late Charge:

It is understood that the minimum guaranteed rental is payable on or before the 1st day of the month and percentage rental, if any, is payable on or before the 10th day of each calendar quarter, without offset or deduction of any nature. In the event any rental is not received within ten (10) days after its due date, the amount thus due shall bear interest at the publicly announced Base Rate of SouthTrust Bank of Alabama, N.A., as such rate may from time to time change, such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the aforesaid due date and terminating with the date on which Tenant makes its full payment of all amounts owing to Landlord at the time of said payment.

4. CONSTRUCTION:

The Landlord, at its sole cost and expense, shall construct the Shopping Center, substantially as shown on

Exhibit "A", consisting of all the buildings shown thereon, together with all sidewalks, streets, entranceways, malls, parking areas, service drives, driveways and related improvements, said improvements (excluding buildings) being sometimes hereinafter referred to as "Common Areas". The Landlord, at its sole cost and expense, shall grade and surface with top quality materials all paved portions of the Common Areas (including parking area), and shall provide proper and adequate water drainage and lighting system and operations therefor and shall operate and maintain the same in good repair and useable condition for use by the patrons of the Shopping Center and the tenants and their employees during the term of this lease and any extensions thereof.

Notwithstanding the foregoing, it is agreed that Landlord shall be obligated to construct only Tenant's store building (hereinafter called the "Store Building") together with the Common Areas (including parking area) in the locations and of the dimensions shown on Exhibit "A", and that Landlord does not obligate itself to construct additional buildings or improvements in the Shopping Center. However, Landlord reserves the right to construct additional buildings substantially in accordance with Exhibit "A". Despite such additional buildings, Landlord agrees to maintain within the Shopping Center at least the ratio of automobile parking area to gross building area (including additional floor levels) as hereinafter provided. Landlord agrees that Tenant shall have use and enjoyment of the demised premises and the Common Areas during any additional construction without unreasonable interruption or interference therewith by reason of or on account of such construction work. Landlord agrees that it shall not construct any buildings within the areas cross-hatched in red on the plot plan attached hereto as Exhibit A.

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Concurrently with the above construction, Landlord agrees at its sole cost and expense, to construct the Store Building for occupancy by Tenant in accordance with the plans and specifications which have been approved by both Landlord and Tenant and which shall constitute a part of this lease. Except where such plans and specifications reflect that the work is to be done by the Tenant, said plans and specifications provide for a completed Store Building and include, but without limitation, the following: Air conditioning and heating equipment including insulated duct work with registers and grilles and roof or ceiling structural system adequately designed to support said air conditioning and heating equipment, plumbing and plumbing fixtures, drains, interior walls and partitions, electrical wiring, lighting fixtures, terrazzo flooring in the sales area and hardened concrete in warehouse and storage areas (color at Tenant's option), connection of air conditioning and heating equipment and connections to all utilities. Tenant shall provide and install its own trade fixtures. All equipment and fixtures provided by Tenant shall remain the property of Tenant and may be removed by Tenant from the demised premises at any time provided that Tenant shall repair any damage caused by such removal. Tenant shall furnish and install, at Tenant's expense, all refrigerating lines and equipment, but Landlord will pay the cost of all electrical and plumbing connections thereto. Landlord agrees not to construct any buildings of more than two stories on any of the parcels identified on Exhibit A as Parcels A, B, C, or D.

5. COMPLETION DATE:

Landlord covenants and agrees that construction of the Store Building and Common Areas shall begin not later than December 31, 1984, and Landlord shall use its best

efforts to cause the completion of the Store Building on or before July 1, 1985, but construction shall be completed not later than August 1, 1985 (subject to the proviso), and if the same shall not be begun or completed by the respective dates, the Tenant, at its option, may, in either of such events, cancel and terminate this lease or may extend the Landlord additional time for the beginning or completion of construction; provided, however, that if, after the beginning of construction, the Landlord's failure to complete said improvements within the stipulated time shall be due to acts of God, strikes, riots, fire, flood, war, delay of carriers, material shortages, embargoes or inclement weather, or other similar happenings which are beyond the control of Landlord, and provided, further, the improvements shall be completed with all due diligence commensurate with such delay and in all events not later than February 1, 1986, said option to terminate shall not arise.

Landlord shall give at least forty-five (45) days' advance written notice to Tenant of the date the Store Building will be completed and ready for Tenant's inspection, occupancy and use. Upon receiving said forty-five (45) day notice, Tenant shall be permitted to enter the Store Building for the purpose of storing and installing fixtures, equipment and merchandise, and preparing for opening of Tenant's retail store operation therein. The parties hereto agree that such entry by Tenant does not constitute acceptance of the premises as being completed or as a waiver of any of the provisions hereof; that Tenant shall not interfere with completion of construction work; and that Landlord shall have no liability for damage or loss to Tenant's property placed in the Store Building except for Landlord's negligence or willful act or default hereunder. The cost of all utilities incurred by Landlord during the time Tenant is in possession of the Store Building for the purposes set forth herein shall be divided equally between Landlord and Tenant.

6. COMMENCEMENT DATE:

The Tenant shall open its store for business within thirty (30) days following performance of the following:

(a) The Store Building and other improvements constructed for Tenant on the demised premises, as shown on Exhibit "A" attached hereto, shall have been delivered to Tenant completed substantially in accordance with the plans and specifications.

(b) Construction of all of the Common Areas (including parking area hereinafter specifically required) shall have been completed substantially as shown on Exhibit "A".

In the event that both (a) and (b) above not have been performed on or prior to February 1, 1986, the Tenant or Landlord may cancel and terminate this lease.

Rent shall begin to accrue hereunder upon the date the Tenant opens its store for business, or upon the expiration of thirty (30) days following the performance of both (a) and (b) above, whichever date shall sooner occur; provided, however, notwithstanding any provision in this lease contained, in the event the expiration of thirty (30) days following the performance of all of the above requirements shall occur on any date during the months of December or January, rent shall not begin to accrue until the next occurring February 1 unless Tenant shall elect to open for business prior to such next occurring February 1, in which event rent shall begin to accrue on the date that Tenant shall elect to open for business. No acceptance of possession of the demised premises, opening for business by Tenant nor payment of rent under this lease shall constitute acceptance by Tenant of defective work or materials or of work not completed in accordance with plans and specifications. At such time as Tenant goes into possession of the

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demised premises a "punch list" of defective work or materials or of work not completed in accordance with the plans and specifications shall be submitted to Landlord for approval and the parties shall acknowledge the work remaining to be completed and the defective work or materials outlined by Tenant. At such time the parties shall execute a supplement to this Lease which supplement shall provide that the Tenant has accepted the premises subject only to the matters set forth in the punch list set forth above; fixing the Commencement Date and Termination Date of the term; establishing the square footage; and the amount of the guaranteed minimum rent.

7. PARKING AND COMMON AREAS:

Landlord hereby grants to Tenant, Tenant's employees, agents, suppliers, customers and invitees, a non-exclusive right at all times to use, free of charge, during the term of this lease, or any extensions thereof, all the Common Areas, which areas are acknowledged to be for use by such persons, along with others similarly entitled, for parking and for ingress and egress between the demised premises and all other portions of the Shopping Center and the adjoining streets, alleys and sidewalks.

