

2/82

STATE OF ALABAMA)
COUNTY OF SHELBY)

LEASE AGREEMENT

THIS LEASE, made this 4th day of February, 1988, between CHAR-TER INVESTMENTS, an Alabama general partnership, c/o Cooper & Grelier Companies, P. O. Box 19399, Birmingham, Alabama 35219 (hereinafter called "Landlord") and BIG B, INC., P.O. Box 10166, Birmingham, Alabama 35202, (hereinafter called "Tenant"), which terms Landlord and Tenant shall include, whatever the context admits or requires, singular and plural, and the heirs, legal representatives, successors and assigns of the respective parties;

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:

1. PREMISES:

That certain store building, approximately 75 feet in width by 120 feet in depth, a loading dock as shown on Exhibit "A" attached hereto, containing approximately 9,000 square feet measuring from center line to center line, and the land on which both the same shall stand (hereinafter collectively called the "demised premises" or the "leased premises"), and also certain rights, easements and privileges in adjoining property, including, but not limited to, additional parking areas and entries and exits, all as hereinafter referred to, 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,



COOPER & GRELIER COMPANIES

P.O. BOX 19399 BIRMINGHAM, ALABAMA 35219

Att.:
Gerri
Austin

marked Exhibit "A" and by this reference made a part hereof. The demised premises are located in a shopping center to be known as ^{SOUTH LAKE} Village ~~on Southlake~~, located in the City of Hoover, County of Shelby, State of Alabama, the legal description of that portion of the shopping center owned by Landlord (as more particularly set forth hereinbelow) being described in Exhibit "B" attached hereto and made a part hereof.

Reference is made to that certain Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements, dated _____, and recorded in Book _____, at Page _____, in the Shelby County Probate Office (hereinafter referred to as the "INDENTURE"). Under the provisions of the INDENTURE, the shopping center property is made up of Tract "1" (owned by Landlord herein) and Tract "2" (owned by Bruno's, Inc.). Tenant acknowledges and agrees that its rights hereunder are subject to the terms, provisions, agreements and obligations of the INDENTURE. Landlord agrees to exert every reasonable effort to cause and compel the owner of Tract "2" under the INDENTURE to carry out and perform all of the obligations, agreements and undertakings with respect to Tract "2" as set forth in the INDENTURE including, but not limited to, maintenance, repair, lighting and non-obstruction of the Common Areas of the Shopping Center as defined in the INDENTURE. Upon receipt of written notice from Tenant that the owner of Tract "2" has failed to perform its obligations as aforesaid, Landlord shall promptly undertake all reasonable efforts to enforce the performance of such obligations by the owner of Tract "2", including all claims, demands, suits or other legal actions necessary with respect thereto, all of which shall be at the sole cost and expense of Landlord, including, without limitation, court costs and reasonable attorneys' fees. In agreeing to undertake the actions set forth hereinabove, Tenant understands and agrees that Landlord does not insure or guarantee the performance of such obligations by the owner of

BOOK 207 PAGE 58

Tract "2". In the event Landlord shall fail to promptly carry out and perform Landlord's obligations as hereinabove set forth, then (i) Tenant shall be permitted to take any such action and file any such proceedings in the name of Landlord, and Landlord shall reimburse Tenant for all cost and expenses, including but not limited to, court costs and attorney's fees, incurred in connection therewith; or (ii) Tenant shall have the unqualified right and privilege of terminating this entire lease agreement by giving to Landlord written notice of its intention to cancel and terminate the Agreement at the end of a period not less than thirty (30) days following the receipt of such written notice by Landlord, in which event Tenant shall be released and discharged of any and all of its obligations under this lease accruing on and after the vacation of the leased premises by Tenant. Should Landlord fail to make reimbursement to Tenant as set forth in (i) of the immediately preceding sentence, within fourteen (14) days from receipt of a statement from Tenant setting forth such cost and expenses, then Tenant shall be permitted to deduct the amount therefor from the next maturing installments of guaranteed minimum rent due under this Lease.

