

Paul J. Peterson

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INDEX TO LEASE AGREEMENT

LANDLORD: VALLEYDALE (S) DEVELOPMENT COMPANY
TENANT: DELCHAMPS, INC.
SHOPPING CENTER: SOUTHGATE VILLAGE SHOPPING CENTER
LOCATION: PELHAM, ALABAMA
DATE OF LEASE: SEPTEMBER 1, 1987

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for use by Tenant (when so operated) as a supermarket principally for the sales of food and other items generally sold by a food supermarket, and for such other purposes as may be from time to time customarily conducted by Tenant in its business, for and during the term beginning, to wit: at midnight on the last day of the calendar month during which the building included in the Demised Premises and all parking areas and other common areas to be located in the Shopping Center are completed and ready for use and occupancy, and ending at midnight twenty (20) years thereafter, together with the portion of any immediately preceding month as Tenant may be paying rent, all subject to the terms, conditions and covenants herein contained, and Landlord covenants to keep Tenant in quiet and peaceable possession of the Demised Premises

Those premises consisting of approximately 46,733 square feet of ground area cross-hatched in red and situated in a shopping center called Southgate Village (hereinafter called "Shopping Center"), in after called "Shopping Center", said Shopping Center being outlined in red on the plot plan dated June 16, 1987, last revised August 21, 1987, marked Exhibit 1, and described on Exhibit A, signed by the parties, attached hereto and made a part hereof by reference, together with a store building to be constructed thereon by Landlord at its sole cost and expense in accordance with the plans and specifications to be approved as hereinafter provided (said premises, together with the store building to be constructed by Landlord, being herein sometimes called "Demised Premises"), together with all rights, privileges and appurtenances thereunto appertaining;

Landlord does hereby demise, lease and let unto Tenant, its successors and assigns, the following premises in the City of Pelham, County of Shelby, State of Alabama, viz:

W I T N E S S E T H:

THIS LEASE AGREEMENT, made and entered into as of the 1st day of September, 1987, by and between VALLEYDALE (S) DEVELOPMENT COMPANY, an Alabama general partnership (hereinafter called "Landlord"), and DELCHAMPS, INC., an Alabama corporation (hereinafter called "Tenant");

STATE OF ALABAMA :
COUNTY OF SHELBY :

during said term (including any extensions thereof), provided that Tenant shall at all times fully and promptly comply with, all and singular, the provisions of this lease to be performed by Tenant.

1. Rent and Notices.

(a) Tenant agrees to pay Landlord during the term hereof an annual rental of \$467,330.00 payable in equal monthly installments of \$38,944.17 each due in advance on the first day of the calendar month and payable on or before the tenth (10th) day of each calendar month during the term of this lease. Said rental shall be payable to Landlord at Landlord's address as determined from time to time pursuant to the provisions hereof.

(b) For purposes of notice or payment of all sums due hereunder, the address of Landlord until otherwise designated in writing is stated to be Valleydale (5) Development Company, Post Office Box 81322, Mobile, Alabama 36689,. For purposes of notice, the address of Tenant until otherwise designated in writing is stated to be Delchamps, Inc., Post Office Box 1668, Mobile, Alabama 36633-1668. Either Landlord or Tenant may designate a different address from time to time by written notice to the other.

2. Landlord's Construction and Commencement of Rent.

(a) Landlord agrees to have the store building included in the Demised Premises ready for Tenant to install its coolers, trade and other fixtures, heating and air conditioning, and other equipment by not later than February 1, 1988, and Tenant shall have and is hereby given a period of one hundred five (105) days following such delivery within which to complete the installation thereof, subject, however to such extension of time for completion of said installations by tenant equal to any delay caused Landlord or Tenant, as the case may be, by windstorm, picketing, strikes, labor disputes, Acts of God, fire or other cause or casualty beyond such party's control. Landlord shall give Tenant at least thirty (30) days prior written notice of the date that the Demised Premises will be ready for Tenant to commence such installations.

(b) For purposes of the preceding subparagraph, the store building shall be deemed ready for installation of Tenant's equipment when the construction necessary for such installation has been completed, and when the truck well and paving of the service drives have been completed. The building shall be completely secured, with all glass, exterior doors and roof openings in place and properly secured and weather tight. In the event that the store building is not ready for such installation on the date so specified in Landlord's written notice, so that Tenant is unable to commence

such installation work, Landlord shall be liable to and shall pay Tenant the sum of Five Hundred Dollars (\$500.00) per day for each day following the date so specified until the store building is ready for such installation, excluding delays caused by windstorm, picketing, strikes, labor disputes, fire, Acts of God, or other cause beyond Landlord's control. No later than thirty days following the date specified in the preceding subparagraph, Landlord shall have completely finished construction of the sidewalks, paving, parking lot lighting and drainage facilities as called for in the plans and specifications. In the event the sidewalks, paving, parking lot lighting, and drainage are not completed within the time specified, so that Tenant is unable to make final arrangements for opening of the store, Landlord shall be liable to and shall pay Tenant the sum of Five Hundred Dollars (\$500.00) per day for each day following the date provided herein until the sidewalks, paving, parking lot lighting, and drainage facilities are ready, excluding delays caused by windstorms, picketing, strikes, labor disputes, fire, Acts of God, or other cause beyond Landlord's control.

(c) Landlord agrees that no rent shall commence hereunder until (1) thirty days after the Demised Premises have been finally delivered to Tenant and completed by Landlord in accordance with the approved plans and specifications, and Landlord has completed construction of all buildings and all parking areas and other common areas shown on the plans and specifications (but in no event earlier than the one hundred five day period allowed Tenant pursuant to subparagraph (a) above; or (11) Tenant opens for business, whichever event shall first occur.

(d) Tenant shall have and is hereby granted the right but not the obligation, to open for business prior to the time Landlord has fully complied with all of its obligations hereunder, upon which opening by Tenant rent shall then commence. Should Tenant so open for business, Landlord agrees to exercise the utmost diligence in fully complying with all of its remaining obligations and Landlord agrees that Tenant shall not, by an earlier opening of its said business, waive compliance by Landlord of its obligations hereunder, or forfeit any rights granted to Tenant hereunder, including the right to cause such obligations to be complied with and to be reimbursed for any costs thereof as provided herein after.

(e) Notwithstanding any provision to the contrary herein contained, Tenant shall not be required to open its store for business (and the term shall not commence nor shall rent accrue or be payable) prior to February 1, 1988, nor between November 1 and the succeeding February 1.

(f) The date of the commencement of the term of this lease shall be reduced to writing in recordable form when the same has been ascertained in accordance with the provi-

sions hereof, and such writing shall be signed by Landlord and Tenant and shall thereafter constitute a part of this Lease. Unless the term hereof shall have commenced within eighteen (18) months from date hereof, this lease shall be null and void, unless Tenant in its sole discretion elects to extend the time for such commencement, but in no event shall such extension be to a date that is more than thirty (30) months from date hereof.

3. Plans and Specifications.

(a) Prior to or upon execution of this lease, Tenant has provided Landlord with a set of prototype plans and specifications for Tenant's building. Landlord hereby acknowledges receipt of same, and agrees at its sole cost and expense to promptly prepare final plans and specifications for submission to Tenant for review and approval, all to the end that Landlord and Tenant shall approve final plans and specifications mutually satisfactory to both, and when so approved, the parties shall sign multiple sets and each party shall retain a set at its principal office. LANDLORD ACKNOWLEDGES THAT THE CONSTRUCTION OF THE PARKING AREA AND DRIVEWAYS IN THE SHOPPING CENTER WILL REQUIRE SPECIAL SURFACING AS SHOWN ON THE PLANS AND SPECIFICATIONS. Should the parties fail to reach mutual agreement within forty-five (45) days from date hereof, either party shall have the option to cancel this lease by written notice to the other party, and if the plans and specifications are not agreed upon within sixty (60) days from the date of this lease, this lease shall be automatically terminated. Landlord agrees, at the sole cost and expense of Landlord to commence within thirty (30) days from date of approval of plans and specifications and to thereafter diligently and continuously pursue to completion, (a) the erection and completion of the store building upon the Demised Premises in accordance with the approved plans and specifications; (b) the construction of the sidewalks, service drives, parking areas, entranceways, driveways, landscaping and related improvements (herein sometimes called "common areas") shown on Exhibit 1; and (c) the grading and surfacing with top quality material all paved portions of the common areas (including the Priority Parking Area), and (d) the other buildings shown on Exhibit 1, as well as proper and adequate utilities, water drainage and lighting systems for the Shopping Center.