Landlord shall provide and maintain a surfaced parking area substantially as shown on Exhibit "A", and of sufficient area to provide:

(a) a minimum ratio of at least five (5) standard-sized automobile parking spaces to each one thousand (1,000) square foot of gross leaseable building area in the Shopping Center, standard size parking spaces to conform to regulations of Shelby County, Alabama, and

(b) facilities for convenient parking of at least three hundred (300) automobiles, and in the event the parking area furnished should at any time be reduced by twenty-five

percent (25%) or more for a period in excess of thirty (30) days during repairs, then the Tenant at its option shall have the right to cancel or terminate the lease; provided, however, that the Tenant may not terminate and cancel this Lease should Landlord make available other parking areas reasonably accessible to the leased premises as a substitute for the area so taken. All of the Common Areas (including parking areas) shall be adequately lighted by Landlord at its expense (subject to the provisions of paragraph 15) during customary shopping hours that other Food World stores operated by Tenant in Shelby County are open for business, including the furnishing of light standards, light bulbs, fixtures and equipment and electrical power consumed in connection with such operation; and Landlord further agrees, at its own cost and expense, to paint and stripe the parking areas from time to time as reasonably required and to sweep and keep the same free of all rubbish and debris and provide adequate policing of same, and Landlord further agrees that no signboards or other construction shall be erected in any of the Common Areas (including the parking area) shown on Exhibit "A" or so as to obstruct the view of the demised premises from the adjoining public streets, provided, however, Landlord shall be permitted, but not required to erect pylon signs in the approximate locations shown on Exhibit "A".

Landlord may temporarily close any part of the Common Area for such period of time as may be necessary to make repairs or alterations or during construction of the remainder of the Shopping Center or to prevent the public from obtaining any prescriptive rights.

Subject to the provisions of paragraph four of this lease, Landlord reserves the right to change from time to time the dimensions and locations of the Common Area, as well as the dimensions, identity and type of buildings in the Shopping Center. Tenant, and its employees and customers,

shall have the non-exclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants to the Shopping Center, and other persons permitted by Landlord to use the same, subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe, including the designation of specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles owned by Tenant, its employees, subtenants, licensees and concessionaires shall be ^{PARKED} ~~parked~~. If required by Landlord, Tenant shall furnish to Landlord a complete list of the license numbers of all automobiles operated by Tenant, its employees, subtenants, licensees or concessionaires and Landlord may designate areas of the Shopping Center for employee parking. Tenant shall not solicit business within the Common Area or take any action which would interfere with the rights of other persons to use the Common Area.

8. SERVICE AREA:

Landlord further agrees to provide for the exclusive use of the Tenant at its service entrances such loading areas as are shown on the approved plans and specifications and further agrees that Landlord shall not interfere with Tenant having 24-hour a day facilities for ingress and egress to the rear of the demised premises and the exclusive right to such space as may be reasonably needed by Tenant for loading and unloading merchandise for its store into and from trucks and trailers at such service entrances.

9. UTILITIES:

Landlord covenants and agrees that the demised premises shall be properly serviced with electricity, telephone, water, sewer and other utilities (other than gas) sufficient to meet Tenant's requirements as of the commence-

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ment of the lease term. Tenant shall pay all charges for utility services furnished to the demised premises during the lease term. Landlord shall not be liable for any interruption whatsoever in utility services, except for Landlord's negligence.

10. TENANT'S REPAIRS:

Upon completion of construction by Landlord and acceptance of the demised premises by Tenant, Tenant agrees to keep the interior of the demised premises in good condition and repair, excepting structural repairs and all repairs which are the responsibilities of the Landlord or which are made necessary by reason of fire and other unavoidable casualties covered by Landlord's fire and extended coverage insurance, and excepting reasonable wear and tear.

Within the repair responsibilities of Tenant shall be included: floor surfacing; plumbing and wiring; automatic doors; heating and air-conditioning equipment, machinery, duct work and grilles; and windows and plate glass; repair of any damage to loading docks and service doors, etc. except such damage caused by faulty construction or settling of the building or covered by Landlord's fire and extended coverage insurance which shall be the responsibility of Landlord. Landlord hereby agrees to transfer to Tenant all warranties Landlord may have on any of the fixtures and equipment which are to be maintained by Tenant.

11. LANDLORD'S REPAIRS:

The Landlord shall, at its cost and expense, keep and maintain the Common Areas (including parking area) in good condition and repair, and shall maintain the exterior of Tenant's Store Building, including the roof, gutter, downspouts, exterior painting, masonry walls, and foundation and structural members, of the Store Building in good

condition and repair, and shall make any and all structural repairs to both the exterior and interior of said premises. If any portion of the common areas (including parking area) or any portion of the Store Building, which is the responsibility of the Landlord, shall at any time be in need of repair, Landlord will repair same forthwith upon receipt of written notice from Tenant to do so, except that the Landlord shall not be obligated to make or pay for any repairs to Tenant's Store Building rendered necessary by the fault, act or negligence of the Tenant, or any of its servants, agents, or employees, except in the case of damage by fire or the elements, or other casualty covered by Landlord's fire and extended coverage insurance.

Notwithstanding the provisions of this lease, Landlord shall not be responsible to Tenant for damages resulting from Landlord's failure to make repairs to Tenant's Store Building only unless Landlord shall have received written notice of the requirements for repair and shall have failed to act with reasonable promptness to remedy the conditions described in said notice; provided, however, this condition shall be inapplicable to Landlord's Common Areas and parking area repair responsibilities above stipulated; and provided further, this condition shall not in any way abrogate Tenant's right to make emergency repairs as hereinbelow permitted.

If in order to protect the Tenant's property in the Store Building it shall be necessary to make emergency repairs to any portion thereof which is the responsibility of the Landlord to repair, or if the Landlord after receipt of notice as above provided fails or neglects to make with all due diligence such other repairs to the Store Building or Common Areas (including parking area) which are the responsibility of the Landlord, the Tenant shall have the right to make such repairs and to deduct from the rental

installments then due or thereafter to become due such sums as may be necessary to reimburse the Tenant for the money expended or expense incurred by it in making such repairs. Landlord further covenants that the Store Building will be so constructed and maintained at all times so as structurally (exclusive of fixtures, equipment, floor coverings, wall coverings and finished ceilings) to comply with and conform to the requirements prescribed by any and all ordinances, statutes, rules or regulations of Shelby County, Alabama relating to public health and sanitation or safety, and that Landlord will promptly make any changes or alterations in the premises which may become necessary in order that said premises may conform to such ordinances, statutes, rules or regulations.

12. SIGNS:

Tenant may place, erect and maintain on the building to be occupied by Tenant, one sign selected by Tenant, consistent with building signs presently existing in other locations in Alabama in which Tenant is operating and to be approved by Landlord, which such sign shall remain the property of Tenant and may be removed at any time during the term of this lease or any extension thereof, provided Tenant shall repair or reimburse Landlord for the cost of any damage to the demised premises resulting from the installation or removal of such signs. If Landlord erects a pylon sign, Tenant shall have the right to attach a sign thereto, which sign shall be subject to Landlord's approval, such approval to not be unreasonably withheld.