2. 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 of fifteen (15) years from the commencement date (commencement date being the date when rent shall begin to accrue under this lease as hereinafter provided), if such date of commencement of the term hereof shall occur on the first day of a calendar month, and if not, such term shall commence upon the first day of the calendar month next following the date of commencement. The parties agree to execute a supplemental agreement fixing the commencement and termination dates of the term hereof 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:

3. USE:

(a) The demised premises may be used for a retail super drug store, including, but not limited to, sale of drug items, and drugs prepared and compounded from prescriptions of medical doctors, health and beauty aids, sale of other general merchandise, commodities and services, and such other articles commonly sold in other super drug stores in the State of Alabama, or for the conduct of any other lawful business, provided, however, the demised premises shall not be used or assigned or subleased under the provisions of Paragraph 30 hereof for any primary use or business which shall be in direct competition with the primary use or business engaged in by any other then tenant in the shopping center to whom Landlord has granted a right of exclusive use. Tenant shall not do or permit anything to be done in or about the premises, 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 cleanliness, safety, occupation, and use of the same. No auction, fire or bankruptcy sales may be conducted in the premises without Landlord's consent.

(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 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.

(c) The space immediately in front of and adjacent to the demised premises may be utilized by Tenant in its discretion for any reasonable purpose, including, but not limited to, the placement of vending and ice machines, the display and sale of merchandise and other goods and wares and such other related purposes as Tenant may designate during the term of this lease and any extensions thereof.

4. EXCLUSIVE DRUG STORE, ETC.:

Landlord covenants and agrees that the Tenant shall have the exclusive right to operate a retail super drug store in the shopping center and any enlargement thereof. Landlord further covenants and agrees that it will not directly or indirectly lease or rent any property, located within the shopping center, or located in any enlargement thereof, or located in any out-parcel or in any other property contiguous to the shopping center or located within 2,500 feet of any exterior boundary of the shopping center which is owned, directly or indirectly, by Landlord, for occupancy as a retail super drug store as hereinafter defined, 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. For such purposes, a "retail super drug store" shall be deemed to include a super drug store engaged in the sale of drug items, and drugs prepared and compounded from prescriptions of medical doctors, sale of other general merchandise, commodities and services, and such other articles commonly sold in other super drug stores in the State of Alabama. Landlord further covenants and agrees that it will not, directly or indirectly, permit any tenant, subtenant or other occupant in the shopping center, or in any

enlargement thereof, or in any out-parcel or in any other property contiguous to the shopping center which is owned, directly or indirectly, by Landlord, to engage in the sale of drugs and drug items prepared and compounded from prescriptions of medical doctors. Under no conditions may Landlord lease any property located within the shopping center or, located in any enlargement thereof, or located in any out-parcel or in any other property contiguous to the shopping center which is owned, directly or indirectly, by Landlord, for the conduct and operation of a photo kiosk store, which kiosk store is engaged in the business of developing film and/or selling photographic supplies, unless leased to Tenant, nor will 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, it being understood that the prohibitions contained in this sentence shall not prevent any other tenant in the shopping center, other than a photo kiosk store, from developing film and selling photographic supplies in connection with its business conducted in the shopping center.

5. RENTAL:

(a) Minimum Guaranteed Rental During First Ten (10) Years of Primary Term:

During the first ten (10) years of the primary term, Tenant agrees to pay to Landlord as minimum guaranteed rental the sum of Sixty-Seven Thousand Five Hundred and No/100 Dollars (\$67,500.00) per annum. Such minimum guaranteed rental during the first ten (10) years of the primary term shall be paid in twelve (12) equal monthly installments of Five Thousand Six Hundred Twenty-Five and No/100 Dollars (\$5,625.00) per month, which installments shall be due and payable in advance on the first day of each and every calendar month during the first ten (10) years of the primary lease term.

