

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

FIFTY JOINT VENTURE LLC, a Nebraska)
Limited Liability Company,)

CI _____

Plaintiff,)

COMPLAINT AND DEMAND FOR JURY

v.)

TRIAL

DILLON COMPANIES, INC., a Kansas)
corporation,)

Defendant.)

COMES NOW the Plaintiff, Fifty Joint Venture LLC, by and through its attorneys, Pansing Hogan Ernst and Bachman, LLP, and for its Complaint against the Defendant, Dillon Companies, Inc., states and alleges as follows:

1. Plaintiff, Fifty Joint Venture, LLC, is a Nebraska Limited Liability Company and landlord of the premises located at 4240 South 50th Street, in the Spring Valley Plaza Shopping Center, City of Omaha, County of Douglas (the "Leased Premises" herein).

2. Defendant, Dillon Companies, Inc., is a Kansas corporation and at all relevant times herein, was authorized to and conducted business in the State of Nebraska.

3. On or about June 20, 1988, Fifty Joint Venture's predecessor in interest, Fifty Joint Venture, a Nebraska General Partnership, entered into a Lease Agreement for the Leased Premises with Dillon Companies, Inc. (as successor to Baker's Supermarkets, Inc.). The lease was thereafter amended by a First Amendment to the Lease dated July 1, 1991, Lease Modification Agreement dated March 26, 2001 and Lease Modification Agreement No. 2 dated April 10, 2001. The foregoing documents are referred to collectively as the "Lease" herein and are attached hereto, marked as **Exhibit "A"** and incorporated by reference.

4. Pursuant to Paragraph 7(b) of the Lease, Dillon Companies, Inc. was required to, at its cost and expense, maintain the roof of the Leased Premises in good order and repair.

5. Additionally, in accordance with Paragraph 15 of the Lease, at the expiration or termination of the Lease, Dillon Companies, Inc. was required to surrender immediate possession of the Leased Premises in good condition.

6. On or about April 25, 2005 Dillon Companies, Inc. entered into a sublease with No Frills Plattsmouth, Inc. for the Leased Premises. (This sublease was subsequently assigned to U Save Foods Inc. and its parent company, Spartan Nash.) Fifty Joint Venture consented to the subletting of the Leased Premises expressly conditioned on Dillon Companies, Inc. remaining primarily responsible to Fifty Joint Venture for all charges due under the Lease and for the performance of all covenants of the tenant under the Lease. A true and accurate Consent Letter to the Assignment is attached hereto, marked as **Exhibit "B"** and incorporated by reference.

7. During 2008, Fifty Joint Venture notified Dillon Companies, Inc. of a roof inspection (the "2008 Inspection" herein) performed on the Leased Premises, highlighting several problems with the then existing roof as a result of re-roofing work done in 2005 by No Frills Plattsmouth, Inc. without the consent of Fifty Joint Venture, and demanded Dillon Companies, Inc.'s attention in addressing the deficiencies. From 2008 through 2015 numerous communications transpired between the Plaintiff and Defendant regarding the condition of the roof and addressing the deficiencies.

8. After receiving little to no cooperation from Dillon Companies, Inc. regarding the restoration of the Leased Premises' roof, Fifty Joint Venture agreed with Dillon Companies, Inc. to have a second inspection performed on the roof in early 2014 (the "2014 Inspection" herein)

to determine what, if any, repairs or other remedial measures had been taken since 2008, and address the roofs condition and its deficiencies.

9. The 2014 Inspection revealed the Leased Premises existing roof, as the result of re-roofing performed in 2005 by No Frills Plattsmouth, Inc., was not installed per any manufacturer specifications or the National Roofing Contractors' Association specifications and/or guidelines. The 2014 Inspection further revealed that No Frills Plattsmouth, Inc.'s attempt to repair the roof in 2005 with improper materials "further deteriorated the membrane allowing water to enter the roof system and structure in numerous areas." Ultimately, the 2014 Inspection concluded that the existing roof had failed beyond repair and estimated a total replacement cost of Five Hundred Six Thousand Five Hundred Sixty-nine and no/100 Dollars (\$506,569.00). A copy of the 2014 Inspection is attached hereto, marked as **Exhibit "C"** and incorporated by reference.

10. In October 2015 Dillon Companies, Inc. had an inspection conducted on the roof by Roof Management Inc. that issued a report dated October 20, 2015. The report identified deficiencies in the roof and recommended the roof be replaced.

11. In January 2016 Plaintiff obtained a roof proposal from Independent Roofing Co. which provided a proposal of roof replacement of \$373,480.00, an add on of \$72,000.00 for isocyanurate roof (R-8.6), an add on of \$2.65 a square foot to clean, prime and paint metal deck, an add on of \$5.25 a square foot for replace metal deck, an add on of \$2.95 a square foot for plywood replacement parapet walls, an add on for HVAC and refrigeration work and an add on for masonry and EFIS work. A copy of the Independent Roofing Co. proposal is attached hereto, marked as **Exhibit "D"** and incorporated by reference.

12. Despite continued requests for action from Fifty Joint Venture, and numerous conversations with both Dillon Companies, Inc. and the subtenants over the course of several years, including demands that the Leased Premises' roof be adequately replaced by the expiration of the Lease, Dillon Companies, Inc. failed to remedy the situation.

13. The lease term expired December 31, 2015 but Fifty Joint Venture consented to holdover by Dillon Companies, Inc., and its sub-tenant, U Save Foods, Inc. until January 31, 2016.

14. Accordingly, Fifty Joint Venture took possession of the Leased Premises on February 1, 2016 and upon inspection of the roof, immediately made another demand on Dillon Companies, Inc. for action.

15. Notwithstanding Fifty Joint Venture's repeated demands for action, Dillon Companies, Inc. has refused to comply with the Covenants in the Lease related to its duties toward maintaining the Leased Premises' roof.

16. Dillon Companies, Inc. has materially breached the Lease in the following ways:

- a. By failing to, at its cost and expense, maintain the roof of the Leased Premises in good order and repair;
- b. By failing to, at the expiration or termination of the Lease, surrender immediate possession of the Leased Premises in good condition.

17. As a proximate result of said breach, Fifty Joint Venture has been damaged in an amount to be determined at trial of this matter, representing charges and expenses associated with the replacement of the roof. Moreover, Fifty Joint Venture will continue to suffer damage for injury that occurs to the decking, insulation, walls, internal fixtures and structure of the Leased Premises on account of the faulty roof.