13. FIXTURES AND INTERIOR ALTERATIONS:

The Tenant, at its own expense, and without approval of Landlord, may from time to time during the term of this lease make any interior non-structural alterations,

additions and improvements in and to the demised premises which it may deem necessary or desirable and which do not adversely affect the structural integrity thereof; but it shall make them in a good workmanlike manner and in accordance with all valid requirements of municipal or other governmental authorities and the cost thereof shall be paid by Tenant so that the premises shall be free of liens for labor and materials. Tenant shall make no structural or exterior alteration without Landlord's prior written consent. All permanent structural improvements shall belong to the Landlord and become a part of the premises upon termination or expiration of this lease.

Tenant may construct and build or install in said premises any and all racks, counters, shelves and other fixtures and equipment of every kind and nature as may be necessary or desirable in the Tenant's business, which racks, counters, shelves and other fixtures and equipment shall at all times be and remain the property of the Tenant; and Tenant shall have the right to remove all or any part of the same from said premises at any time Tenant is not in default hereunder; provided, Tenant shall repair or reimburse Landlord for the cost of repairing any damage to said premises resulting from the installation or removal of such items.

14. INDEMNIFICATIONS:

Except for the acts, negligence or misconduct of Landlord, Tenant agrees to indemnify and save harmless the Landlord from any claim or loss by reason of an accident or damage to any person or property happening in, on or about the demised premises; and Tenant further agrees to carry, at its expense, public liability insurance coverage in a company qualified to transact business in the state in which the demised premises are located; stipulating limits of

liability of not less than \$200,000.00 for an accident affecting any one person; not less than \$500,000.00 for an accident affecting more than one person; \$50,000.00 property damage; and together with an umbrella liability policy in the amount of not less than Five Million Dollars (\$5,000,000). Certificate of such coverage from the insurer providing thirty (30) days' notice to Tenant prior to cancellation or termination shall be furnished to Landlord.

Likewise, except for the acts, negligence or misconduct of Tenant, Landlord shall indemnify and save harmless the Tenant from any claim or loss by reason of an accident or damage to any person or property happening on or about the Common Areas (including parking area) of the Shopping Center; and Landlord further agrees to carry, at its expense, public liability insurance coverage on the Common Areas (including parking area) of the Shopping Center, with a contractual liability endorsement on the policy in a company qualified to transact business in the state in which the demised premises are located, stipulating limits of liability of not less than \$200,000.00 for an accident affecting any one person; not less than \$500,000.00 for an accident affecting more than one person; and \$50,000.00 property damage. Certificate of such coverage from the insurer providing thirty (30) days' notice prior to cancellation or termination shall be furnished to Tenant.

15. PRO RATA COMMON AREA MAINTENANCE CHARGE:

As additional rental, and as reimbursement for Tenant's pro rata share of Landlord's cost and expense in maintaining the Common Areas pursuant to the provisions of Section 7 hereinabove, Tenant agrees to pay to Landlord during each lease year, Tenant's pro rata share of the amount of Landlord's actual cost and expense in maintaining the Common Areas; provided, however, in no event shall such

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additional rental to be paid by Tenant exceed the sum of Twenty-One Thousand Dollars (\$21,000.00) per annum during the first Lease Year. Thereafter such charge may increase by an amount equal to the increase annually in the Consumer Price Index from the first such Lease Year but, in any event, not in excess of 3% in any one year. This adjustment of Common Area maintenance charge shall be made at the end of each and every Lease Year during the term of this lease in the manner provided herein and shall remain in effect until the next such annual adjustment is made.

"Consumer Price Index," as used herein, shall be the "Consumer Price Index for All Urban Consumers, U. S. City Average, All Items (1967=100)" issued by the U. S. Bureau of Labor Statistics. If the Consumer Price Index published by the U. S. Bureau of Labor Statistics is discontinued, then the Consumer Price Index published by the U. S. Department of Commerce shall be used (with proper adjustment); and if the U. S. Department of Commerce Index is discontinued, then Landlord and Tenant shall, in good faith, agree on a suitable substitute. "Lease Year," as used herein, shall mean each and every twelve-month period during the term of this lease. The first such twelve-month period shall commence on the 1st day of August, 1985, and end on the 31st day of July, 1986.

Tenant's pro rata share shall be the ratio which the total square foot floor area of Tenant's Store Building bears to the total square foot floor area of all Store Buildings then existing in the Shopping Center. Such additional rent shall be payable within thirty (30) days from receipt from Landlord of a statement covering Tenant's pro rata share of such expense. Landlord shall submit to Tenant such information concerning Landlord's actual cost and expense in maintaining the Common Areas as Tenant may reasonably request.

16. CLEANLINESS:

Tenant shall at all times keep the interior of the Store Building in a reasonably neat and orderly condition and shall keep the entryways and delivery areas adjoining the building reasonably clean and free from rubbish and dirt. Tenant will not make or suffer any waste of the premises or permit anything to be done in or upon the demised premises creating a nuisance thereon, and Tenant further agrees to permit the Landlord or its agent at all reasonable times to enter upon the premises for making repairs and for examining or showing the same to prospective purchasers. Tenant shall comply with all Rules and Regulations regarding the Shopping Center as Landlord may establish.

17. FIRE:

In the event that the leased premises are partially damaged or totally destroyed by fire, casualty or other disaster, the term of this lease shall not be affected thereby except as hereinafter provided. In the event that the building on the leased premises is damaged or destroyed by fire, casualty or other disaster, Landlord shall promptly cause the same to be restored to its prior existing condition; provided, however, Landlord shall have whatever time is reasonably necessary to adjust the loss with the insurance companies insuring the leased premises at the time of the happening of the fire or other casualty, and due allowance shall be made for delay occasioned by strikes, walkouts and conditions beyond the control of Landlord. If the loss is one not covered by Landlord's insurance or would take over six months to repair or restore, Landlord, at its option, may elect to terminate and cancel this lease, in which event this lease shall upon written notice from Landlord to Tenant, be terminated and cancelled and neither party shall thereafter have any further obligation with respect to the other.

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In the event Landlord fails to completely restore and rebuild same within six (6) months after such fire, casualty or disaster, then and in that event Tenant may, at its option, elect to terminate and cancel this lease, in which event this lease shall, upon written notice from Tenant to Landlord, be terminated and cancelled and neither party shall thereafter have any further obligation with respect to the other. Should the leased premises or a portion thereof be rendered untenable by reason of damage or destruction thereof by fire, casualty or other disaster during the term of this lease, as provided in this paragraph, rent shall abate in proportion to the area of the leased premises rendered untenable from the date of the happening of the fire or other casualty or disaster up to the date of the restoration of the premises; provided, however, no rent shall accrue for any portion of the premises unless Tenant is able to conduct its usual business in that portion of the premises which remains tenantable. If at the date of the happening of the fire, casualty or other disaster Tenant shall have paid any rent for a period beyond such date, Tenant shall be entitled to a proportionate refund.

