

Prepared by and return to: L. Stacy Weaver, Jr., P.O. Box 2129, Fayetteville, NC 28302

NORTH CAROLINA

11273

HARNETT COUNTY

MEMORANDUM OF LEASE

CARLETTA R. CAGLE, widow, a resident of Harnett County, North Carolina, hereby leases to SPOUT SPRINGS, INC., a North Carolina corporation with its principal office in the City of Fayetteville, Cumberland County, North Carolina, for a term beginning on the first day of July, 1995, and continuing for a maximum period of fifty (50) years, including extensions and renewals, the following property:

COMMENCING South 60 degrees 08 minutes 22 seconds East 462.62 feet from the northwest property corner of Lot 79, Babcock Village as recorded in Map Book 8, Page 17, Harnett County Registry, to the place and point of BEGINNING;

THENCE South 60 degrees 08 minutes 22 seconds East 230.0 feet;

THENCE North 29 degrees 51 minutes 38 seconds East 120.0 feet;

THENCE South 60 degrees 08 minutes 22 seconds East 179.73 feet;

THENCE North 29 degrees 51 minutes 38 seconds East 276.0 feet;

THENCE South 60 degrees 08 minutes 22 seconds East 331.91 feet;

THENCE South 37 degrees 42 minutes 48 seconds East 357.52 feet to a point in the western right of way margin of a proposed road;

THENCE South 52 degrees 17 minutes 12 seconds West 226.15 feet along said western margin to a point;

THENCE along a curve to the left having a radius of 800.20 feet and an arc length of 293.01 feet, being subtended by a chord of South 40 degrees 21 minutes 01 seconds West 291.37 feet along said western margin to a point;

THENCE South 29 degrees 51 minutes 38 seconds West 164.06 feet along said western margin to a point in the proposed right of way margin of N.C. Highway 87;

THENCE North 60 degrees 08 minutes 22 seconds West 932.80 feet along said proposed northern right of way margin to a point;

THENCE North 29 degrees 51 minutes 38 seconds East 400.0 feet to the point and place of BEGINNING; and containing 14.312 acres, more or less, according to a survey by Larry King & Associates, R.L.S., P.A. on August 24, 1995.

The provisions set forth in a written lease agreement between the parties dated the first day of July, 1995 are hereby incorporated in this memorandum.

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GEORGE E. TATUM  
REGISTER OF DEEDS  
CUMBERLAND AND CO., N.C.

*Carletta R. Cagle* (Seal)  
Carletta R. Cagle

FILED

BOOK 1143 PAGE 87-t

'96 APR 2 AM 11 18

CAYLE P. HOLDER  
REGISTER OF DEEDS  
HARNETT COUNTY, NC

33724

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NORTH CAROLINA  
HARNETT COUNTY

I, Ruby B. Nalley, a Notary Public of said County and State, do hereby certify that Carletta R. Cagle personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal this 27 day of February, 1996.

Ruby B. Nalley  
Notary Public

My Commission expires: December 4, 1999

(N.P. Seal)



North Carolina - Harnett County  
The foregoing certificate(s) of Ruby B. Nalley  
Notary Public, Harnett Co., N.C.  
Notary Public (Notaries Public) is/are certified to be correct. This instrument was presented for registration and recorded in this office at Book 1143 page 87-88  
This 2nd day of April, 1996  
at 11:18 o'clock A. M.  
Sharon R. Bullock by: Sharon R. Bullock  
Register of Deeds - Asst. Deputy

The foregoing Certificate(s) of Ruby B. Nalley

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By George E. Tatum REGISTER OF DEEDS FOR CUMBERLAND COUNTY,  
Sharon R. Bullock Deputy/Assistant - Register of Deeds

NORTH CAROLINA

AMENDMENT TO LEASE

HARNETT COUNTY

THIS AMENDMENT TO LEASE dated this 6<sup>th</sup> day of April, 1999, by and between JSC CENTERS, LLC, a North Carolina limited liability company (hereinafter "Tenant") and CARLETTA R. CAGLE, widow, of Harnett County, North Carolina (hereinafter "Landlord");

**WITNESSETH: THAT**

**WHEREAS**, Carletta R. Cagle, as Landlord, and Spout Springs, Inc., as Tenant, entered into a certain lease agreement dated July 1, 1995 (the "Lease") for a certain tract consisting of 14.312 acres on North Carolina Highway 87, Harnett County, North Carolina (the "Premises"); and

**WHEREAS**, JSC Centers, LLC has succeeded to the interest of Spout Springs, Inc. and is now tenant under the lease; and

**WHEREAS**, Tenant has requested of Landlord that the Lease be amended in respect to removing certain restrictions contained in Paragraph 17 of the Lease; and

**WHEREAS**, Landlord is agreeable to removal of the restrictive covenant contained in Paragraph 17 of the Lease under the conditions hereinafter stated;

**NOW, THEREFORE**, in consideration of the premises and the undertakings of the parties hereinafter contained, the Lease is amended as follows:

1. Paragraph 17 entitled "**Restrictive Covenants**" is amended by striking therefrom the prohibition on the Tenant not to sublet or assign any part of the premises to a person, firm, or corporation engaged in the business of dispensing and selling gasoline or other petroleum products.

2. The removal of the restrictive covenant from the Lease by the Landlord is contingent upon the Tenant's agreement that, whenever it assigns or sublets any part of the premises to a person, firm or corporation engaged in the business of selling and dispensing gasoline or other petroleum products, it will obtain from such sublessee or assignee adequate general liability insurance from each such subtenant, which such policy shall name Tenant and Landlord as additional insureds, and will obtain reasonable indemnity clauses in any such sublease or assignment which will protect the Landlord and Tenant against any claim, demand, loss, fine, assessment, action, damages, penalties, judgments, costs, expenses and interests arising, directly or indirectly, in whole or in part from any contamination caused by such subtenant or assignee.

3. For each such sublessee or subtenant which the Tenant obtains that is engaged in the business of dispensing gasoline or other petroleum products in accordance with the permission to do so undertaken by the lease amendment, Tenant will pay to Landlord the

in additional rental, such additional rental to Landlord to commence with the first lease payment which Tenant receives from any such sublessee or assignee.

Except as herein amended, the Lease is otherwise to remain unchanged and unimpaired and is affirmed by the parties.

IN TESTIMONY WHEREOF, the parties have signed and sealed this Amendment to Lease the day and year first above written.

LANDLORD:

Carletta R. Cagle (SEAL)  
Carletta R. Cagle

TENANT:  
JSC CENTERS, LLC

BY: Joseph P. Riddle III  
Joseph P. Riddle, III, Member/Manager

BY: Sharlene R. Williams  
Sharlene R. Williams, Member/Manager

BY: Carolyn R. Armstrong  
Carolyn R. Armstrong, Member/Manager

NORTH CAROLINA

HARNETT COUNTY

I, Juliana W. Barlow, a Notary Public of Cumberland County, North Carolina, certify that CARLETTA R. CAGLE personally appeared before me this day and

acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 2nd day of April, 1999.