(b) Minimum Guaranteed Rental During Last Five
(5) Years of Primary Term:

During the last five (5) years of the primary term, Tenant agrees to pay to Landlord as minimum guaranteed rental the sum of Sixty-Nine Thousand Seven Hundred Fifty and No/100 Dollars (\$69,750.00) per annum. Such minimum guaranteed rental during the last five (5) years of the primary term shall be paid in twelve (12) equal monthly installments of Five Thousand Eight Hundred Twelve and 50/100 Dollars (\$5,812.50) per month, which installments shall be due and payable in advance on the first day of each and every calendar month during the last five (5) years of the primary lease term.

(c) Percentage Rental During Primary Term and
any Extended Terms:

In addition, the Tenant agrees to pay to the Landlord a percentage rental equal to the amount, if any, by which two percent (2%) of Tenant's gross sales made from the demised premises in each fiscal year ending January 31 during the term of the lease, and any extensions thereof, exceeds (i) the annual minimum guaranteed rental of \$67,500.00 paid each such fiscal year during the first ten (10) years of the primary term; (ii) exceeds the annual minimum guaranteed rental of \$69,750.00 paid each such fiscal year during the last five (5) years of the primary term; and (iii) exceeds the annual minimum guaranteed rental required to be paid during each year of any extended period, as hereinafter provided.

Any excess rent which may become due by reason of the percentage of sales provision shall be payable by the Tenant within sixty (60) days after the expiration of each fiscal year. However, upon final termination of the lease, if not extended, or upon termination of the last extension thereof, any excess rent which may be due by reason of said percentage of sales provision shall be payable by Tenant

within sixty (60) days after such termination or expiration of the leasehold. The percentage rent for each fiscal year shall be calculated separately and without reference to the volume of sales of any other year. For purposes of calculating the percentage rental due hereunder, the Tenant's fiscal year shall be from February 1 of each year to January 31 of the next year. The first monthly installment of rental shall be due on the first day of the next succeeding complete calendar month after the date the lease commences as hereinafter provided, and shall include any rent due for the preceding fractional month. Both guaranteed rental and percentage rental for fractional years and fractional months occurring at the beginning and end of the term, or any extension thereof, shall be prorated on the basis of the annual rental.

(d) 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 and 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; (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) receipts, earnings, commissions, compensation or charges of any kind for services or activities of any nature rendered or performed by any bank, building and loan association, or other financial institution occupying space in the leased premises to or on behalf of any of its customers; (10) sales by postal substations; (11) sales of fixtures, machinery or equipment after use thereof in the conduct of Tenant's business in the leased premises; (12) all sales at discount to Tenant's employees; (13) all receipts from the sales of tobacco, tobacco products, beer and wine and any other alcoholic beverages; and (14) service and interest charges for time payment accounts and charge accounts. Tenant makes no representation or warranty as to the amount of sales it expects to make in the demised premises.

(e) 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. At the end of each fiscal year, 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 statement of the gross sales made by Tenant from the demised premises during the preceding fiscal year. Such statement of sales shall be 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 purchaser of the demised premises provided any such mortgagee or prospective purchaser shall treat said sales statements as confidential.

(f) 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.

6. 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, parking areas, service drives, driveways and related improvements in all of the areas in the real property described in Exhibit "B" attached hereto and in the areas on Bruno's Property as set forth in the Reciprocal Easement and Operating Agreement (more particularly described in Paragraph 9 hereinbelow), 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. The arrangement and location of all existing store

BOOK 207 PAGE 66

buildings and common areas (including parking area) within the shopping center shall at all times during the term of this lease be maintained as shown on Exhibit "A", provided that Landlord may expand the rear of the small shop space in the shopping center if such changes are necessary or desirable to the development and operation of the shopping center and do not materially adversely affect the required parking ratio, access to the demised premises and all other portions of the shopping center, and visibility of the shopping center.

Notwithstanding the foregoing, it is agreed that Landlord shall be obligated to construct only Tenant's store building (Bruno's, Inc. to construct its own food store building as shown on Exhibit "A") 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, as shown on Exhibit "A"; provided, however, they shall be of like structural quality and in architectural harmony with Tenant's building. 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 uninterrupted use and enjoyment of the demised premises and the common areas during any additional construction without unreasonable interference therewith by reason of or on account of such construction work.

