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LEASE AGREEMENT

THIS LEASE, made this 8TH day of June, 1989, by and between Keystone Plaza Associates, a general partnership (hereinafter referred to as "Landlord"); Western Supermarkets, Inc. (hereinafter called "Tenant"); and Hadley Church Realty Company, Inc. (hereinafter called "Agent");

ARTICLE I
Definitions

1.1 Shopping Center. The term "Shopping Center" means the area within the boundaries shown on and described in the "Plat" attached hereto as Exhibit "A" and by this reference made a part hereof.

1.2 Lease Year. The first lease year shall commence on the date Landlord and Tenant specify pursuant to Section 3.3 hereof and shall end on the last day of the twelfth full calendar month thereafter. The first lease year shall include the first twelve full calendar months of the term and any partial calendar month occasioned by the commencement of rent on a day other than the first day of a calendar month. Each successive lease year shall commence on the anniversary date of the first day of the first full calendar month during the first lease year.

ARTICLE II
Demise of Premises and Improvements

Landlord hereby leases and demises to Tenant and Tenant hereby leases and takes from Landlord the Premises, described hereinbelow, hereinafter called, "the Premises":

34,750 square feet identified on Exhibit "A" located at U.S. 31 South, Alabaster, Alabama, with adjacent parking lot with a minimum of 4.5 parking spaces per 1,000 square feet of leased space, plus the area marked on Exhibit "A" to be used for outside sales for items such as drink machines, ice, firewood and bedding plants.

2.1 Landlord Construction. Subject to unavoidable delays due to labor disputes, acts of God, governmental regulations or controls, or other casualties, conditions or causes beyond the reasonable control of Landlord, Landlord will, as promptly as is practicable, cause the construction of the Premises and buildings which comprise the Shopping Center to be completed in accordance with final plans and specifications as stated in Exhibit "F" and made a part hereof. The Premises are to be substantially completed on or before November 1, 1989, unless completion is delayed due to the circumstances beyond Landlord's control as referred to above, in which event Landlord may extend the time for completion by the amount of time which completion is delayed due to such causes. Landlord shall notify Tenant no later than October 1, 1989, of the aggregate period of delay, as aforesaid and shall give further notice at reasonable intervals of such delays. In the event the Premises are not substantially completed on or before November 1, 1989, then and in such event, Tenant shall have the right to delay its occupancy until March 1, 1990; and Tenant shall have the option of terminating this Agreement in the event the Premises are not substantially completed on or before May 1, 1990, provided, however, Tenant's obligation to pay rent shall be governed by Section 3.2 hereof. Under no circumstances shall Landlord be liable to Tenant for any delay in commencing or completing construction of the Premises.

2.2 Construction Notice. The Premises shall be conclusively deemed to be substantially completed when (1) Landlord certifies to Tenant that Landlord has performed Landlord's work as required pursuant to the Construction Rider attached hereto as Exhibit "D" and by this reference made a part hereof; and (2) when the time periods and provisions as set forth in Section 5.1 have been complied with.

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2.3 Tenant's Right to Possession. Tenant shall be permitted to enter the Premises once Tenant has (a) obtained a notice from Landlord of the availability of the Premises and (b) deposited with Landlord a policy or certificate of insurance in accordance with Section 7.1 hereof.

2.4 Shop Lease Plan. Landlord will provide Tenant with a Shop Lease Plan for the Shopping Center as shown on Exhibit "C". Tenant may request changes to such Shop Lease Plan; provided that Landlord may in its sole discretion accept, deny or modify such requested changes. Any changes requested by Tenant must conform with Landlord's requirements for plans and specifications produced by qualified professionals at Tenant's expense, and the cost of such changes shall be paid for by Tenant.

2.5 Right of First Refusal.

(A) Upon notice by the Tenant occupying the adjoining 4,000 square feet of retail space (hereinafter referred to as the "expansion space" identified on the Shop Lease Plan) that such tenant will either vacate the expansion space or has decided not to renew its lease, then Tenant under this lease shall have the option to expand this lease to include said space as part of the Premises. Tenant must exercise its option within sixty (60) days after written notice by Landlord to Tenant that said expansion space will be available. If Tenant does not exercise its right in a timely manner, Tenant will have irretrievably lost such right to the relevant expansion space.

(B) Upon Tenant exercising its option for the expansion space, Tenant may request and Landlord shall be obligated to buildout the expansion space by adding up to an additional 2,500 square feet of rentable area to the rear of the expansion space whereupon said additional area shall be included as part of the expansion space as herein provided (for a total expansion space of 6500 square feet).

(C) Any expansion space with respect to which Tenant exercise its rights will be delivered by Landlord to Tenant in accordance with specifications that are comparable to the completion of the Premises delivered to Tenant which comprise 34,750 square feet being leased hereunder. Any such expansion space will become part of the Premises on the date the expansion space is completed and delivered to Tenant, and the Premises will then be deemed to include any such expansion space.

(D) The base monthly rent for any such expansion space will be the base monthly rent per rentable square foot of the Premises in effect on the date on which any such expansion space becomes part of the Premises. The base monthly rent will be increased as of the earlier to occur of (i) the day on which Tenant opens for business; or (ii) thirty (30) days following Landlord's delivery of possession of the expansion space to Tenant in its completed form. Such increased rent shall be an amount equal to the product of (1) the number of rentable square feet of any such expansion space multiplied by (2) the base monthly rent per rentable square foot of the Premises in effect on the date on which any expansion space becomes part of the Premises. Tenant's share of Taxes, Insurance, and Common Area Maintenance as provided in Section 4.4 and 4.5 herein, will be, as of the date on which any expansion space becomes part of the Premises, a fraction whose numerator is the sum of the rentable square feet of the Premises and the new expansion space, and whose denominator is the rentable square feet of the shopping center. The base monthly rent and Tenant's share will be increased in a similar manner whenever expansion space is added to the Premises.

(E) Tenant will not have any rights according to this section, if at the time Tenant is obligated to give notice of its desire to lease the expansion space, an event of default then exists and has not been cured within any applicable cure period.

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2.6 Traffic Light. Landlord covenants and agrees to design, install and construct a traffic light at the entrance to the Keystone Plaza Shopping Center prior to the commencement date of this Lease Agreement.

ARTICLE III

Term - Obligation to Pay Rent - Termination - Option to Renew

3.1 Term. This Lease Agreement shall be binding upon the parties from the date hereof, it being understood and agreed that the term of this Lease shall commence on the 1st day of the first lease year and shall continue, unless sooner terminated as provided herein, for a period of twenty (20) lease years hereafter.

3.2 Tenant's Obligation to Pay Rent. Tenant's obligation to pay rent and all other charges set forth in Article IV hereof shall commence seven (7) months after the commencement date, the commencement date being defined as the earlier to occur of the following events:

- (a) The day on which Tenant opens for business;
- (b) Thirty (30) days following Landlord's delivery of possession of the Premises to Tenant, provided that on the commencement date so determined the accessways and parking areas shown on the Plat have been substantially completed, provided, further, in no event shall this date be prior to March 1, 1990.

3.3 Commencement Date - Estoppel Agreements. The parties agree that promptly upon the establishment of the first (1st) day of the first lease year, they will execute an amendment acknowledging said date and the commencement date of each lease year thereafter, which amendment shall be attached to this Lease and made a part hereof.

Within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or to such other party as may be designated by Landlord, a certificate stating that this Lease is in full force and effect and has not been modified, supplemented or amended in any way, except as indicated in such certificate; that all conditions and agreements hereunder to be performed by Landlord have been satisfied or performed, except as set forth in said certificate; that Tenant is not in default in the payment of rent or any other of the obligations required of Tenant hereunder; and that Tenant has paid base rentals as of the date set forth in the certificate.

3.4 Termination. This Lease shall terminate at the end of the original term hereof without the necessity of any notice from either Landlord or Tenant to terminate same, and Tenant hereby waives notice to vacate the Premises and agrees that Landlord shall be entitled to the summary recovery of possession of the Premises should Tenant hold over to the same extent as if statutory notice had been given. In the event Tenant holds over without the express written consent of Landlord, Tenant shall pay to Landlord the rental and additional rental herein provided for the duration of such holdover period. Holding over with Landlord's consent shall not renew this Lease and Tenant shall become a tenant at will for such holdover period.

3.5 Two Renewal Terms; Change in Rentals. Tenant shall have an option to renew this lease for a term of five (5) years upon the same terms and conditions as are provided herein except that the base rental during said first renewal term shall be Two Hundred Thirty-Nine Thousand Seven Hundred Seventy-Five and 00/100 Dollars (\$239,775.00) per year. Tenant shall have a further option to renew this lease for an additional term of five (5) years upon the same terms and conditions as are provided herein except that the base rental during said second

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renewal term shall be Two Hundred Thirty-Nine Thousand Seven Hundred Seventy-Five and 00/100 Dollars (\$239,775.00) per year.

Each of said options shall be exercised by Tenant giving notice by certified mail to Landlord, return receipt requested, at least six (6) months before the expiration of the then-existing term. It shall be a condition of the exercise of either of the foregoing options that at the time of the exercise of said option Tenant shall not be in default hereunder or shall not be in default under any of the terms of a sales agreement executed simultaneously herewith.

ARTICLE IV Tenant Payments

Tenant covenants and agrees to pay Landlord the rental and charges set forth hereinbelow. Such charges and all advances by Landlord on Tenant's behalf which are referred to herein as "costs" shall not be deemed a part of base rental. Such costs shall be deemed as additional rent for purposes of default but shall not be deemed to be rentals with respect to governmental wage, price and rent controls or analogous governmental actions affecting the amount of rental which Landlord may charge Tenant.

4.1 Base Rent. Tenant covenants and agrees to pay as base rental the following:

<u>Years</u>	<u>Rental Rate/Square Footage</u>	<u>Monthly Rent</u>	<u>Yearly Rent</u>
1 - 6	\$6.15/square foot	\$17,809.58	\$213,712.50
7 - 9	6.65/square foot	19,257.29	231,087.50
10 - 20	6.90/square foot	19,981.25	239,775.00
21 - 25	6.90/square foot	19,981.25	239,775.00
26 - 30	6.90/square foot	19,981.25	239,775.00

it being understood that base rental shall be apportioned for any period of less than one (1) calendar month for which Tenant is obligated to pay rent and such sum shall be added to the base rental due from Tenant during the applicable lease year. Base rental shall be payable in advance on the first (1st) day of each full calendar month for which rental is due hereunder or on the day Tenant is first obligated to pay rent in the event such date does not fall on the first (1st) day of a calendar month. If Tenant fails to pay any rent or additional charges within fifteen (15) days of the due date, such unpaid amounts will be subject to a late payment charge of five percent (5%) of such unpaid amounts. This late payment charge is intended to compensate Landlord for its additional administrative costs resulting from Tenant's failure, and has been agreed upon by Landlord and Tenant, after negotiation, as a reasonable estimate of additional administrative costs which will be incurred by Landlord as a result of Tenant's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. The late payment charge will constitute liquidated damages and will be paid to Landlord together with such unpaid amounts. The payment of this late payment charge will not constitute a waiver by Landlord of any default by Tenant under this lease.