If one or more of the building in the premises other than the Store Building are damaged or destroyed by fire or other casualty, Landlord shall either restore and repair such damage or destruction or shall remove all unsightly debris arising out of such loss.

If at any time during the term of this lease or any extensions thereof any of the buildings in the Shopping Center, exclusive of Tenant's Store Buildings, are damaged by fire or other casualty covered by Landlord's insurance, Landlord shall immediately commence and diligently prosecute to completion repair of all such damage and shall restore said improvements to their condition prior to such damage; provided, however, that Landlord shall not be required to

repair or restore its leaseable areas which are not occupied prior to such damage, or will not be occupied or will not be reoccupied if the same be restored.

Tenant agrees, upon notice from Landlord, to remove such fixtures and other property from the leased premises as shall be required by Landlord for such restoration work and agrees to permit Landlord, its agents, servants, employees and contractors to enter upon the leased premises and remain thereon without molestation for the purpose of restoring the leased premises. Should Tenant have paid any rent upon the leased premises beyond the date of termination, as in this paragraph provided, Tenant shall be entitled to a proportionate refund.

If Tenant desires to insure any merchandise or other property located within the demised premises, it shall do so at Tenant's expense; and Tenant expressly waives any and all claims against Landlord for loss or damage to any such merchandise or other property, whether or not covered by Tenant's insurance, regardless of the cause of such damage, including, without limitation, damage resulting from negligence of Landlord, its agents, servants or employees; provided that Tenant shall cause the insurance of such merchandise and property to contain a waiver of subrogation clause by which the insurance companies waive all right of recovery from Landlord, its agents, servants or employees.

Landlord agrees to carry fire and extended coverage insurance on Tenant's Store Building and all other buildings within the Shopping Center in companies selected by Landlord, including Landlord's subsidiaries, in the amount not less than eighty percent (80%) of the full insurance value thereof, above foundation walls, with Landlord's customary deductibles, and hereby expressly waives any and all claims against the Tenant for loss or damage due to fire, explosion, windstorm, or other

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casualty covered by such insurance, regardless of the cause of such damage, including, without limitation, damage resulting from the negligence of the Tenant, its agents, servants or employees; provided, that the insurance carried by Landlord on its building occupied by Tenant shall contain a waiver of subrogation clause waiving the right of recovery by the insurance company or companies from Tenant, its agents, servants and employees.

18. QUIET ENJOYMENT:

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The Landlord covenants, warrants and represents that upon commencement of the lease term, the Shopping Center, including the demised premises, will be free and clear of all liens and encumbrances superior to the leasehold hereby created, except for current taxes, easements of record and except for any existing mortgage, in connection with which Landlord is to provide Tenant with a Non-Disturbance and Attornment Agreement prior to the commencement of the lease term (providing, in substance, that so long as Tenant shall faithfully discharge the obligations on its part to be kept and performed under the terms of this lease, its tenancy shall not be disturbed, nor shall this lease be affected by any default under such mortgage; that in the event of the foreclosure or enforcement of such mortgage, the rights of the Tenant hereunder shall expressly survive, and that this lease shall in all respects continue in full force and effect provided that Tenant fully performs all of its obligations under the lease; and that in the event of foreclosure or enforcement of such mortgage, Tenant will attorn to and recognize as its landlord the owner of the said mortgage or the purchaser of the leased premises at any foreclosure sale conducted in connection with such mortgage). Landlord further covenants, warrants and represents that the Landlord has full right and power to execute and perform this lease

and to grant the estate demised herein; and that the Tenant on paying the rent herein reserved and performing this lease and the covenants and agreements of same, shall peaceably and quietly have, hold and enjoy the demised premises, and all rights, easements, appurtenances and privileges belonging or in anywise appertaining thereto, during the full term of this lease and any extensions thereof.

The Landlord represents the non-existence of any zoning or other restriction preventing or restricting use of the demised premises as permitted in Paragraph 1 hereof or use of Common Areas for parking purposes; and should such zoning or other restriction be in effect or adopted at any time during the term of this lease, preventing Tenant from conducting its business as permitted herein or using the Common Areas (including parking area) in conjunction therewith, the Tenant at its option may terminate this lease and shall stand released of and from all further liability hereunder.

19. TAXES.

(a) Taxes and Assessments. In addition to rentals and common area maintenance charges, Tenant shall pay or cause to be paid as additional rent, in the same manner as the annual rent, before any fine, penalty, interest, or cost may be added thereto for nonpayment thereof, all taxes, assessments (including, but not limited to, all assessments for public improvement), water and sewer rents, rates and charges for public utilities, including fees to the North Shelby County Fire and Emergency Medical District, excises, levies and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time during the term of this Lease may have been or may be assessed, levied, confirmed, imposed upon or become due or payable out of or in respect of or become a lien on, the demised premises or any part or

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appurtenance thereof, the rent or income received by Tenant from subtenants or on the right or privilege of leasing real estate or collecting rents thereon.

(b) Payment by Tenant, Computation. Tenant shall promptly make annual payments to Landlord on account of the annual real estate taxes and assessments assessed against the demised premises for the tax year then in effect upon being billed therefor and Landlord shall pay said taxes and assessment. Tenant's share of real estate taxes shall be computed by multiplying the total tax assessment on the tax lots whereon the demised premises are situate times a fraction, the numerator of which shall be the gross floor area occupied by Tenant, at the time this computation is made, and the denominator of which shall be the gross floor area of the entire building or buildings in the Shopping Center. Landlord shall provide Tenant with copies of the tax assessment statements and shall provide a statement showing the allocation of such taxes or assessments to the demised premises.

(c) Contests. Tenant shall have the right to contest the amount or validity, in whole or in part, of any assessment or seek a reduction in the assessed valuation of the demised premises by appropriate proceedings diligently conducted in good faith, but only after payment of such amount and/or item in question unless said payment would operate as a bar to such contest or interfere materially with the prosecution thereof.

Upon the final determination of any such proceedings, Tenant shall immediately pay any amount plus interest, fees, penalties or other liability in connection thereof as finally determined in such proceeding as required by law. Tenant covenants that Landlord shall not suffer or sustain any costs or expenses (including, but not limited to, attorneys' fees) or any liabilities in connection with such proceeding.

Tenant shall first consult with Landlord and obtain its consent before contesting any assessment or charge and thereafter, if Tenant takes such appeal, it shall regularly consult with Landlord during the course of same so that Landlord will be able to protect its interest.