WHEREFORE, Fifty Joint Venture prays for an order of judgment against Dillon Companies, Inc. in an amount to be determined at trial of this matter, representing replacement costs for the roof, associated costs in replacing the roof, any damage to the internal fixtures and structure of the Leased Premise that are as a result of the faulty roof, prejudgment and post-judgment interest at the highest rate allowed by law, Fifty Joint Venture's costs and attorney's fees incurred herein, and for any other relief this Court deems just and appropriate.

DATED this 8 day of March, 2016.

FIFTY JOINT VENTURE, LLC, a Nebraska
Limited Liability Company, Plaintiff



PANSING HOGAN ERNST & BACHMAN LLP
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Omaha, Nebraska 68114
(402) 397-5500

By: David L. Welch, #18881
Jeffrey A. Nix, #23842
Attorney for Defendant

LEASE AGREEMENT

This Lease Agreement made and entered into in triplicate as of the 20th day of June, 1988 by and between Fifty Joint Venture, a Nebraska General Partnership (hereinafter called "Landlord"), and Baker's Supermarkets, Inc., a Nebraska corporation (hereinafter called "Tenant").

1. Premises and Term. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the premises (the "Leased Premises") described herein for a term (the "Lease Term") of forty (40) "Lease Years" and any "Partial Lease Year" preceding the first Lease Year, as such terms are hereinafter defined. The term of this Lease and all of Tenant's obligations hereunder shall commence six (6) months after receipt by Tenant of written notice from Landlord evidencing compliance with Section 4 and stating that the Leased Premises are substantially complete and ready for Tenant's occupancy in accordance with Section 4 hereof or on the date Tenant opens for business to the public whichever is earlier (the "Commencement Date"). The Leased Premises, located in the City of Omaha, State of Nebraska, consist of a part of a shopping center known as "Spring Valley Plaza" situated at the southwest corner of 50th & F Street in Omaha, Douglas County, Nebraska which Shopping Center is more particularly described in Exhibit "A", attached and made a part hereof (the "Shopping Center"). Such Leased Premises are projected to contain approximately seventy-three thousand (73,000) square feet of ground area (determined by measuring from the outside of any exterior walls to the middle of any common or shared walls) as outlined in red on the Plan of the Shopping Center attached and marked Exhibit "B", together with all improvements, appurtenances, easements and privileges thereunto belonging. The parties undertake within thirty (30) days of the Commencement Date to jointly execute a certificate verifying the precise ground floor area of such Leased Premises.

The Shopping Center will be developed in various phases, with the area of the Shopping Center in which the Leased Premises are located designated Phase I and outlined in yellow on Exhibit B. No representation or warranty with respect to the construction or completion of any phase or portion of the Shopping Center, other than Phase I and the drives and access points outlined in yellow, are intended or implied.

2. Rent.

Tenant shall pay, without offset or credit, for the Leased Premises as follows:

(a) A fixed rent of Thirty Thousand Four Hundred Thirteen and 25/100 Dollars (\$30,413.25) per month payable on the first day of each and every month in advance commencing with the Commencement Date, which fixed rent shall be equitably apportioned for any period less than a full calendar month, and shall be altered, abated or diminished as the case may be as provided in this Lease. The fixed monthly rent has been established by the parties and is represented by the product derived by employing "Leased Premises Costs", as herein defined, of \$2,884,960.00 (\$39.52 for each square foot of the projected ground floor area) as the multiplicand and a factor of .010542 (1/12th of 12.65%) as the multiplier. The parties jointly agree that they shall by written confirmatory statement alter and modify the monthly fixed rent, upward or downward, in accordance with such formula within thirty (30) days of the determination of the Leased Premises Costs, and such fixed monthly rental as so adjusted shall be deemed to operate retrospectively if the Leased Premises Costs are determined

subsequent to Commencement Date. "Leased Premises Costs" shall be limited to actual costs incurred and expended by Landlord in connection with the construction of the Leased Premises which are set forth in Exhibit "C" attached hereto.

(b) Effective as of January 1, 2000 and on each tenth anniversary thereafter during the Lease Term (the "Comparative Date"), the fixed rent set forth above shall be employed as the multiplicand, and one-third (1/3) of the percentage increase, if any, in the "Consumer Price Index" as hereinafter defined, which is published and publicly announced for the monthly period most nearly preceding such Comparative Date over the Consumer Price Index for the calendar year 1990 shall be employed as the multiplier. The resultant increase, if any, shall be effective as the monthly fixed rent for the succeeding decade of the Lease Term, it being the intention of the parties that the fixed monthly rent shall in no event be less than that set forth in Article 2(a) above.

(c) The "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (All Items Index) published by the United States Department of Labor, Bureau of Labor Statistics expanded. If the Consumer Price Index is discontinued or is unavailable, the parties will substitute a comparable index reflecting changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency, bank or other financial institution or recognized authority.

(d) Until further written notice by Landlord to Tenant, rent checks shall be payable and mailed to:

Fifty Joint Venture
c/o PDM, Inc.
400 Morgan Place
8420 West Dodge Road
Omaha, NE 68114

3. Lease Year, Partial Lease Year and Early Termination.

(a) The term "Lease Year" as employed herein, is defined to mean a period of twelve (12) consecutive calendar months, the first Lease Year commencing on the first day of January, following the Commencement Date, and each succeeding Lease Year thereafter shall commence on the anniversary date of the Commencement Date. The period of the Lease Term commencing as of the Commencement Date and ending December 31, 1989, shall be deemed a "Partial Lease Year" If there be a period at the end of the Lease Term which shall be less than a Lease Year due to an earlier termination of the Lease Term herein created, then such shorter period shall likewise be deemed a "Partial Lease Year."

(b) Tenant shall have the right and option, at Tenant's election, to terminate this Lease effective, as of the last day of the twentieth (20th) Lease Year of the Lease Term, effective as of the last day of the twenty-fifth (25th) Lease Year of the Lease Term, effective as of the last day of the thirtieth (30th) Lease Year of the Lease Term, or effective as of the last day of the thirty-fifth (35th) Lease Year of the Lease Term. If Tenant shall elect to exercise any of such options, Tenant shall transmit written notice of such election to Landlord at least six (6) calendar months prior to the effective date of such termination, except that no notice shall be required to terminate the relationship of Landlord and Tenant upon the expiration of the full term herein created.