(b) Unless Landlord shall have completed the footings and foundations for the building on the Demised Premises within six (6) months from date hereof, Tenant shall have the right to terminate this lease, or at Tenant's sole option, to extend Landlord additional time for the completion thereof.

4. Shopping Center and Common Areas.

(a) The arrangement and location of the store buildings, parking areas, driveways, entrances and other common areas shall at all times during the term be kept and maintained as shown on Exhibit 1 and shall not be changed or altered without the prior written consent of Tenant, which consent shall not be unreasonably withheld. Landlord covenants that there has been established a minimum parking ratio requirement of five (5) automobile spaces for each 1,000 square feet of gross leasable area in the Shopping Center, and Landlord covenants not to modify said requirements without Tenant's prior approval.

(b) Landlord agrees not to erect, or permit to be erected, any buildings or structures on any area designated and reserved on Exhibit 1 for parking, sidewalks, driveways, service areas, entrances and ways for ingress and egress except as designated on Exhibit 1, or unless prior written approval is obtained from Tenant. Landlord agrees to provide at all times adequate entrances, ways for ingress and egress, and service areas, and further agrees that Tenant shall have uninterrupted use and enjoyment of the entrance-ways, ways for ingress and egress, the Demised Premises and the parking areas shown on Exhibit 1 without unnecessary interference with said use and enjoyment or conduct of Tenant's business in the Demised Premises by reason of further permitted construction on the areas shown on Exhibit 1, if any, or otherwise.

(c) Tenant and its customers, employees and invitees shall have free of charge during the term of this lease, the nonexclusive use of the parking areas, sidewalks, entrances, ways for ingress and egress, alleys and easements shown on Exhibit 1, and Landlord agrees not to block or otherwise interfere with the rights hereby granted Tenant. Landlord shall not grant or permit any parking or access rights in or to the Shopping Center to owners or occupants of adjacent property without in each instance obtaining the prior written consent of Tenant, and if required by Tenant, Landlord shall fence off or otherwise obstruct by appropriate barrier any unauthorized access or parking.

(d) In the event any parcels are shown on Exhibit 1 as not being included in the Shopping Center, whether designated as "Out Parcel", or "Not Included" or "Other Owners" or similar designations, Landlord hereby expressly acknowledges that any restrictions which may be set forth on Exhibit 1 with respect to said parcels are binding thereon and shall be enforced by Landlord for the benefit of Tenant.

(e) In no event shall Landlord permit the operation on any part of the Shopping Center of a so-called "game room" business featuring electronic coin-operated game machines;

or dance hall or so-called "disco" or similar establishment; or bar, lounge or other business or similar establishment allowing consumption of alcoholic beverages on the premises; or a theater for the showing of motion pictures, closed circuit television productions or similar telecasts, or for the presentation of dramatic theater, musical or similar productions. No "carnival" or "midway" or "flea market" or other activities shall be permitted on the parking areas without the prior written consent of Tenant, and in the event of a violation of this provision, in addition to any other remedy available to Tenant, all rent shall be abated during the existence of such activities.

(f) Landlord agrees, at the request of Tenant, to designate an area in the parking area for vehicular parking of employees of the tenants in the Shopping Center, and to require all tenants to require their employees to use such area; provided such employee parking area shall not be located in the Priority Parking Area shown on Exhibit 1. If such parking area is not so requested and designated, Landlord agrees to require the other tenants to prohibit their employees from using the Priority Parking Area except while patronizing Tenant's store on the Demised Premises.

5. Renewal Options.

(a) If Tenant be not then in default after notice and expiration of applicable curative periods, Tenant shall have the right and option to renew this lease for not exceeding four (4) successive terms of five (5) years each, upon the same terms and conditions and for the same rental provided for in the original term hereof, each renewal term to begin at the expiration of the then current term. In the event Tenant fails to notify Landlord prior to the last six (6) months of the then current term of Tenant's desire to terminate the lease at the expiration of the then current term, this lease shall automatically be renewed for an additional term (as may be limited as hereinafter provided) beginning at the expiration of the then current term, except there shall be no further renewal beyond the last renewal term. Wherever in this lease the word "term" is referred to, such reference shall mean the original term and any extensions thereof, unless the context requires a different meaning.

(b) Tenant shall have the right at its option to specify the duration of each renewal term that may be extended on the following conditions: If Tenant elects to exercise an option for renewal term for a period less than five (5) years, Tenant shall give Landlord written notice of such election no later than six (6) months prior to the expiration of the then current term, which notice shall state the duration of the next ensuing renewal term which shall not be more than five (5) years nor less than one (1) year, and which expiration date shall be on the anniversary of the ex-

piration date of the then current term. Subsequent renewal terms, if exercised, shall commence at the expiration of the prior term.

6. Landlord's Title.

Landlord warrants and represents to Tenant that it is the owner in fee simple of the land comprising the Shopping Center, subject to no liens, easements or encumbrances prior to this lease, except for (a) the lien for current ad valorem taxes, (b) utility and drainage easements that serve the Shopping Center and do not interfere with the use of the Demised Premises or the service areas adjacent thereto, and (c) other matters, if any, which shall be disclosed by Landlord and as may be approved by Tenant in writing. No later than thirty (30) days subsequent to the date of this lease, Landlord will furnish Tenant a copy of Landlord's owner's policy of title insurance and/or other evidence satisfactory to Tenant that the warranties contained in this paragraph are true and correct. Landlord warrants and represents to Tenant that it has the complete and lawful right to lease the Demised Premises and that the same are properly zoned for a food supermarket of the type operated by Tenant and that the Demised Premises are not located in an area where, by virtue of the location of the Shopping Center, the sale of liquor, wine or beer by Tenant for off-premises consumption is prohibited.

7. Assignment, Subletting and Concessions.

Tenant shall have the right, at any time after the commencement of the term hereof, to assign this lease, to sublease the Demised Premises (or any portion thereof), and to grant concessions therein, for use as a supermarket as contemplated in the preamble hereof (including without limitation the operation of banking facilities, automated teller machines and the like), or for any other use which does not violate any exclusive use agreements then in existence between the Landlord and other tenants in the Shopping Center. Upon request of Tenant, Landlord shall within thirty (30) days furnish Tenant with a list of any such exclusive use agreements. The making of any such assignment or subletting or granting of any such concession shall in all other respects be subject to the terms of this lease and shall not relieve Tenant of its obligations hereunder; and Landlord agrees, in the event of default thereafter, to give Tenant the same notices and rights to cure given to any assignee, as provided hereafter.

8. Surrender

Tenant agrees to permit no waste of the Demised Premises but, on the contrary, to take good care of the same and upon termination of this lease, to surrender possession thereof without notice, in as good condition as at the delivery of same to Tenant for its installation work, reasonable wear and tear, damage by fire and other casualty or loss through eminent domain excepted. Tenant shall repair any damage to the Demised Premises caused solely by the removal of its fixtures and equipment, and will leave wiring, conduit and pipes closed and secured.

9. Repairs and Maintenance.

(a) Landlord agrees at its sole cost and expense to promptly repair (and replace when necessary) and at all times during the term hereof to maintain in good repair and condition the foundations, supporting walls, subfloors, exterior walls, exterior roofs, sewers, septic tanks and/or grease traps, (including periodic pumping and cleaning of septic tanks and grease traps), sidewalks, exterior painting, the sprinkler and fire protection system and exterior plumbing (including plumbing requiring structural entry) and exterior fixtures (unless caused by Tenant's misuse thereof) of the building on the Demised Premises as well as the exterior parts of said building, whether included in the above enumeration or not, unless hereinafter made Tenant's responsibility.