20. CONDEMNATION:

If there is a partial taking of the demised premises by eminent domain, as the result of which the ground floor area is reduced by not more than ten percent (10%), the term of this lease will continue and Landlord, at Landlord's expense, will restore the remaining premises to a complete architectural unit with store front, signs and interior of equal appearance and utility as they had previous to the taking, but there will be a pro rata reduction in the minimum guaranteed rent payable each month and Tenant will have no right to any of the proceeds of such taking. If on the other hand, the taking exceeds ten percent (10%) of the ground floor area, Tenant may, at Tenant's option, terminate this lease by giving Landlord thirty (30) days' notice in writing; or in the event the improvements are condemned and ordered torn down or removed by a lawful authority, then the term of this lease shall cease as of the date possession shall be taken by such authority, and the minimum guaranteed rent will be apportioned as of the date of such taking. In the event that any portion of the Common Areas (including parking area and access thereto) designated as such on Exhibit "A" be permanently taken for any public or quasi-public use, under any statute or by right of eminent domain, or private purchase in lieu thereof, so as to materially and substantially interfere with the conduct of Tenant's business in the demised premises, or as to reduce the required parking

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area by an amount in excess of twenty-five percent (25%), Tenant may, at Tenant's option, terminate this lease by giving Landlord thirty (30) days' notice in writing and be liable for rent only up to the time of such taking, provided, however, that Tenant may not terminate the lease in the event Landlord shall make available other reasonably accessible parking area as a substitute for the parking area so taken.

Tenant shall be entitled to claim the value of its unamortized leasehold improvements and its reasonable moving expenses and damage to or inability to use its inventory or stock which results from the move; all other condemnation proceeds shall be the sole property of the Landlord, and Tenant waives any interest it may have in such proceeds.

21. DEFAULT:

In the event the Tenant should (a) fail to pay any of the monthly installments of rent reserved herein for a period of more than ten (10) days after the same shall become due and payable, or (b) if the Tenant shall fail to keep or shall violate any other condition, stipulation or agreement herein contained, on the part of the Tenant to be kept and performed, and if such failure or violation (other than the failure to pay rent) shall have continued for a period of thirty (30) days after written notice by certified or registered mail at Tenant's office address hereinafter designated from the Landlord to cure such violation or failure, or (c) a receiver or trustee shall be appointed for the premises or for all or substantially all the assets of Tenant, or (d) Tenant shall desert or vacate or shall commence to desert or vacate the premises or any substantial portion of the premises or shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial portion of Tenant's goods, wares, equip-

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ment, fixtures, furniture, or other personal property, then, in any such event, the Landlord at its option, may either (i) terminate this lease; or (ii) re-enter the demised premises by summary proceedings or otherwise expel Tenant and remove all property therefrom and relet the premises at the rent obtainable, making reasonable efforts therefor and receive the rent therefrom; but Tenant shall remain liable for the deficiency, if any, between Tenant's rent under this lease and the price obtained by Landlord on reletting; or (iii) if the default is a default pursuant to (a) or (b) above, declare the entire rent for the remaining term of the lease to be due and payable. However, a default (except as to payment of rentals) shall be deemed cured if Tenant in good faith commences performance requisite to cure same within thirty (30) days after receipt of notice and thereafter continuously and with reasonable diligence proceeds to complete the performance required to cure such default.

22. BANKRUPTCY:

The Tenant further covenants and agrees that if, at any time, the Tenant is adjudged a bankrupt, or insolvent under the laws of the United States or of any state, or makes a general assignment for the benefit of creditors, or if a receiver of the property or assets of the Tenant is appointed, and if such shall not be discharged within ninety (90) days after such appointment, then the Landlord may, at its option, declare the term of this lease agreement at an end and shall forthwith be entitled to immediate possession of the said premises as aforesaid.

23. CONSTRUCTION RISKS:

It is understood and agreed that nothing contained herein shall constitute the Landlord as the agent in any sense of the Tenant in construction of any of said improve-

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ments, and that the Tenant shall have no control or authority over the construction of said improvements. The Tenant shall not in any manner be answerable or accountable for any loss or damage arising from the negligence or the carelessness of Landlord's contractor or of any of their subcontractors, employees, agents or servants by reason of Landlord's construction of said improvements called for under the terms of this lease. Except for the act or acts of Tenant, Landlord shall indemnify Tenant and save Tenant harmless from and against all claims and suits for damage to persons or property from defects in material or workmanship from any negligence caused by Landlord, Landlord's contractors, subcontractors or any of their employees, agents or servants during the progress of the work in constructing said improvements or from any faulty construction thereof.

24. NOTICES:

All rent payments due hereunder and all notices required to be given to Landlord hereunder shall be sent to Landlord in care of:

Metropolitan Life Insurance Company
One Madison Avenue
New York, New York 10010
Attention: Executive Vice President -
Real Estate Investments

and

Metropolitan Life Insurance Company
47 Perimeter Center East, NE
Suite 650
Atlanta, Georgia 30346
Attention: Vice President or
Associate General Counsel

and to such other address as Landlord may direct from time to time by written notice forwarded to Tenant by Landlord. All notices required to be given by Landlord to Tenant hereunder shall be sent to Tenant at Post Office Box 2486,

Birmingham, Alabama, 35201, or to such address as Tenant may direct Landlord by written notice.

25. TERMINATION:

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The Tenant will yield up the demised premises and all additions thereto (except signs, equipment and trade fixtures installed by Tenant at its expense) at the termination of the tenancy in as good and tenantable condition as the same are at the beginning of Tenant's occupancy, less reasonable wear and tear, damage by fire and other casualties, and condemnation proceedings by eminent domain excepted, and also excepting any damage, disrepair or other condition that the Landlord is obligated hereunder to repair or correct; provided, however, any provision hereinabove in this paragraph to the contrary notwithstanding, Tenant shall not be required to restore, remove, renovate, reconstruct or rebuild any walls, partitions, windows, doors or other openings or other facilities in the building on the leased premises to the same condition as at the beginning of Tenant's occupancy, but, on the contrary, all improvements then located on the leased premises and all machinery and equipment located thereon, including, but not limited to heating and air-conditioning, will be delivered to Landlord in their "as is" condition at such time, it being understood and agreed that Tenant shall have no responsibility except as set forth in Section 10 for replacing any such machinery and equipment, and that Tenant shall not be responsible for renovating, restoring or replacing any part of the improvements caused by ordinary and usual wear during the occupancy of the leased premises by Tenant.

26. HOLDING OVER:

In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the

demised premises after the expiration of the lease term, it shall so remain as a tenant from month to month and all provisions of this Lease applicable to such tenancy shall remain in full force and effect except the minimum guaranteed rent shall be double the rent required in paragraph 3.

27. ASSIGNMENT AND SUBLEASING:

The Tenant may, without the consent of the Landlord, sublease up to 5% of the space within demised premises, subject to the provisions of Paragraph 1 hereinabove entitled "Use"; provided the Tenant herein shall continue to remain liable and responsible for the payment of rentals and due performance of all other terms, covenants and conditions of this lease. Tenant shall not assign or in any manner transfer this Lease or any interest therein or sublet the premises or any part thereof except as provided above, or grant any license, concession, or other right of occupancy of any portion of the demised premises, except as set forth above, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. In determining the acceptability of a proposed assignee or subtenant, Landlord may consider such matters as the effect on the tenant mix of the Shopping Center; whether percentage rental is being paid by Tenant and whether the proposed subtenant or assignee will pay Landlord a comparable percentage rent; the credit-worthiness and responsibility of the proposed assignee or subtenant; whether the proposed use shall violate any restrictive covenant Landlord has made with any other tenant of the Shopping Center; and the anticipated drawing power of the proposed assignee or subtenant on patrons of the Shopping Center and on other prospective tenants of the Shopping Center.