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 to be approved by both Landlord and Tenant. Plans and specifications shall be approved when initialed by both parties, and when initialed shall constitute a part of

this lease. Said plans and specifications shall provide for a completed store building, commonly referred to as a "lock and key job", and shall 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 to Tenant's requirements, vinyl asbestos 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 its own trade fixtures which shall be connected by Landlord. 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.

On the rent commencement date, the Landlord agrees to pay to Tenant in cash the sum of Twenty-Two Thousand Five Hundred Eighty and 63/100 Dollars (\$22,580.63), representing a reimbursement to Tenant of costs and expenses incurred by Tenant in fixturing and making other leasehold improvements for the operation of Tenant's business in the demised premises.

7. COMPLETION DATE:

Landlord covenants and agrees that the improvements on the demised premises, as hereinabove referred to, shall begin not later than March 1, 1988, and shall be completed not later than October 31, 1988, 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 March 1, 1989, said option to terminate shall not arise.

Landlord shall give at least forty-five (45) days' advance written notice to Tenant of the date Tenant's building leased hereunder 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 said 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 said building except for Landlord's negligence or willful act or default hereunder.

8. COMMENCEMENT DATE:

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

(a) Tenant's 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 in accordance with the plans and specifications.

(b) The building and facilities to be occupied by Bruno's, Inc. as shown on Exhibit "A" attached hereto have been completed and are ready for the opening of business by Bruno's, Inc. and shall be opened for business by Bruno's,

Inc. simultaneously with the opening of business by Tenant herein.

(c) 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 all the above requirements shall not have been met on or prior to March 1, 1989, the Tenant 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 all the above requirements, 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.

9. PARKING:

Landlord hereby dedicates and 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, including parking area, as shown on Exhibit "A", 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

BOOK 207 PAGE 70

other portions of the shopping center and the adjoining streets, alleys and sidewalks.

Landlord shall at all times during the term of this lease, and any extensions thereof, provide and maintain a surfaced parking area on Tract "1" substantially as shown on Exhibit "A", and of sufficient area to provide a minimum ratio of at least five (5) standard-sized automobile parking spaces to each one thousand (1,000) square feet of gross leaseable building area in Tract "1", standard size parking spaces to conform to regulations of the City of Hoover. In the event the parking area furnished should at any time be substantially less, and such deficiency of parking facilities shall continue for thirty (30) days after written notice thereof is received by Landlord giving reasonable details, the Tenant shall be entitled to a pro rata reduction in rental; except, however, in the event the parking area is reduced by twenty-five percent (25%) or more, 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 in Tract "1" (including parking areas) shall be adequately lighted by Landlord at its expense during customary shopping hours for the type of business operated by Tenant, 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 in Tract "1" 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, pylon signs shall be permitted in the approximate locations shown on Exhibit "A".

10. 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 Tenant shall have 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.

11. UTILITIES:

Landlord covenants and agrees that the demised premises shall be properly serviced with gas, electricity, telephone, water, sewer and other utilities sufficient to meet Tenant's requirements as of the commencement of the lease term. Tenant shall pay all charges for utility services furnished to the demised premises during the lease term.

12. 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; interior, exposed plumbing and wiring; heating, air-conditioning and grilles; and windows and plate glass; 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.

13. 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, foundation and structural members, and the exterior concealed plumbing (including septic tank, if any), and exterior wiring, 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 immediately 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.

BOOK 207 PAGE 74

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 municipal or other governmental authority 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 now in force or which may be hereafter passed, adopted or promulgated; provided, however, in the event such changes or alterations are specifically attributable to the type of business which Tenant is operating in the demised premises, then Tenant, at Tenant's expense, will promptly make any such changes or alterations.