(b) Tenant agrees at its sole cost and expense to promptly repair (and replace when necessary) and at all times during the term hereof to maintain in good repair and condition the interior of the Demised Premises, including the heating and air conditioning units and systems (whether located on the interior or exterior of the building), electrical fixtures and equipment, electrical installations, trash removal equipment, floors, store fixtures, interior paint or decorations, all doors and windows, interior and exterior, and agrees to replace all broken glass or damaged glass on the Demised Premises, including window glass and plate glass, except when caused by settling of the building, or by causes covered by Landlord's fire and extended coverage insurance.

(c) If any repairs, replacements or maintenance which Tenant is obligated to make to the Demised Premises become necessary because of the failure of Landlord to make any repairs, maintenance or replacements required of it, or because of poor workmanship or defective materials in the performance of such work by Landlord, then Landlord agrees to make such repairs at its expense.

(d) If any repairs, replacements or maintenance which Landlord is obligated to make to the Demised Premises become

necessary because of the failure of Tenant to make any repairs, maintenance or replacements required of it, or because of bad workmanship or defective materials in the making of such performance of such work by Tenant, the Tenant agrees to make such repairs at its expense.

10. Tenant's Equipment and Trade Fixtures.

(a) Tenant shall have the right at any time during the term of this lease, to install, use and operate in, upon and on the Demised Premises such furnishing, fixtures, equipment, machinery and appliances as it may consider necessary in the conduct of its business in, upon or on said premises. Furnishing, fixtures, equipment, machinery and appliances used in the Demised Premises which are owned solely by Tenant and which are supplied and installed at the sole cost and expense of Tenant shall at all times be and remain the property of Tenant and Tenant shall have the right to remove the same from said premises at any time during the term hereof, provided Tenant shall not be in default hereunder after expiration of applicable grace periods.

(b) Furnishings, fixtures, equipment, machinery and appliances used in, on or upon the Demised Premises and which is/are leased or sold to Tenant by other parties under any lease agreement, conditional sales contract, security agreement or otherwise, shall be and remain the property of the party from whom Tenant may be leasing or purchasing the same, and such party shall have the right at any time, whether there be a default hereunder or not, to remove such furnishings, fixtures, equipment, machinery and appliances from the Demised Premises. Landlord hereby waives any Landlord's lien as to any such furnishings, fixtures, equipment, machinery and appliances mentioned in this paragraph and at any time located in, on or upon the Demised Premises, and agrees to confirm such waiver to any such lessor or conditional seller if requested by Tenant.

(c) The rights of removal provided for in this paragraph shall extend for a period of thirty (30) days following the expiration of the term of this lease, and Tenant agrees to repair any damage to the Demised Premises caused by such removal.

11. Landlord's Failure to Repair.

Landlord and Tenant agree that as to repairs (emergency excluded) required to be made by Landlord to the Demised Premises, Tenant shall give Landlord written notice of the need of such repairs and if within thirty (30) days from the date of the receipt of such written notice, Landlord has not commenced to make and complete such repairs, Tenant shall have the right (but not the obligation) to make such

repairs and pay the costs thereof.

If the circumstance requiring such repairs is such that the repairs cannot be completed in said thirty (30) day period, Landlord shall immediately advise Tenant of the additional time needed, and if Tenant agrees, Landlord shall have such additional time within which to make such repairs. Should Tenant make any such repairs after Landlord's failure to do so, it shall give Landlord immediate notice thereof and Landlord agrees to reimburse Tenant upon demand for the cost thereof. Should Landlord fail to reimburse Tenant, Tenant shall have the right to deduct the cost of such repairs from rent due or to become due hereunder and any such deductions by Tenant shall not be deemed to constitute a failure to pay rent or any other default hereunder even if it be later determined that such deductions, or any part thereof, were unauthorized, improper or illegal. Tenant agrees not to expend any sums under this paragraph 11 without first (or simultaneously with the giving of notice to Landlord) giving written notice to any mortgagee of the Demised Premises (provided such mortgagee has in writing furnished Tenant its then proper mailing address), and allowing such mortgagee the same period of time within which to make such repairs, from receipt of such written notice, as is allowed in this paragraph to Landlord.

12. Emergency Repairs.

In the event it becomes necessary to make any emergency repairs to the Demised Premises, Tenant may make the same itself and pay all costs and expenses in connection therewith. Tenant agrees to use its best effort to contact Landlord or Landlord's agent by telephone to advise of the need for said repairs prior to making same, but Tenant is authorized and empowered to make such repairs whether or not Landlord is actually contacted. If such repairs are otherwise the obligation of Landlord and Landlord fails to reimburse Tenant for the cost thereof within ten (10) days from the date Landlord is notified of the costs and demand is made for payment, Tenant may deduct such costs and expenses from rent due and to become due hereunder and said deductions shall not be deemed to constitute a default hereunder or a failure to pay rent even if it be later determined that any such deductions or any part thereof were unauthorized, improper or illegal. Tenant agrees to give simultaneous notice to any first mortgagee of the Demised Premises (whose name and address shall have been furnished Tenant) of Tenant's demand of Landlord for reimbursement. Emergency repairs shall be deemed those necessary for prevention of imminent injury of damage to persons or property.

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13. Tenant's Alterations.

Tenant may at its sole cost and expense alter or remodel the interior of the Demised Premises in any manner it may so elect (including relocation of exterior doors), provided the structural strength is not impaired and provided such alterations or remodeling are in accordance with the requirements of the local authorities having jurisdiction thereof.

14. Utilities.

Landlord shall without cost and expense to Tenant cause to be furnished, installed and maintained adequate utility lines and services to serve the Demised Premises. All such services shall be separately metered to the Demised Premises. Tenant agrees to pay all service charges for water, telephone, electricity, sanitary sewer charges, garbage disposal and gas used on or in the Demised Premises, and Tenant further agrees not to permit any lien or claim to be filed against Landlord by reason of nonpayment of any such charges.

15. Indemnity.

Landlord agrees to indemnify, protect and save harmless Tenant from any loss, damage, cost or expense caused by injuries or death to persons or damage to property (provided such injuries, death or damage be not a proximate result of Tenant's negligence) while in, on or about the parking areas or other common areas shown on Exhibit 1, or that may be adjacent thereto and owned by Landlord (exclusive of the Demised Premises), or resulting from Landlord's failure to maintain in good repair the sidewalks. Tenant agrees to indemnify, protect and save harmless Landlord from any loss, cost, damage or expense caused by injuries or death to persons or damage to property while in or on the Demised Premises (provided such injuries, death or damage be not a proximate result of Landlord's negligence).

16. Inspection Rights.

Landlord may, during regular business hours (and upon at least two (2) days' prior written notice), through its agents and representatives, enter the Demised Premises for the purpose of inspecting thereof and making any repairs or replacements required of Landlord hereunder, provided same does not unnecessarily interfere with the operation of Tenant's business therein.

17. Events of Casualty and Insurance.

(a) Landlord agrees during the term of this lease at its sole cost and expense to keep the buildings in the Shopping Center, including the building on the Demised Premises, insured to their full insurable value against loss or damage by fire, lightning, windstorm, flood (if applicable), vandalism and malicious mischief, and the perils embraced in the term "extended coverage", with replacement cost endorsement. Evidence of said insurance coverage shall be for the benefit of Landlord's and Tenant's interests, and shall provide for at least twenty (20) days notice to Tenant of any change or cancellation thereof. If the Demised Premises or any part thereof be partially or substantially destroyed by fire or other casualty, then the Landlord agrees at its sole cost and expense (utilizing the proceeds of said insurance) to promptly rebuild or replace the same in as good condition as it was in immediately prior to such fire or other casualty, and the parties agree that there shall be a just and proportionate abatement in the rent from the date of such damage or destruction until Landlord repairs or restores the building and delivers possession thereof to Tenant. If the Demised Premises are made untenable in whole or in part by damage or destruction within the last three (3) years of the term of this lease (whether during the original term or an extension thereof) at the option of the Landlord or at the option of the Tenant, which said option shall be exercised by notice in writing given to Landlord or Tenant, as the case may be, within thirty (30) days after the occurrence of such damage or destruction, this lease shall terminate, and Landlord shall refund to Tenant all rent paid for the period subsequent to such damage or destruction.