Notwithstanding the prohibition on assignment, Tenant may assign this lease without the Landlord's consent

to any business organization affiliated with the Tenant or to any business organization with or into which the 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.

Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Notwithstanding any such assignment or subletting, Tenant shall at all times remain fully responsible and liable for the payment of the rent and for the compliance of all of its other obligations under this Lease. Moreover, in the event that the rental due and payable by a sublessee, or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto, exceeds the rental payable under this Lease or with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee, or other transferee exceeds the rental payable under this Lease, Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case may be.

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28. TENANT TO PAY PRO RATA SHARE OF
INSURANCE PREMIUMS:

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In addition to ~~rentals~~ ^{RENTALS} and common area maintenance charges, Tenant agrees to pay to Landlord, as additional rental, Tenant's pro rata share of any insurance premiums paid by Landlord during the preceding lease year to carry

the insurance referred to hereinabove. Tenant's pro rata share of such insurance premium shall be determined by multiplying the amount of insurance premiums so paid by Landlord by a fraction, the numerator of which is the number of square feet of ground floor area contained in the Store Building occupied by Tenant in the Shopping Center and the denominator of which is the number of square feet of ground floor area in all buildings in the Shopping Center. Tenant agrees to pay its said pro rata share of such insurance premiums each year within ten (10) days from receipt from Landlord of a statement covering such premium.

29. LIMITATION OF PERSONAL LIABILITY:

Anything in this lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord in the land and buildings comprising the Shopping Center of which the demised premises are a part subject to rights of any mortgagee of the premises which may have priority, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord, in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this lease to be observed and/or performed by Landlord, and no other property or assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies. Nothing herein contained shall act as a limitation on any right of Tenant to make a deduction from rent as in this lease may be otherwise provided.

30. NOTICE OF LANDLORD'S DEFAULT:

Anything in this lease to the contrary notwithstanding, Tenant agrees that it will not terminate this lease because of Landlord's default in performance hereof until

Tenant has first given written notice as herein stipulated to Landlord and to any holder of a first mortgage encumbering the demised premises (provided Tenant has first been notified in writing of the name and address of said mortgage holder), specifying the nature of the default by Landlord and allowing Landlord and said mortgage holder, or either of them, thirty (30) days after date of such notice to cure such default and a reasonable period of time in addition thereto if circumstances are such that said default cannot reasonably be cured within said thirty (30) day period; provided, however, that no such notice shall be required in emergencies as herein stipulated. Tenant further agrees not to prepay any rents more than fifteen (15) days in advance of the due dates thereof as required or made by this lease without the prior written consent of Landlord.

31. WAIVER OF LANDLORD'S LIEN:

Upon request by Tenant, Landlord agrees to waive its Landlord's lien upon any fixtures or equipment placed by Tenant in the demised premises if required by any mortgagee of said fixtures or equipment.

32. ATTORNEYS' FEES:

Tenant agrees to pay Landlord all reasonable attorneys' fees incurred in the event Landlord employs an attorney to collect any rental or other obligations due hereunder by Tenant, or in the event Tenant violates any of the terms, conditions or covenants on the part of Tenant herein contained. Likewise, Landlord agrees to pay Tenant all reasonable attorneys' fees incurred in the event Landlord violates any of the terms, conditions and covenants on the part of Landlord herein contained.

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33. EXTENSIONS:

It is further agreed that Tenant, or any approved assignee of Tenant, at its option, shall be entitled to the privilege of two (2) successive extensions of this lease, each extension to be for a period of five (5) years and on the same terms and conditions and for the same rentals required during the initial term hereof. Tenant, or Tenant's successor by way of merger or consolidation only, shall be entitled to two (2) additional successive extensions of this lease, each such additional extension to be for a period of five (5) years for the same rentals required during the initial term hereof.

Such option privilege may be exercised by the Tenant or such approved assignee giving to the Landlord a notice in writing at least nine (9) months before the expiration of the initial term, and if extended, at least nine (9) months before the expiration of such extended term, stating the intention of the Tenant or such approved assignee to exercise such option, and thereupon this lease shall be so extended without the execution of any other or further document.

34. SUBORDINATION:

The Tenant agrees that this lease shall at all times be subject and subordinate to the lien of any mortgage (which term shall include all security instruments) that may be placed on the demised premises by the Landlord, and Tenant agrees, upon demand, without cost, to execute any instrument as may be required to effectuate such subordination; provided, however, as a condition to this subordination provision, the Landlord shall obtain from any such mortgagee an agreement in writing, which shall be delivered to Tenant, providing in substance that, so long as Tenant shall faithfully discharge the obligations on its part to be

kept and performed under the terms of this lease, its tenancy shall be undisturbed, nor shall this lease be affected by any default under such mortgage; and in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive, and this lease shall in all respects continue in full force and effect; provided, however, that Tenant fully performs all of its obligations under this lease.

35. BENEFIT:

This lease and all of the covenants and conditions hereof shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto, subject to the provisions of Section 27 hereof. Each provision hereof shall be deemed both a covenant and a condition and shall run with the land.

36. TITLES:

The titles appearing in this lease are for reference only and shall not be considered a part of this lease or in any way modify, amend or affect the provisions hereof.

37. RECORDING OF LEASE:

Tenant shall have the right to file the entire within lease agreement for record within six months from date of execution in the Office of the Judge of Probate of Shelby County, and Tenant shall pay all costs and expense which is required in connection with such recording.

38. COMPLETE AGREEMENT:

This written lease contains the complete agreement of the parties with reference to the leasing of the demised

premises, except plans and specifications for Tenant's store and related improvements to be formally approved by the parties prior to the effective date of this lease. No waiver of any breach of covenant herein shall be construed as a waiver of the covenant itself or any subsequent breach thereof.

IN WITNESS WHEREOF, Landlord and Tenant have each caused this lease to be executed, ALL IN ^{QUADRUPPLICATE} ~~TRIPPLICATE~~, on this the 19th day of December, 1984.

WITNESS:

Kevin May

METROPOLITAN LIFE INSURANCE COMPANY

By

James F. McEvoy

Its ASSOCIATE GENERAL COUNSEL

LANDLORD

ATTEST:

Lo Bruno

Its Vice President

BRUNO'S, INC.

By

Angelo Bruno

Its President

TENANT

WITNESS:

Charles Mathis V

TAYLOR & MATHIS V

By

James F. McEvoy

Its GENERAL PARTNER

AGENT

STATE OF ALABAMA)
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that whose name as ASSOCIATE GENERAL COUNSEL of Metropolitan Life Insurance Company, a New York corporation, is signed to the foregoing lease and who is known to me, acknowledged before me on this day that, being informed of the contents of said lease, 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 19th day of December, 19 84.

Louis R. Nelson
Notary Public
My Commission Expires: 3/27/87

STATE OF)
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Angelo Bruno, whose name as President of Bruno's, Inc., an Alabama corporation, is signed to the foregoing lease and who is known to me, acknowledged before me on this day that, being informed of the contents of said lease, 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 12th day of December, 19 84.