4.2 Percentage Rental Against Minimum Rental. Beginning in the twelfth (12th) lease year, and each lease year thereafter, in addition to the fixed annual base rent provided for by Paragraph 4.1 of this lease, the Tenant shall pay to the Landlord, as additional rent for each lease year (as defined below), an amount equal to the excess of one percent (1%) of gross sales (as defined below) for such lease year over the sum of aforesaid base rent plus impositions paid by the Tenant pursuant to Paragraph 4.4, 4.5, and 4.6 of this lease.

The term "gross sales" shall mean the selling price of all merchandise sold or delivered in, at, on, or from any part of the demised premises, and the charges for all services of any sort sold or performed in, at, on, or from any part of the demised premises and shall include sales and charges for cash or

credit, regardless of collections in the case of the latter, but shall exclude (1) returns and refunds in fact made by the Tenant, (2) exchange of merchandise between stores or warehouses of the Tenant where such exchanges are made solely for the convenient operation of the Tenant's business and not for the purposes of consummating a sale which has been made at, in, on, or from the demised premises, (3) the amount of any city, county, state, or federal sales, luxury or excise tax on such sales which is both added to the selling price (or absorbed therein) and paid to the taxing authority by the Tenant (but not by any vendor of the Tenant), (4) the selling price of merchandise delivered to the Tenant at the demised premises for sale to the public but not yet sold to the public, (5) sales of cigarettes, (6) bad debts, provided the Tenant writes such bad debts off its books, (7) trading stamps or other premiums distributed by the Tenant, (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, savings 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, and (13) all receipts from the sales of salvage cartons, meat scraps, suet and other salvage merchandise. Tenant makes no representation or warranty as to the amount of sales it expects to make in the demised premises. A sale shall be deemed to be made in the demised premises if an order therefore is secured or received in the demised premises, whether or not such order is filled in the demised premises or elsewhere or if, pursuant to mail, telegraph, telephone, or other similar means, orders are received or filled at or from the demised premises. If any one or more departments or other divisions of the Tenant's business shall be sublet, pursuant to the provisions of this lease, by the Tenant or conducted by any person, firm, or corporation other than Tenant, then there shall be included in gross sales for the purpose of fixing the percentage rent payable hereunder all the gross sales of such departments or divisions in the same manner and with the same effect as if the business or sales of such departments and divisions of the Tenant's business had been conducted by the Tenant itself. The Tenant shall, during the term hereof, keep for a period of three (3) years following the end of each lease year, a permanent, complete, and accurate record of all sales of merchandise or services and all revenue derived from the business conducted in the demised premises by the Tenant and by all other persons conducting any business upon the demised premises.

The term "lease year" shall mean the twelve (12) month period commencing on the date of the commencement of this lease and each succeeding twelve-month period.

The Tenant shall submit to the Landlord within sixty (60) days following the end of each lease year a written statement signed and certified by the Tenant to be a true and correct statement of the amount of gross sales during the preceding lease year, and the Tenant shall at the same time pay to the Landlord the amount of percentage rent, if there be any due, as shown by said statement.

4.3 Tenant's Books and Records; Audit Procedure. Tenant covenants and agrees that for the purpose of ascertaining the correct amount or amounts payable as additional rent for any period as hereinabove provided, it will keep at the home office of tenant, proper books, records, and accounts which shall show daily sales and transactions made by Tenant or by any person, firm, or corporation at, in, on, from, upon, or through the demised premises. Upon request, Tenant further agrees to deliver to the Landlord, on or before the tenth day of each month during the term hereof, statements showing total gross sales for the preceding month; and agrees to furnish Landlord with a duplicate copy of an annual audit, made as hereinafter provided, of all such gross sales made by Tenant in such business. Upon request, Tenant agrees to permit the Landlord, at its expense, at any time or from time to time, upon written notice of 48 hours, to have an audit made of said books, records, and accounts by an accountant appointed by Landlord. If such audit made by Landlord shall disclose a liability for rent to the extent of five percent (5%) or more in excess of the rental therefore computed and paid by Tenant for such period, Tenant shall promptly pay to Landlord the cost of said audit in addition to the deficiency, which deficiency shall be payable in any event. The annual audit herein agreed to be furnished by Tenant shall be made by an

independent certified public accountant or registered accountant duly licensed and authorized to practice in the State of Alabama. It is further understood and agreed that Landlord will retain as confidential the information contained in the above-described reports required by this lease, unless the Landlord be required to divulge this confidential information pursuant to a valid order of court or subpoena from either federal or state governments having subpoena powers, or power to order the production of evidence and/or documents.

4.4 Taxes and Insurance. (A) Tenant shall pay promptly when due all taxes directly or indirectly imposed or assessed on Tenant's business operations, machinery, equipment, improvements, inventory and other personal property or assets whether such taxes are assessed against Tenant, Landlord or the Shopping Center as a single entity. In the event that such taxes are imposed or assessed against Landlord or the Shopping Center, Landlord shall upon request furnish Tenant with all applicable tax bills, public charges and other assessments or impositions.

Tenant shall pay as additional rent Tenant's proportionate share of the taxes, charges and assessments of whatsoever nature, directly or indirectly assessed or imposed upon that portion of the Shopping Center, or rents therefrom, upon which Landlord is from time to time obligated to pay the taxes, including all costs and fees incurred by Landlord in contesting or negotiating same. Tenant's proportionate share shall be determined by dividing the gross leaseable area of the Shopping Center into the total of taxes, charges and assessments and multiplying the resulting quotient by the number of square feet of the Premises. Tenant shall pay its proportionate share of taxes in arrears or in advance, as the case may be, annually, or as invoiced and paid by Landlord, for each tax year (prorated for short year) and thereafter at the beginning of each successive tax year during the term, each such installment being due as invoiced by Landlord.

Within sixty (60) days of receipt of the applicable tax bills for each tax year, Landlord will certify to Tenant the amount of taxes payable by Landlord and the amount of Tenant's proportionate share. The proportionate share paid for such tax year shall be adjusted and Tenant shall pay any deficiencies along with the installment of base rental next due. Any overpayments shall be credited against the tax payment installment next due. Tenant's liability for any taxes hereunder shall be subject to a pro rata adjustment for the tax year in which the term commences or terminates based upon the number of days during the tax year that the premises are occupied by Tenant.

The term "tax year" as used herein shall mean the twelve (12) month period established as the real estate tax year by the taxing authorities having lawful jurisdiction over the Shopping Center. It is understood and acknowledged that Tenant's obligation to Landlord for payments pursuant to this Section 4.4 is based upon the system of taxation of land, buildings, betterments, improvements and other such property in effect as of the date of this Lease. Should the applicable taxing authorities change the manner in which they raise revenue from such tax system to an income or other tax form of whatsoever nature, then and in that event, Tenant shall pay any taxes, charges or assessments imposed under any such new, additional or alternative system of taxation in the manner set forth herein.

(B) Tenant shall pay as additional rent Tenant's proportionate share of the cost of all insurance applicable to the Shopping Center including but not limited to public building insurance, liability insurance, fire, casualty and extended coverage insurance (which insurance shall be competitively bid, and reasonable in amount of coverages but in no event less than that required by Landlord's mortgagee). Tenant's proportionate share shall be determined by dividing the gross leaseable area of the Shopping Center into the total of insurance premiums and multiplying the resulting quotient by the number of square feet of the Premises. Tenant shall pay its proportionate share of insurance in advance, annually, or as invoiced and paid by Landlord, for each insurance year (prorated for short year) and thereafter at the beginning of each successive insurance year during the term, each such installment being due as invoiced by Landlord. Tenant's liability for any insurance hereunder shall be subject to a pro rata adjustment for the insurance year in which the term commences or terminates based upon

the number of days during the insurance year that the premises are occupied by Tenant.

4.5 Common Areas. The term "common areas" refers to all areas whether improved or unimproved within the exterior boundaries of the Shopping Center which are now or hereafter made available for the non-exclusive use, convenience and benefit of Landlord and Tenant and other tenants of the Shopping Center, their employees, agents, customers, invitees and licensees, including without limiting the generality of the foregoing, malls, walkways, automobile parking areas, driveways, curbs, gutters, sidewalks, signs, (including pylon sign), courts, paving, lighting and landscaped and planted areas.

Landlord shall keep or cause said common areas to be kept landscaped and shall repair, maintain or replace the common areas or any portion thereof. All expenses in connection with said common areas shall be charged and prorated in the manner hereinafter set forth. It is understood and agreed that the phrases "expenses in connection with said common areas" or "common area expenses" as used herein shall be construed to include, but not be limited to, all sums expended in connection with operation, landscaping, maintenance, and repair of the common areas including, but not limited to all taxes, assessments or governmental charges directly or indirectly imposed thereon of whatsoever nature not covered by Section 4.4 hereof; workmen's compensation insurance and fidelity bonds; the cost of all personnel employed with respect thereto; the cost of security service, if provided; the cost of all utilities with respect thereto, and management fees. In addition, Tenant shall pay a sum to Landlord for accounting, bookkeeping, payment of the expenses of the common areas and collection of Tenant payments with respect thereto in the amount of Tenant's pro rata share of an amount equal to fifteen percent (15%) of the total of the common area expenses for each calendar year. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. Should Landlord expand the common areas from time to time, then the expenses in connection with said common areas shall also include all of the expenses incurred and paid in connection with said expanded common area facilities.

Tenant shall pay to Landlord Tenant's pro rata share of such common area expenses in the following manner:

(i) Tenant shall pay an amount estimated by Landlord to be Tenant's monthly pro rata share of common area expenses to Landlord along with Tenant's payments of base rental. Landlord may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Landlord's experience and reasonably anticipated costs.

(ii) Landlord shall, within a reasonable time following request by Tenant, furnish Tenant a statement covering the calendar quarter, or year just expired, certified as correct by an authorized representative of Landlord, showing the total common area expense, the amount of Tenant's pro rata share of such common area expenses for such calendar quarter or year and the payments made by Tenant with respect to such period as set forth in subparagraph (i). If Tenant's pro rata share of such common area expenses exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of such statement. If said payments exceed Tenant's pro rata share of such common area expenses, Tenant shall be entitled to offset the excess against payments next thereafter to become due Landlord as set forth in subparagraph (i). Tenant's pro rata share of common area expenses for the period in question shall be determined by dividing the gross leasable area of the Shopping Center into the total of such expenses and multiplying the resulting quotient by the number of square feet of the Premises. There shall be an appropriate adjustment of Tenant's share of the common area expenses as of expiration of the term of this Lease.