(b) Tenant agrees during the term of this lease to keep the personal property of Tenant (or the personal property of the party from whom Tenant may be buying or leasing the property) including trade fixtures, machinery, appliances and equipment, insured to its full insurable value against loss or damage by fire, lightning, windstorm, flood (if applicable), vandalism and malicious mischief, and the perils embraced in the term "extended coverage", with replacement cost endorsement. If Tenant's property or any part thereof be partially or substantially destroyed by fire or other casualty, then Tenant agrees to promptly restore or replace the same at its sole cost and expense in as good condition as it was in immediately prior to such fire or other casualty. If the Demised Premises are made untenable in whole or in part by damage or destruction within the last three (3) years of the term of this lease (whether during the original term or an extension thereof), Tenant shall, provided the option of Landlord and Tenant to terminate this lease as provided in the preceding subparagraph is not exercised by either party, restore or replace said heating and air conditioning equipment at its own expense.

(a) Landlord and Tenant agree that in the event any part of the Demised Premises shall be taken by federal, state, county, city, public utility or other public authority under

19. Eminent Domain.

(b) Landlord and Tenant shall each look solely to its own hazard insurance in the event of destruction of the property of either. Neither Landlord nor Tenant shall be under obligation to pay any amount to the other, its successors or assigns, or to the insurance company issuing the policy of insurance for the amount of insurance of damages even though the loss or damage is caused by the negligence of the other, its agents, servants, invitees, employees, visitors or licensees. Landlord and Tenant shall each cause its respective insurance carriers to waive rights of subrogation in conformity with the terms of this paragraph 18, and shall promptly furnish each other proper endorsements or appropriate evidence with respect thereto.

(a) Landlord and Tenant agree that in the event of any loss or damage to the building included in the Demised Premises, or of the contents, improvements, fixtures and/or equipment of Tenant located therein, by fire or any other perils which each said party has obligated itself under this lease to insure against, regardless of the cause thereof, and whether or not the same be caused by the carelessness or negligence of Landlord or Tenant, their respective servants, employees, agents, invitees, visitors or licensees, neither Landlord nor Tenant, nor their respective insurance carriers shall have any right of subrogation over or against the other, their servants, employees, agents, invitees, visitors, or licensees for any such damage or loss so sustained.

18. Waiver of Subrogation.

(c) Landlord agrees to carry and maintain public liability insurance coverage on all common areas (including parking areas) of the Shopping Center with limits of liability of not less than \$500,000 for an occurrence affecting one person, not less than \$1,000,000 for an occurrence affecting more than one person, and not less than \$250,000 property damage insurance. Tenant agrees to carry and maintain public liability of not less than \$500,000 for an occurrence affecting one person, not less than \$1,000,000 for an occurrence affecting more than one person and not less than \$250,000 property damage. Blanket policies maintained by Tenant or Landlord for not less than the amounts set out above shall be sufficient to comply with the provisions of this subparagraph. Said policies shall contain what is customarily known as "contractual liability" provisions, and each party shall furnish the other certificates of such coverage on a current basis.

the power of eminent domain, then the term of this lease shall cease on the part so taken from the day the possession of that part shall be required for such public purpose and the rent shall be paid up to that date, and from that day, the monthly rental shall be reduced in proportion to the amount of the Demised Premises taken; provided, however, that in the event fifteen (15%) percent or more of the parking area is taken under the power of eminent domain, or so much of the parking area designated as "Priority Parking" on Exhibit 1 is taken that results in a loss of more than 34 parking spaces within said parcel, Landlord shall give Tenant and any mortgagee written notice thereof and Tenant shall have the option, to be exercised within sixty (60) days after receipt of such written notice, to cancel this lease and declare the same null and void, and Tenant shall notify Landlord and any mortgagee of the Demised Premises in writing of its election. In the event Tenant does not elect to cancel the lease, Landlord shall, at its sole cost, build on the new building line a wall, or front, similar to the one removed. Tenant, upon any taking, shall be entitled only to so much of the award as will compensate it for the cost of removal of stock, stock fixtures, equipment, machinery and appliances.

(b) Notwithstanding anything to the contrary in this paragraph 19 contained, in the event Landlord shall offer a comparable parking area either to replace the stated percentage of the total parking area or the stated number of spaces in the section marked "Priority Parking" taken under the power of eminent domain, and in the event Tenant shall approve either replacement parking area so offered by Landlord, the lease shall remain in effect.

20. Exclusive.

(a) To the extent that the Landlord is not prohibited by any existing or future law, regulation, statute or court decision, Landlord hereby covenants and agrees with Tenant (and this covenant and agreement constitutes a material part of the consideration for the execution of this lease by Tenant) that so long as this lease is in effect, Landlord, its successors, assigns, representatives or heirs, will not lease, or permit be leased, or rent or occupy, or permit to be occupied, any premises in the Shopping Center to be used or occupied for the purpose of operating a delicatessen, bakery or a food supermarket, or any business of Tenant, or any other store that would carry fifty percent (50%) or more items of groceries, meat, seafood or produce; provided, however, that if Landlord is lawfully prohibited from performing this agreement by law, regulation, statute or court decision of any federal, state or other governmental agency or authority or of any court, then Landlord shall not be required to perform the covenants and agreements of this paragraph and Landlord shall not be deemed to be in default under this lease agreement for failure to perform or abide by the covenants and

agreements of this paragraph, nor shall it be responsible or liable for any damages or otherwise. Nothing herein contained shall constitute an admission that the covenants and agreements set forth in this paragraph are in violation of any law, regulation, statute or court decision. Should landlord default under this paragraph of the lease, Tenant shall have the right to recover damages in an action at law, or injunctive relief in equity, or both. Nothing in the foregoing, however, shall be construed to prohibit Landlord from using, leasing or occupying any other store in the Shopping Center for a traditional restaurant or "fast-food" type of restaurant.

(b) Notwithstanding any covenant or agreement to the contrary contained in this paragraph 20, if Tenant ceases to operate or closes its business in the Demised Premises for six (6) consecutive months, and such cessation of operations or closing of such business for said six (6) month period, or any part thereof, be not due to or caused by fire, windstorm, or other casualty, Acts of God, picketing, strikes, labor disputes or other cause beyond the control of Tenant, then the covenants of Landlord contained in this paragraph 20 shall thereafter be of no further force or effect.

(c) The operation by an assignee or a subtenant of Tenant (or anyone holding under Tenant) of a food supermarket on the Demised premises shall, for the purposes of this paragraph 20, constitute the operation of such a business by Tenant. The provisions of this paragraph 20 in favor of Tenant shall apply to any assignee and to a subtenant of Tenant, or anyone holding under Tenant, to the same extent and with like force and effect as the same apply to Tenant.

21. Attorneys' Fees.

In the case either party hereto commences any litigation against the other involving this lease or any provisions thereof or any rights thereunder, the nonprevailing party to such litigation shall pay to the prevailing party the reasonable attorneys fees incurred by the prevailing party in such litigation.