14. SIGNS:

Tenant may place, erect and maintain on the building to be occupied by Tenant, any signs selected by Tenant, consistent with building signs presently existing in other locations in Alabama in which Tenant is operating, which such signs 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. Tenant reserves the right to construct and erect, at Tenant's cost and expense, its own sign on Landlord's shopping center pylon sign at the location shown on Exhibit "A" attached hereto. In the event there is insufficient space on Landlord's pylon sign to erect Tenant's sign, then in such event, Tenant reserves the right to erect its own pylon sign at any reasonable location in the shopping center which does not obstruct any other pylon sign erected by any other tenant in the shopping center.

15. 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 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. 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; 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.

16. INDEMNIFICATIONS:

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 on or about the demised premises, provided, however, that such indemnity shall not extend to any claim or loss caused by the sole negligence of Landlord, its agents, servants or employees, or to any claim or loss caused by a default by Landlord under Landlord's obligations in this Lease Agreement; 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 insuror providing ten (10) days' notice prior to cancellation or termination shall be furnished to Landlord.

Likewise, 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 all common areas (including parking area) of the shopping center, provided, however, that such indemnity shall not extend to any claim or loss caused by the sole negligence of Tenant, its agents, servants or employees, or to any claim or loss caused by a default by Tenant under Tenant's obligations in this Lease Agreement; and Landlord further agrees to carry, at its expense, public liability insurance coverage on all 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

BOOK 207 PAGE 76

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 ten (10) days' notice prior to cancellation or termination shall be furnished to Tenant.

17. COMMON AREA MAINTENANCE CHARGE:

As additional rental and as a reimbursement for Tenant's pro rata share of Landlord's cost and expense in maintaining the common areas pursuant to the provisions of Section 9 hereinabove, Tenant agrees to pay its pro rata share of the annual cost of all repairs, maintenance and replacement to the common areas of the property described on Exhibit "B" ("common area maintenance charge"). Tenant's pro rata share will be determined as that percentage of such costs as equals the percentage of gross leasable area in Tenant's store building to the gross leasable area of all buildings on said property, including such buildings as may from time to time be constructed and situated on said property. Tenant will pay such common area maintenance charge within sixty (60) days of the end of each lease year, provided Landlord has furnished Tenant with the information necessary for calculation of its pro rata share. Landlord agrees to exhibit to Tenant copies of the paid receipts or other evidence of the basis upon which such common area maintenance charge is chargeable to Tenant. Anything hereinabove to the contrary notwithstanding, in no event shall Tenant's pro rata share of such common area maintenance costs exceed Four Thousand Five Hundred Dollars (\$4,500.00) in any one lease year during the primary lease term nor Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) during any extended term.

Common area maintenance charge shall mean the total cost and expense incurred in operating, maintaining and repairing the common areas, including the cost and expense of

maintaining landscaping, cleaning, restriping of parking areas, patching and/or repairing of pavement, lighting, sanitary control, removal of snow, trash, garbage and other refuse, including costs related to trash compactors, fire protection, water and sewerage charges, the cost of public liability, personal and bodily injury and property damage liability insurance coverage covering the common areas, and maintenance, operation, utility costs and repair of any and all traffic directional signs and exterior signs advertising the shopping center. Any provisions hereinabove to the contrary notwithstanding, common area maintenance charge shall not include the initial cost of equipment or improvements forming a part of the common areas; resurfacing, installation of new light standards, fixtures and equipment; installation of or repair to the roof on the buildings on the property described on Exhibit "B".

18. CLEANLINESS:

Tenant shall at all times keep the interior of the 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.

19. 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. 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, the fixed minimum 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.

In the event that, at any time during the term of this lease, any one or more of the buildings located on the property described on Exhibit "B" are damaged or destroyed by fire or other casualty, notwithstanding that the demised premises may or may not be affected by such fire or casualty,

and, as a result thereof, any one or more of the leases covering ^{AT LEAST 20,000 S. FT. OF} such buildings shall be terminated by its terms, then, notwithstanding any provision in this lease to the

contrary, Tenant may terminate this lease and the tenancy hereby created, by giving ten (10) days' written notice to the other prior to ninety (90) days after the occurrence of such casualty. Fixed minimum rent and other charges, if any, shall be adjusted as of the date of such termination. Any fixed minimum rent or other charges paid by Tenant in advance shall be refunded to Tenant.