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Tenant's obligations hereunder shall be limited to the following annual caps:

<u>Years</u>	<u>Annual Capped Amounts</u> (Based on 34,750 square feet)
1 - 5	\$12,162.50
6 - 10	\$13,900.00
11 - 15	\$15,637.50
16 - 20	\$17,375.00
21 - 25	\$19,112.50
25 - 30	\$20,850.00

Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against the Tenant and the other users of said common areas such reasonable rules and regulations (including the exclusion of employee's parking therefrom) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of the common areas and the Shopping Center.

4.6 Utilities. Tenant shall be responsible for and promptly pay all charges for utilities furnished to the Premises including water, gas, electricity, sewer, scavenger or similar utility service during the term hereof including all tap fees, connection fees or utility taxes applicable to the Premises. Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage, or other interference with any such utility service unless due to willful or negligent acts solely on the part of Landlord, its agents, employees or contractors.

4.7 Excluded Uses. As part of the consideration for Tenant entering into this Lease, Landlord agrees and covenants that Landlord will not lease for the purpose of, nor permit the operation of, a retail or wholesale supermarket, meat market or department, grocery market or department, vegetable produce market or department, fruit produce market or department, bakery or bakery department (unless Tenant's consent is obtained), dairy market or department, delicatessen store or department (unless Tenant's consent is obtained), or any similar food store (not including any speciality restaurant selling food for on-premises consumption) by any person, firm or entity other than Tenant in the Shopping Center. Landlord further covenants and agrees with Tenant that no building located in whole or in part within two hundred (200) feet of the area outlined in black on Exhibit "A" shall be used, in whole or in part, for purposes of the operation of a bowling alley, movie theater, tavern, or night club.

ARTICLE V Tenant's Acceptance, Use of Premises and Regulations Related Thereto

5.1 Acceptance of Premises. Within thirty (30) days of Landlord's delivery of possession of the Premises to Tenant, Tenant shall notify Landlord of any defects therein; failing which the Premises shall be conclusively deemed to comply with the requirements for Landlord's construction as set forth in Exhibit "D"; provided, further, this provision shall not relieve Landlord's contractor from its obligations to Landlord and Tenant.

5.2 Tenant's Use of Premises and Regulations Related Thereto. Tenant shall not use the Premises or any part thereof for any purpose other than the operation of a supermarket. Tenant shall conduct its business in the Premises under the name or trade name of Western Supermarkets and no other name or trade name except such as Landlord shall approve in writing, which approval shall not be unreasonably withheld. The retail price to be charged by Tenant for merchandise sold in the Premises shall be within the sole discretion and control of Tenant provided that Tenant shall not conduct any auction, fire, bankruptcy, moving, or closeout sales. The provisions hereof shall not preclude Tenant from conducting periodic, seasonal, promotional or clearance sales.

Tenant will occupy and continuously conduct business in the Premises for the uses permitted above from and after the date on which rent is first due from Tenant hereunder.

Recognizing that it is in the interests of both Tenant and Landlord to have regulated hours of business for all of the Shopping Center, Tenant agrees that commencing with the opening for business by Tenant in the Premises and for the remainder of the term of this Lease, Tenant shall be open for business daily; Sundays, New Years, 4th of July, Christmas and Thanksgiving excepted, during the hours of 10:00 a.m. to 5:30 p.m. Monday thru Saturday or whatever extended hours Tenant may adopt.

Tenant shall abide by the rules and regulations set forth by Landlord, attached hereto as Exhibit "B" and made a part hereof, as such may be amended from time to time by Landlord.

5.3 Tenant's Rights to Make Alterations. Landlord agrees that the Tenant may, at its own expense and after giving Landlord notice in writing of its intention to do so, from time to time during the term hereof, make such alterations, and improvements in and to the interior of the Premises (except those of a structural nature) as it may find necessary or convenient for its purposes, provided that the value of the Premises is not thereby diminished, and provided, further, that no such alterations and improvements costing in excess of Fifty Thousand and no/100 Dollars (\$50,000.00) may be made without first procuring Landlord's written approval. In addition, no alterations or improvements shall be made to any storefront or the exterior walls or roof of the Premises. In no event shall Tenant make or cause to be made any penetration through the roof of the premises without the prior written approval of Landlord which may be withheld in its sole and absolute discretion. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Section 5.3. Upon termination of this Lease, such alterations and improvements shall not be removed by the Tenant but shall become a part of the Premises. Tenant shall perform the work of any such alterations or improvements in accordance with Section 5.8 hereof and in such a manner as not to obstruct the access to the premises of any other tenant in the Shopping Center.

In the event that Tenant shall make any permitted alterations and improvements to the Premises under the terms and provisions of this Section 5.3 Tenant agrees upon its part to carry such insurance as is required by Section 7.1 it being expressly understood and agreed that none of such alterations or improvements or the construction thereof shall be insured by Landlord, nor shall Landlord be required under any provisions for reconstruction of the Premises to reinstall any such alterations or improvements.

5.4 Painting and Decorating. Tenant shall not paint or decorate any part of the exterior of the Premises or any part of the interior of the Premises visible from the exterior thereof or change the architectural treatment of the Premises without first obtaining Landlord's written consent which consent shall not be unreasonably withheld. Tenant shall upon notice from Landlord promptly remove any such decorative or architectural change which has been applied to or installed upon the Premises without Landlord's written consent or take such other action with reference thereto as Landlord may direct.

5.5 Pylon Sign. Landlord shall fabricate and erect at its expense a pylon sign at the entrance of Keystone Plaza; said pylon sign to be fabricated and erected at such maximum size and height as permitted under the applicable zoning regulations of the municipality where the sign is to be located. Landlord shall maintain said pylon sign as a part of the common area as specified in Section 4.5. Tenant shall be permitted, during the term of this lease, to fabricate and install, at its expense, an appropriate sign on the pylon sign, with Tenant being given the first choice over other tenants of the location of the sign. The lettering of Tenant's sign, the name display, the size and color thereof, and the sign showcase shall be dignified and in good taste in keeping with the standards of Keystone Plaza. All such lettering, the display and size of the sign, lettering, shall be designed and specified by Tenant and approved by Landlord. Tenant shall have the right to change the sign display and lettering from time to time

provided such changes are approved by the Landlord. Landlord agrees not to unreasonably withhold or delay any approvals required hereunder. Tenant shall be responsible for maintenance of its sign (excluding electricity) and shall keep its sign in good repair and condition at all times.

5.6 Fixtures and Personal Property. Any trade fixtures, signs and other personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant and Landlord agrees that Tenant shall have the right, provided Tenant is not in default hereunder, at any time, and from time to time, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Premises. Nothing herein contained shall be deemed or construed to permit or allow Tenant to remove so much of such personal property, without the immediate replacement thereof with similar personal property of comparable or better quality so as not to adversely affect the operation of Tenant's business in the Premises. Tenant at its sole expense shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, signs, and other personal property, and upon the last day of the lease term or the earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris.

5.7 Retail Restriction Limit. During the term of this Lease, Tenant shall not, either directly or indirectly, own, operate or be financially interested in, either by itself or with others, a business of similar size and nature permitted to be conducted hereunder within a radius of three (3) miles of the perimeter of the Shopping Center except for those which Tenant has in operation on the date hereof.

5.8 Liens. Upon completion of any work performed by Tenant hereunder, Tenant shall furnish Landlord with waivers and affidavits confirming that all contractors, subcontractors, laborers and materialmen who have performed work on the Premises have been paid in full. Such waivers and affidavits shall be in a form acceptable to Landlord and in accordance with the applicable Alabama statutes.

Should mechanics', materialmen's or other liens or claims thereof be filed against the Premises or any portion of Shopping Center by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the lien to be cancelled and discharged of record by bond or otherwise within thirty (30) days after receipt of notice from Landlord. Should Tenant fail to cause such lien to be so discharged or bonded, Tenant shall be in default hereunder, and Landlord may exercise any or all remedies available to Landlord pursuant to Article XI hereof or in lieu thereof, Landlord may at its option, within the sixty (60) days next following Tenant's failure, discharge the same by paying the amount claimed to be due, and Tenant shall pay as additional rent on demand the amount so paid and all costs and expenses incurred by Landlord including reasonable attorney's fees in processing such discharge.

ARTICLE VI **Repairs, Maintenance and Alteration Obligations**

6.1 Repairs and Maintenance. Tenant agrees at all times, from and after delivery of possession of the Premises to Tenant, at its sole cost and expense, to repair, replace and maintain in good and tenantable condition the Premises and every part thereof, including without limitation, the utility meters, pipes and conduits; partition walls; flooring and floor covering; all fixtures, air conditioning, ventilating and heating equipment serving the Premises and other equipment therein; utility lines and connections serving the Premises exclusively; the storefront or storefronts; all Tenant's signs, locks and closing devices; all window sashes, casements or frames; and all doors and door frames, excluding however roof, exterior walls and utility lines servicing other premises, which shall be repaired and maintained by Landlord if not maintained by the applicable utility. Tenant shall perform such items of repair, maintenance, improvement or reconstruction of and to the Premises as may at any time or from time to time be required by any governmental agency having jurisdiction thereof.

The foregoing provisions hereof to the contrary notwithstanding Landlord shall not be required to make repairs necessitated by reason of the negligence of Tenant or anyone claiming by, through or under Tenant, or by reason of the failure of Tenant to perform or observe any conditions or agreements in this Lease contained, or caused by alterations or improvements made by Tenant or anyone claiming under the Tenant. Anything contained in this Lease to the contrary notwithstanding, Landlord shall not in any way be liable to Tenant for failure to make repairs as herein specifically required of it unless Tenant has previously notified Landlord, in writing, of the need for such repairs and Landlord shall have failed to commence and complete said repairs within a reasonable period of time following receipt of Tenant's written notification.

If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner satisfactory to Landlord, Landlord shall have the right, upon giving Tenant written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event Tenant shall pay Landlord for such work as additional rent, upon demand.

Tenant agrees to permit the Landlord and its authorized representatives to enter the Premises at all times during usual business hours for the purpose of inspecting same. Tenant further covenants and agrees that Landlord may, at its option, go upon the Premises and make any necessary repairs to the Premises and perform any work therein which Landlord deems necessary. Nothing herein contained shall imply any duty on the part of Landlord to do any work under any provision of this Lease that Tenant may be required to do. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of rent. In the event Landlord makes or causes any repairs which Tenant is obligated to perform to be made or performed, as provided for herein, Tenant shall pay the cost thereof to Landlord, as additional rent upon demand.

6.2 HVAC System Serving the Premises. Tenant shall perform or cause to be performed routine maintenance on the heating, ventilating and air conditioning system serving the Premises, including but not limited to timely changing of filters (at least monthly), adjustment and inspection of air handling mechanism and control equipment; inspection, maintenance and performance of necessary lubrication, testing and other such normal maintenance procedures. Tenant shall repair such system at Tenant's sole cost and expense and shall maintain the same in good condition. Tenant and Landlord shall share equally the costs of replacement of such system(s).