22. Common Area Maintenance.

(a) Landlord agrees during the term of this lease to properly maintain the parking areas, sidewalks and other common areas, to keep the parking areas, driveways and similar common areas hard-surfaced and in good repair and to completely resurface the same when the same is in need of resurfacing; to promptly replace in the common area, including the parking areas, any burned out or broken bulbs or lights; to keep the parking areas lighted, striped, clean and free from all debris, and available at all times as a free parking lot for

Tenant and customers and invitees of Tenant and customers and invitees of the Shopping Center; to water, mow and otherwise maintain all grassy and landscaped areas of the Shopping Center and to keep all bushes and trees in a healthy condition; and to keep all other common areas lighted and in good repair. Landlord agrees to prepare and furnish to Tenant a schedule projecting the frequency and times that the parking lot will be cleaned, such schedule to be on an annual basis. Landlord further agrees to keep the parking area lights on each day from dusk until such time as Tenant closes its store each day, but not later than 12 o'clock midnight. Landlord will light such portion of the parking lot for such time as Tenant shall request, but Tenant will reimburse Landlord for Tenant's share of the cost of electricity for such additional lighting (taking into consideration such other tenants who may also be open during such hours and utilizing such lighting) based on a pro-rata of the number of hours of operation of such lights. This provision shall not be construed as giving Landlord any right to regulate Tenant's business hours.

(b) Notwithstanding the provisions of subparagraph (a) hereof, Tenant agrees to resurface and restripe, at its expense and as it deems necessary, the priority parking area and to maintain in proper working order, at its expense and as it deems necessary, the lighting within the priority parking area.

(c) If Landlord fails to do anything required of it in subparagraph (a) hereof, Tenant may give Landlord written notice specifying what Landlord has failed to do and if Landlord does not correct such condition within thirty (30) days from the date of receipt by Landlord of said written notice, then Tenant may itself correct such condition and deduct the cost thereof from any rental due or to become due under this lease. If the circumstance requiring such repairs is such that the repairs cannot be completed in said thirty (30) day period, Landlord shall immediately advise Tenant of the additional time needed, and if Tenant agrees, Landlord shall have such additional time within which to make such repairs. The deductions by Tenant of any such rental shall not be deemed to constitute either a failure of Tenant to pay rent or any other default hereunder even if it be later determined that any such deductions, or any part thereof, were unauthorized, improper or illegal. Tenant agrees not to expend any sums under this paragraph 22(c) without first (or simultaneously with the giving of notice to Landlord) giving written notice to any mortgagee of the Demised Premises (provided such mortgagee has in writing furnished Tenant its then proper mailing address) and the same period of time shall be allowed such mortgagee within which to make such repairs from receipt of such written notice as is allowed Landlord in this subparagraph.

23. Default of Landlord.

Failure of Landlord to comply with any term, condition, provision, agreement or undertaking contained in this lease shall constitute a default by Landlord hereunder.

(a) Landlord and Tenant agree that in the event Landlord defaults in any obligation requiring the payment of money only, Tenant shall give Landlord written notice of such default by certified or registered mail, and Landlord shall have ten (10) days from the date of receipt of such written notice within which to correct the same. If Landlord fails to correct such default within said ten (10) day period Tenant may, at its option and after giving Landlord one additional ten (10) day written notice of its intention to terminate this lease, terminate same, if such default be not corrected within said ten (10) day period.

(b) Landlord and Tenant agree that in the event of any default by Landlord in the performance of any covenant or agreement contained in this lease other than the payment of money, Tenant shall give Landlord written notice of such default by certified or registered mail. If at the expiration of twenty (20) days from receipt by Landlord of said written notice, such default continues to exist, or in case of a default which due diligence cannot be cured within twenty (20) days and Landlord is not proceeding with due diligence to cure and correct the same, Tenant shall then give Landlord a second notice in writing by certified mail or registered mail, and after the expiration of ten (10) days from receipt by Landlord of such second written notice, Tenant may at its option, provided such default has not been corrected, terminate this lease. In the event Landlord corrects or cures any default within the time provided of thereafter if prior to Tenant's notice of termination, then upon such correction or cure, the rights of Landlord hereunder shall be reestablished as though said default had not occurred and said notice had not been given by Tenant.

(c) Tenant agrees, simultaneously with the giving of notice to Landlord, to send a copy of such written notice to any mortgagee of the Demised Premises (provided such mortgagee has in writing furnished Tenant its then proper mailing address) and allowing such mortgagee the same period of time within which to correct any default from receipt of such written notice as is allowed Landlord in this paragraph.

24. Default of Tenant.

Failure of Tenant to comply with any term, condition, provision, agreement or undertaking contained in this lease shall constitute a default by Tenant hereunder.

(a) Landlord and Tenant agree that in the event Tenant defaults in the payment of rental or any other sum hereunder, Landlord shall give Tenant written notice of such default by certified or registered mail, and Tenant shall have ten (10) days from the date of receipt of such written notice within which to correct same. If Tenant fails to correct such default within said ten (10) day period, Landlord may, at its option and after giving Tenant one additional ten (10) day written notice of its intention to terminate this lease, and if such default is not corrected within the said ten (10) day period, terminate the same.

(b) Landlord and Tenant agree that in the event of any default by Tenant in the performance of any covenant or agreement herein contained other than the payment of money, Landlord shall give Tenant written notice of such default by certified or by registered mail. If, at the expiration of twenty (20) days from receipt by Tenant of said written notice, such default continues to exist, or in case of a default which with due diligence cannot be cured within twenty (20) days and Tenant is not proceeding with due diligence to cure and correct the same, Landlord shall then give Tenant a second notice in writing by certified or registered mail, and after the expiration of ten (10) days from receipt by Tenant of such second notice, Landlord may, at its option and provided such default has not been corrected, terminate this lease. In the event Tenant corrects or cures any default within the time period provided, the rights of Tenant hereunder shall be reestablished as though the default had not occurred and such notice had not been given by Landlord.

(c) If the Demised Premises shall be abandoned during the term or if Tenant shall be evicted from said premises by summary proceedings or otherwise, or in the event of the commencement of bankruptcy proceedings by or against Tenant which are not discharged or dismissed within sixty (60) days, or upon the happening of any event of default as provided above, Landlord may at its election terminate this lease (in which event Landlord shall be entitled to recover damages for any such default, or Landlord may reenter the same by force or otherwise, without being liable for prosecution therefor, and may relet the Demised Premises at any time as agent of Tenant, applying any moneys collected first to costs, fees and expenses of collecting, then to the expense of obtaining possession, then to the payment of the rent and all other sums owing and to become owing landlord and paying any surplus thereof to Tenant; and such reentry and reletting shall not discharge Tenant from liability for rent or from any other covenant of this lease by it to be kept and performed.

25. Operation of Tenant's Business.

(a) Tenant agrees to open its business in the Demised Premises on the commencement of the term hereof, and to operate therein for a period of at least six (6) months. Thereafter Tenant shall have the right in its sole and absolute discretion to discontinue the operation of its business on the Demised Premises at any time or from time to time. This lease shall never be construed to require Tenant to operate its business on the Demised Premises or to prevent its closing such business, except as otherwise provided in the first sentence of this paragraph. Landlord and Tenant agree, however, that if the operation of business in the Demised Premises is discontinued for a period of six (6) consecutive months and such discontinuance is not caused by or due in whole or in part to fire, windstorm or other casualty, Act of God, picketing, strikes, labor disputes or other causes beyond the control of Tenant, or its successors or assigns, for a period of sixty (60) days after the expiration of said six (6) month period, Landlord shall have the right to terminate this lease with written notices thereof. On the date of such termination notice, this lease and the term hereof shall expire as though such date were the original expiration date set forth herein, and any rent paid for periods beyond said termination date shall be refunded to Tenant.

(b) Any discontinuance of business on the Demised Premises shall not relieve Tenant from its obligations for payment of the rentals or any other sums due by Tenant to Landlord, or from its other obligations herein, unless Tenant is otherwise relieved therefrom by reason of any other provision of this lease.

26. Merchants' Association.

Tenant shall have a right, but shall not be obligated, to join and maintain membership in any merchants' association on the same terms and conditions as the other members of said association.

27. Tenant's Signs.

(a) Tenant shall have the right from time to time to erect and display signs, lettering, advertisements and other projections on the exterior and interior of the Demised Premises (except that no signs shall be placed on the roof of the premises by any party), including without limitation, large business signs. Any damage to the building as a result of the removal of Tenant's signs (excluding mounting bracket holes and similar openings) shall be repaired at the expense of Tenant.