4. Delivery of Possession, Title and Quiet Possession. Landlord agrees, at its expense, to construct the Leased Premises substantially in accordance with plans and specifications to be prepared and submitted by Landlord to Tenant within ninety (90) days of the execution date of this Lease and approved by Tenant within thirty (30) days of receipt, such approval to be evidenced by the signature of Tenant on such plans and specifications. The construction of the Leased Premises shall be completed in a first class manner and in accordance with the plans and specifications approved by Tenant and all federal, state and local laws, ordinances, building codes, rules and regulations of all governmental units or agencies having jurisdiction over the Leased Premises. Concurrent with Landlord's notice required in Section 1 of this Lease, Landlord shall deliver to Tenant a certificate from Landlord's architect certifying that the Leased Premises are substantially completed. In the event Tenant fails to approve or disapprove such plans they shall be deemed approved. If such plans are disapproved, then the Landlord shall make such changes which are mutually acceptable and which do not increase the cost of or delay the completion of such construction. Landlord agrees that while in the course of constructing the Leased Premises, Tenant may enter, at its risk, the same for the purpose of installing its equipment and fixtures to whatever extent it may be practical so to do without interfering with the completion of the Leased Premises or the Shopping Center and without being guilty of or liable for trespass, rent, use of occupancy. Tenant shall bear all risk of loss to any property so installed by it.

Landlord covenants and represents that Landlord has marketable title to the Shopping Center in fee simple and that no leases, tenancies, agreements, encumbrances, liens or defects in title adversely affect the use of the Leased Premises or the rights granted Tenant in this lease, except to the extent otherwise specifically provided herein, and that no restrictive covenants, zoning or other ordinances or regulations are effective presently which will prevent the Tenant from conducting supermarket activities in the Leased Premises.

5. Parking and Common Areas.

(a) Landlord undertakes to provide, maintain, repair, replace, adequately light daily between the hours of 6:00 a.m., when required, but not beyond 1:00 a.m. (unless the Tenant and other tenants of the Shopping Center requesting extended service shall agree to pay the cost of same), clean, stripe, furnish with directional markers and traffic control signs, remove snow and ice with reasonable promptness, the parking and common areas (which parking area shall provide for parking of at least eight hundred (800) automobiles in Phase I of the Shopping Center as outlined in yellow on the Plan annexed as Exhibit B) and service and receiving areas, sidewalks, curbs, roadways, and other facilities appurtenant thereto, substantially as shown on Exhibit "B" annexed. The parking areas shown upon Exhibit "B" shall be employed for the exclusive use of the Tenant and its employees, customers and invitees and of other occupants of the Shopping Center without charge and no buildings or other structures shall hereafter be erected within the area outlined in black on Exhibit B except (i) those buildings or structures or expansions thereof situated wholly within the area cross hatched in orange which are permitted or, (ii) with the prior written consent of Tenant which in its sole discretion, may be arbitrarily withheld. Landlord may designate a reasonably convenient area for use of parking by employees of Tenant and employees of other occupants of the shopping center. Tenant shall employ reasonably diligent efforts to assure that its employees shall park in the areas so designated by Landlord which

shall at all times be suitably paved, maintained and illuminated by Landlord. The parking areas shall have automobile entrances and exists from and to adjacent streets and roads which shall substantially conform in size and location to those shown on Exhibit "B" annexed, except where modification is required by governmental authority.

(b) Tenant shall pay to Landlord, on a monthly basis in advance, a pro rata share of the actual cost and expense directly paid or incurred by Landlord during the Term of this Lease in operating, managing, equipping, policing, protecting, lighting, repairing, restriping, maintaining, and replacing the common and parking areas. Such expenses shall include but not be limited to fire protection, landscaping, parking lot lighting and repairs and replacements of parking lot lights, planting and replanting, water and sewer charges, wages paid to employees to the extent directly attributable to services by such employees in respect to the common area, unemployment taxes, social security taxes, personal property taxes, fees for required licenses and permits, security, supplies, repair and resurfacing of parking areas, drives, service areas, sidewalks, and curbs, and repair and replacement of shopping center identification signs, rental charges and reasonable depreciation of equipment and machinery employed directly or indirectly in the operation of the common areas and Landlord's administrative costs with respect thereto which shall not exceed fifteen percent (15%) of the direct cost and expense thereof. Tenant shall not be obliged to contribute to any capital expenditure in the context of Section 263 of the Internal Revenue Code of 1954, as amended, incurred by Landlord in connection with such common area except the replacement of parking areas, shopping center signage, and parking lot lighting.

Tenant's proportionate share of such costs and expenses for each Lease Year and partial Lease Year shall be paid in monthly installments on the first day of each month, beginning with the first day of the calendar month following the Commencement Date, in advance, in an amount estimated by Landlord from time to time. Subsequent to the end of each partial or full Lease Year, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's proportionate share of such costs and expenses for such period. If the total amount paid by Tenant under this Section for any Lease Year shall be less than the actual amount due from Tenant, for such Lease Year as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within thirty (30) days after the furnishing of each such statement, and if the total amount paid by Tenant hereunder for any such Lease Year shall exceed such actual amount due from Tenant for such Lease Year, such excess shall be credited against the next installment due from Tenant to Landlord under this Section. For the purposes hereof, Tenant's proportionate share shall be computed by employing the square foot leaseable area of the Leased Premises as the numerator and the leaseable square foot floor area of all buildings of the Shopping Center as the denominator.

(c) Tenant is authorized and permitted to employ the sidewalk contiguous to and fronting the Leased Premises and a part of the parking area adjacent outlined in green on Exhibit "B" annexed for display of merchandise and promotional activities in a manner so as not to create a hazard to pedestrian or vehicular traffic. Tenant may perform cleaning and housekeeping chores, which cannot be accomplished conveniently within the Leased Premises upon the parking area, during such hours as such parking area shall have minimum public usage. Landlord shall furnish and supply Tenant with an area at the rear of the Leased

Premises for the placement of no more than three compactors for the temporary storage of refuse and wastes which shall be of sufficient size and conveniently located for Tenant's use.