Juliana W. Babin  
Cumberland Co., Notary Public

My Commission Expires: August 28, 2002

STATE OF NORTH CAROLINA  
COUNTY OF Cumberland

I, Penny S. Raynor, a Notary Public for said County and State, do hereby certify that JOSEPH P. RIDDLE, III, Member/Manager of JSC CENTERS, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this 6th day of April, 1999

Penny S. Raynor  
Cumberland Co., Notary Public

My Commission Expires: 7-19-99

STATE OF NORTH CAROLINA  
COUNTY OF Cumberland

I, Jeanette Page Webster, a Notary Public for said County and State, do hereby certify that SHARLENE R. WILLIAMS, Member/Manager of JSC CENTERS, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this 6th day of April, 1999

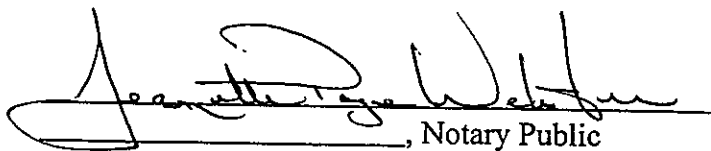
Jeanette Page Webster  
Cumberland Co., Notary Public

My Commission Expires: My Commission Expires

STATE OF NORTH CAROLINA  
COUNTY OF Cumberland

I, Jeanette Page Webster, a Notary Public for said County and State, do hereby certify that CAROLYN R. ARMSTRONG, Member/Manager of JSC CENTERS, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this 6<sup>th</sup> day of April, 1999

  
\_\_\_\_\_, Notary Public

My Commission Expires: My Commission Exp. February 15, 2004

NORTH CAROLINA

HARNETT COUNTY

LEASE

THIS LEASE AGREEMENT, made and entered into this 1st day of July, 1995, by and between CARLETTA R. CAGLE, widow, of Harnett County, North Carolina (herein called "Landlord"), and SPOUT SPRINGS, INC., a North Carolina corporation with its principal office at 238 North McPherson Church Road, Fayetteville, North Carolina, 28303 (herein called "Tenant");

W I T N E S S E T H:

That, in consideration of the rentals herein provided and the other terms, covenants and conditions of this lease agreement, Landlord does hereby let, lease and demise unto Tenant the following described real property and improvements (herein called the "Premises"):

That certain real property consisting of not less than fourteen and 312/1000 (14.312) acres, more or less, same being a part of that land owned by Landlord and located on the north side of Highway #87, Harnett County, North Carolina, and being that fourteen and 312/1000 (14.312) acres tract more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, on which said Exhibit "A" Landlord has placed her initials. The Premises will include the right to use in common with others for a septic field and repair area a tract of 7 acres contiguous to the above described property on the northern side, and being more particularly described on Exhibit "C" attached hereto and incorporated herein by reference, on which Exhibit "C" Landlord has placed her initials. The Tenant will pay ad valorem taxes on the septic field, arrange for its maintenance and the proration of the costs thereof, allow the Landlord to add up to two (2) businesses without any compensation to Tenant, and to surrender the same to Landlord when and if public sewer service is made available to the Premises. The parties agree that it shall be deemed available to the Premises when within 500 feet of the property line. Upon making such connection, Tenant will remove all lines and equipment from the septic field and have it cleaned. Tenant, its successors, assigns, customers, invitees, contractors, etc. shall have the right to use in common with others the road to

be constructed along the eastern portion of the Premises by Tenant (said road to be named "H.M. Cagle Drive"), as shown on recorded plat of the Premises and Proposed Road, but said road shall not be included in the leased Premises. Upon development of Tenant's shopping center on the Premises, Tenant will make available to Landlord and her successors, assigns, contractors, customers, lessees and business invitees, the use of the access road into the center as shown on Exhibit "A" for ingress and egress to Landlord's property at the rear of the Premises. Tenant shall also have the right during the first fifteen (15) years of the term of this lease, but no later than June 30, 2010, to add to the Premises up to five and 688/1000 (5.688) additional acres from that tract of five and 688/1000 (5.688) acres contiguous to the above described property on the northern side, said five and 688/1000 (5.688) acres being more particularly described on Exhibit "B" attached hereto and incorporated herein by reference, on which Exhibit "B" Landlord has placed her initials, without increasing the rent. Not included in the Premises but reserved for future use as highway right-of-way is a tract of 2.60 acres along the northern margin of Highway #87, also contiguous to the Premises, which such tract of 2.60 acres Landlord covenants to make available for such right-of-way at the appropriate time consistent with the timetable of the North Carolina Department of Transportation. Should final negotiations with the North Carolina Department of Transportation result in a dedication or purchase for highway purposes of less than the aforesaid 2.60 acres, then Landlord will make such unused property available to Tenant under this lease, but such amount of property shall be deducted from the acreage in Exhibit "B". Any such reduction in the property described in Exhibit "B" shall take place all along the northern portion thereof. Tenant shall have the right to grade, grass, maintain, and put signage of its choosing on the aforesaid 2.60 acres (but will relocate the signage at the request of Landlord).

The terms, covenants and conditions of this lease are as follows:

1. TERM: The term of this lease shall be for a period of fifty (50) years commencing on July 1, 1995; provided, however,

that if Tenant is unable to get Food Lion, as its major anchor tenant, or any replacement anchor tenant, to renew its lease at the end of the first twenty (20) year term, or at the end of any five year option term, of the Food Lion lease, then Tenant shall have the right to cancel this lease on thirty (30) days' notice to Landlord if the Premises are then lien free.

Notwithstanding the foregoing, should Tenant be unable to secure all permits (utilities, zoning, access, etc.) deemed necessary by it to construct and operate the shopping center proposed by Tenant on the Premises within ninety (90) days after the execution of this lease, then Tenant may, by written notice to Landlord, cancel this lease. Tenant agrees that there will be no structural changes made to the Premises by it during the aforesaid ninety (90) days. Tenant also agrees to notify Landlord when all permits have been secured, and Landlord shall have thirty (30) days thereafter in which to remove any standing timber on the Premises.

2. RENTAL: As rental for the Premises during the first ten (10) years of the term hereof, Tenant shall pay to Landlord at RFD #2, Cameron, North Carolina, the sum of:

Dollars per year in advance in equal successive monthly installments of

Dollars each on the first day of each and every calendar month during the first ten (10) years of the initial term of this lease; provided, however, that Tenant shall only pay

of the stated rental until the earlier of: (i) such time as the Food Lion store to be located on the Premises opens for business, or (ii) the expiration of nine (9) months from the date of last execution of this lease by Landlord or Tenant. In the event that the date of commencement of rent shall occur on a day other than the first day of the month, the first rental payment shall be adjusted for the proportionate fraction of the whole month so that all rental payments other than the first shall be made and become due on the first day of each month.

(b) During the second ten (10) years of the term of this lease, the rental shall be:

per year in advance in equal successive monthly installments of

Dollars each on the first day of each and every calendar month.

(c) Tenant shall pay rent during the remaining thirty (30) years of the term of this lease as follows:

(d) Should any installment of rent due under this lease not be received by Landlord by the 10th day of the month, there shall be paid by Tenant to Landlord, as a late charge, an additional amount equal to \_\_\_\_\_ of the monthly rental amount due.

(e) In addition to the above stated rentals, when and if Tenant leases Outparcel #2 included in Exhibit "A", as described in Exhibit "F" attached hereto and incorporated by reference and on which Exhibit "F" Landlord has placed her initials, Tenant will pay over to Landlord \_\_\_\_\_ of the net rentals received from such Outparcel #2, less Tenant's pro-rata part of the rent under this ground lease which is attributable to Outparcel #2.

### 3. COMPLIANCE WITH LAWS; USE OF PREMISES:

(a) Tenant covenants and agrees that during the entire term of this Lease and any renewals or extensions thereof, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the Federal, State, County, City and Municipal Governments or any of their departments, bureaus, boards, commissions and officials thereof with respect to the Premises, any buildings and improvements thereon or hereafter erected thereon by Tenant or the use or occupancy thereof whether said compliance shall be ordered or directed to or against Landlord or Tenant or both, except to the extent that Landlord has any obligations under this Lease.

(b) Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, which shall be conducted diligently and in good faith in the name of Landlord or Tenant or both, and without cost or expense to Landlord, the validity or applicability of any law, ordinance,

order, rule or regulation of the nature hereinabove referred to, and Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal; provided, however, that observance and compliance therewith, pending prosecution of such proceeding, may be legally delayed without subjecting Landlord to any criminal or civil liability or fine. Landlord agrees, without cost or expense to her, to execute and deliver any appropriate documents or instruments which may be necessary and appropriate to permit Tenant to contest the validity of application of any such law, ordinance, order, rule, regulation or requirement and to fully cooperate with Tenant in such contest.

(c) The Premises may be used for any lawful purpose not in violation of any applicable law, ordinance or regulation of any governmental body having jurisdiction thereover. Tenant shall use the Premises for the construction and operation of a shopping center on the Premises, but may make any reasonable commercial use of the Premises without the written consent of Landlord. Tenant covenants not to use the Premises in any way which would violate any rules or regulations of any public authority having jurisdiction.