(b) Landlord agrees to erect and to maintain in a first class condition throughout the term of this lease (i) a shopping center pylon in the location shown on Exhibit 1 and (ii) a sign situated on the pylon advertising and carrying the name of the Shopping Center. The pylon and sign shall be constructed and designed as provided in the plans and specifications. Tenant shall have the right to locate its sign on said pylon, and the sizes and positions of prominence of all tenants' signs located thereon shall be determined in accordance with the sizes of the respective tenants' premises in the Shopping Center. The cost of construction, installation, maintenance and energy expense of the pylon and Shopping Center sign located thereon shall be Landlord's responsibility, and Tenant shall be responsible for the cost of installation, maintenance and energy expense of its sign located thereon. A separate meter shall be installed to separate the cost of energy expense for Tenant's sign. In no event shall any other pylon or sign be erected by or for any other tenant in the Shopping Center.

28. Recordation of Lease.

Landlord and Tenant agree that this lease agreement or a mutually agreeable memorandum form of same (if such memorandum can be legally used to serve as a substitute for the recordation of the full lease) shall be recorded in the proper recording office of the county in which the Demised Premises are located within sixty (60) days from date of its execution, and Landlord agrees to pay all recording fees, expenses and taxes imposed in connection with the recordation thereof. Tenant shall record this lease agreement or memorandum thereof, and upon the recordation thereof shall bill Landlord therefor, and Landlord agrees within thirty (30) days from the date of such bill to reimburse Tenant for the cost of recording of same including the aforesaid recording fees, expenses and taxes. If Landlord fails to reimburse Tenant, Tenant shall have the right to deduct all such costs from rentals next becoming due and payable under this lease agreement and such deductions shall not be deemed to constitute a default hereunder even if it be later determined that such deductions or any part thereof, were illegal, unauthorized or improper. Landlord further agrees to pay all costs and fees for recording any amendments to this lease and the time and procedure for recording such amendments shall be the same as provided for the recording of this lease.

29. Subordination and Non-disturbance.

At the option of Landlord, Tenant agrees that this lease may be made subject and subordinate to the lien of any first mortgage (which term shall include all first security instruments) that may be placed on the Demised Premises by Landlord, and Tenant agrees upon demand and without cost

to execute such instruments as may be required to effectuate such subordination; provided, however, as a condition to such subordination, Laddlord shall obtain from any such mortgagee and deliver to Tenant an agreement in writing providing in substance that so long as Tenant shall faithfully discharge the obligation on its part to be kept and performed under the terms of this lease, its tenancy and rights under this lease shall not 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.

30. Trash Disposal Facilities.

Tenant shall store all trash, rubbish and garbage on or at the rear of the Demised Premises, and shall provide for the prompt and regular removal thereof for disposal outside the area of the Shopping Center.

31. Trade Names.

Tenant may operate its store under any trade or business name it may choose and may from time to time change such name.

32. Successors and Assigns.

Every provision of this lease applicable to Laddlord and every provision thereof applicable to Tenant shall also bind, apply to and run in favor of their respective heirs, successors, assigns and successors in interest as fully as if said words were inserted after the words "Laddlord" and "Tenant" whenever and wherever the same appear herein.

33. Nonwaiver.

Any assent, express or implied, by Tenant or Laddlord to any breach of any specific covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally or any subsequent breach thereof.

34. Gender.

Pronouns used herein denoting one gender shall include other genders whenever and wherever the context so admits or requires.

35. Transfer of landlord's Interest.

Should Landlord sell or otherwise transfer to any party its interest in the Shopping Center, the Demised Premises or this lease, Tenant shall not be required to recognize such party as its Landlord hereunder (nor pay to said party rent or any other sums due hereunder) until and unless Tenant shall have been furnished by the Landlord or the first mortgagee (a) the name and address of such party and to whom the rents and other sums due hereunder are to be paid, and (b) a true and correct copy of the fully executed instrument of conveyance or transfer, evidencing to Tenant's reasonable satisfaction that such party has succeeded to the rights and obligations of Landlord hereunder.

36. Common Area Maintenance Contributions.

(a) Tenant agrees to pay Landlord a pro rata share of the annual cost of common area maintenance performed by Landlord in accordance with the provisions of paragraph 22 of this lease. For purposes of this paragraph, the term "cost of common area maintenance" shall mean the direct cost to Landlord for (a) paving repair, (b) energy expense for lighting the parking areas and other common areas, (c) painting the parking lines and driveways lanes, (d) repair to lighting standards in the common areas and replacement of bulbs and/or lighting elements, (e) sweeping and cleaning the common areas, and (f) maintenance of any landscaping. Said term shall not include (a) the cost of repair or restoration to the common areas resulting from fire, wind-storm, accident or other casualty, nor (b) any cost covered by the casualty insurance required to be carried by Landlord hereunder, nor (c) the cost to Landlord for premiums for any liability insurance carried by Landlord, nor (d) any overhead or salaries or expenses for Landlord's employees unless such employees are employed full time and engaged solely for the purpose of performing such common area maintenance, nor (e) the cost of replacement of trees, bushes or other plants or greenery. The cost of completely resurfacing the parking area within the common areas of the Shopping Center in accordance with paragraph 22 of this lease shall not be deemed to be a cost of common area maintenance.

(b) Landlord shall cause all such common area maintenance to be performed at competitive prices and all such work performed by third parties shall be contracted for at arm's length. Landlord shall furnish Tenant with a copy of the proposed budget for common area maintenance at the beginning of each lease year (and prior to the making of any third-party contracts or agreements), together with information reflecting the nature of the services, the amount or rate of computation for payment of same and the identity of any third parties proposed for the performance of same. In the

event that Tenant deems any item in the proposed budget not to be based on competitive pricing, Landlord shall use its best good faith efforts to renegotiate or obtain new proposals at competitive prices, and in the event Landlord is unable to do so, Tenant shall have the right to perform such services or cause same to be performed at prices less than those proposed by Landlord. Should Tenant elect to exercise this right, the cost of maintenance incurred by Tenant shall be included in Landlord's cost of same, and Tenant's pro rata share shall be determined as provided in subparagraph (c) below, except that Tenant shall be allowed a credit against its pro rata share for costs expended by it, and in the event such costs so expended should exceed the amount determined to be Tenant's pro rata share, Landlord shall within ten (10) days from date of request therefor reimburse Tenant for such excess costs.

(c) Landlord shall furnish Tenant within thirty (30) days after the close of each lease year during the term hereof an itemized statement showing the total cost of Landlord of such common area maintenance. If requested by Tenant, Landlord shall also furnish copies of invoices, statements, contracts, expense vouchers and other supporting data to substantiate the itemized statement. Landlord agrees to use its best good faith efforts to cause all such maintenance to be done at competitive prices, and Tenant shall have the right to review and audit Landlord's books and records respecting such maintenance work, on an annual basis. Tenant's pro rata share of such cost shall be determined by multiplying the total common area maintenance cost by a fraction, the numerator of which shall be the number of square feet of area in the Demised Premises, and the denominator of which shall be the aggregate square feet of gross leasable area in the Shopping Center. The term "lease year" shall be deemed to mean the first twelve-month calendar period commencing on the first full month of the term hereof, and each twelve-month calendar period thereafter. In the event the term of this lease commences on a day other than the first day of the month, then such partial month shall also be included in the first lease year of the term. Payment from Tenant shall be due thirty (30) days after receipt by Tenant of such itemized statement.