6. Utilities. Tenant shall pay when due all bills for water, sewer rents, or sewer charges, heat, gas and electricity used in the Leased Premises during the Term of this Lease. Unless otherwise required by governmental authority, the source of supply and vendor of each such commodity or service shall be the local utility company or municipality commonly serving the area. All utilities shall be connected to an adequate source of supply or disposal. The gas and water service lines and sewer lines are represented by the Landlord to be of a capacity sufficient to satisfy the present requirements of Landlord's operations and, if Tenant shall require additional service line capacity of any such utilities, and if the same are then available on Landlord's premises, Tenant, at Tenant's expense, shall have the right to employ the same.

7. Repairs and Alterations.

(a) Landlord shall maintain at all times keep in good repair at its sole cost and expense the exterior walls, foundation and subflooring of the Leased Premises and make all repairs and replacements to the exterior thereof (other than the roof, doors, door frames, windows, window frames, loading dock doors, loading dock ramps and platforms, enclosures and seals, and Tenant's exterior signs) including the exterior pipes, ducts, wires and conduits leading to and from the Leased Premises. No exterior modifications or improvements shall be effected to the exterior of the Leased Premises without the joint written approval of the parties hereto.

(b) Tenant, at its cost and expense, may effect such alterations, replacements or additions to the interior of the Leased Premises as Tenant may deem appropriate in the conduct of its business operations in compliance with any law, ordinance or other regulation of public authority. Tenant, at Tenant's expense, shall maintain the roof of the Leased Premises and the interior of the Leased Premises in good order and repair, including the maintenance, repair, and replacement of heating, electrical, plumbing, fire sprinklers, cooling and ventilating equipment. Tenant shall maintain its exterior identification signs and shall keep all glass, including glass in windows and doors, clean and in good condition, replacing any glass which may be damaged or broken with glass of the same quality. The obligation of repair and replacement by Tenant shall not apply in the event of damage by fire or other casualty covered by Landlord's insurance.

8. Sign and Tenant's Fixtures. Tenant may install and operate interior electric and other signs and other mechanical equipment and in so doing shall comply with all lawful requirements. Tenant may install and shall maintain at its expense exterior identification signs affixed to the Building in which the Leased Premises are situated conforming to its standard and customary signs employed in shopping centers. All trade fixtures, equipment, machinery and other property owned by Tenant shall remain the property of Tenant without regard to the means by which the same is installed or attached to the Leased Premises, and Landlord agrees that Tenant shall have the right at any time, and from time to time, to remove any and all such trade fixtures, equipment and other property, including, but not limited to counters, shelving, freezers, air conditioning, cooling and other machinery, and the same shall not be subject to any landlord's lien. To the extent that such fixtures, machinery and equipment shall be removed by Tenant

at the expiration or sooner termination of this Lease, Tenant agrees to repair the damage caused by such removal and to leave the Leased Premises in a "Broom-clean" condition.

9. Assignment and Subletting. Tenant's interest under this lease shall not be assigned, nor shall the Leased Premises be sublet except in accordance with the following:

(a) Tenant's interest under this Lease may, at any time and from time to time, be assigned and reassigned, provided that such assignment or reassignment shall be to a corporation which is a subsidiary of or affiliated by a stock ownership with Tenant, or to a corporation resulting from any consolidation, reorganization or merger to which Tenant, or any of its subsidiaries or affiliates may be a party, or to a person or entity which shall acquire substantially all of Tenant's assets in the Leased Premises. Subject to the use restrictions provided herein, Tenant may at any time and from time to time sublet or license or permit a portion or portions of the Leased Premises, to the extent that the same does not in the aggregate exceed ten thousand (10,000) square feet of floor space, to be used for concessions, leased or licensed departments and demonstrations in connection with and as a part of the operation of Tenant's store.

(b) At any time and from time to time subsequent to the fifth (5th) Lease Year of the Lease Term, Tenant may discontinue the operation of Tenant's store in the Leased Premises, then Tenant shall, at least sixty (60) days prior to such discontinuance, furnish to the Landlord written notice setting forth the effective date of such discontinuance. Landlord may at any time within one (1) year after the receipt of such notice of the Tenant's intent to discontinue operations, at Landlord's option, terminate and cancel this Lease by written notice to Tenant, which termination shall become effective thirty (30) days after receipt by Tenant of the Landlord's notice of termination and cancellation. During the course of the discontinued operations, the rent provided in Article 2 and the other costs and charges for which Tenant is responsible under this Lease shall be applicable.

(c) In the event that Tenant shall desire to assign this Lease or to sublet the entire Leased Premises to any persons, firms or corporations, other than a corporation described in section (a) hereof, Tenant shall provide Landlord prior to the effective date of such assignment or subletting, the name of such assignee or subtenant and the proposed use of the Leased Premises. Any assignment or subletting of the Leased Premises by Tenant in their entirety shall be for a use not in violation of any existing exclusive use restriction theretofore granted by Landlord to any other occupant of the Shopping Center or for a use prohibited by Article 10 below. Landlord's consent to such assignment or subletting shall be given or withheld within forty-five (45) days following the receipt by Landlord of notice from the Tenant as above provided, and, if Landlord notifies Tenant of its refusal to consent to any such assignment or subletting, this Lease shall terminate effective as of six (6) months from the date Landlord shall have received Tenant's notice of Tenant's intention to so assign or sublet. In the event Landlord shall fail to either withhold or give Landlord's consent to such assignment or subletting within such forty-five (45) day period, then Landlord shall conclusively be presumed to have consented to such assignment or subletting.

In the event that Landlord shall consent to such assignment or subletting, the provisions of Article 2 with

respect to rental and the other provisions of this Lease shall remain fully effective.

(d) Notwithstanding any assignment, reassignment or subletting by Tenant permitted by sections (a) and (c) above, Baker's Supermarkets, Inc. shall not be released from nor its liability affected by the payment of the fixed rent required under this Lease and the timely payment and performance of all terms herein contained during the remaining unexpired Term. No assignee or sublessee of Baker's Supermarkets, Inc. shall be permitted to further assign or sublet the Leased Premises or any part thereof without the Landlord's written consent, which shall not be arbitrarily withheld.

10. Use Restrictions.

Tenant may use the Leased Premises for a retail grocery supermarket and/or liquor store having as its principal purpose the sale of food and related items, liquor, beer, floral shop, restaurant, bakery and delicatessen items, and general merchandise now or hereafter offered for sale in other supermarket establishments of Tenant or competing retail grocery supermarkets in Omaha, Nebraska, and Tenant may employ the Leased Premises for any other lawful purpose so long as at the date of the commencement of such other lawful use it is not in conflict with the principal and primary use of any then existing tenant of the Shopping Center who occupies in excess of 20,000 square feet of ground floor area except that notwithstanding such conflict, Tenant shall be permitted an incidental portion of the Leased Premises for such conflicting purpose.