4. REPAIRS AND SIGNS: Tenant acknowledges that it has inspected the Premises and accepts the same in their presently existing condition on the execution date of this lease and further acknowledges that Landlord has made no warranties with respect to the same. Tenant shall maintain the Premises at all times in a good state of repair, clean and in a presentable condition, including any and all improvements erected or placed thereon, and same shall be surrendered in such state or a better condition at the expiration or other termination of this lease. Tenant shall also keep in the above stated order, condition and repair any parking lot and plumbing and sewage system which Tenant shall construct on the Premises.

Tenant may install, operate and maintain such advertising signs as Tenant may deem necessary and as are in compliance with the applicable ordinances and regulations. Tenant shall surrender the Premises at the expiration hereof in good and presentable

condition, ordinary wear and tear and damage by casualties excepted, subject to the provisions of paragraph 7 hereof.

5. ALTERATIONS AND IMPROVEMENTS: Tenant may install or construct any improvements deemed necessary or appropriate to its business on the Premises and shall maintain same in good repair and working condition, replacing any that may be consumed through use. All furnishings, trade fixtures and equipment used in the Premises supplied and installed at the sole cost and expense of Tenant shall at all times be and remain the property of Tenant (except such additions and improvements as may be installed by either of the parties and which are in any manner permanently attached thereto, specifically including all lighting, heating, air conditioning, plumbing, electrical, sewage disposal plant and equipment, sprinkler system(s) and other like equipment, fixtures and improvements used in connection with the Premises and the improvements thereon, and any property which is left on the Premises at the expiration of the term, all of which shall become the property of Landlord and surrendered at the termination of this lease) and Tenant shall have the right to remove the same from the Premises at any time during the term hereof or within thirty (30) days next following the date of termination of this lease; provided further that Tenant shall at its sole cost and expense, repair or reimburse Landlord for the cost of repairing any and all damage to the Premises resulting from the removal of such furnishings, trade fixtures and equipment.

Tenant shall construct a road (to be named H. M. Cagle Drive) from North Carolina Highway #87 adjacent to the Premises to one (1) foot beyond Landlord's five and 688/1000 (5.688) acre tract lying north of the Premises for the purposes of provided ingress and egress to the Premises and a proposed subdivision to be developed by Landlord, her heirs, successors and assigns, which road shall be constructed and maintained by Tenant so as to comply with the requirements of the North Carolina Department of Transportation for its future acceptance. Tenant shall offer said road for public dedication and shall maintain it until the same is accepted by the North Carolina Department of Transportation. Said road shall be for the benefit of, and may be used for ingress and egress by,

Tenant and Landlord and their respective successors, assigns, contractors, customers, lessees, their business invitees, etc. in common with owners and tenants in Landlord's subdivision.

6. ASSIGNMENT OR SUBLETTING:

(a) So long as this Lease shall be in full force and effect and Tenant is not in default hereunder, Tenant shall have the right, without the consent of the Landlord, at any time and from time to time, to assign its interest in this Lease or to sublet the whole or any portion or portions of the Premises, and may permit its subtenant or subtenants to assign or sublease all or any part of the Premises, without requiring Landlord's consent therefor, so long as such assignment or sublease does not alter, change or otherwise adversely affect any of Landlord's rights and privileges granted hereunder, and provided any assignee shall specifically assume in writing and agree to perform all the terms, covenants and conditions agreed to by Tenant under this Lease. Provided, however, that Tenant shall not lease, or allow to be sublet, any portion of the Premises to any person, corporation, or other legal entity in any way involved in the selling, dispensing, or in any way distributing petroleum products except with respect to packaged products sold for installation and use away from the Premises. Landlord agrees upon receipt of a written assumption of all terms and conditions of this Lease by such assignee, to relieve Tenant, and any mesne assignee of Tenant, from all obligations and liabilities hereunder. Tenant agrees to furnish to Landlord written notice of the assignment of this Lease within thirty (30) days thereafter, together with the name and address of the assignee.

(b) If for any reason this Lease and the leasehold estate of Tenant hereunder is terminated by Landlord by summary proceedings or otherwise in accordance with the terms of this Lease, Landlord covenants and agrees that such termination of this Lease shall not result in a termination of any sublease affecting the Premises and that all such subleases shall continue for the duration of their respective terms and any extensions thereof as a direct lease between Landlord hereunder and the subtenant thereunder, with the same force and effect as if Landlord hereunder had duly entered into such sublease as Landlord thereunder (subject, however, to the

prior right of the holder of any leasehold mortgage to which such sublease may have been assigned). Tenant covenants that it will in good faith endeavor only to enter into subleases which are reflective of market value at the time that such subleases are negotiated. Landlord shall, upon request, and no longer than ten (10) days from such request, execute, acknowledge and deliver such agreements evidencing and agreeing to the foregoing as each subtenant shall require.

7. INSURANCE AND DESTRUCTION: (a) Tenant covenants that it will, during the continuance of the term of this Lease, keep or cause to be kept, the building or buildings and improvements now or hereafter erected on the Premises insured, including Builder's Risk insurance during the course of all construction, in a responsible and reputable insurance company or companies licensed to do business in the State of North Carolina, against loss or damage by fire and such other hazards as are currently embraced in the standard extended coverage endorsement in the jurisdiction where the Premises are located, and in an amount equal to the replacement value of said buildings and improvements.

(b) All casualty insurance policies carried or caused to be carried by Tenant shall be issued in the name of Tenant, Landlord and the holder or holders of any mortgage on the Tenant's leasehold estate or to which the Landlord's fee simple interest is subordinated and any subtenant(s) on the Premises as Tenant may designate, as their respective interests may appear. Tenant shall have the right to make all adjustments of loss and execute all proofs of loss in its name and/or the Landlord's name. Subject to any loss payable endorsements in favor of any of the holder(s) of the mortgage(s) referred to in paragraph 18 hereof, if so required by said mortgage(s), and subject to the rights (if any) of such holder(s) to apply the proceeds (of any insurance loss(es) towards the repayment of the indebtedness and interest secured by such mortgage(s) and the rights (of such holder(s) to receive the proceeds in the first instance in order to have applied for restoring, rebuilding and repairing, the proceeds of such insurance in case of loss(es) shall be payable to Tenant as trust funds and used by Tenant (or by any subtenant(s) designated in writing by

Tenant) for such purposes (unless such loss shall occur within three (3) years of the end of this lease, and Tenant elects to terminate and cancel the lease as provided in this paragraph). However, if Tenant elects to cancel, then the proceeds of such insurance shall be paid over to Landlord who may utilize such proceeds to rebuild, restore or repair the buildings on the Premises.

(c) Tenant may maintain for its own account any additional insurance and the proceeds thereof shall belong solely to Tenant. Landlord shall not carry or permit to be carried any additional or other insurance of any kind or character covering any interest in the Premises or the buildings or improvements thereon without the Tenant's prior written consent.

(d) If any building, fixture or other improvements now or hereafter situated on the Premises (except movable trade fixtures, furniture and furnishings) should at any time during the term of this lease be damaged or destroyed by any casualty required by this lease to be covered by fire or extended coverage insurance, the Tenant shall, to the extent of available insurance proceeds, restore and rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction or build replacement improvements which satisfy the requirements of this lease as to replacements and rebuilding, subject to the provisions of subparagraph 7(e) hereof. Such restoration and/or rebuilding shall be prosecuted with reasonable diligence, and shall be completed as soon as reasonably possible. In determining whether Tenant has restored buildings and improvements as soon as reasonably possible, a prime consideration shall be the availability of applicable insurance proceeds.

(e) Except as otherwise herein provided, in the event of any damage by casualty as aforesaid, the terms of this lease shall be otherwise unaffected and Tenant shall remain and continue liable for the payment of rent, real estate taxes and assessments and other charges hereunder as though no casualty had occurred. If such a casualty affecting fifty percent (50%) or more of the improvements on the Premises shall occur within three (3) years of the end of the then existing term of the lease, Tenant shall have

the option to terminate the lease and to surrender the Premises to Landlord without restoring buildings and improvements as aforesaid, in which event Landlord shall be entitled to receive the proceeds of insurance.