6.3 Alterations in the Composition of the Common Areas. The parties recognize that the Shopping Center may be constructed in stages and construction of later stages may necessitate the rearrangement and alteration of some of the common areas, including but not limited to the parking area. Landlord therefore, reserves the right in its sole discretion to change, rearrange, alter, modify, reduce or supplement any and all of the facilities designed for the common use and convenience of all tenants. Landlord specifically reserves the right to reduce the parking area which for purposes of this provision shall be construed to include the driveways, footways, and other passage ways within the Shopping Center, as shown on the Plat attached hereto, by erecting on said parking area, store buildings or other structures or improvements of any kind, including but not limited to extensions to buildings shown on the Plat, so long as the said parking area built or otherwise improved on shall not in the aggregate reduce the portion of the parking area shown on the Plat by more than fifteen (15%) percent unless such reduction is required in order to comply with applicable governmental legislation, ordinances, regulations, standards or executive orders and provided further that a minimum of 4.5 parking spaces per 1,000 square feet of leased space is maintained. In furtherance, and not in limitation of the foregoing, Landlord shall have the right to erect additional stores or other structures in the Shopping Center and to erect in connection with the construction thereof, temporary scaffolds and other aids to construction on the exterior of the Premises, provided that front and rear access to the Premises shall not be denied Tenant and that there shall be no encroachment upon the interior of the Premises. Landlord shall have the right to close the roadways, accessway and parking areas within the

Shopping Center at such times and in such manner as is necessary, in Landlord's sole opinion to prevent their dedication as public rights of way or streets.

ARTICLE VII
Insurance - Casualty Loss

7.1 Tenant Insurance. So long as Tenant occupies the Premises or any part thereof, Tenant shall keep in force at Tenant's expense public liability insurance including personal injury, products liability and independent contractors coverage, for Tenant and Landlord as their interest may appear covering the Premises, Tenant's use thereof and any use of motor vehicles by Tenant within the Shopping Center, in companies and in forms satisfactory to Landlord with minimum limits of One Million and no/100 Dollars (\$1,000,000.00) on account of bodily injury to, or death of, one person and One Million and no/100 Dollars (\$1,000,000.00) on account of bodily injury to, or death of, more than one person as a result of any accident or disaster and with property damage insurance coverage in the minimum amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00). Tenant shall keep in force as set forth above, fire and extended coverage insurance including coverage against water damage, sprinkler flow and sprinkler leakage on Tenant's property, including but not limited to Tenant's improvements, Tenant's inventory, trade fixtures, furnishings, floor coverings, drapes, equipment and other property of Tenant whether or not removable by Tenant hereunder, which insurance shall cover Tenant and Landlord to the extent of any interest Landlord may have therein against damages to all such property and improvements which insurance shall be an amount sufficient to cover the full replacement cost of any repair or reconstruction from any such hazard during the term of this Lease. Tenant shall in addition keep in force Workman's Compensation or similar insurance to the extent required by law. Tenant shall deposit the policy or policies of such insurance or a certificate or certificates thereof with Landlord within ten (10) days following the commencement of the term hereof. Should Tenant fail to carry or keep in force such insurance, Landlord may but need not, cause such insurance to be issued and in such event Tenant agrees to pay as additional rental the premium for such insurance promptly upon Landlord's demand.

7.2 Indemnity. (a) Tenant hereby indemnifies and holds Landlord harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising from or out of the occupancy or use by Tenant of the leased premises or any part thereof, its agents, contractors or employees. The foregoing to the contrary notwithstanding, in no event shall Tenant be required to indemnify Landlord against losses resulting from affirmative acts of proven negligence solely on the part of Landlord, its agents, contractors or employees, provided that in no event shall Landlord be liable with respect to water damages of any nature whatsoever.

(b) Landlord hereby indemnifies and holds Tenant harmless from any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property happening on or about all common areas (including parking areas) of the shopping center, or on the leased premises if occasioned wholly or in part by an act or omission of Landlord, its agents, contractors or employees.

7.3 Increase in Insurance Premiums. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene the public liability or fire, extended coverage and casualty loss insurance policies on the Premises and the Shopping Center, or which will prevent Landlord from securing such policies in companies acceptable to Landlord. If anything done, permitted to be done, or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon and about the Premises shall cause the rate of fire or other insurance on the Premises or the Shopping Center in companies acceptable to Landlord to be increased beyond rates from time to time applicable to the Shopping Center, Tenant shall pay as additional rent, the amount of any such increase promptly upon demand by Landlord and shall cease such action until such payment is made.

7.4 Waiver of Subrogation. Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other party, or anyone for whom such party may be responsible, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Landlord and Tenant each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra cost shall be charged therefore each party shall advise the other thereof and the other party, at its election, may pay the same, but shall not be obligated to do so.

ARTICLE VIII
Loss or Taking of the Premises

8.1 Damage or Destruction Due to Insured Casualty. A. In the event the Premises are damaged or destroyed by fire or other insured perils, Landlord shall:

(i) Within a period of ninety (90) days thereafter, commence repair, reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or

(ii) In the event of partial or total destruction of the Premises during the last three (3) years of term hereof, Landlord and Tenant shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For purposes of this paragraph (ii), "partial destruction" shall be deemed a destruction to an extent of at least thirty-three and one-third percent (33 1/3%) of the then full replacement cost of the Premises as of the date of destruction; or

(iii) In the event of damage or destruction of the Premises or the Shopping Center to an extent of sixty percent (60%) or more of the full replacement cost thereof, Landlord shall have the option to terminate this Lease by written notice to Tenant within sixty (60) days of such damage or destruction.

B. In the event the Premises shall be damaged as a result of any flood, earthquake, act of war, nuclear peril, or from any other uninsured casualty and the cost of restoring same exceeds One Million and no/100 Dollars (\$1,000,000.00), Landlord may upon written notice to Tenant given within ninety (90) days following the date of such damage either commence repair, reconstruction or restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or elect not to so repair, reconstruct or restore the Premises in which event this Lease shall cease and terminate. Should Landlord commence repairs or replacement within two (2) years after the date of such damage or destruction, and should at least four (4) years remain on the lease term at time Landlord elected to terminate the Lease, Landlord shall not enter into a new lease for the repaired Premises or for the improvements constructed in replacement of the Premises with any lessee other than Tenant, unless Tenant shall have periodically declined to enter into a lease for the same term, upon the same rental, and upon substantially the same terms as those of such new lease.

C. In the event damage or destruction described in Paragraph 8.1A or 8.1B is of the extent that Tenant cannot reasonably operate its business, no

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rental will be paid for Premises until said Premises are restored to an operable condition. If the Premises are partially damaged pursuant to Section 8.1 hereof, and the lease is not terminated, this lease will continue in full force and effect as to the remainder of the Premises if Tenant can operate its business in the reduced space. The minimum rent payable by Tenant for the balance of the term will be abated in the proportion that the leasable area of the premises damaged bears to the leasable area of the Premises immediately prior to such damage.

D. In the event of reconstruction of the Premises under this Article 8.1 said reconstruction shall be in conformance with the "Description of Base Building Structure To Be Provided By Landlord" set forth in Exhibit "D". Notwithstanding that all reconstruction work shall be performed by Landlord's contractor unless Landlord shall otherwise agree in writing, Landlord's obligation to reconstruct the Premises shall be only to the extent of the work as described in "Provisions Relating To Construction Of Tenant's Store" in Exhibit "D" hereof. Tenant, at its sole cost and expense, shall be responsible for the repair and restoration of all items set forth in "Description of Tenant Allowance Work To Be Performed By Landlord" in said Exhibit "D" plus the replacement of its improvements, stock in trade, trade fixtures, furniture, furnishings and equipment. Tenant shall commence the installation of improvements, fixtures, equipment and merchandise hereof promptly upon delivery to it of possession of the Premises and shall diligently prosecute such installation to completion.

E. Upon the termination of this Lease pursuant to the provision of this Section 8.1 the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the Premises to Landlord, except for items which have theretofore accrued and be then unpaid. In the event of such termination, all of Tenant's insurance proceeds covering Tenant's leasehold improvements by excluding proceeds for trade fixtures, merchandise, signs and other personal property, shall be disbursed and paid to Landlord.

8.2 Eminent Domain. If the whole or any part of the Premises shall be taken under the power of eminent domain, whether by condemnation or friendly acquisition, this Lease shall terminate as to part so taken on the date Tenant is required to yield possession thereof to the condemning or acquiring authority. Landlord shall within sixty (60) days of such taking perform such repair, reconstruction or restoration as may be necessary in order to restore the part not taken (not including Tenant's leasehold improvements) to useful condition, and the base rental shall be reduced in proportion to the portion of the Premises so taken. In the event Tenant's use of the Premises as provided for in Section 5.2 hereof is materially impaired due to such taking, either party may terminate this Lease by written notice to the other given not more than twenty (20) days following notice of any such condemnation or friendly acquisition. Notwithstanding anything to the contrary, Tenant shall have the right, at its sole cost and expense, to assert a separate claim in any condemnation proceeding for its personal property and tenant improvements, including moving expenses and trade fixtures, and any other damages it may sustain.

ARTICLE IX Assigning, Subletting and Change in Corporate Ownership

9.1 Assignment and Subletting. Tenant shall not transfer or assign this Lease or subject or license the whole or any portion of the Premises without the express written consent of Landlord, which consent shall not be unreasonably withheld. Any attempt by Tenant to transfer, assign, sublet, or enter into a license or concession agreement, or to change ownership without first obtaining Landlord's express written consent, which consent shall not be unreasonably withheld, shall be void, shall confer no rights upon any third person and shall operate to prevent any such transfer, assignment, subletting, license agreement or change of ownership from becoming effective with respect to this Lease and the Premises. Tenant agrees to reimburse Landlord for Landlord's reasonable attorney fees incurred in conjunction with the processing and documentation of any such requested ownership change, transfer, assignment, subletting or licensing agreement.

9.2 Voting Control. If Tenant is a corporation and if the person or persons who own a majority of its voting shares at the time of execution hereof cease to own a majority of such shares at any time hereafter, except as a result of transfers by gift, bequest or inheritance, or repurchase of the Tenant's treasury stock or transfer of the Tenant's Employee Stock Option Plan (ESOP), Tenant shall so notify Landlord. In the event of such change of ownership, whether or not Tenant has notified Landlord thereof, Landlord may consent to such transfer in ownership, whereby said consent shall not be unreasonably withheld.

ARTICLE X Tenant Covenants

Tenant covenants and agrees to perform all obligations expressed on its part to be performed hereunder, to cease all conduct prohibited hereby immediately upon receipt of written notice from the Landlord, to take such actions as are required by Landlord as part of Tenant's performance hereunder in accordance with the provisions of Landlord's notice requiring such actions and to pay to Landlord all sums due Landlord hereunder at the times and in the manner set forth herein. Tenant further covenants and agrees to pay to Landlord all sums advanced, paid or incurred by Landlord hereunder on behalf of Tenant, which amounts as costs hereunder, shall be deemed additional rent and shall be due not more than five (5) days following written notice from Landlord.