37. Tax Contribution.

(a) Tenant agrees to pay all ad valorem taxes on the fixtures and equipment owned or leased by Tenant located in the Demised Premises. Tenant further agrees, subject to the terms and conditions herein contained, to pay to Landlord Tenant's pro rata share of the real estate ad valorem taxes assessed against the Shopping Center during the term hereof, computed by multiplying the total amount of such taxes by a fraction, the denominator of which shall be the aggregate square feet of gross leasable area in the Shopping Center

(whether or not leased) and the numerator of which shall be the total number of square feet in the Demised Premises. In the event the commencement of the term of this lease does not coincide with the tax year of the taxing authority, Tenant's pro rata share of taxes for the first and last years of the term hereof shall be prorated so that Tenant shall be charged only for that portion of the tax year during which the term of this lease is in effect. If Tenant's building is separately assessed, Tenant shall pay to Landlord the taxes attributable to said building together with Tenant's pro rata share of the real estate taxes on the common areas, such pro rata share to be computed using the same formula as hereinabove set forth. Tenant shall have the right to request Landlord to obtain a separate assessment of Tenant's building and Landlord shall use its best efforts to do so.

(b) Landlord shall at the end of each tax year furnish Tenant a copy of the paid tax bills for such tax year and a copy of the assessments on which such tax bills are based and all facts, data and information needed to calculate Tenant's pro rata share of the ad valorem taxes. Payment from Tenant shall be due thirty (30) days thereafter.

(c) Tenant shall have the right in the name of Landlord, but at Tenant's expense, to take whatever action (including litigation) Tenant deems necessary to contest the validity or amount of the assessed valuation of the Demised Premises or of the Shopping Center or of the ad valorem tax for any tax year, and Tenant at its cost and expense may undertake by appropriate proceedings in the name of Landlord, or Tenant, to contest or effect a review of the validity or amount of the assessed valuation of the ad valorem tax for any tax year. Any documents required to enable Tenant to prosecute any such proceedings shall be executed and delivered by Landlord within a reasonable time after demand therefor. Landlord shall inform Tenant in time to permit Tenant to undertake such contest or review, and shall furnish all pertinent data required to undertake such contest or review.

(d) Real estate ad valorem taxes for the purpose of this paragraph shall not include assessments for public improvements.

(e) If there is any remission or refund of all or any part of Tenant's tax payment for any tax year for which Tenant's tax payment has been paid, Tenant shall be entitled, without demand, to an appropriate refund for such taxes.

(f) Should any dispute ever exist as between Landlord and Tenant as to the amount of any ad valorem taxes due by Tenant to Landlord, and Tenant fails to pay such taxes on demand, the parties agree that the failure of Tenant to pay such taxes, in the absence of a final, unappealable court judgment that Tenant is liable therefor, shall not be deemed to constitute a default under this lease, unless Tenant fails

to make payment within thirty (30) days after the rendition of an adverse, final unappealable court judgment.

(g) Landlord agrees to promptly notify Tenant in writing should Landlord receive from any taxing authority any notice that such taxing authority proposes to increase, modify or change any of the ad valorem tax assessments.

(h) Landlord agrees that Tenant may actively participate in any hearing before any taxing authority, including, without limitation, the tax assessor, board of equalization or other public authority, relative to any modification or change of assessments or rate of taxation. Landlord further agrees not to enter into any agreement or understanding with respect to any increase in, or change or modification of, the ad valorem taxes without having first secured the written consent of Tenant.

(i) For purposes of subparagraph (a) hereof and Tenant's obligation to contribute, the term of this lease shall not be deemed to commence until the date that Landlord shall have completed the buildings and improvements in the Shopping Center as shown on Exhibit 1, notwithstanding that Tenant may have elected to open for business in the Demised premises and pay rent therefor.

38. Fire and Extended Coverage Insurance Premium Contribution.

(a) Subject to the provisions of subparagraph (b) herein, Tenant agrees to reimburse Landlord for Tenant's pro rata share of the cost of the annual premium paid by the Landlord for the fire and extended coverage insurance required to be carried by Landlord covering the buildings on the Shopping Center and Demised premises, as provided in paragraph 17(a) of this lease. Landlord shall furnish Tenant with duplicate copies or certificates of said insurance policy, which shall provide that said policy or policies may not be cancelled or modified except on at least twenty (20) days' prior written notice to Tenant. Tenant agrees to make such annual reimbursement to Landlord within thirty (30) days from receipt of written request from Landlord, together with a copy of the premium notice reflecting payment of same. Upon the expiration of the term of this lease, or upon the cancellation or termination hereof (except by reason of default of Tenant), Landlord shall pay to Tenant the amount of any unearned premium for which Tenant has reimbursed Landlord pursuant to the provisions hereof.

(b) Landlord agrees to procure all insurance coverage required to be carried pursuant to the terms of this paragraph from agents or brokers dealing at arm's length and at usual and customary rates for such insurance coverage. Prior

to effecting such coverage and prior to each subsequent renewal of such coverage, Landlord shall first notify Tenant in writing of the name of the insurer, the amount, form and extent of such coverage, and the cost of the premium therefor; and Tenant shall have the right to require Landlord to effect such coverage in the same amount, form and extent of coverage, but with a different insurer and/or through a different agent or broker, provided (i) the premium cost is less than that quoted by Landlord and (ii) Landlord and Landlord's first mortgagee approve any different insurer proposed by Tenant (but the right of approval shall arise only if such proposed insurer has an "insurance rating" less than the insurer proposed by landlord, and in that event, such approval shall not be unreasonably withheld). However, Landlord can nullify Tenant's election if it then obtains a premium cost equal to or less than that quoted by Tenant.

39. Additional Rent.

(a) In addition to the rent provided for in Paragraph 1 of this lease, Tenant agrees to pay Landlord a percentage rent computed and payable as follows: On or before the last day of the second calendar month next succeeding each twelve (12) month period during the term hereof, and also on or before the expiration of sixty (60) days after the termination hereof, Tenant agrees to deliver to Landlord a full, true and correct statement certified to by one of its officers, showing the gross sales (as herein defined) made by Tenant in or from the Demised Premises during the preceding twelve (12) month period. Subject to the limitation and to the credits provided for hereinafter, Tenant shall pay Landlord as additional rent, at the time such statement is delivered, an amount equal to one (1%) percent of gross sales made by Tenant during each such twelve (12) month period.

(b) In no event shall the additional rent provided herein exceed in any twelve (12) month period an amount equal to one hundred fifty (150%) percent of the annual rental provided in paragraph 1 of this lease; and further, there shall be credited against any additional rent due hereunder an amount equal to said annual rent and any payments or contributions made by Tenant for common area maintenance, ad valorem taxes and insurance premiums during such twelve (12) month period, it being the intent of the parties that Landlord shall be only entitled to such additional rent over and above the aforesaid basic payments.

(c) The term "Gross Sales" as used herein is hereby defined to mean the total amount of all sales of merchandise made in or from the Demised Premises after deducting therefrom (to the extent that the same are or have been included in the computation of gross sales); the total amount of all refunds to customers and all credits granted for the return of merchandise; all discounted sales to employees; all sales

taxes of federal, state, municipal and other political subdivisions; all federal excise taxes and any other tax collected for a government agency; and all sales of liquor, wine, beer or packaged alcoholic beverages. Further, the receipts from transactions made by any subpost office, banking facilities, automated teller machines, and the like, that may be located on the Demised Premises shall not be deemed to be a part of "Gross Sales".

(d) If this lease commences other than on the first day of the month, then the gross sales of the fractional part of the first month shall be included with the gross sales made in the next twelve (12) month period for the first computation of additional rent under this lease.

(e) All books and records of Tenant pertaining to sales of merchandise from Demised Premises shall be open for inspection and audited by an authorized representative of Landlord. Said inspection and audit shall be conducted at the general office of Tenant at 305 Delchamps Drive, Mobile, Alabama, or at such other place as may be designated by Tenant in writing. Any inspection or audit shall be made only during regular business hours and Landlord agrees not to divulge any figures, audit reports or statement furnished by Tenant but agrees to keep all of the same confidential. Tenant shall not be required to keep or preserve or cause to be kept or preserved the records on which the additional rent is based for more than six (6) months after expiration of the period to which such records relate. Unless Landlord shall object in writing within said six (6) month period, Landlord shall be deemed to have waived any right to examine or require production of such records, and Tenant shall not be liable for any additional rent for the period to which said records relate except such additional rental as Tenant may have actually paid.