(f) Landlord shall, at Tenant's cost and expense, cooperate fully with Tenant to obtain the largest possible recovery of all applicable policies of fire and extended coverage insurance, and all such policies shall provide that proceeds be paid to Tenant. Said proceeds shall be held and applied by Tenant for restoration purposes as herein provided, and any insurance proceeds remaining after complying with the provisions of this lease relating to restoration shall be Tenant's sole property. If the lease is terminated as hereinabove provided without restoration of buildings and improvements by Tenant, the insurance proceeds payable by reason of damage or destruction shall be paid to Landlord.

8. INDEMNIFICATION: Tenant agrees, at its expense, to maintain in full force during the leased term, a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in this State, which insures Landlord and Tenant against liability for injuries to persons or property and death of any person occurring in or about the Premises in the sum of not less than One Million (\$1,000,000.00) Dollars for any one person injured or killed and not less than Two Million (\$2,000,000.00) Dollars for any one accident and not less than Five Hundred Thousand (\$500,000.00) Dollars for property damage. If required by Landlord, Tenant shall provide Landlord with copies or certificates of said policy or policies.

9. TAXES: Tenant shall pay during the primary and renewal terms, when due, all real estate taxes and other assessments or charges of any kind or nature which are now or may hereafter be imposed or assessed upon the Premises and any improvements made thereon or any part thereof, and all taxes and assessments or charges of any kind or nature imposed or assessed upon fixtures, equipment, merchandise or other property installed in or brought onto the Premises by or for the Tenant. All such taxes and assessments shall be paid by Tenant before any fine, penalty,

interest or cost as may be added thereto for the non-payment thereof, and shall be apportioned between Tenant and Landlord for the tax year in which the term of this lease shall begin, as well as for the tax year in which this lease shall end. Nothing herein contained shall require Tenant to pay any income or excess profits taxes assessed against Landlord, or any corporation capital stock and franchise taxes, or any taxes incidental to the doing of business by Landlord, imposed upon Landlord.

In the event that a separate tax assessment is not then in effect for the Premises, Landlord shall on the commencement of the term of this lease or as soon thereafter as is practicable, apply for and make reasonable and diligent efforts to obtain a separate tax assessment for the Premises, and shall notify, authorize and direct the taxing authorities and collector to send to Tenant all tax bills and assessments.

Anything in this paragraph to the contrary notwithstanding, Landlord agrees that Tenant shall have the right, at Tenant's sole cost and expense, in the Landlord's and/or the Tenant's name, to contest the legality or validity of any of the taxes, assessments or other public charges required to be paid by Tenant, but no such contest shall be carried on or maintained by Tenant after such taxes, assessments or other public charges become delinquent unless Tenant shall have duly paid the amount involved under protest or shall procure and maintain a stay of all proceedings to enforce any collection thereof and any forfeiture or sale of the Premises, and shall also provide for payment thereof together with all penalties, interest, cost and expenses by deposit of a sufficient sum of money or by a good and sufficient undertaking as may be required by law to accomplish such stay. Landlord agrees that it will, at the request of Tenant, execute or join in the execution of any instrument or document which may be necessary and appropriate in connection with any such contest, except for bonds or undertakings. In the event any such contest is made by Tenant, Tenant shall promptly, upon final determination thereof adversely to Tenant, pay and discharge the amount involved or affected by any such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon. Any recovery of taxes as a result of

Tenant's action hereunder shall belong solely to Tenant.

Tenant shall also have the right, at Tenant's sole cost and expense, to endeavor to obtain a lowering of the assessed valuation upon the Premises for the purpose of reducing taxes thereon, and in such event, Landlord will offer no objection and at the request of Tenant will cooperate without expense to Landlord in effecting such reduction and will execute or join in the execution of any instrument or document which may be necessary and appropriate for any such proceeding. Any recovery of taxes as a result of such proceeding hereunder shall belong solely to Tenant.

Landlord further covenants and agrees that if there shall be any refunds or rebates on account of any taxes, governmental imposition, levy or special or general assessments paid by Tenant under the provisions of this lease, such refund or rebate shall belong to Tenant. Any such refunds or rebates which shall be received by Landlord shall be trust funds and shall be forthwith paid to Tenant. Landlord shall, at Tenant's request, sign any receipt which may be necessary to secure the payment of any such refund or rebate as received by Landlord.

#### 10. CONSTRUCTION.

(a) Tenant shall have the right, at its own cost and expense, to construct on any part or all of the Premises, at any time and from time to time, such buildings, parking areas, driveways, walks, gardens and other improvements as Tenant shall from time to time determine, provided that the same shall be in compliance with all then applicable laws, regulations, buildings codes and ordinances of all governmental authorities having jurisdiction over the Premises. Prior to commencement of construction, Tenant covenants and agrees that it will have obtained or arranged for adequate funds or financing with which to pay for the total cost of such construction.

(b) Consistent with the requirements of subparagraph (a) of this paragraph, the Tenant shall have the right at any time during the terms hereof, including any renewal terms if any should later be agreed upon by Landlord and Tenant, to remove, rebuild, alter, demolish or replace improvements from time to time without the consent of the Landlord, provided that such removal, rebuilding,

alterations, demolitions or replacements do not materially decrease the value of the Premises or the improvements located thereon.

(c) If any mechanics' or other liens shall be filed against the Premises or any building or improvements thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished to or for the Tenant at the Premises or against the Landlord as owner thereof, the Tenant shall, within twenty (20) days after written notice from the Landlord thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. The Tenant shall also defend on behalf of the Landlord at the Tenant's sole cost and expense any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens or orders, and the Tenant shall pay any damage and discharge any judgment entered therein and save harmless the Landlord from any claim, costs or damage resulting therefrom. During the entire term of this lease, Tenant shall pay for all labor performed and material furnished in and about the erection, repair, alterations and improvements of the buildings to be constructed and erected by Tenant pursuant to the terms of this lease and keep said Premises and buildings and improvements thereon at all times free and clear of all liens for labor or materials furnished in and about such erection, repairs, alterations and improvements and will defend at its own cost and expense each and every lien asserted, or claim filed, against said Premises or buildings or improvements thereon or any part thereof for labor claimed to have been so performed or materials claimed to have been so furnished to or for the benefit of Tenant.

(d) Tenant shall, during the entire term of this lease, own all improvements constructed or placed upon the Premises. Landlord agrees that the Tenant or any subtenant while not in default thereof shall have the right at any time and from time to time to remove any and all trade fixtures, furniture, furnishings, equipment and other property installed in or upon the Premises, but excluding all lighting, heating, air conditioning, plumbing, electrical, sewage disposal plant and equipment, sprinkler system(s) and other like equipment, fixtures and improvements used in connection with the Premises and the improvements thereon, all

of which shall become a part of, and shall be included with, the permanent improvements referred to in this lease. Tenant covenants and agrees, at the termination of this lease, whether by limitation, forfeiture or otherwise, to quit, surrender and deliver to the Landlord possession of the Premises with all the buildings, fixtures and improvements thereon (excluding all furniture, furnishings and equipment therein belonging to and removable by the Tenant or its subtenants under the terms of this lease) free from any payment therefor, in good condition and repair, ordinary wear and tear and damage by casualty excepted, but subject to the provisions of paragraph 7 hereof, all of which shall become and remain the property of the Landlord.

(e) Tenant, at its own cost and expense, shall apply for and prosecute with reasonable diligence, all necessary permits and licenses required for any construction mentioned in this paragraph. Landlord, without cost or expense to itself, shall cooperate with Tenant in securing building and other permits and authorizations necessary from time to time for any construction, alteration(s) or other work permitted to be done by Tenant under this lease, but such cooperation by Landlord shall not be construed as consent to the filing of a mechanic's lien or a notice of intention to file a mechanic's lien or any claim relating thereto.

11. UTILITIES AND UTILITY EASEMENTS:

(a) Tenant shall pay all charges made against the Premises for water, sewer, gas or electricity during the continuance of this lease as they shall become due.