Louis R. Nelson
Notary Public
My Commission Expires: 3/22/87

STATE OF ALABAMA)
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that E.H. Avery, whose name as general partner of TAYLOR & MATHIS V, a Georgia general partnership, is signed to the foregoing lease and who is known to me, acknowledged before me on this day that, being informed of the contents of said lease, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 19th day of December, 19 84.

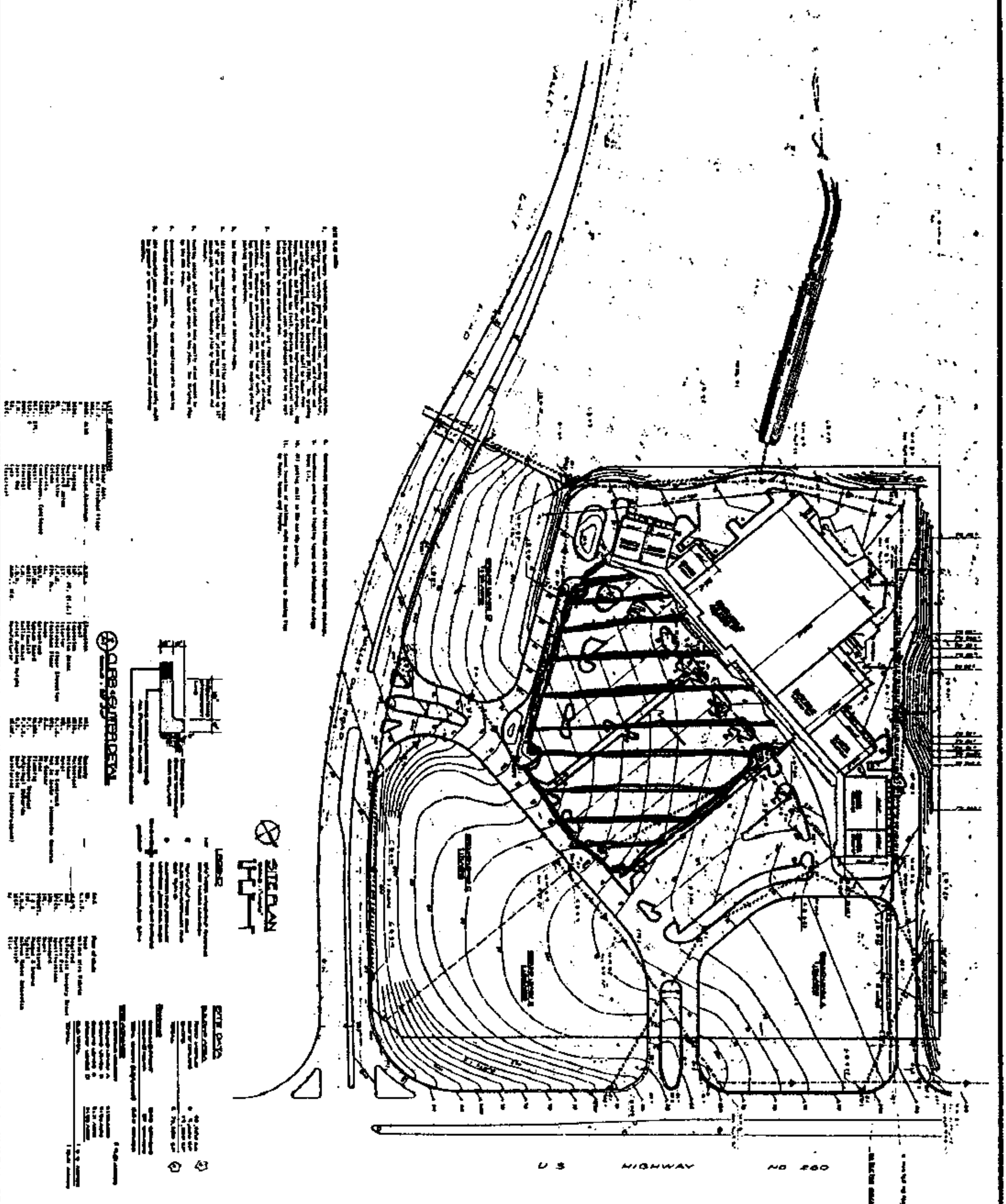
Louis R. Nelson
Notary Public
My Commission Expires: 3/27/87

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EXHIBIT "A"

OGRAM ARCHITECTS, INC. 348 Peachtree Street N.E./Atlanta, Georgia 30308/Telephone (404) 521-0211

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OGRAM ARCHITECTS, INC. 348 Peachtree Street N.E./Atlanta, Georgia 30308/Telephone (404) 521-0211

INVERNESS

DEVELOPER: METROPOLITAN LIFE INSURANCE CO.
DESIGNED BY: TAYLOR & HARRIS

A-1

EXHIBIT B

LEGAL DESCRIPTION:

Part of the Southeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: COMMENCE at the Southwest corner of said Southeast Quarter of Section 36, Township 18 South, Range 2 West, and run North along the West line of same 770.80 feet; thence right $119^{\circ}08'28''$ and run Southeasterly 257.26 feet; thence left $90^{\circ}00'$ and run Northeasterly 643.69 feet to the point of beginning of herein described tract; thence continue along last described course 852.31 feet to a point on the Southwesterly right-of-way of U.S. Highway #280; thence right $89^{\circ}57'31''$ and run Southeasterly along said right-of-way 59.50 feet; thence right $90^{\circ}02'29''$ and run Southwesterly 170.47 feet to the point of curve of a curve to the left, having a radius of 39.5 feet, and a central angle of $90^{\circ}02'29''$; thence run Southeasterly along arc of said curve 62.07 feet to the point of tangent; thence run Southeasterly along said tangent 87.62 feet to the point of curve of a curve to the left, having a radius of 124.5 feet and a central angle of $40^{\circ}00'$; thence run Northeasterly along arc of said curve 86.92 feet to the point of tangent; thence run Northeasterly along said tangent 80.03 feet to the point of curve of a curve to the left, having a radius of 49.5 feet and a central angle of $50^{\circ}00'$; thence run Northeasterly along the arc of said curve 43.20 feet to the point of tangent; thence run Northeasterly along said tangent 91.52 feet to a point on the Southwesterly right-of-way of U.S. Highway #280; thence right $90^{\circ}00'$ and run Southeasterly along said right-of-way 75.00 feet; thence right $90^{\circ}00'$ and run Southwesterly 66.49 feet to the point of curve of a curve to the left, having a radius of 164.50 feet and a central angle of $40^{\circ}00'$; thence run Southwesterly along the arc of said curve 114.84 feet to the point of tangent; thence run Southeasterly along said tangent 308.53 feet to the point of curve of a curve to the left, having a radius of 113.50 feet and a central angle of $39^{\circ}00'54''$; thence run Southeasterly along the arc of said curve 77.29 feet to the point of tangent; thence run Southeasterly along said tangent 6.69 feet to the point of curve of a curve to the left, having a radius of 72.14 feet and a central angle of $94^{\circ}47'07''$; thence run Northeasterly along the arc of said curve 119.36 feet to a point on a curve of the Northwesterly right-of-way of Shelby County Highway #17 (Valley Dale Road); said curve having a radius of 1392.42 feet and a central angle of $9^{\circ}34'14''$; thence right 180° from the tangent of said point on curve, and run Southwesterly along the arc of said curve and right-of-way 232.59 feet to a point on said curve, said point also being the point of curve of another curve, having a radius of 72.14 feet and a central angle of $94^{\circ}47'07''$; thence right 180° from the tangent of said point on curve and run Northwesterly along the arc of said curve 119.36 feet to the point of reverse curve of a curve to the right, having a radius of 111.50 feet and a central angle of $20^{\circ}00'48''$; thence run Northwesterly along the arc of said curve 38.95 feet to the point of reverse curve of a curve to the left, having a radius of 49.50 feet and a central angle of $105^{\circ}57'25''$; thence run Southwesterly along the arc of said curve 91.54 feet to the point of tangent; thence run Southwesterly along said tangent 289.86 feet; thence right $34^{\circ}55'02''$ and run Southwesterly 53.06 feet; thence right $40^{\circ}04'58''$ and run Northwesterly 490.0 feet to the point of beginning. Contains 9.77460 acres.