(a) Tenant agrees during the Term of this Lease and as a material consideration for its execution, neither Tenant nor any concessionaire, licensee, sublessee, assignee, or successor thereto shall:

(i) Employ the Leased Premises or any part thereof for any office, storage use, except as incidental to a permitted principal use.

(ii) Operate a bingo or other game room, pool hall, teen club, theatre or other gambling or entertainment enterprise upon the Leased Premises or any part thereof.

(b) During the term of this Lease, the Landlord acknowledges as a material consideration for its execution by Tenant that the following use restrictions shall be applicable to the Shopping Center, other than the Leased Premises:

(i) No part thereof may be employed to engage in the package sale of intoxicating liquors, including wine and beer; nothing herein shall preclude (a) the sale or dispensation of wine, beer and/or liquor in connection with the operation of a deli, restaurant, or cafe, or (b) if Osco Drug becomes a tenant of the Shopping Center, the sale or dispensation by Osco Drug and its successors and assigns, of wine, beer and/or liquor from its leased premises provided no more than 1,500 square feet of sales floor area is devoted to such sales or dispensation.

(ii) No part of any premises leased to any other occupant of the Shopping Center shall be permitted to devote an area of the premises leased to such other occupant in excess of seven hundred fifty (750) square feet of floor area (one-half of adjoining aisles shall be included in the measure-

ment of such areas) for the sale of food or food products so long as a supermarket/grocery shall operate in the Leased Premises; provided however, Landlord shall have the right to lease to any single tenant of the Shopping Center who sells food items or products to be consumed primarily within its premises or prepared food items or products for consumption off premises and (b) to lease to other specialty tenants of the Shopping Center whose primary use is the sale of ice cream, candy, nuts, popcorn, pretzels, yogurt, frozen custard, so-called health and natural foods, donuts, bakery items, cookies or any combination or variety of the foregoing, not in excess of 2,500 square feet of net leaseable floor area.

(ii) No part of premises leased to any other occupant of the Shopping Center shall be employed to operate a bingo or other game room, pool hall, teen club, theatre or any other entertainment enterprise.

11. Insurance and Real Estate Taxes.

(a) Landlord shall carry fire and all risks coverage insurance covering the buildings and improvements constituting the Shopping Center to the extent of its full replacement value, less foundations, with eighty (80%) percent co-insurance clause permitted with companies which are authorized to do business in the State of Nebraska. Landlord shall also procure and continue in effect public liability and property damage insurance with respect to the operation of the Shopping Center with single limits for death or bodily injury of not less than Two Million Dollars (\$2,000,000.00) and property damage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00). Such public liability insurance shall be endorsed so as to name the Tenant as an additional insured. Landlord's obligation to maintain the insurance described herein may be provided within the coverage of any "blanket" policy or policies of insurance carried and maintained by the Landlord.

(b) During the Lease Term, Tenant agrees to pay Landlord a pro rata share of (i) general real estate taxes and special assessments (excluding special assessments attributable to the development of the Shopping Center or the paving of "F" Street), levied and assessed against the land and buildings constituting the Shopping Center, and payable during the Lease Term, and (ii) the cost to Landlord of the insurance required to be maintained by Landlord pursuant to the provisions of this Lease. Tenant shall, within thirty (30) days following any request from Landlord, accompanied by the paid tax bill or the invoice for policy premiums, as the case may be, or photocopies thereof, pay to Landlord. Tenant's pro rata share thereof computed by multiplying the amount of such tax bill or premium charge by a fraction, the numerator of which shall be the square foot leasable area of the Leased Premises and the denominator of which shall be, in the case of taxes or assessments, the leasable square foot floor area of all buildings of the Shopping Center which were included, completed and fully assessed for purposes of such tax bill or in the case of insurance, which were included in the underwriting process used to calculate premium. Any liability hereunder for any period in which the Lease Term shall not cover the entire Lease Year during which such tax payment is made or for which such premium is paid shall be properly prorated to reflect the period of Tenant's possession under this Lease.

(c) Tenant shall not be obliged to contribute to any premium increase attributable to any increased hazard of the business operations of any occupant of the Shopping Center.

ere be an increase in premiums for fire and extended
age or public liability and property damage insurance
utable to a change of use in the Leased Premises, and
enant fails to alter the same within thirty (30) days
r notice from Landlord, Tenant shall pay to Landlord, on
nd, the amount of such increased premium.

(d) Tenant shall procure and maintain during the term
this Lease at its own cost and expense, a policy or
olicies of insurance insuring Landlord and Tenant as their
erests may appear, against comprehensive public liability
vering the Leased Premises and the use and operation
ereof, with a combined single limit of at least \$2,000,000
r injury to or death of persons and loss of or damage to
roperty. Any insurance required to be procured and
aintained by Tenant under the provisions of this Lease
hall not be subject to cancellation except after thirty
(30) days' prior written notice to Landlord. All policies
of insurance required to be furnished hereunder shall be
deposited with Landlord prior to the commencement of the
term hereof and extensions thereof not less than thirty (30)
days prior to the expiration of the term of such coverage;
provided, however, that if Tenant shall maintain any
insurance required hereunder under a blanket policy, Tenant
shall have sufficiently complied with the terms hereof by
furnishing Landlord a certificate or certificates for the
same.

12. Fire or Other Casualty and Eminent Domain.

(a) In the event that the Leased Premises or the
Shopping Center of which it is a part shall be damaged by
fire, explosion or other casualty or occurrence to the
extent of fifty percent (50%) or more of the cost of
replacement thereof, either the Landlord or Tenant may
terminate this Lease upon giving notice of such election in
writing to the other within ninety (90) days after the
happening of the occurrence occasioning such damage;
provided, however, that if within said period of ninety (90)
days Landlord shall have commenced to repair and restore the
building or premises so damaged or destroyed and shall
thereafter proceed with due diligence and shall complete the
same within twelve (12) calendar months measured from the
commencement of the work of such repair and restoration,
then and in such event Tenant shall not have the right to so
terminate.