ARTICLE XI Default by Tenant and Remedies of Landlord

11.1 Remedies of Landlord. In the event Tenant shall not commence and proceed diligently to effectuate any actions required by Landlord as specified in this lease and in any notice given Tenant hereunder to the satisfaction of Landlord, Landlord may at its sole discretion do such things as are specified in said notice, and Tenant hereby grants to Landlord access to the Premises if same is required by Landlord in furtherance hereof. Landlord shall have no liability to Tenant for any loss or damage whatsoever resulting from such entry or such action by Landlord, and Tenant hereby agrees to pay as additional rent upon demand any expenses incurred or paid by Landlord's taking such action. In the event that: (a) fails to pay all or any portion of any sum due from Tenant hereunder within ten (10) days following written notice; (b) fails to immediately cease all conduct prohibited hereby immediately upon receipt of written notice from Landlord; (c) fails to take such actions in accordance with the provisions of written notice from Landlord as are required by Landlord to remedy Tenant's failure to perform any of the terms, covenants, and conditions hereof; (d) commits waste to the Premises or removes any leasehold improvements thereto; (e) fails to conduct business in the Premises as required by this Lease or abandons the Premises or the Premises appear to be abandoned; (f) commits an act in violation of this Lease which Landlord has previously notified Tenant to cease more than once in that lease year; (g) becomes bankrupt or insolvent or files any debt proceeding, or if Tenant shall take or have taken against Tenant any petition of bankruptcy, or if Tenant shall take action or have action taken against Tenant for the appointment of a receiver for all or a portion of Tenant's assets, or if Tenant shall file a petition for a corporation reorganization, or shall make an assignment for the benefit of creditors, or if in any other manner Tenant's interest hereunder shall pass to another by operation of law (it being understood that any or all of such occurrences shall be deemed a default on account of bankruptcy for the purposes hereof and that such default on account of bankruptcy shall apply to and include any Guarantor of this Lease; (h) is otherwise in default hereunder and shall not have cured such default within thirty (30) days following written notice from Landlord, then and in such event, Landlord may at its option and without further notice to Tenant, re-enter and resume possession of the Premises and declare this Lease and/or Tenant's rights of possession hereunder to be terminated and may thereupon remove all persons and property from the Premises with or without resorting to process of any court, either by force or otherwise. Notwithstanding such re-entry by Landlord, Tenant hereby indemnifies and holds Landlord harmless from and against any and all loss or damage which Tenant may incur by reason of the termination of this Lease and/or Tenant's right to possession hereunder. Upon

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re-entry Landlord may without terminating this Lease make such repairs and alterations as Landlord in its sole discretion deems necessary to relet the Premises and may then relet the Premises or any portion thereof on such terms and conditions for such period of time, whether less than equal to or beyond the unexpired term hereof, as Landlord in its sole discretion may deem appropriate. Landlord shall, however, have no obligation to mitigate Tenant's damages by reletting the Premises. Should the Premises be relet, Tenant shall pay to Landlord all costs incurred or paid by Landlord in reletting. Upon reletting, sums received from such new tenant by Landlord shall be applied first to payment of all costs, incident to reletting, including, but not limited to repair and alteration costs and legal and brokerage fees; any excess shall then be applied to any indebtedness to Landlord from Tenant other than for base rentals, and any excess shall then be applied to the payment of base rentals due and unpaid.

Tenant acknowledges that Tenant's agreement to pay the rental and costs hereunder for the term hereof has served to induce Landlord to enter into this Lease and that Landlord's termination of its Lease or of Tenant's right to possession due to Tenant's default shall not abrogate such agreement. Accordingly, following any such termination, Tenant shall pay all such rentals and costs as same become due under the terms of this Lease, together with all attorney's fees and other expenses incurred by Landlord in regaining possession, provided that in the event of reletting Tenant shall be entitled to offset or credit in the manner set forth hereinabove against sums due from Tenant hereunder.

11.2 Remedies Cumulative - Effect of Waiver. The remedies herein granted Landlord are cumulative and are in addition to those granted by law or in equity under the laws of the State of Alabama or the United States. The mention in this Lease of any specific right or remedy shall not preclude Landlord from exercising any other right or remedy or from maintaining any action to which it may otherwise be entitled either at law or in equity. The failure of Landlord to insist in any one or more instances upon the strict performance of any covenant of this Lease, or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by Landlord. No payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord hereunder shall be deemed to be anything but payment on account, and the acceptance by Landlord of such a lesser amount whether by check with an endorsement or statement thereon, or by an accompanying letter or otherwise that said lesser amount is payment in full shall not be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's rights to recover the balance due or pursue any of Landlord's other remedies hereunder. For the purpose of any suit by Landlord brought or based on this Lease, the failure to include any sum or sums matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums so omitted.

ARTICLE XII Succession to Landlord's Interest

12.1 Assignment. The covenants, conditions and agreement herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon tenant, its heirs, executors, administrators, successors and assigns, and shall inure to the benefit of Tenant and only such assigns, of Tenant to whom the assignment by Tenant has been consented to by Landlord. Nothing contained in this Lease shall in any manner restrict Landlord's right to assign or encumber this Lease in its sole discretion, and it is further agreed, anything to the contrary herein contained notwithstanding, that in the event Landlord conveys its interest in the Shopping Center, Landlord shall be relieved of all further obligations hereunder.

12.2 Attornment. Should Landlord assign this Lease as provided for above, or should Landlord enter into a first mortgage affecting the Shopping Center and should the holder of such mortgage succeed to the interest of Landlord, Tenant shall be bound to said assignee or any such mortgage holder under all the terms, covenants and conditions of this Lease for the balance of the term hereof

remaining after such succession, and Tenant shall attorn to such succeeding party as its Landlord under this Lease promptly under any such succession. Tenant agrees that should any party so succeeding to the interest of Landlord require a separate agreement of attornment regarding the matters covered by this Lease, then Tenant shall enter into any such "attornment agreement", provided the same does not modify any of the provisions of this Lease and has no adverse effect upon Tenant's continued occupancy of the Premises.

12.3 Subordination and Non-Disturbance. This lease and all of the rights of Tenant hereunder are and shall be subject and subordinate to the lien of any mortgage or mortgages presently existing or hereinafter placed on the demised premises or any part thereof, except the Tenant's property or trade fixtures, and to any and all renewals, modifications, consolidations, replacements, extensions or substitutions of any such mortgage or mortgages (all of which are hereinafter termed the mortgage or mortgages) provided, nevertheless, each or all of such mortgages shall contain a provision to the effect that so long as the Tenant is not in default under this lease, or any renewal thereof no foreclosure of the lien of said mortgage or any other proceeding in respect thereof shall divest, impair, modify, abrogate or otherwise adversely affect any interests or rights whatsoever of the Tenant under the said lease.

Such subordination shall be automatic, without the execution of any further subordination agreement by Tenant. If, however, a written subordination agreement, consistent with this provision, is required by a mortgagee Tenant agrees to execute, acknowledge and deliver the same and in the event of failure so to do, Landlord may, in addition to any other remedies for breach of covenant hereunder, execute, acknowledge and deliver the same as the agent or attorney in fact of Tenant, and Tenant hereby irrevocably constitutes Landlord its attorney-in-fact for such purpose.

12.4 Estoppel Certificate. Tenant shall, from time to time, upon not less than ten (10) days prior written request by Landlord, execute, acknowledge and deliver to Landlord a written statement certifying that this lease is unmodified and in full force and effect (or that the same is in full force and effect as modified, listing the instruments of modification), the dates to which the rent or other charges have been paid and whether or not to the best of Tenant's knowledge Landlord is in default hereunder (and if so, specifying the nature of such default), it being intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Landlord's interest or mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the building.

ARTICLE XIII Surrender of Premises

At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in the same condition as when tendered by Landlord, reasonable wear and tear and insured casualty excepted. Tenant shall have no right to remove any leasehold improvements whether made by Tenant or Landlord, including, but not limited to floor and wall coverings, lighting, heating, air conditioning, ventilating, plumbing, and other such fixtures, partitions, alterations, improvements, systems, and all such similar apparatus and equipment. If not then in default, Tenant shall, however, have the right at the end of the term hereof, to remove any furniture, trade fixtures or other personal property placed in the Premises, provided that Tenant promptly repairs any damage to the Premises caused by such removal and provided further that all such removal and/or repairs are completed by the normal expiration date hereof.

ARTICLE XIV

14.1 Quiet Enjoyment Tenant shall, subject to the provisions hereof, peaceably and quietly hold and enjoy the Premises during the term hereof without

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hindrance or interruption by Landlord so long as Tenant performs and observes all of the terms, covenants, and conditions to be performed and observed by Tenant hereunder and pays all sums due from Tenant hereunder. Landlord will request its title insurer to request its title insurer to issue to Tenant a leasehold title policy at no cost or expense to Landlord, such policy to be issued simultaneously with Landlord's mortgagee policy with Tenant to pay any extra costs or expenses over the cost of the mortgagee policy.

14.2 Recording of Lease. Landlord agrees to file the entire Lease Agreement for record in the Shelby County Probate Office within thirty days (30) months from the date of execution and to pay all costs and expenses for such recordation. In the event Landlord fails to record the Lease Agreement within said time period, Tenant shall be permitted to record the same and deduct the entire amount of costs and expenses from the next maturing installment of rent.

ARTICLE XV Miscellaneous Provisions

15.1 Entire Agreement. This Lease and the Exhibits attached hereto, set forth the entire agreements between the parties concerning the Premises and no subsequent agreement, amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by each party.

15.2 Representations. Tenant acknowledges that neither Landlord nor Landlord's agents, employees, or contractors have made any representations or promises with respect to the Premises, the Shopping Center or this Lease except as expressly set forth herein and that Tenant shall have no claim, right or cause of action based on or attributable to any representation or promises with respect to the Premises, the Shopping Center or this Lease except as expressly set forth herein.

Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall during the term of this Lease occupy any space in the Shopping Center.

15.3 Addresses - Notices. All notices required or permitted to be given hereunder shall be in writing, delivered in person or sent by registered or certified mail, return receipt requested, to Landlord at 2015 1st Avenue North, Suite 300, Birmingham, Alabama, 35203, or at such other place as Landlord may designate by written notice to Tenant, and to Tenant at the Premises with copies to be sent to 2614 19th Street South, Birmingham, Alabama, 35209, or such other address as Tenant may designate by written notice to Landlord. The time of post-mark shall be deemed the time of "receipt" of notices as that term is used herein. All payments due Landlord hereunder shall be made to Landlord at 2015 1st Avenue North, Suite 300, Birmingham, Alabama, 35203, or at such other place as Landlord may designate by written notice to Tenant.