If at any time during the term of this lease or any extensions thereof any of the buildings on the property described on Exhibit "B", exclusive of Tenant's store building, are damaged by fire, other casualty, or otherwise, 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.

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 fixed minimum 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 the insurance of such merchandise and property obtained by Tenant shall contain a waiver of subrogation

BOOK 207 PAGE 80

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 building and all other buildings on the property described on Exhibit "B" in an amount not less than eighty percent (80%) of the full insurable value thereof, above foundation walls, and hereby expressly waives any and all claims against the Tenant for loss or damage due to fire, explosion, windstorm, or other 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.

20. QUIET ENJOYMENT:

The Landlord covenants, warrants and represents that upon commencement of the lease term, the property described on Exhibit "B" will be free and clear of all liens and encumbrances superior to the leasehold hereby created, except for current taxes 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 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 warrants the non-existence of any zoning or other restriction preventing or restricting use of the demised premises as permitted in Paragraph 3 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 or restricting 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.

21. TAXES AND LIENS:

All taxes, assessments and charges on land or improvements and obligations secured by mortgage or other lien upon the demised premises or the property described on Exhibit "B" shall be promptly paid by the Landlord when due. The Tenant may perform, acquire or satisfy any lien, encumbrance, agreement or obligation of the Landlord which may threaten its enjoyment of the premises; and if it does so it shall be subrogated to all rights of the obligee against the Landlord or the premises or both and shall be reimbursed by the Landlord for resulting expenses and disbursements together with interest thereon at twelve percent (12%) per annum.

BOOK 207 PAGE 82

22. CONDEMNATION:

83
PAGE
207
BOOK

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 building 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 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 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 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 or substantially interfere with the conduct of Tenant's business in the demised premises, or as to reduce the required parking 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.

23. DEFAULT:

In the event the Tenant should 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 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 either such failure or violation shall have continued for a period of thirty (30) days after the Tenant shall have received written notice by certified or registered mail at its office address hereinafter designated from the Landlord to pay such rent or to cure such violation or failure, then, in any such event, the Landlord at its option, may either (a) terminate this lease or (b) re-enter the demised premises by summary proceedings or otherwise expel Tenant and remove all property therefrom and relet the premises at the best possible 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 rent obtained by Landlord on reletting. 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.

24. 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.

25. 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 improvements, 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. 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 from the use of unskilled labor or 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.

26. NOTICES:

All rent payments due hereunder and all notices required to be given to Landlord hereunder shall be sent to Landlord in care of Cooper & Grelier Companies, P. O. Box 19399, Birmingham, Alabama, 35219, 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 10166, Birmingham, Alabama, 35202, or to such address as Tenant may direct Landlord by written notice. All notices given by either party shall be sent United States Certified Mail, return receipt requested, postage prepaid, addressed as hereinabove set forth.

27. TERMINATION:

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 whatever for repairing or replacing any such machinery and equipment, and that Tenant shall not be responsible for repairing, renovating, restoring or replacing any part of the improvements caused by ordinary and usual wear during the occupancy of the leased premises by Tenant.

BOOK 207 PAGE 86

28. 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.

29. ARBITRATION:

In the event there should arise a misunderstanding between the parties hereto as to the compliance with the terms and conditions of this lease upon the part of either of the parties hereto, or as to whether the premises tendered by the Landlord have been improved in substantial conformity with

said Plans and Specifications, or as to whether either party has grounds hereunder entitling it to terminate this lease, it is mutually agreed that such differences, if they cannot be satisfactorily adjusted between the parties within thirty (30) days, shall be submitted to a single arbitrator, if the parties hereto agree upon one; otherwise, to a board of three arbitrators, of whom one shall be selected by each party within ten (10) days after such thirty (30) day period and a third person shall be selected by these two; and the decision and award of such single arbitrator, if only one is used, or any two (2) of such board, if three (3) are used, as the case may be, shall be final and binding upon the said parties and their successors and assigns, respectively, and shall have the same force and effect as though any such decision had been handed down by a court of final and competent jurisdiction. Each of the parties hereto covenants to abide by such arbitration decision.