(b) In the event that the Leased Premises or the
Shopping Center of which the Leased Premises are a part
shall be damaged to the extent of less than fifty percent
(50%) of the cost of replacement but in excess of twenty
five percent (25%) of such cost, the Landlord shall repair
and restore the Shopping Center and the Leased Premises
their condition immediately prior to such damage
destruction if the yet unexpired term of Tenant's occupancy
under this lease at the date of the happening of
occurrence causing such damage shall be less than five
years, unless Landlord shall waive such requirement, and
Tenant shall within forty-five (45) days of the date of
occurrence of such damage give written notice to Landlord
that it, by virtue of such notice, does extend the term
its occupancy for a period ending with the 31st day of
December next following the fifth (5th) anniversary date
the occurrence of such damage, then Landlord shall repair
and restore the Leased Premises and the Shopping Center
building of which it is a part and the term of this Lease
shall be deemed to have been so extended without further
confirmatory documentation by the parties. In the event
Leased Premises are damaged, the rents and other payments
payable pursuant to this Lease, until the Leased Premises

are repaired, shall abate proportionately according to the extent of damage or destruction to the Leased Premises.

(c) In the event that the Leased Premises or the Shopping Center building of which it is a part shall be damaged by fire, explosion or other casualty or occurrence to the extent of less than twenty-five percent (25%) of the cost of replacement, the damage shall be promptly repaired by Landlord at Landlord's expense. In the event the Leased Premises are damaged, the rents and other charges payable hereunder shall, until the Leased Premises are repaired, shall abate proportionately according to the extent of damage or destruction to the Leased Premises.

(d) Under no circumstances shall either Landlord or Tenant be liable to the other for loss or damage to the other's property resulting from fire or other casualty which is covered by insurance.

(e) If more than fifty percent (50%) of the floor space in the Shopping Center shall be taken under the power of eminent domain or conveyed under threat of eminent domain or if any part of the floor space of the Leased Premises shall be so taken, either Party may by written notice to the other, delivered on or before the date of surrendering possession of public authority, terminate this Lease. All compensation awarded for any taking under the power of eminent domain, whether for any part of the Leased Premises or the Shopping Center shall be the property of the Landlord, whether such damages be awarded as compensation for diminution of the value or loss of the leasehold, or for diminution in the value of, or loss of the fee of premises or otherwise, and Tenant hereby assigns to the Landlord all Tenant's right, title and interest in and to any such compensation; provided however, that Landlord shall not be entitled to any award made to Tenant for the value of Tenant's fixtures, and the cost of removal of inventory and fixtures. Tenant shall not make claim for the value, if any, of any expired term of this Lease. If a part of the Leased Premises shall be taken by eminent domain but neither party shall have exercised the right to terminate this Lease, then the Lease Term shall cease only as to the part so taken from the date possession shall be obtained by such public authority and the fixed rent shall be equitably and proportionately abated. If this Lease shall not be terminated as a result of the exercise by public authority of the power of eminent domain, the Landlord shall make all required repairs or alterations to the Leased Premises or to the building of which the Leased Premises are a part so as to constitute the remaining structure or premises a complete architectural unit.

13. Landlord's Right to Repair. Landlord may at reasonable times during Tenant's business hours or at any time in the case of an emergency enter the Leased Premises for the purpose of making repairs.

14. Merchants Association. Tenant agrees to become a member of any merchants' association which Landlord may cause to be organized, composed of occupants of the Shopping Center. Tenant agrees to join and maintain membership in good standing in such association during the term of this Lease and to make payments to the association of assessments made by it to the extent that such assessments shall not exceed \$.15 per square foot of the Leased Premises during each Lease Year, prorated for any Partial Lease Year.

15. Surrender. At the expiration or termination of this Lease, Tenant shall surrender immediate possession of the Leased Premises in good condition, reasonable wear and tear, changes and alterations, damage by fire, casualty and the elements, and repairs which are obliged to be made by

Landlord expected. Any holding over by Tenant shall not operate to extend or renew this Lease or imply or create a new lease, but in such case Landlord's rights shall be limited to either immediate termination of Tenant's occupancy or the treatment of Tenant's occupancy as a month to month tenancy, any custom or law to the contrary notwithstanding.

16. Default and Remedies.

(a) If any rent is due and remains unpaid for ten (10) days after receipt of notice from Landlord, or if Tenant defaults in fulfilling any of the other covenants of this Lease on Tenant's part to be performed hereunder and such default shall continue for a period of thirty (30) days after notice from Landlord to Tenant specifying the nature of such default, or, if the default so specified shall be of nature that the same cannot reasonably be cured or remedied within such thirty (30) day period, if Tenant shall not in good faith have commenced the curing or remedying of such default within such thirty (30) day period and shall not thereafter diligently proceed therewith to completion, Landlord shall then, but not until then, have the immediate right of re-entry and may remove all persons and property from the Leased Premises at the cost of and for the account of Tenant, all only with service of notice and resort to legal process. Should Landlord elect to re-enter, or should it take possession pursuant to legal proceedings, it may terminate this Lease or it may from time to time without terminating the Lease, make such repairs as may be necessary in order to relet the Leased Premises or any part thereof for such terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Landlord in the exercise of reasonable discretion may deem advisable; all rentals received by the Landlord from such reletting, shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, reasonable attorneys' fees incident thereto and costs of such repairs; third, to the payment of rent due and unpaid hereunder; the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rental received from such reletting during any month shall be less than is required to be paid during that month by the Tenant hereunder, Tenant shall pay such deficiency to Landlord and such deficiency shall be calculated and paid monthly. No re-entry or taking of possession by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

In addition to and not in limitation of, any other remedies Landlord may have, Landlord may recover from Tenant the costs of recovering the Leased Premises, reasonable attorneys' fees and the discounted value, at the time of such termination, of the excess, if any, of the amount of rent and charges reserved in this Lease for the remainder of the stated term up until the next date this Lease could be terminated by Tenant pursuant to the provisions of Article 3 (b) over the then fair market rental value of the Leased Premises for the Remaining Term.

(b) If Landlord shall from time to time fail to pay any sum or sums due to Tenant, or if Landlord from time to time shall fail to perform any act or acts required of Landlord by this Lease, and if such failure continues for thirty (30) days after receipt of notice from Tenant, Tenant shall be entitled to exercise any and all legal remedies to recover such amounts or to require such performance.