15.4 Captions - Headings and References. The Captions, Section Numbers, Article Numbers and Index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Sections or Articles of this Lease, or in any way affect this Lease. The use of the terms "hereof", "hereunder" and "herein" shall refer to this Lease as a whole except where noted otherwise. The necessary grammatical changes required to express singular, plural, male, female or neuter as applicable shall be assumed in each case to be fully expressed.

15.5 Relationship of the Parties. This Lease shall in no way create the relationship of partner or joint venturer between Landlord and Tenant. This Lease shall not result in the creation of an estate for years in Tenant, nor any interest which may be hypothecated, mortgaged, levied or sold. No estate shall pass out of Landlord to Tenant hereunder, and Tenant shall not be entitled to any

award of whatsoever nature based on this Lease and/or Tenant's right to the use and occupancy of the Premises hereunder.

15.6 Alabama Law. The laws of the State of Alabama shall govern the interpretation, the validity, performance and enforcement of this Lease.

15.7 Severability. In the event any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term covenant or condition of this Lease shall be valid and enforceable to the full extent permitted by law.

15.8 Time. TIME IS OF THE ESSENCE OF THIS LEASE.

15.9 Limitation of Liability. Landlord's obligations and liability to Tenant with respect to the Lease shall be limited solely to Landlord's interest in the Shopping Center.

15.10 Tenant warrants and represents to Landlord that Tenant has not employed or retained by broker, finder or agent in connection with the negotiations or execution of this Lease and agrees to indemnify and hold Landlord harmless from and against any cost, liability or expense incurred by Landlord resulting from and against any cost, liability or expense incurred by Landlord resulting from or attributable to any claim for a brokers fee, finders fee or real estate commissions by Tenant or any party claiming by, through or under Tenant or as Tenant's agent.

15.11 Agent's Commission. Landlord agrees to pay Agent as compensation for services rendered five percent (5%) of all rentals thereafter paid by Tenant under this Lease. Landlord, with consent of Tenant, hereby assigns to Agent the first month's rent hereunder and five percent (5%) of all rentals paid under this Lease. Landlord agrees if this Lease is extended, or if new Lease is entered into between Landlord and Tenant covering the Premises, or any part thereof, then in either of said events, Landlord, in consideration of Agent's having procured Tenant hereunder, agrees to pay Agent five percent (5%) of all rentals paid to Landlord by Tenant under such extension or new Lease. Agent agrees in the event Landlord sells the Premises that upon Landlord's furnishing Agent with an agreement signed by the Purchaser, assuming Landlord's obligations to Agent under this Lease, that Agent will release the original Landlord from any further obligations to Agent hereunder. Agent is a party to this Lease solely for the purpose of enforcing its rights under this section and it is understood by all parties hereto that Agent is acting solely in the capacity as agent for Landlord, to whom Tenant must look as regards all covenants, agreements and warranties herein contained, and that Agent shall never be liable to Tenant in regard to any matter which may arise by virtue of this Lease.

15.12 Execution. This Lease shall be executed in triplicate, each of which shall be deemed an original and any of which shall be deemed to be complete of itself and may be introduced into evidence or used for any purpose without the production of the other copies. If Tenant is a corporation, two authorized corporate officers must execute this Lease in their appropriate capacity for Tenant and affix the corporate seal.

Special Stipulations. The following Exhibits are hereby made a part of this Lease:

- Exhibit "A" - Plat
- Exhibit "B" - Rules & Regulations
- Exhibit "C" - SHOP LEASE PLAN
- Exhibit "D" - Provisions Relating to
Construction of Tenant's Store
- Exhibit "E" - Description of Tenant's Work (Not Applicable)
- Exhibit "F" - Final Plans and Specifications

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IN WITNESS WHEREOF, the parties hereby have duly executed this instrument in triplicate, individually or through their authorized officers, agents or attorney-in-fact, as the case may be, causing their respective seals to be affixed hereto, the day and year first above written.

Signed, sealed and delivered
by Landlord in the presence of:

James W. Wood Jr.
Witness
Charles W. L. L.
Witness

LANDLORD:

By: Hadley Church Realty Company,
Inc., its General Partner

By: Greg A. Church
Greg A. Church
Its President

Signed, sealed and delivered
by Tenant in the presence of:

Archie H. Williams
Witness
R. Ed. Poolin
Witness

TENANT:

Western Supermarkets, Inc.

By: Kenneth Hubbard
Its PRESIDENT

Signed, sealed and delivered
by Agent in the presence of:

James W. Wood Jr.
Witness
Charles W. L. L.
Witness

AGENT:

Hadley Church Realty Company, Inc.

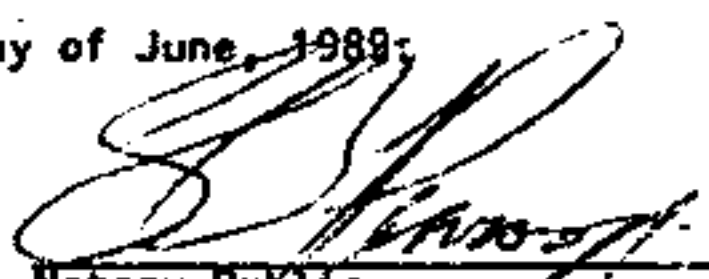
By: Greg A. Church
Its President

05/18/89

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Greg A. Church whose name as President of Hadley Church Realty Company, Inc., a corporation as general partner of Keystone Plaza Associates, an Alabama General Partnership, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents of said Lease Agreement, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner as aforesaid.

Given under my hand this the 8th day of June, 1989.


Notary Public

My Commission Expires: 8/20/91

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Kenneth E. Hubbard whose name as President of Western Supermarkets, Inc., a corporation, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lease Agreement, 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 8th day of June, 1989.

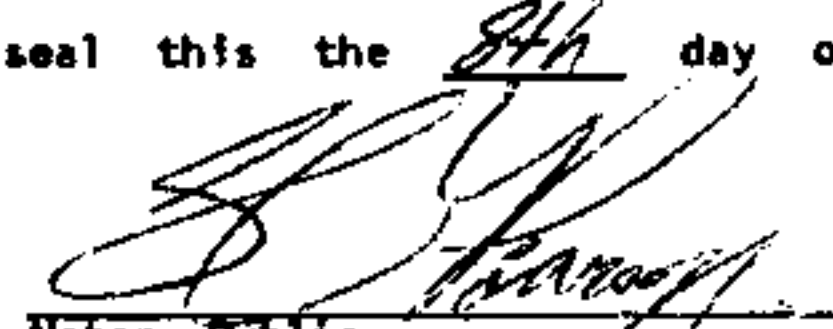

Notary Public

My Commission Expires: 12/20/90

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Greg A. Church whose name as President of Hadley Church Realty Company, Inc., a corporation, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lease Agreement, 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 8th day of June, 1989.


Notary Public

My Commission Expires: 8/20/91

BOOK 245 PAGE 872

EXHIBIT A

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EXHIBIT NO. 1

**McDONALD'S
RESTAURANT**

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

RECEIVED

Let Your
words
speak

-NOV-76 TW:TRK 0811 EASTMAN
-JUN-20-1968 BOOK 115 PAGE 424

[illegible]

For the following reasons, we believe that the proposed rule is not warranted. First, the proposed rule would require the use of a single, uniform, and potentially outdated, definition of "disability" for all purposes. This is not only inconsistent with the current practice of using different definitions for different purposes, but it also would be inconsistent with the current practice of using the most appropriate definition for each purpose. Second, the proposed rule would require the use of a single, uniform, and potentially outdated, definition of "disability" for all purposes. This is not only inconsistent with the current practice of using different definitions for different purposes, but it also would be inconsistent with the current practice of using the most appropriate definition for each purpose. Third, the proposed rule would require the use of a single, uniform, and potentially outdated, definition of "disability" for all purposes. This is not only inconsistent with the current practice of using different definitions for different purposes, but it also would be inconsistent with the current practice of using the most appropriate definition for each purpose.

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SURVEY FOR
KEYSTONE PLAZA
SHOPPING CENTER

PERRY HAND & ASSOCIATES
INCORPORATED
P.O. BOX 881
BIRMINGHAM, ALA 35204
(205) 325-1400

DATE: 1-25-68	
TIME: 10:00 AM	LOCATION: 100-100000
REPORTING OFFICER: J. A. JONES	REPORTING OFFICER: J. A. JONES

[illegible]

EXHIBIT "B"

Rules and Regulations

1. Tenant shall keep the inside and outside of the Premises and all glass, doors and windows of the Premises clean.
2. Tenant shall keep all exterior surfaces of the Premises clean.
3. Tenant shall replace promptly at Tenant's expense, with glass of a like kind and quality, any plate glass or window glass of the Premises which may become cracked or broken.
4. Tenant shall maintain the Premises at Tenant's expense in a clean, orderly and sanitary condition free of offensive odors, insects, rodents, vermin and other pests.
5. Tenant shall comply to the extent necessary with all laws, ordinances, and regulations of the United States, State of Alabama, County of Shelby or any agencies thereof and comply with all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of the Premises by Tenant.
6. Tenant shall keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises.
7. Tenant shall conduct business during the hours set forth in the Lease in a dignified manner in accordance with high standards of operation and maintain stocks of merchandise adequate to assure the transaction of a maximum volume of business in and at the Premises.
8. Tenant shall require employees, officers and agents to park in the areas of the parking lot designated by Landlord, if any, as employee parking areas. If requested by Landlord, Tenant shall furnish Landlord with the license number of all employee vehicles within five days of Landlord's request.
9. Tenant shall perform such acts and do such things as are necessary in order to correct and cure any deficiency on Tenant's part in the performing of items 1 through 8 immediately above, in accordance with the provisions of any written notice from Landlord relating thereto.
10. Tenant shall not conduct any auction, fire, bankruptcy, moving or closeout sales. The provisions hereof shall not preclude Tenant from conducting periodic, seasonal, promotional or clearance sales.
11. Tenant shall not place or maintain merchandise or other articles in any entry of the Premises, on the footwalks adjacent thereto or elsewhere in the exterior or common areas, except as provided in the description of the Premises.
12. Tenant shall not use or permit the use of any apparatus for sound reproduction or transmission including but not limited to loudspeakers, phonographs, public address systems, sound amplifiers and radios, or any musical instrument in any manner that sounds so produced are audible or visible outside the Premises.
13. Tenant shall not permit undue accumulation of garbage, trash, rubbish, or other refuse within or without the Premises.
14. Tenant shall not cause or permit objectionable odors to emanate or be dispelled from the Premises.
15. Tenant shall not solicit business in the parking area or other common areas.

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

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

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

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

20. Tenant shall cease all conduct prohibited pursuant to items 11 through 19 immediately above, promptly upon notice from Landlord. If Tenant shall fail to cease such conduct within three days following the first notice of such violation during any lease year, Tenant shall pay to Landlord One Hundred and no/100 Dollars (\$100.00) for each day or portion thereof that Tenant fails to cease such conduct.