(b) Landlord shall grant such easements on the Premises as the Tenant, any utility company or companies, and/or the municipal authorities having jurisdiction thereof, may deem necessary to install, provide and maintain all utilities to the Premises, and grant and/or use reasonable efforts without expense to Landlord to obtain such modifications of existing utility easements as Tenant may reasonably request so as to remove certain easements from their present locations to the perimeter or boundaries of the Premises to avoid or reduce interference with the erection of the proposed buildings and the continued use thereof. Landlord shall, promptly upon request, execute in recordable form such instruments granting

such easements and/or modifications thereof as may be requested by any of the aforesaid parties; provided that any costs involved in complying with the terms of this paragraph, including attorney's fees, shall be borne by Tenant. Tenant and/or its subtenants shall have the right to erect, install, operate and maintain signs and pylons with signs on the Premises and/or any portion thereof. No consent of the Landlord shall be required.

12. ENTRY BY LANDLORD: Landlord or agents may inspect the Premises at all reasonable hours and Tenant shall permit inspection by prospective tenants during the three (3) months preceding the expiration hereof.

13. REMOVAL AND SURRENDER: Tenant agrees that it will, at the expiration or earlier termination of said term, remove all goods and effects not the property of Landlord, including all signs and lettering affixed or placed by Tenant, and peaceably yield up to Landlord the Premises and all improvements and additions made to or upon the same, clean and in the state of repair, order and condition required by this lease in all respects, damage by casualty and reasonable deterioration excepted, subject to the provisions of paragraph 7 hereof.

14. DEFAULT: Each of the following shall be deemed a default and a breach of this lease:

(1) (a) the filing of a petition by or against Tenant under any existing or any future bankruptcy act;

(b) appointment of a receiver or trustee for the property of Tenant;

(c) the taking of possession of the property of Tenant by a governmental officer or agency;

(d) the making of an assignment for the benefit of creditors by Tenant;

If either (a), (b), or (c) should be involuntary on the part of Tenant, it shall not be deemed a default if removed within thirty (30) days.

(2) (a) A default in the payment of rent for a period of fifteen (15) days after written notice from Landlord to Tenant and to Tenant's mortgagee and the expiration of the cure period hereinafter given to Tenant's mortgagee;

(b) A default in the performance of any other covenant or condition of this lease to be performed by Tenant for a period of thirty (30) days after notice from Landlord. No default hereunder [ (2) (b) ] shall be deemed to exist if steps have been in good faith commenced promptly by Tenant to rectify the same and shall be prosecuted to completion with diligence and continuity.

In the event of any such default, Landlord may, if it so elects, at any time thereafter serve notice on Tenant that Landlord elects to: (i) terminate this lease upon a specified date not less than ten (10) days after such notice and this lease shall expire on the date so specified. A default under subdivision (2) hereof shall be deemed waived if it is made good before notice of termination is served on Tenant. If Landlord elects to so terminate this lease, it shall have the right to collect as damages the difference between the fair market value of the lease for the remainder of the term (or any authorized extension thereof) and the rental under any new lease which Landlord by reasonable diligence may be able to obtain; or (ii) terminate Tenant's right to possession of the Premises without terminating the term of this lease, whereupon Landlord shall have the immediate right to take full possession of the Premises and to expel all persons and property therefrom. In such event, Landlord shall be entitled to collect damages measured by the difference in the rental in this lease for the remainder of the term and such rental as Landlord is able to secure upon making a reasonable effort to re-let the Premises for the benefit of Tenant; or (iii) leave Tenant in possession of the Premises without termination or repossession in which event Landlord may recover damages to consist of the unpaid rent.

The acceptance of rental by Landlord following the occurrence of an event of default shall not waive Landlord's rights under this paragraph 14.

15. QUIET ENJOYMENT: Landlord covenants and agrees that if Tenant pays the rent and otherwise fully and faithfully performs the covenants and other agreements herein contained, Tenant shall during the term herein granted peaceably and quietly have, hold and enjoy the demised Premises free from any eviction or interference

by Landlord.

16. ENVIRONMENTAL INDEMNITY:

(a) Indemnity

(i) Landlord hereby indemnifies, defends and holds harmless Tenant from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, incurred by, claimed or assessed against Tenant under any laws, rules, regulations including, without limitation, Applicable Laws (as hereinafter defined), in any way connected with any injury to any person or damage to any property or any loss to Tenant occasioned in any way by Hazardous Substances (as hereinafter defined) on the Premises, prior to Tenant's occupancy of the Premises, or by the negligent or intentional activities of Landlord before Tenant's occupancy of the Premises.

(ii) This indemnity specifically includes the direct obligation of Landlord to perform any remedial or other activities required, ordered, recommended or requested by any agency, government official or third party, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of pollution, however it came to be located thereon (hereinafter the "Remedial Work"). Landlord shall perform all such work in its own name in accordance with Applicable Laws (as hereinafter defined).

(iii) Without waiving its rights hereunder, Tenant may, at its option, perform such remedial or removal work as described in clause (ii) above, and thereafter seek reimbursement for the costs thereof. Tenant shall permit Landlord access to the Premises to perform such remedial activities.

(iv) Whenever Tenant has incurred costs described in this section, Landlord shall, within 10 days of receipt of notice thereof, reimburse Tenant for all such expenses together with interest from the date of expenditure as the "applicable federal rate" established by the Internal Revenue Service.

(b) Agency or Third Party Action

Without limiting its obligations under any other paragraph of this lease, Landlord shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination on the Premises existing prior to the date of execution of this lease. The responsibility conferred under this paragraph includes but is not limited to responding to such orders on behalf of Tenant and defending against any assertion of Tenant's financial responsibility or individual duty to perform under such orders. Landlord shall assume, pursuant to paragraph (a) above, any liabilities or responsibilities which are assessed against Tenant in any action described under this paragraph (b).

(c) Indemnification of Landlord by Tenant

Tenant hereby indemnifies, defends and holds harmless Landlord from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, incurred by, claimed or assessed against Landlord under any laws, rules or regulations, including, without limitation, Applicable Laws (as hereinafter defined), in any way connected with any injury to any person or damage to any property or any loss to Landlord occasioned in any way by Hazardous Substances (as hereinafter defined) placed on the Premises after the Tenant's occupancy of the Premises or by the negligent or intentional activities of Tenant during Tenant's occupancy of the Premises.

This indemnity specifically includes the direct obligation of Tenant to perform any remedial or other activities required, ordered, recommended or requested by any agency, government official or third party, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of pollution, however it came to be located thereon (hereinafter the "Remedial Work"). Tenant shall perform all such work in its own name in accordance with Applicable Laws (as hereinafter defined).

Without limiting its obligations under any other paragraph of this lease, Tenant shall be solely and completely responsible for

responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination on the Premises occurring during Tenant's occupancy of the Premises. The responsibility conferred under this paragraph includes but is not limited to responding to such orders on behalf of Landlord and defending against any assertion of Landlord's financial responsibility or individual duty to perform under such orders. Tenant shall assume, pursuant to this subparagraph c, any liabilities or responsibilities which are assessed against Tenant in any action described under this subparagraph (c).

(d) Definitions

"Hazardous Substance(s)" shall mean any substance which at any time shall be listed as "hazardous" or "toxic" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601 et seq., as amended and the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. Sec. 6901 et seq., as amended, or in the regulations implementing such statutes, or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under any other Applicable Laws (as hereinafter defined). The term "Hazardous Substance(s)" shall also include, without limitation, raw materials, building components, the products of any manufacturing or other activities on the Premises, wastes, petroleum products, or special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Sec. 3011, et seq., as amended.

"Applicable Laws" shall include, but shall not be limited to, CERCLA, RCRA, the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq., the Clean Air Act, 42 U.S.C. Sec. 7401 et seq., as amended, and the regulations promulgated thereunder, and any other federal, state and/or local laws or regulations, whether currently in existence or hereafter enacted or promulgated, that govern or relate to:

- (i) The existence, cleanup and/or remedy of contamination of property;
- (ii) The protection of the environment from spilled,

deposited or otherwise emplaced contamination;

(iii) The control of hazardous or toxic substances or wastes; or

(iv) The use, generation, discharge, transportation, treatment, removal or recovery of hazardous or toxic substances or wastes, including building materials.