(c) Landlord undertakes and agrees notwithstanding any other provision of this Article that it shall exercise reasonable efforts to mitigate any damages which it may have suffered by reason of any default of Tenant.

17. Estoppel Certificate. Tenant agrees, at any time, and from time to time, upon not less than twenty (20) days prior notice by Landlord to execute, acknowledge and deliver to Landlord a statement in writing addressed to Landlord certifying that this Lease is unmodified and in full force and effect or, if there had been modifications, that the same is in full force and effect as modified and stating the modifications, stating the dates to which the fixed rent or other charges had been paid, and stating whether or not to the best of the knowledge of the Tenant, there exists a default in the performance of any covenant, agreement, term, provision or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge, it being intended that any such statement delivered hereto may be relied upon by Landlord and by any mortgagee or prospective mortgagee of any mortgage effecting the realty of which the Leased Premises are a part.

18. Subrogation. Neither Landlord nor Tenant shall be liable to the other for any business interruption or any loss or damage to property or injury or death of persons occurring on the Leased Premises or any part of the Shopping Center, whether or not caused by the fault or negligence of the Landlord or Tenant, or their respective agents, employees, subtenants, licensees, or assignees, if such business interruption, loss or damage to property, or injury or death of persons is covered by insurance.

19. Subordination; Nondisturbance of Possession.

(a) At Landlord's option, this Lease shall be and is subordinated to any existing mortgages or deeds of trust covering the Shopping Center, any extension or renewal thereof, or to any new mortgages or deeds of trust which may be placed thereon from time to time; provided, however, anything to the contrary contained herein notwithstanding, every such mortgage or deed of trust shall recognize the validity of this Lease and shall require that the Tenant's possession not be disturbed in the event of a foreclosure of Landlord's interest, as long as Tenant shall not be in default under any of the terms of this Lease. Tenant shall execute whatever instruments may be reasonably required to effect such subordination.

(b) In the event any mortgagee or beneficiary under a deed of trust shall elect to have this Lease prior to the lien of its mortgage or deed of trust then, upon notice to Tenant thereof, this Lease shall thereupon be deemed prior to the lien of any such mortgage or deed of trust.

20. Notices. All notices hereunder shall be in writing and shall be sent by United States registered or certified mail, postage prepaid, addressed, if to Landlord or Tenant, to their respective principal offices at 400 Morgan Place, 8420 West Dodge Road, Omaha, Nebraska 68114. Notices given in accordance with the provisions shall be deemed received when postmarked.

21. Holding Over. Any holding over after the expiration of the term hereof with the consent of Landlord shall be construed to be a tenant from month to month (at 1.5 times the then monthly minimum rental herein specified) payable hereunder and shall otherwise be on the same terms and conditions herein specified as far as applicable.

22. Liability of Landlord. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Shopping Center and out of rents or other income from such property receivable by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Shopping Center, and neither Landlord nor any of its Joint Venturers nor any directors, officers, employees or partner of any Joint Venturer shall be liable for any deficiency.

23. Delays in Performance. The performance by Landlord and Tenant of any of their respective obligations or undertakings provided for in this Lease (except the payment of rent or any other sums of money payable by Tenant under this Lease) shall be postponed and no default shall be deemed to exist in the event and so long as the performance of any such obligations or undertaking is prevented, delayed, retarded, or hindered by any act of nature, weather conditions, fire, earthquake, flood, explosion, war, riot, failure of transportation, strikes, lockouts, action of labor unions, condemnation, laws, order of government or civil or military authorities, inability to procure labor, equipment, facilities, materials, or supplies in the open market, or any other cause beyond the control of Landlord or Tenant, as the case may be.

24. Signs. Landlord may, but shall not be obligated to, erect one electrically lit pylon sign for tenants of the Shopping Center whose leased premises exceed 40,000 square feet of net leaseable area. In such event, Tenant shall have the right to place and maintain, at its expense, a sign on such pylon containing only such tenant's tradename, which sign shall be subject to the approval of Landlord reasonably exercised. Landlord agrees that priority as to the size and the positioning of various tenants signs shall be based upon the relative square footage of ground floor area of each tenant's leased premises. Tenant shall pay its prorata share of all reasonable costs for the acquisition, installation, operation, repair and replacement of such pylon sign.

25. Ordinances. Landlord shall, at Landlord's expense, comply with all federal, state, county and municipal laws and ordinances and all rules, regulations and orders of any duly constituted authority, affecting the construction of the Shopping Center. Tenant shall comply with all federal, state, county and municipal laws and ordinances and all rules, regulations and orders of any duly constituted authority, present or future, which affect the Tenant's business in or the Tenant's use of the Leased Premises.

26. Indemnity. Tenant agrees to indemnify and save Landlord harmless from and against any and all claims, damages, liability, costs and expenses, including reasonable attorneys fees, in any manner arising out of or in connection with the Leased Premises, including but not limited to the conduct or management of the business conducted by Tenant in the Leased Premises, the breach or default on the part of Tenant in the performance of any covenant or agreement contained in this Lease, or any negligence of Tenant or its agents, employees, contractors, concessionaires, licensees, customers or invitees. In case any action or proceeding is brought against Landlord, by reasons of any such claim, Tenant upon notice from Landlord, shall defend such action or proceeding.

ord agrees to indemnify and save Tenant harmless from
gainst any and all claims, damages, liability, costs
expenses, including reasonable attorneys fees, in any
arising out of or in connection with the Landlord's
ation of the Shopping Center, the breach or default on
part of Landlord in the performance of any covenant or
ement contained in this Lease, or any negligence of
lord or its agents, employees, contractors,
essionaires, licensees, customers or invitees. In case
action or proceeding is brought against Tenant, by
son of any such claim, Landlord upon notice from Tenant,
ll defend such action or proceeding.

27. Miscellaneous.

(a) Captions of the several articles contained in this
lease are for convenience only and do not constitute a part
of this Lease and do not limit, affect or construe the
contents of such articles.

(b) Each party agrees to execute a short form of this
lease suitable for recording from time to time at the
request of the other.

(c) In the event of the sale, transfer or conveyance
of the Shopping Center by Landlord, the Landlord shall be
deemed relieved of the terms, covenants and obligations to
be performed by Landlord to the date of such transfer and
the covenants, terms and obligations thereafter shall be
those of the landlord-transferee.