BOOK 245 PAGE 875

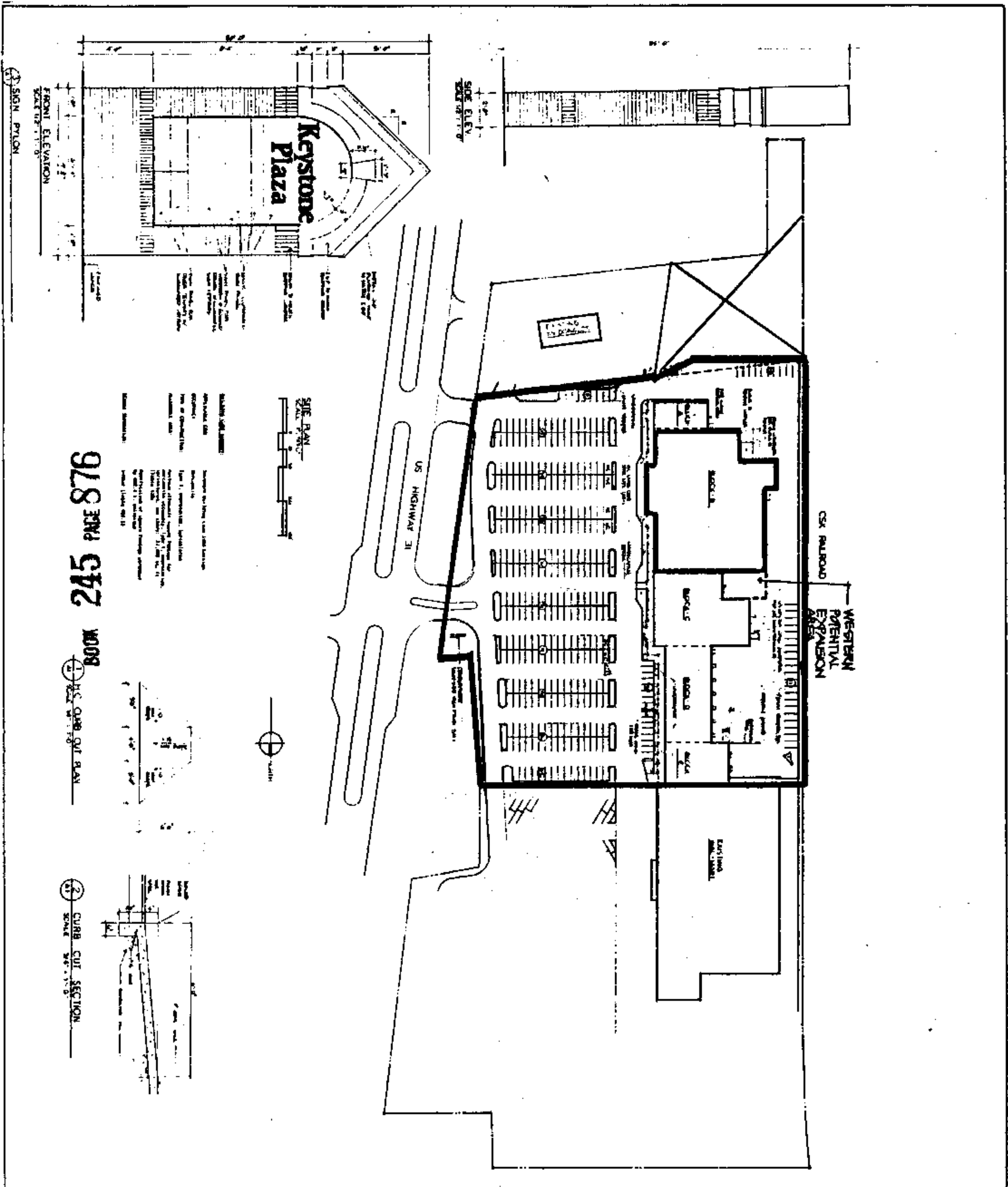


EXHIBIT C

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A111

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the
COST OF THE WORK PLUS A FEE
1978 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

Use only with the 1976 Edition of AIA Document A201, General Conditions of the Contract for Construction.

This document has been approved and endorsed by The Associated General Contractors of America

AGREEMENT

made as of the Sixth day of July in the year of Nineteen
Hundred and Eighty-nine.

BETWEEN the Owner: Keystone Plaza Associates, A Partnership
2015 1st Avenue, North
Birmingham, AL 35203

and the Contractor: McWhorter and Co., Inc.
P.O. Box 907
Anniston, AL 36202

the Project: Keystone Plaza
U.S. Highway 31 South
Pelham, AL

the Architect: P. Lauren Barrett Architects, Inc.
2701 7th Avenue
Birmingham, AL 35233

The Owner and the Contractor agree as set forth below.

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AIA DOCUMENT A111 • COST-PLUS OWNER-CONTRACTOR AGREEMENT • NINTH EDITION • APRIL 1978 • AIA®
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A111-1978 1

EXHIBIT D

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ARTICLE 1

THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 16. If anything in the Contract Documents is inconsistent with this Agreement, the Agreement shall govern.

ARTICLE 2

THE WORK

- 2.1 The Contractor shall perform all the Work required by the Contract Documents for
(Here insert the caption descriptive of the Work as used on other Contract Documents.)

Construction of Keystone Plaza, a strip shopping center, U.S. Highway 31 South, Pelham, AL (Adjacent to Wal-Mart).

ARTICLE 3

THE CONTRACTOR'S DUTIES AND STATUS

The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use his best efforts to furnish at all times an adequate supply of workmen and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Owner.

ARTICLE 4

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 The Work to be performed under this Contract shall be commenced *within ten (10) days of notice to proceed* and, subject to authorized adjustments, Substantial Completion shall be achieved not later than *144 days*.
(Here insert any special provisions for liquidated damages relating to failure to complete on time.)

ARTICLE 5

COST OF THE WORK AND GUARANTEED MAXIMUM COST

5.1 The Owner agrees to reimburse the Contractor for the Cost of the Work as defined in Article 8. Such reimbursement shall be in addition to the Contractor's Fee stipulated in Article 6.

5.2 The maximum cost to the Owner, including the Cost of the Work and the Contractor's Fee, is guaranteed not to exceed the sum of *Two million one hundred forty-three thousand three hundred seventy-eight dollars* (\$ 2,143,378.00); such Guaranteed Maximum Cost shall be increased or decreased for Changes in the Work as provided in Article 7.

(Here insert any provision for distribution of any savings. Delete Paragraph 5.2 if there is no Guaranteed Maximum Cost.)

Any savings under the Guaranteed Maximum Cost will be divided between the Owner and the Contractor on a 50%-50% basis.

1. The cost of a performance bond is not included in the Contract.

Sitework	\$286,728.00	
Western Food Store	995,686.00	(34,750 SF)
Eckerd's Drug Store	256,326.00	(8,640 SF)
Small Shops	604,638.00	(22,593 SF)
Total	\$2,143,378.00	

ARTICLE 6

CONTRACTOR'S FEE

6.1 In consideration of the performance of the Contract, the Owner agrees to pay the Contractor in current funds as compensation for his services a Contractor's Fee as follows:

Seven and one half percent (7½%) of the "Costs to be Reimbursed" as listed in Article 8.

6.2 For Changes in the Work, the Contractor's Fee shall be adjusted as follows:

Seven and one half percent (7½%) of the "Costs to be Reimbursed" as listed in Article 8.

6.3 The Contractor shall be paid *Ninety* percent (90 %) of the proportional amount of his Fee with each progress payment, and the balance of his Fee shall be paid at the time of final payment. *The Owner will retain 10% of each request for payment through 50% completion of the project. No additional amount will be withheld through the last half of the project if job progress is satisfactory. The withheld amounts will be paid to the Contractor at the time of final payment.*

ARTICLE 7

CHANGES IN THE WORK

- 7.1 The Owner may make Changes in the Work as provided in the Contract Documents. The Contractor shall be reimbursed for Changes in the Work on the basis of Cost of the Work as defined in Article 8.
- 7.2 The Contractor's Fee for Changes in the Work shall be as set forth in Paragraph 6.2, or in the absence of specific provisions therein, shall be adjusted by negotiation on the basis of the Fee established for the original Work.

ARTICLE 8

COSTS TO BE REIMBURSED

- 8.1 The term Cost of the Work shall mean costs necessarily incurred in the proper performance of the Work and paid by the Contractor. Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior consent of the Owner, and shall include the items set forth below in this Article 8.
- 8.1.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Contractor, and including such welfare or other benefits, if any, as may be payable with respect thereto.
- 8.1.2 Salaries of Contractor's personnel when stationed at the field office, in whatever capacity employed. Personnel engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
- 8.1.3 Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the Cost of the Work under Subparagraphs 8.1.1 and 8.1.2.
- 8.1.4 The portion of reasonable travel and subsistence expenses of the Contractor or of his officers or employees incurred while traveling in discharge of duties connected with the Work.
- 8.1.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
- 8.1.6 Payments made by the Contractor to Subcontractors for Work performed pursuant to Subcontracts under this Agreement.
- 8.1.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.
- 8.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area.
- 8.1.9 Cost of premiums for all bonds and insurance which the Contractor is required by the Contract Documents to purchase and maintain.
- 8.1.10 Sales, use or similar taxes related to the Work and for which the Contractor is liable imposed by any governmental authority.
- 8.1.11 Permit fees, royalties, damages for infringement of patents and costs of defending suits therefor, and deposits lost for causes other than the Contractor's negligence.
- 8.1.12 Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Contractor. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's Fee. If, however, such loss requires reconstruction and the Contractor is placed in charge thereof, he shall be paid for his services a Fee proportionate to that stated in Paragraph 6.1.
- 8.1.13 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.
- 8.1.14 Cost of removal of all debris.

- 8.1.15 Costs incurred due to an emergency affecting the safety of persons and property.
- 8.1.16 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

(Here insert modifications or limitations to any of the above Subparagraphs, such as equipment rental charges and small tool charges applicable to the Work.)

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ARTICLE 9

COSTS NOT TO BE REIMBURSED

9. The term Cost of the Work shall not include any of the items set forth below in this Article 9.
- 9.1.1 Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices.
- 9.1.2 Expenses of the Contractor's principal and branch offices other than the field office.
- 9.1.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- 9.1.4 Except as specifically provided for in Subparagraph 8.1.8 or in modifications thereto, rental costs of machinery and equipment.
- 9.1.5 Overhead or general expenses of any kind, except as may be expressly included in Article 8.
- 9.1.6 Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
- 9.1.7 The cost of any item not specifically and expressly included in the items described in Article 8.
- 9.1.8 Costs in excess of the Guaranteed Maximum Cost, if any, as set forth in Article 5 and adjusted pursuant to Article 7.