17. RESTRICTIVE COVENANT. Tenant agrees that it will not sublet nor assign any part of the Premises during the term hereof to any person, firm, or corporation engaged in the business of dispensing and selling gasoline, other petroleum products or other Hazardous Substances as defined in paragraph 16)d) herein (provided, however, that nothing contained herein shall prevent Tenant from subleasing a part of the Premises for use as a dry cleaners) and Tenant shall not permit any such activity on any part of the Premises. Tenant also agrees not to allow the operation of a furniture store on the Premises unless Landlord so consents.

18. MORTGAGE FINANCING.

(a) If Tenant shall elect to finance its construction of improvements on the Premises by mortgage financing which shall require Tenant to assign its interest in the lease to a mortgagee, or otherwise secure such mortgagee, and if any such lending institution shall require changes in this lease as a condition of its approval of this lease for such financing, Landlord agrees to execute with Tenant the amendment or amendments to this lease accomplishing the changes; provided, however, that Landlord shall not be required to agree to any modifications relating to the amount of the rent, the size and location of the Premises, the duration or the commencement date of the term, or the value of the improvements to be made by Tenant.

(b) Tenant is hereby given the right by Landlord in addition to any other rights herein granted, without Landlord's prior written consent, to mortgage, pledge or otherwise encumber its leasehold estate or interest in this lease, or any part or parts thereof, under one or more leasehold mortgage(s), and assign this lease, or any part or parts thereof, and any subleases thereof, as collateral security for such mortgage(s), upon the condition that

all rights acquired under such mortgage(s) shall be subject to each and all the covenants, conditions and restrictions set forth in this lease, and to all rights and interests of Landlord herein, none of which covenants, conditions or restrictions is or shall be waived by Landlord by reasons of the right given so to mortgage such interest in this lease, except as expressly provided herein. If Tenant shall mortgage this leasehold, or any part or parts thereof, and if the holder of any such mortgage shall, within thirty (30) days of its execution, send to Landlord a true copy thereof, together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgagee, Landlord agrees that so long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of such satisfaction is given by the holder thereof to Landlord, the following provisions shall apply:

(1) Except for termination of this lease by default, there shall be no cancellation, surrender or modification of this lease by joint action of Landlord and Tenant without the prior consent in writing of the leasehold mortgagee.

(2) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the holder of such leasehold mortgage. The leasehold mortgagee shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Tenant.

(3) Anything herein contained notwithstanding, so long as such leasehold mortgage remains unsatisfied of record, or until written notice of satisfaction is given by the holder to Landlord, if any default shall occur which, pursuant to any provision of this lease, entitles Landlord to terminate this lease, and if, before the expiration of thirty (30) days from the date of service of notice of termination upon such leasehold mortgagee, such leasehold mortgagee shall have notified Landlord of its desire to nullify such notice and shall commence to comply with all of the other requirements of this lease within sixty (60) days from the date of service of notice, if any are then in default, and shall prosecute

the same with reasonable diligence, then in such event Landlord shall not be entitled to terminate this lease and any notice of termination theretofore given shall be void and of no further force and effect.

(4) If the Landlord shall elect to terminate this lease by reason of any default of Tenant, the leasehold Mortgagee not only shall have the right to nullify any notice of termination by curing the default, but also shall have the right to postpone and extend the specified date for the termination of this lease as fixed by Landlord in its notice of termination, for a period of not more than six (6) months, provided that the leasehold Mortgagee shall cure or cause to be cured any then existing money defaults and meanwhile pay the rent and comply with and perform all of the other terms, conditions and provisions of this lease on Tenant's part to be complied with and performed, and provided further that the leasehold Mortgagee forthwith shall take steps to acquire or sell Tenant's interest in this lease by foreclosure of the Mortgage or otherwise and shall prosecute this action to completion with all due diligence. If at the end of the six (6) month period the leasehold Mortgagee shall be actively engaged in steps to acquire or sell Tenant's interest in this lease, the time for Mortgagee to comply with the provisions of this Section shall be extended for such period as shall be reasonably necessary to complete these steps with reasonable diligence and continuity, not to exceed an additional six (6) months.

(5) In the event of termination of this lease by reason of any default by Tenant, and the subsequent cure of such default by the holder of a leasehold mortgage, Landlord will enter into a new lease of the Premises with the holder of any such leasehold mortgage or its nominee, for the remainder of the term, effective as of the date of such termination, at the rental and upon the terms, provisions, covenants and conditions as herein contained and subject only to the same conditions of title as this lease is subject on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, provided:

(i) Said leasehold mortgagee or its nominee shall make

written request upon Landlord for such new lease within thirty (30) days after the date of such termination and such written request shall be accompanied by payment to Landlord of sums then due to Landlord under this lease; and

(ii) Said leasehold mortgagee or its nominee shall pay to Landlord at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof be due pursuant to this lease but for such termination, and in addition thereto any expenses, including Landlord's reasonable attorneys' fees, to which Landlord shall have been subjected by reason of such default; and

(iii) Said leasehold mortgagee or its nominee shall perform and observe all covenants herein contained on Tenant's part to be performed and shall further remedy any other conditions which Tenant under the terminated lease was obligated to perform under the terms of this lease; and upon execution and delivery of such new lease, any subleases which may have theretofore been assigned and transferred by Tenant to Landlord, as security under this lease, shall thereupon be deemed to be held by Landlord as security for the performance of all of the obligations of the new tenant under the new lease; and

(iv) The tenant under such new lease shall have the same right, title and interest in and to the buildings and improvements on the Premises, erected after the date hereof, as Tenant had under the terminated lease.

(v) The new lease shall be expressly made subject to the rights, if any, of Tenant under the terminated lease;

(6) The proceeds from any insurance policies or arising from a condemnation are to be held by any leasehold mortgagee and distributed pursuant to the provisions of this lease, but the leasehold mortgagee may reserve its rights to apply to the mortgage all or any part of Tenant's share of such proceeds pursuant to the terms and conditions of such mortgage.

(7) The term "Mortgage" whenever used herein shall include, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial

Code.

(8) Landlord agrees that the name of any leasehold mortgagee may be added to the "Loss Payable endorsement" of any and all insurance policies carried by Tenant hereunder.

(9) Landlord, on request, shall execute, acknowledge and deliver to each leasehold Mortgagee any agreement prepared at the sole cost and expense of Tenant, in form satisfactory to leasehold Mortgagee, among Landlord, Tenant and leasehold Mortgagee, agreeing to all of the provisions of this Section.

(10) In the event of default by Tenant and said Tenant does not elect to cure pursuant to the provisions herein, after such notice as recited above, the leasehold Mortgagee or mortgagees of record shall be allowed, after notice as recited above, to tender to Landlord the rental in accordance with the provisions of this lease and all real estate taxes levied against the entire premises, and to commence and prosecute with reasonable dispatch and continuity the work necessary to cure all other defaults, all within the time as is herein provided for the Tenant under this paragraph. In such event the leasehold Mortgagee's or mortgagee's right of possession will be fully recognized and protected, and so long as it or they shall pay all rents and taxes subsequently becoming due, and comply with all other terms, provisions and conditions herein provided for performance on Tenant's part, Landlord shall not at any time join leasehold Mortgagee or mortgagees in any eviction action, summary dispossession proceeding or any other action to recover possession of the premises.