30. ASSIGNMENT AND SUBLEASING:

87
PAGE 207
BOOK The Tenant may, without the consent of the Landlord, assign this lease, or sublease or vacate the demised premises, in whole or in part, subject to the provisions of Paragraph 3 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.

Anything hereinabove to the contrary notwithstanding, Tenant shall give Landlord a ninety (90) day written notice of its intention to sublease its premises or assign its lease in conformity with the provisions of Paragraph 3 hereinabove entitled "Use". Landlord shall thereupon be authorized to also offer the space for rent and Landlord and its agents will have reasonable access to the premises for such purpose. Upon securing a bona fide sublease or assignment, Tenant must first present such proposed sublease or assignment to Landlord, whereupon Landlord shall

have a thirty (30) day period within which to exercise either of the following options:

(a) Landlord may consent to the proposed sublease or assignment, in which event Tenant shall deal directly with such sublessee or assignee and shall receive all rental payments made by such sublessee or assignee. In such event, the Tenant shall remain fully liable under this Lease for the payment of the monthly rent and all other charges hereunder, as well as the performance of all other obligations of Tenant hereunder.

(b) Landlord may terminate the Lease, in which event Landlord may deal directly with any proposed sublessee or assignee, or may reject the proposed sublessee or assignee and negotiate with other parties, in its sole discretion.

If during such ninety (90) day period or thereafter, but prior to the presentation by Tenant to Landlord of a bona fide sublease or assignment, the Landlord or its agents should locate a sublessee or assignee acceptable to Landlord, Tenant hereby agrees to enter into a termination of the lease.

If Tenant vacates the premises, Landlord shall have the right at any time the premises are vacant by thirty (30) days' written notice to Tenant to terminate the lease.

31. TENANT TO PAY PRO RATA PORTION OF AD VALOREM

TAXES:

Beginning with the commencement date of the within lease, and each lease year thereafter during the primary term of this lease and any extensions hereof, Tenant agrees to pay to Landlord Tenant's pro rata amount of the assessments and ad valorem real estate taxes (or any other taxes adopted by proper governmental authorities as a substitute for and in the nature of real estate taxes) levied against the property described on Exhibit "B" hereto and all improvements constructed thereon. The taxes which Tenant shall be required to pay shall be a fractional amount thereof, the numerator of which fraction is the number of square foot floor area of

89
PAGE
207
BOOK
Tenant's building, and the denominator of which fraction shall be the total square foot area of all of the store buildings within the property described on Exhibit "B". The amount of taxes attributable to the said property, and for which Tenant is to reimburse Landlord in part, shall be less any abatements, discounts or refunds thereon. Tenant shall be responsible only for its pro rata share of such taxes for any fractional lease year occurring during the period in which Tenant shall be responsible for tax payments as hereinabove described. Upon request of Tenant, Landlord agrees to exhibit to Tenant the paid tax statements as evidence of the basis upon which such taxes are chargeable to Tenant, and such additional rental shall be payable by Tenant on demand after payment by Landlord. Landlord further agrees upon request of Tenant to furnish certification of a surveyor or engineer as to total square footage of floor area from time to time existing in the property described on Exhibit "B". All taxes levied against the demised premises other than ad valorem real estate taxes shall remain the sole responsibility of Landlord. Tenant shall have the right from time to time to contest or protest or review by legal proceedings or in such other manner as may be provided, any such taxes, assessments or other governmental impositions aforementioned, and to institute such proceedings in the name of Landlord as Tenant may deem necessary, provided, however, any expenses incurred by reason thereof shall be borne by Tenant and such proceedings conducted free of all expense by Landlord.