40. Exculpation.

From and after the accomplishment of Landlord's obligations respecting the construction of the Demised Premises and the other improvements in the Shopping Center in accordance with the terms of this lease, Tenant agrees that Tenant shall look solely to Landlord's interest in the Demised Premises and in the Shopping Center and in Landlord's personal property used in connection therewith for the satisfaction of any claim, judgment or decree requiring the payment of money by Landlord based upon any default hereunder, and no other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of such claim, judgment or decree. Nothing contained herein shall diminish the rights of Tenant under any provision of this lease to withhold any and all rental payments and other payments becoming due to Landlord pursuant to the provisions of this lease. As used in this paragraph the phrase

"Demised Premises" and "Shopping Center" and the "Landlord's personal property used in connection therewith" shall include all additions to any of same and all substitutions thereof including any award payable as a result of a partial or total taking under the power of eminent domain and the proceeds of all fire and extended coverage insurance policies.

41. Investment Tax Credit.

The entire investment tax credit allowed by law for the property leased shall be passed on to Tenant. Landlord shall execute, upon request of Tenant, an election to pass on to Tenant the investment tax credit in the form attached hereto as Exhibit B.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease in multiple original as of the day, month and year first above written.

LANDLORD:

VALLEYDALE (5) DEVELOPMENT
COMPANY

By: [Signature]

L. W. Cav
Managing Partner

By: [Signature]

T. E. Mitchell
Managing Partner

WITNESSES:

[Signature]
[Signature]

WITNESSES:

[Signature]
[Signature]

(Affix
Corporate
Seal)

TENANT:

DELCHAMPS, INC.

By: [Signature]

J. R. Delchamps
Vice President

ATTEST:

By: [Signature]

Heidi A. Eckert
Secretary

STATE OF ALABAMA:
COUNTY OF MOBILE:

I, a Notary Public in and for said County in said State,
hereby certify that L. W. CAVE and T. E. MITCHELL, whose names
as Managing Partners of VALLEYDALE (S) DEVELOPMENT COMPANY, an
Alabama general partnership, are signed to the foregoing con-
veyance, and who are known to me, acknowledged before me on
this day that, being informed of the contents of the convey-
ance they, as such Partners 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 4th day
of September, 1987.

Marcia W. Ferguson
NOTARY PUBLIC

My Commission Expires: 9/5/90

STATE OF ALABAMA:
COUNTY OF MOBILE:

I, a Notary Public in and for said County in said State,
hereby certify that J. R. DELCHAMPS, whose name as Vice
President of DELCHAMPS, INC., an Alabama corporation, is
signed to the foregoing conveyance and who is known to me,
acknowledged before me on this day that, being informed of
the contents of the conveyance, 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 1 day
of September, 1987.

James H. McDonald, Jr.
NOTARY PUBLIC

My Commission Expires: 9/24/88

Prepared by:

James H. McDonald, Jr.
Vice President and General Counsel
Delchamps, Inc.
Post Office Box 1668
Mobile, Alabama 36633
(205) 433-0431

" EXHIBIT A "

A tract of land situated in the Southeast 1/4 of the Southeast 1/4 of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows: Commence at the Northeast corner of said quarter-quarter section and run in a westerly direction along the north line thereof a distance of 422.06 feet; thence an angle left of 91 degrees 23 minutes 26 seconds and run in a southerly direction a distance of 412.83 feet to the point of beginning; thence an angle left of 88 degrees 35 minutes 50 seconds and run in an easterly direction for a distance of 417.36 feet to a point on the east line of said 1/4 - 1/4 section; thence an angle right of 89 degrees 15 minutes 39 seconds and run in a southerly direction along said east line a distance of 214.93 feet to a point on the west right of way line of U. S. Highway No. 31; thence an angle right of 08 degrees 42 minutes 15 seconds and run along said right of way in a southerly direction a distance of 408.97 feet; thence an angle right of 21 degrees 21 minutes 05 seconds and run in a southwesterly direction a distance of 188.80 feet to a point on the northwest right of way line of Alabama Highway No. 261; thence an angle right of 29 degrees 30 minutes and run in a southwesterly direction along said right of way a distance of 122.50 feet; thence an angle right of 85° 58" and run in a northwesterly direction along the northeast boundary of Riverchase Animal Clinic Property a distance of 141.48 feet; thence an angle left of 90 degrees and run southwest along the northwest line of said property a distance of 100.00 feet to the northeast right of way line of Valley Dale Terrace; thence an angle right of 90 degrees and run northwest along right of way line a distance of 25.60 feet to the beginning of a curve to the right, said curve having a radius of 419.64 feet and subtending a central angle of 13 degrees 13 minutes 21 seconds; thence run northwest along the arc of said curve a distance of 96.84 feet; thence on a line tangent to curve, continue north along right of way line a distance of 166.06 feet; thence an angle right of 77 degrees 22 minutes 09 seconds and run northeast along right of way a distance of 13.01 feet; thence an angle left to tangent of a curve to the left of 77 degrees 07 minutes 41 seconds; said curve having a radius of 174.25 feet and subtending a central angle of 30 degrees 07 minutes 58 seconds; thence run along the arc of said curve a distance of 91.61 feet; thence on a line tangent to curve, continue along right of way line in a northwesterly direction a distance of 67.40 feet; thence 90 degrees right and run northeast a distance of 147.17 feet; thence an angle right of 9 degrees 47 minutes, 39 seconds, and run northeast a distance of 175.89 feet; thence an angle left of 49 degrees 18 minutes 39 seconds and run in a northerly direction a distance of 175.35 feet to the point of beginning.

STATEMENT OF SUPPLEMENTAL INFORMATION
PURSUANT TO REG. 81.48-4(g)(4)

This statement of supplemental information is provided by the Landlord to the Tenant pursuant to Reg. 81.48-4(g)(4) (which pertains to the investment credit) and relates to a general election on the part of the Landlord dated the ___ day of _____, 19___, with the consent of the above-named Tenant, dated the ___ day of _____, 19___, that the investment credit be passed by the Landlord to the Tenant in the case of all property the possession of which the Land transferred to the Tenant under lease during the Tenant's taxable year that began _____, 19___, and ended _____, 19___.

PROPERTY DESCRIPTION

Description of Property	Possession transfer date (rental start)	Fair Market Value	Estimated Useful Life Category

The foregoing list includes and consists of all property transferred under lease by Landlord to the above-named Tenant during Tenant's taxable year as designated above.

ELECTION TO PASS ON INVESTMENT CREDIT TO TENANT

This is notice that the undersigned Landlord elects, for the purpose of the tax credit allowed by Section 38 of the Internal Revenue Code, to treat Tenant as having purchased the property identified below.

TENANT: DELCHAMPS, INC.
305 Delchamps Drive
Post Office Box 1668
Mobile, Alabama 36633-1668

Taxpayer Account Number: [REDACTED]

Tenant files Federal income tax returns with the District Director in Atlanta, Georgia.

LANDLORD: Name:
Address:

Taxpayer Account Number: _____

Landlord files Federal income tax returns with the District Director in _____

This statement is intended as a general election on the part of the Landlord to pass the investment credit to the above-named Tenant in the case of all property the possession of which the Landlord transfers under lease to the Tenant during Tenant's taxable year which begins on _____, 19____, and ends on _____, 19____.

Signature by Landlord constitutes a general-election to pass on credit if accepted by Tenant.

_____, LANDLORD

By: _____
Its: _____
Date: _____

Signature by Tenant indicates his consent to be treated as the purchaser of all property the possession of which Landlord transfers under lease to the Tenant during the taxable year indicated above.

DELCHAMPS, INC., TENANT

By: _____
Its: _____
Date: _____

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

1987 OCT 13 PM 1:44

Thomas A. Knowlton, Jr.
JUDGE OF PROBATE

Page 1 of Exhibit B

1. Deed Tax \$5356.00
2. Mtg. Tax _____
3. Recording Fee \$5.00
4. Indexing Fee 1.00
TOTAL \$542.00