(11) Landlord covenants, warrants and agrees, whenever and as often as Tenant may request, subject always, however, to the provisions of subparagraph (14) hereof, to mortgage and subordinate the Landlord's fee simple title in the Premises, i.e., the land and improvements thereon, or any portions thereof that may be designated by Tenant, and the leasehold hereby created, together with all rents and other benefits due to Landlord under this lease, to the lien of such mortgage or mortgages as Tenant may obtain. It is expressly provided, however, that Landlord's obligation to subordinate under this subparagraph shall extend to Tenant's

parking lot and building area only as described on Exhibit "D" and shall not include Tenant's outparcels which may be located on the Premises. It is further provided that Landlord's obligation to subordinate to refinancing by Tenant shall not exceed the cost of all improvements made to the Premises by Tenant, less the principal sums paid on any prior mortgage financing as Tenant shall have obtained. Landlord shall join in the execution of mortgage(s) and such related instruments as may be required to impose valid mortgage liens on the Premises and shall execute all documents reasonably and customarily required by the mortgagee or by the mortgagee's attorney(s) or by the title company insuring the mortgage or by any combination of them. Landlord shall not be required to sign or execute the note to be secured by the mortgage on the fee title but shall execute the mortgage itself. The mortgage shall contain language to the effect that landlord executes it solely for the purpose of encumbering Landlord's fee title and without assuming any personal liability whatsoever for the payment of the note it secures or any other provision of the note or mortgage. If the Landlord shall, after ten (10) days' written notice, without legal cause refuse to join in the execution of the mortgage(s) and related documents, then, in addition to any other remedies that Tenant may have in law or in equity, the Tenant may abate the payment of rent or any other monies due to the Landlord until the Landlord shall have complied with its obligations hereunder.

(12) Tenant hereby agrees to cause the indebtedness which any such mortgage secures to be repaid in strict accordance with the terms thereof, without any default by Tenant thereunder. It is the express intention of the parties hereto that any such mortgage and repayments of the indebtedness secured thereby shall be solely the responsibility of Tenant and shall not be the responsibility of Landlord. Landlord shall have the right, however, to cure any default by Tenant under any such mortgage and to hold Tenant liable hereunder for all losses, expenses and costs incurred by Landlord in the process of curing Tenant's defaults. Tenant agrees to promptly forward to Landlord copies of any notices of default which Tenant may receive from the holder of the mortgage.

(13) Landlord agrees to give to the mortgagee(s) a copy of each notice of default and other communication relative to defaults from Landlord to Tenant hereunder, concurrently with the giving of any such notice or other communication to Tenant, at such address or addresses specified in writing from time to time to Landlord by the mortgagee(s). Landlord shall also give to the mortgagee(s) a copy of any notice of rejection of this lease or any part thereof by any trustee in bankruptcy of Tenant. No notice of default to Tenant shall be effective unless copies thereof are also given to the mortgagee(s) as aforesaid.

(14) Tenant agrees that, irrespective of all other provisions of this paragraph 18 relating to mortgage financing, the Premises shall not be mortgaged or otherwise encumbered for a period beyond twenty-five (25) years from the commencement date of the term of this lease, and shall thereafter remain free therefrom, which said commencement date is as set forth in paragraph 1 of this lease.

19. LANDLORD'S TITLE. Landlord hereby covenants and warrants that she has full right and lawful authority to enter into this lease for the full term hereof and that she has a good marketable fee simple title in and to the Premises (except as hereinafter stated), free and clear of all liens, easements, restrictions and encumbrances, excepting herefrom property taxes for the current year, rights-of-way and easements of record now existing thereon for public utilities and highway use and other liens and encumbrances acceptable to Tenant, all of which are more specifically described in Exhibit "E" attached hereto and incorporated by reference herein. Landlord, when acquiring title to the property of which the Premises form a part, took title from Weyerhaeuser Real Estate Company by deed recorded in the Harnett County Registry in Book 767, Page 747. In such deed, the grantor reserved certain mineral rights in and to the tract conveyed, but covenanted not to exercise the rights to the same where that would adversely affect the use of the surface unless the said grantor, or its successors or assigns, had made satisfactory written arrangements with the then owner of the property affected, and with the mortgagee or mortgagees of such property, as their respective interests appear, to compensate said owner and mortgagee or

mortgagees for damages incurred to the surface and any improvements thereon caused by the exercise of such rights. The parties hereto acknowledge that the exercise of such rights might potentially damage Tenant's lease rights and Tenant's improvements to be erected under this lease. Landlord agrees that, should any such eventuality occur and Tenant be deprived of the use of all or part of the Premises as a result of the exercise of such mineral rights, then the rent shall proportionately abate during the period that such unfitness to use the Premises shall continue. Landlord hereby assigns to Tenant any and all recovery that Landlord might make from her grantor, Weyerhaeuser Real Estate Company, for such reason, except for any claim Landlord has for loss of rents.

20. HOLDING OVER: In the event Tenant remains in possession of the Premises after the expiration of the term hereof and without the execution of a new lease, Tenant, as a result of such holding over, shall occupy the Premises as a tenant from month to month, subject to all the conditions, provisions and obligations of this lease insofar as the same shall then be applicable to such tenancy.

21. AVOIDANCE OF WAIVER: No failure on the part of Landlord to enforce any covenant or provision herein contained, nor any waiver of any right thereunder by Landlord unless in writing, shall discharge or invalidate such covenant or provisions or affect the right of Landlord to enforce the same in the event of any subsequent breach or default.

22. NOTICES: Any notices required to be given under this lease, relating to the Premises or the occupancy thereof, shall be deemed sufficiently given if posted in the U.S. mails, postage prepaid, certified, return receipt requested, to: (a) Landlord at RFD #2, Cameron, North Carolina, (b) in the case of Tenant to 238 North McPherson Church Road, Fayetteville, North Carolina, 28303.

23. MEMORANDUM OF LEASE; RECORDING: The parties will at any time, at the request of either one, promptly execute an instrument, in recordable form, which will constitute a Memorandum or Short Form of Lease, setting forth a description of the Premises, the term of this Lease and other relevant portions thereof, excepting the rental provisions, as either party may request. Either party may, at its own cost and expense, record this lease, or a

memorandum or short form thereof.

24. BENEFIT: Except where specifically prohibited herein, this lease shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors, personal representatives and assigns, and the term "Tenant" shall include any successor tenant upon whom this lease might devolve by operation of law or otherwise. The use of the singular includes the plural and the plural the singular, and the masculine and neuter gender shall apply to all genders.

IN TESTIMONY WHEREOF, the parties hereto have signed and sealed this lease.

LANDLORD:

Carletta R. Cagle (SEAL)  
Carletta R. Cagle

TENANT:  
Spout Springs, Inc.

ATTEST:

Joan C. Brown  
By its ASST. Secretary  
(Corp. Seal)

Joseph P. Mill  
By its President

NORTH CAROLINA  
CUMBERLAND COUNTY

I, Tammy D. Knight, a Notary Public of said County and State, do hereby certify that JOAN C. BROWN personally came before me this day and acknowledged that he/she is the ASST. Secretary of Spout Springs, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its ASST. Secretary.

Witness my hand and official seal, this the 6 day of July, 1995.

Tammy D. Knight

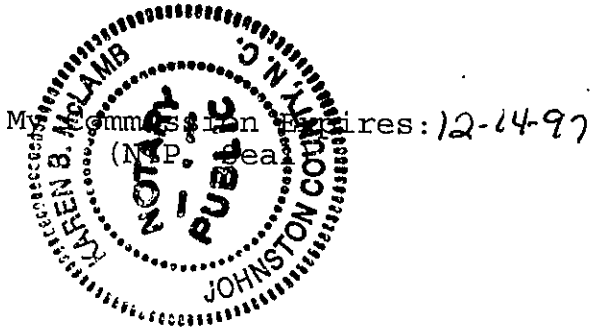
Notary Public

My Commission Expires:  
(N.P. Seal)

NORTH CAROLINA  
HARRNETT COUNTY

I, Karen B. McLamb, a Notary Public of said County and State, do hereby certify that Carletta R. Cagle personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal this 6<sup>th</sup> day of July, 1995.