ARTICLE 10

DISCOUNTS, REBATES AND REFUNDS

- 10.1 All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

(Here Insert any provisions relating to deposits by the Owner to permit the Contractor to obtain cash discounts.)

ARTICLE 11

SUBCONTRACTS AND OTHER AGREEMENTS

- 11.1 All portions of the Work that the Contractor's organization does not perform shall be performed under Subcontracts or by other appropriate agreement with the Contractor. The Contractor shall request bids from Subcontractors and shall deliver such bids to the Architect. The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted.
- 11.2 All Subcontracts shall conform to the requirements of the Contract Documents. Subcontracts awarded on the basis of the cost of such work plus a fee shall also be subject to the provisions of this Agreement insofar as applicable.

ARTICLE 12

ACCOUNTING RECORDS

- 12.1 The Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract, and the Contractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after the final payment.

ARTICLE 13

APPLICATIONS FOR PAYMENT

- 13.1 The Contractor shall, at least ten days before each payment falls due, deliver to the Architect an itemized statement, notarized if required, showing in complete detail all moneys paid out or costs incurred by him on account of the Cost of the Work during the previous month for which he is to be reimbursed under Article 5 and the amount of the Contractor's Fee due as provided in Article 6, together with payrolls for all labor and such other data supporting the Contractor's right to payment for Subcontracts or materials as the Owner or the Architect may require.

ARTICLE 14

PAYMENTS TO THE CONTRACTOR

- 14.1 The Architect will review the Contractor's Applications for Payment and will promptly take appropriate action thereon as provided in the Contract Documents. Such amount as he may recommend for payment shall be payable by the Owner not later than the *tenth (10th)* day of the month.
- 14.1.1 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that he has made audits of the supporting data, exhaustive or continuous on-site inspections or that he has made any examination to ascertain how or for what purposes the Contractor has used the moneys previously paid on account of the Contract.
- 14.2 Final payment, constituting the entire unpaid balance of the Cost of the Work and of the Contractor's Fee, shall be paid by the Owner to the Contractor *twenty (20)* days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has been completed, the Contract fully performed, and final payment has been recommended by the Architect.
- 14.3 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate entered below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

(Here insert any rate of interest agreed upon.)

Prime plus 1% based on the prevailing rate of AmSouth Bank, N.A., Birmingham, Alabama.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.)

ARTICLE 15

TERMINATION OF CONTRACT

- 15.1 The Contract may be terminated by the Contractor as provided in the Contract Documents.
- 15.2 If the Owner terminates the Contract as provided in the Contract Documents, he shall reimburse the Contractor for any unpaid Cost of the Work due him under Article 5, plus (1) the unpaid balance of the Fee computed upon the Cost of the Work to the date of termination at the rate of the percentage named in Article 6, or (2) if the Contractor's Fee be stated as a fixed sum, such an amount as will increase the payments on account of his Fee to a sum which bears the same ratio to the said fixed sum as the Cost of the Work at the time of termination bears to the adjusted Guaranteed Maximum Cost, if any, otherwise to a reasonable estimated Cost of the Work when completed. The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of the Contract the Owner shall further assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with said Work. The Contractor shall, as a condition of receiving the payments referred to in this Article 15, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in himself the rights and benefits of the Contractor under such obligations or commitments.

ARTICLE 16

MISCELLANEOUS PROVISIONS

- 16.1 Terms used in this Agreement which are defined in the Contract Documents shall have the meanings designated in those Contract Documents.
- 16.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(List below the Agreement, the Conditions of the Contract, [General, Supplementary, and other Conditions], the Drawings, the Specifications, and any Addenda and accepted alternates, showing page or sheet numbers in all cases and dates where applicable.)

Contract Drawings

P. Lauren Barrett Architects, Inc.

Date

Latest
Revised

A1	5/10/89	5/25/89
A2	5/10/89	5/29/89
A3-A9	5/10/89	
T1 & T2 (Western)	5/29/89	
D1-D3	5/29/89	
T1-T5 (Eckards)	5/10/89	
S1	5/10/89	5/29/89
S2-S3	5/10/89	
S4	5/10/89	
S5-S7	5/10/89	5/25/89
TP1-TP2 (Western)	5/29/89	
P1-P3	Undated	
TM1-TM2 (Western)	5/29/89	
M1-M3	Undated	
TE1-TE4	5/29/89	
E1-E6	Undated	
Perry Hand & Associates		
C1-C7 (Site Drawings)	5/15/89	

Specifications by P. Lauren Barrett Architects, Inc.

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This Agreement entered into as of the day and year first written above.

OWNER

CONTRACTOR

Keystone Plaza Associates, A Partnership

McWhorter and Co., Inc.

2015 1st Ave., N., Birmingham, AL 35203

P.O. Box 907, Anniston, AL 36202

[Signature]

[Signature]

General Partner

Earlon C. McWhorter, President

JUN - 7 - 89 WED 14:39 HADLEY, CHURCH & CO.

P. 07

June 7, 1989

KEYSTONE PLAZA
PELHAM, ALABAMA

SUPPLEMENTARY AGREEMENT

OWNER: KEYSTONE PLAZA ASSOCIATES, A PARTNERSHIP

CONTRACTOR: McWHORTER AND CO., INC.

The Owner and the Contractor agree that the guaranteed maximum prices listed in the Owner-Contractor contract shall be adjusted to reflect the actual costs of the project after subcontractor and material prices are taken.

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Keystone Plaza Associates,
A Partnership

McWhorter and Co., Inc.

JUN - 7 - 89 WED 11:40 HADLEY, CHURCH & CO.

P. 08

AGOID. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/YY/YY)

06/06/89

PRODUCER

JIM DOZIER INS. AGCY., INC.
1130 QUINTARD AVE., STE. 204
ANNISTON, AL 36202
PHONE: (205) 238-5201

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

CODE

BUS-CODE

INSURED

McWhorter and Company, Inc.
P. O. Box 907
Anniston, AL 36202

COMPANY
LETTER A

Great American Insurance Companies

COMPANY
LETTER B

U S F & G Insurance Companies

COMPANY
LETTER C

COMPANY
LETTER D

COMPANY
LETTER E

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
A	GENERAL LIABILITY				GENERAL AGGREGATE \$ 1,000
	X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR OWNER'S & CONTRACTOR'S PROI	GLP 8415 948 03	7/11/88	7/11/89	PRODUCTS COMPOSE AGGREGATE \$ 1,000 PERSONAL & ADVERTISING INJURY \$ 1,000 EACH OCCURRENCE \$ 1,000 BODILY DAMAGE (Any one fire) \$ 50 MEDICAL EXPENSE (Any one person) \$ 1
A	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$ 1,000
	X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X RENTED AUTOS X NON-OWNED AUTOS DAMAGE LIABILITY	CAP 8415 958 03	7/11/88	7/11/89	BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE
A	EXCESS LIABILITY				EACH OCCURRENCE \$ 3,000
	X OTHER THAN UMBRELLA FORM	PRO 8415 946 03	7/11/88	7/11/89	AGGREGATE \$ 3,000
A	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				STATUTORY
		WC 0832 7755 01	4/15/89	4/15/90	\$ 500 (EACH ACCIDENT) \$ 500 (DISEASE - POLICY LIMIT) \$ 500 (DISEASE - EACH EMPLO)
B	OTHER				\$2,299,988 "All Risk" exclu
	Builders Risk Reporting Form	CIM 111488993	10/5/88	10/5/89	flood & earthquake \$1,000 Deductible

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

JOB: Keystone Plaza
U.S. Hwy 31 Pelham, AL 35124

MORTGAGEE:

AmSouth Bank, N.A.
P. O. Box 11007
Birmingham, AL 35288

CERTIFICATE HOLDER

Keystone Plaza Association, A Partnership
2015 First Avenue North
Birmingham, AL 35203

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OF LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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EXHIBIT "F"
Plans and Specifications

The following are incorporated by reference:

- (1) Drawings of Keystone Plaza Shopping Center for
Hadley, Church & Company, Inc.
Prepared by: P. Lauren Barrett Architects, Inc.

INDEX OF DRAWINGS

<u>DWG</u>	<u>DESCRIPTION</u>
A-1	Site Plan; Details Revision 1; 5-25-89
A-2	Floor Plan Blocks "A" and "B", Door and Frame Elevations Revision 2; 5-29-89
A-3	Floor Plan Block C; Details
A-4	Floor Plan Blocks "D" and "E"
A-5	Exterior Elevations
A-6	Exterior Elevations; Details
A-7	Wall Structures
A-8	Wall Sections
A-9	Roof Plan; Details
S-1	Foundation Plan Block A & B Revision 2; 5-29-89
S-2	Foundation Plan Block C
S-3	Foundation Plan Block D & E
S-4	Roof Framing Plan Block A & B Revision
S-5	Roof Framing Plan Block C
S-6	Roof Framing Plan Block D & E
S-7	Sections and Detail
P-1	Plumbing Floor Plan Block A & B
P-2	Plumbing Floor Plan Block C
P-3	Plumbing Floor Plan Block D & E
M-1	Mechanical Floor Plan Block A & B
M-2	Mechanical Floor Plan Block C
M-3	Mechanical Floor Plan Block D & E
E-1	Electrical Site Plan, Legend and Notes

E-2 Block A & B Lighting Plan
 E-3 Block A & B Power Plan
 E-4 Block C Lighting and Power Plan
 E-5 Block D & E Lighting and Power Plan
 E-6 Electrical Schedules and Details

Western Supermarket Tenant Drawings - 5-29-89

T-1 Interior Elevations; Finish Schedule, Door Elevations, Details
 T-2 Reflected Ceiling Plan; Details
 D-1 Interior Elevations
 D-2 Interior Elevations; Details; General Notes
 D-3 Floor Finish Plan
 TP-1 Plumbing Floor Plan Block "B"
 TP-2 Riser Diagrams; Schedules; Legend
 TM-1 Mechanical Floor Plan Block "B"
 TM-2 Mechanical Equipment Schedule
 TE-1 Lighting Plan
 TE-2 Power Plan
 TE-3 Schedules; Legends
 TE-4 Details, Schedules

(2) Keystone Plaza Shopping Center Specifications Job #88-88
 Dated May 10, 1989
 Prepared by: P. Lauren Barrett Architects, Inc.

As Amended By:

(a) Addendum No. 1 dated May 30, 1989
 (b) Addendum No. 2 dated June 5, 1989
 (c) Addendum No. 2 dated June 5, 1989

(3) Western Supermarket at Keystone Plaza Shopping Center Supplemental Specifications
 Job #88-88
 Dated May 29, 1989
 Prepared by: P. Lauren Barrett Architects, Inc.

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89 JUL 11 PM 2:53
 JUDGE OF PROBATE

1. Deed Tax \$4599.79
 2. Mtg. Tax _____
 3. Recording Fee 92.50
 4. Indexing Fee 300
 TOTAL 4695.29