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EXHIBIT "C"

RULES AND REGULATIONS

1. Tenant shall keep the inside and outside of the Premises and all glass, doors and windows of the Premises clean.
2. Tenant shall keep all exterior surfaces of the Premises clean.
3. Tenant shall replace promptly at Tenant's expense, with glass of a like kind and quality, any plate glass or window glass of the Premises which may become cracked or broken.
4. Tenant shall maintain the Premises at Tenant's expense in a clean, orderly and sanitary condition free of offensive odors, insects, rodents, vermin and other pests and use such pest control or exterminating service as is designated by Landlord, if any, to service all Shopping Center tenants, provided that the cost thereof is competitive and comparable with service available to Tenant. In the event Tenant fails to pay for such service, Landlord shall have the right but not the obligation, to make payments or perform such duties on Tenant's behalf in which event Tenant shall pay such sums as are advanced by Landlord as additional rent to Landlord upon demand.
5. Tenant shall keep rubbish, garbage, trash and other refuse in proper containers in the interior of the Premises and cause same to be removed on a daily basis at Tenant's expense in the manner and at the times specified by Landlord. Tenant shall use any scavenger or collection service designated by Landlord to service all Shopping Center tenants. In the event Tenant fails to pay for such scavenger service Landlord shall have the right, but not the obligation, to make payments on Tenant's behalf in which event Tenant shall pay such sums as are advanced by Landlord as additional rent to Landlord upon demand.
6. Tenant shall comply with all laws, ordinances, and regulations of the United States, State of Alabama, County of Shelby or any agencies thereof and comply with all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of the Premises by Tenant.
7. Tenant shall keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises.
8. Tenant shall conduct business during the hours set forth in the Lease in a dignified manner in accordance with high standards of operation and maintain stocks of merchandise adequate to assure the transaction of a maximum volume of business in and at the Premises.
9. Tenant shall require employees, officers and agents to park in the areas of the parking lot designated by Landlord, if any, as employee parking areas. Tenant shall furnish Landlord with the license number of all employee vehicles within five days following Tenant's commencement of business in the Premises and thereafter within five days following any changes in such personnel or their vehicle license numbers. If Tenant, its officers, agents or employees shall fail to park their cars in the designated parking areas after giving notice to Tenant, Landlord shall have the right to either have such vehicles towed from the Shopping Center at Tenant's expense or charge Tenant Ten Dollars (\$10.00) per day per car parked in any parking area other than those designated.
10. Tenant shall perform such acts and do such things as are necessary in order to correct and cure any deficiency on Tenant's part in the performing of items 1 through 9 immediately above, in accordance with the provisions of any written notice from Landlord relating thereto.

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EXHIBIT "C"

RULES AND REGULATIONS

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11. Tenant shall not conduct any auction, fire, bankruptcy, moving or closeout sales. The provisions hereof shall not preclude Tenant from conducting periodic, seasonal, promotional or clearance sales.

12. Tenant shall not place or maintain merchandise or other articles in any entry of the Premises, on the footwalks adjacent thereto or elsewhere in the exterior or common areas.

13. Tenant shall not use or permit the use of any apparatus for sound reproduction or transmission including but not limited to loudspeakers, phonographs, public address systems, sound amplifiers and radios, or any musical instrument in any manner that sounds so produced are audible or visible outside the Premises.

14. Tenant shall not permit undue accumulation of garbage, trash, rubbish, or other refuse within or without the Premises.

15. Tenant shall not cause or permit objectionable odors or food odors to emanate or be dispelled from the Premises or the compactor used by Tenant.

16. Tenant shall not solicit business in the parking area or other common areas.

17. Tenant shall not distribute handbills or other advertising matter to, in or upon any automobiles parked in the parking areas or in any other common areas.

18. Tenant shall not permit the parking or standing of delivery vehicles to interfere with the use of any driveway, walk, parking area, or other common areas of the Shopping Center.

19. Tenant shall not cause or permit the loading or unloading of merchandise, supplies or other property outside the area designated therefore at the rear of the Premises, or permit the parking or standing outside of said area by delivery vehicles or other vehicles or equipment engaged in loading or unloading.

20. Tenant shall not conduct any live promotion in the windows of the Premises.

21. Tenant shall cease all conduct prohibited pursuant to items 11 through 20 immediately above, promptly upon notice from Landlord. If Tenant shall fail to cease such conduct within three days following the first notice of such violation during any lease year, Tenant shall pay to Landlord One Hundred and No/100 Dollars (\$100.00) for each day or portion thereof that Tenant fails to cease such conduct.

22. The Landlord, and its agents, shall have the right to enter the demised Premises at all reasonable hours for the purpose of making any repairs, alterations, or additions which it shall deem necessary for the safety, preservation, or improvement of the Shopping Center, and the Landlord shall be allowed to take all material into and upon said Premises that may be required to make such repairs, improvements and additions, or any alterations for the benefit of the Tenant without in any way being deemed or held guilty of an eviction of the Tenant; and the rent reserved shall be in no wise abate while said repairs, alterations, or additions are being made; and the Tenant shall not be entitled to maintain a setoff or counterclaim for damages against the

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EXHIBIT "C"

RULES AND REGULATIONS

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Landlord by reason of loss or interruption to the business of the Tenant because of the prosecution of any such work. All such repairs, decorations, additions, and improvements shall be done during ordinary business hours, or, if any such work is at the request of the Tenant to be done during any other hours, the Tenant shall pay for all overtime costs.

Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Shopping Center, and for the preservation of good order therein. The Landlord shall not be responsible to any Tenant for the non-observance, or violation, of any of these Rules and Regulations by other tenants.

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

1985 JUN 19 AM 9:08

Thomas W. Linnaman, Jr.
JUDGE OF PROBATE

Need tax - 2618.00-
Rec. 112.50
Ind. 1.00

2731.50-