Karen B. McLamb  
Notary Public

LEGAL DESCRIPTION

SPOUT SPRINGS PLAZA - 14.31 ACRE TRACT

COMMENCING South 60 degrees 08 minutes 22 seconds East 462.62 feet from the northwest property corner of Lot 79, Babcock Village as recorded in Map Book 8, Page 17, Harnett County Registry, to the point and place of BEGINNING;

THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 230.00 feet to a point;  
THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 120.00 feet to a point;  
THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 179.73 feet to a point;  
THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 276.00 feet to a point;  
THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 331.91 feet to a point;  
THENCE South 37 degrees 42 minutes 48 seconds East for a distance of 357.52 feet to a point in the western right of way margin of a proposed road;

THENCE South 52 degrees 17 minutes 12 seconds West for a distance of 226.15 feet along said western margin to a point;

THENCE along a curve to the left having a radius of 800.20 feet and an arc length of 293.01 feet, being subtended by a chord of South 40 degrees 21 minutes 01 seconds West for a distance of 291.37 feet along said western margin to a point;

THENCE South 29 degrees 51 minutes 38 seconds West for a distance of 164.06 feet along said western margin to a point in the proposed right of way margin of N.C. Hwy. 87;

THENCE North 60 degrees 08 minutes 22 seconds West for a distance of 932.80 feet along said proposed northern right of way margin to a point;

THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 400.00 feet to the point and place of BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 14.312 acres more or less.

This description prepared by Larry King & Associates, R.L.S., P.A. on this 24th day of April, 1995.

CRC

Exhibit "B"

LEGAL DESCRIPTION

SPOUT SPRINGS PLAZA - TRACT B

COMMENCING from the northwest property corner of Lot 79, Babcock Village as recorded in Map Book 8, Page 17, Harnett County Registry:

South 60 degrees 08 minutes 22 seconds East for a distance of 692.62 feet ,  
North 29 degrees 51 minutes 38 seconds East for a distance of 120.00 feet ,  
South 60 degrees 08 minutes 22 seconds East for a distance of 179.73 feet ,  
North 29 degrees 51 minutes 38 seconds East for a distance of 276.00 feet ,  
South 60 degrees 08 minutes 22 seconds East for a distance of 331.91 feet to the BEGINNING;

THENCE North 61 degrees 12 minutes 56 seconds East for a distance of 92.43 feet to a point;

THENCE North 29 degrees 51 minutes 18 seconds East for a distance of 471.93 feet to a point;

THENCE South 60 degrees 08 minutes 42 seconds East for a distance of 416.87 feet to a point in the western right of way margin of a proposed road;

THENCE South 29 degrees 51 minutes 18 seconds West for a distance of 154.16 feet along said western margin to a point;

THENCE along a curve to the right having a radius of 1049.88 feet and an arc length of 384.53 feet, being subtended by a chord of South 40 degrees 20 minutes 52 seconds West for a distance of 382.38 feet along said western margin to a point;

THENCE South 52 degrees 17 minutes 12 seconds West for a distance of 170.00 feet along said western margin to a point;

THENCE North 37 degrees 42 minutes 48 seconds West for a distance of 357.52 feet to the point and place of BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 5.688 acres more or less.

This description prepared by Larry King & Associates, R.L.S., P.A. on this 24th day of April, 1995.

CRC

Exhibit "C"  
LEGAL DESCRIPTION

SPOUT SPRINGS PLAZA - TRACT "C"

COMMENCING from the northwest property corner of Lot 79 Babcock Village as recorded in Map Book 8, Page 17, Hamett County Registry:

South 60 degrees 08 minutes 22 seconds East for a distance of 692.62 feet,  
North 29 degrees 51 minutes 38 seconds East for a distance of 120.00 feet,  
South 60 degrees 08 minutes 22 seconds East for a distance of 179.73 feet,  
North 29 degrees 51 minutes 38 seconds East for a distance of 276.00 feet,  
North 29 degrees 51 minutes 38 seconds East for a distance of 78.90 feet to the BEGINNING;  
THENCE North 60 degrees 08 minutes 42 seconds West for a distance of 19.99 feet to a point;  
THENCE North 29 degrees 51 minutes 18 seconds East for a distance of 692.18 feet to a point;  
THENCE South 60 degrees 08 minutes 42 seconds East for a distance of 400.00 feet to a point;  
THENCE South 29 degrees 51 minutes 18 seconds West for a distance of 692.18 feet to a point;  
THENCE South 61 degrees 12 minutes 56 seconds West for a distance of 92.43 feet to a point;  
THENCE North 60 degrees 08 minutes 22 seconds West for a distance of 331.91 feet to a point;  
THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 78.90 feet to the point and place of  
BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 7.00 acres more or less.

This description prepared by Larry King & Associates, R.L.S., P.A. on this 17th day of April, 1995.

CRC

Exhibit "D"

LEGAL DESCRIPTION

**SPOUT SPRINGS PLAZA - TRACT "A" - FOOD LION LEASE**

COMMENCING, South 60 degrees 08 minutes 22 seconds East 692.62 feet from the northwest property corner of Lot 79 Babcock Village as recorded in Map Book 8, Page 17, Harnett County Registry to the point and place of BEGINNING;

THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 120.00 feet to a point;  
THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 179.73 feet to a point;  
THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 276.00 feet to a point;  
THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 331.91 feet to a point;  
THENCE South 37 degrees 42 minutes 48 seconds East for a distance of 357.52 feet to a point in the western right of way margin of a proposed road;

THENCE South 52 degrees 17 minutes 12 seconds West for a distance of 226.15 feet along said western margin to a point;

THENCE along a curve to the left having a radius of 800.20 feet and an arc length of 287.05 feet, being subtended by a chord of South 40 degrees 33 minutes 49 seconds West for a distance of 285.52 feet along said western margin to a point;

THENCE North 14 degrees 23 minutes 28 seconds West for a distance of 41.87 feet to a point;

THENCE North 60 degrees 08 minutes 22 seconds West for a distance of 593.61 feet to a point;

THENCE South 74 degrees 51 minutes 38 seconds West for a distance of 42.43 feet to a point;

THENCE South 29 degrees 51 minutes 38 seconds West for a distance of 170.00 feet to a point in the proposed northern right of way margin of N.C. Hwy. 87;

THENCE North 60 degrees 08 minutes 22 seconds West for a distance of 60.00 feet along said northern margin to a point;

THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 400.00 feet to a point;

THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 10.00 feet to the point and place of BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 9.31 acres more or less.

This description prepared by Larry King & Associates, R.L.S., P.A. on this 17th day of April, 1995.

CRC

LEASE

EXHIBIT "E"

EXCEPTIONS

1. Easement(s) to Central Electric Membership Corporation recorded in Book 661, Page 79, Harnett County Registry.
2. Easement(s) to Carolina Telephone & Telegraph recorded in Book 362, Page 19, Harnett County Registry.
3. Existing easements for public roads and utilities now in use.
4. Such state of facts as would be disclosed by accurate survey and inspection of the land.
5. Reservation of gas, oil and mineral rights by Weyerhaeuser Real Estate Company by deed recorded in Book 767, Page 747, Harnett County Registry.
6. Taxes for years subsequent to the year 1994 not yet due and payable.

CRC

LEASE  
EXHIBIT "F"  
LEGAL DESCRIPTION

SPOUT SPRINGS PLAZA - LOT 2

COMMENCING the following bearings and distances from North Carolina Grid Monument "MOBILE": North 38 degrees 23 minutes 33 seconds West 362.57 feet, North 29 degrees 51 minutes 3 seconds East 75.00 feet, and South 60 degrees 08 minutes 22 seconds East 280.00 feet to the BEGINNING, said beginning point also being in the proposed northern right of way margin of N. C. Hwy. 87, said point also being in the eastern margin of a 60' Ingress/Egress Easement;

THENCE North 29 degrees 51 minutes 38 seconds East for a distance of 170.00 feet along said eastern margin to a point;

THENCE North 74 degrees 51 minutes 38 seconds East for a distance of 42.43 feet to a point;

THENCE South 60 degrees 08 minutes 22 seconds East for a distance of 190.00 feet to a point;

THENCE South 29 degrees 51 minutes 38 seconds West for a distance of 200.00 feet to a point in said proposed northern right of way margin of N. C. Hwy. 87;

THENCE North 60 degrees 08 minutes 22 seconds West for a distance of 220.00 feet along said proposed northern margin to the point and place of BEGINNING;

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 1.00 acres more or less.

This description prepared by Larry King & Associates, R.L.S., P.A. on this 19th day of June, 1995.

CRC

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To Kelly	From R.H. Jones	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	