32. TENANT TO PAY PRO RATA PORTION OF LANDLORD'S INSURANCE PREMIUMS:

Beginning with the commencement date of the within lease, and each lease year thereafter during the primary term of this lease and any extensions hereof, Tenant agrees to pay to Landlord Tenant's pro rata share of the 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 premiums shall be determined by multiplying the amount of such 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 building occupied by Tenant and the denominator of which is the number of square feet of ground floor area in all buildings on the property described on Exhibit "B". Tenant shall be responsible only for its pro rata share of such insurance premiums for any fractional lease year occurring during the period in which Tenant shall be responsible for insurance premium payments as hereinabove described. 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 premiums.

33. 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.

34. SELF HELP:

If Landlord shall default in the performance or observance of any agreement or condition in this lease contained on its part to be performed or observed, and if Landlord or any first mortgagee shall not cure such default

within thirty (30) days after notice from Tenant to Landlord and said mortgagee (except that no such notice shall be required in emergencies as herein stipulated) specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter, cure such default for the account of Landlord; and any amount paid or any contractual liability incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord; and Landlord agrees to reimburse Tenant therefor or save Tenant harmless therefrom; provided, however, that Tenant may cure any such default as aforesaid prior to the expiration of said waiting period and without such notice to Landlord and first mortgagee if the curing of such default prior thereto is reasonably necessary to protect the real estate or Tenant's interest therein or to prevent injury or damage to persons or property. If Landlord shall fail to reimburse Tenant upon demand for any amount paid for the account of Landlord hereunder, said amount may be deducted by Tenant from the next or any succeeding payments of rent due hereunder.

35. 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 said first mortgagee.

36. 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.

37. ATTORNEYS' FEE:

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.

38. OPTIONS TO RENEW:

Tenant is hereby granted three (3) options to renew and extend this lease for an additional term of five (5) years each following the expiration of the primary term, at the same rental payable during the last five years of the original term and upon all of the other terms and conditions as apply to the original term. In the event Tenant desires to exercise the options to renew as stated above, Tenant shall be required to notify Landlord in writing (i) not less than one hundred eighty (180) days prior to the expiration of the then current term (initial or extended); or (ii) within twenty (20) days after receipt of notice from Landlord to Tenant that Tenant has failed to exercise its option of extension within the time period provided in (i) above, and the option(s) of extension

shall not lapse until after the expiration of said 20-day period following receipt of Landlord's notice. If said option(s) is duly exercised, the term of this lease shall be automatically extended for the period of the next ensuing option, without the requirement of any other or further document.

39. 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.

40. 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. Each provision hereof shall be deemed both a covenant and a condition and shall run with the land.

41. 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.

42. RECORDING OF LEASE:

Landlord agrees 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 to pay all expense which is required in connection with such recording. In the event Landlord fails to record the lease within the time limit set forth hereinabove, Tenant shall be permitted to record the same and to deduct the entire amount of costs and expenses incurred in such recording from the next maturing installment of rent which Tenant is required to pay under the terms of the lease.

43. 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 building 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 DUPLICATE, on this the 4th day of February, 1988.

ATTEST:

William M. Jones, Jr.
Its Secretary

BIG B, INC

By: Anthony J. Bruno

Anthony J. Bruno
Its President

TENANT

BOOK 207 PAGE 94

Deed Schrey
Witness

Deed Schrey
Witness

Ref: MOD/8140601

CHAR-TER INVESTMENTS, an
Alabama general partnership

By: [Signature]
Its General Partner

By: [Signature]
Its General Partner

LANDLORD

STATE OF Alabama)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles Lelieu and Carte Lopez, whose names as general partners of Char-Ter Investments, an Alabama general partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such general 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 February, 1988.

Marshall Willey Cain
NOTARY PUBLIC

My Commission Expires: 4/8/88

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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

Given under my hand and official seal, this the 10th day of February, 1988.

STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED

88 SEP 30 PM 2:29

Thomas A. Swanson, Jr.
JUDGE OF PROBATE

Carolyn Riab
NOTARY PUBLIC

My Commission Expires: 4/29/90

1. Deed Tax \$ 505.50
2. Mtg. Tax
3. Recording Fee 100.00
4. Indexing Fee 1.00
TOTAL 606.50