(d) This instrument shall merge all undertakings
between the parties hereto with respect to the Leased
Premises and shall constitute the entire lease contract
unless otherwise hereafter modified by both parties in
writing. This instrument shall also bind and benefit, as
the case may require, the heirs, legal representatives,
permitted assigns and successors of the respective parties.

(e) Nothing contained in this Lease shall be deemed or
construed by the Parties hereto or by any third party to
create the relationship of principal and agent, or of
partnership, or of joint venture, or of any association
between Landlord and Tenant, it being expressly understood
and agreed that neither the method of computation of rent
nor any other provisions contained in this Lease nor any act
of the Parties hereto shall be deemed to create any
relationship of lessor and lessee. No waiver of any default
of Tenant hereunder shall be implied from any omission by
Landlord to take any action on account of such default if
such default persists or is repeated and no express waiver
shall affect any default other than the default specified
in the express waiver and then only for the time and to the
extent therein stated. One or more waivers of any covenant,
term or condition of this Lease by Landlord shall not be
construed as a waiver of a subsequent breach of the same
covenant, term or condition. The consent or approval of
Landlord to or of any act by Tenant requiring Landlord's
consent or approval shall not be deemed to waive or release
necessary Landlord's consent or approval to or of any
subsequent similar act by Tenant. The invalidity or
unenforceability of any provision hereof shall not affect
impaired any other provisions. The necessary grammatical
changes required to make the provisions of this Lease
in the plural sense where there is more than one lessee
to either corporations, associations, partnerships, or
individuals, males or females, shall in all instances
be assumed as though in each case fully expressed. The laws
of the State in which the Leased Premises are located shall
govern the validity, performance and enforcement of this
Lease. This Lease becomes effective as a lease on

execution and delivery thereof by Landlord and by Tenant and shall not be binding on either party until executed and delivered.

(f) It is understood that Landlord promulgate reasonable, nondiscriminatory written rules and regulations for the use of the Common Areas.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease, under seal, as of the day and year first above written.

FIFTY JOINT VENTURE, Landlord

By: Venture-50, Inc.,
Joint Venturer

By: *Jack Baker*
Title: President

By: *Lerner Fifty Partnership*
Joint Venturer

By: *[Signature]*
Title: Managing Partner

BAKER'S SUPERMARKETS, INC.,
a Nebraska corporation, Tenant

Attest:

By: *[Signature]*
Title: *[Signature]*

By: *David E. Whipple*
Title: *Chief Executive*

EXHIBIT "A"

Legal Description

TRACT I

That part of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Six (6), Township Fourteen (14) North, Range Thirteen (13) East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 6; thence South along the West line of said Northeast Quarter for 674.57 feet to the true point of beginning; thence North 86 35' 59" East for 1294.27 feet along the line established by court decree May 15, 1973, to be the common boundary line between William J. Foxley and Jorgensen Grading Co., to a set iron pin on the West line of 50th Street, 674.57 feet South of and 33.0 feet West of the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 6, Township 14, North, Range 13 East, also being 180.97 feet South of the Southeast corner of Lot 14, Harper's Acres; thence North 00 11' 51" West for 180.97 feet along the West line of 50th Street to the Southeast corner of said Lot 14, Harper's Acres; thence South 86 35' 53" West for 905.70 feet along the South line of Harper's Acres; thence along the following two courses, established by court decree October 18, 1972, to be the common boundary between Jorgensen Grading Co. and Frank Wear; thence South 03 46' 33" West for 11.00 feet; thence South 88 12' 55" West for 386.72 feet to a point on the West line of the Northeast Quarter of said Section 6 at a point 493.60 feet South of the Northwest corner of said Northeast Quarter; thence South along said West line of the Northeast Quarter for 180.97 feet to the true point of beginning, together with part of Lots 9, 10, 11, 12, 13 and 14, Harper's Acres and part of vacated 51st Street as surveyed, platted and recorded in Douglas County, Nebraska, more particularly described as follows: Beginning at the Southeast corner of Lot 14, Harper's Acres, said point being on the West line of 50th Street; thence South 86 35' 53" West along the South line of Harper's Acres for 905.70 feet; thence North 03 46' 33" East for 11.00 feet; thence North 85 19' 52" East for 906.20 feet to the West line of 50th Street at a point 31.00 feet North of the Southeast corner of Lot 14, Harper's Acres; thence South 00 11' 51" East along said West line of 50th Street for 31.00 feet to the true point of beginning, all in the City of Omaha, Douglas County, Nebraska.

TRACT II

That part of the West 1/2 of the NE 1/4 of Section 6, T14N, R13E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the point of intersection of the East line of said West 1/2 and the centerline of the Chicago, Northwestern Railroad right-of-way; thence N 00 00'12"E (assumed bearing) 20.12 feet on the East line of said West 1/2; thence S 83 46'47" W 33.20 feet on a line 20.00 feet North of and parallel to the centerline of said Chicago, Northwestern Railroad to the West right-of-way line of 50th Street; thence N 00 00'12" E 35.21 feet on a line 33.00 feet West of and parallel to the East line of said West 1/2 and on the West right-of-way line of 50th Street to the point of beginning; thence S 83 46'47" W 909.97 feet on a line 55.00 feet North of and parallel to the centerline of the Chicago, Northwestern Railroad; thence N 48 01'42" W 46.66 feet; thence N 00 09'48" E 663.20 feet thence N 86 46'30" E 938.94 feet to the West line of 50th Street; thence S 00 00'12" W 648.62 feet on a line 33.00 feet West of and parallel to the East line of said West 1/2 and on the West line of 50th Street to the point of beginning

TRACT III

Lot 1, except the East 17.0 feet of the North 17.0 feet thereof, taken for street r.o.w. and all of Lots 2 and 3, Harper's Acres, an Addition to the City of Omaha, Douglas County, Nebraska.

TRACT IV

Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, Harpers Acres, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT B

(See Lease File for full size copy of site plan)

EXHIBIT C

Leased Premises Costs

The following is a list of all costs that are to be included in the "Leased Premises Costs" as set forth in Section 28 of the Lease.

- Land: Pro rata share of one half of the actual cost of the Land described on Exhibit A annexed to the Lease.
- Building: \$16.50 per square foot for building shell cost; such costs per square foot is based on the actual construction cost of the building shell in which the leased premises is situated (the "Building") including the walls, roof, docks, exterior doors and windows and utility service to the Building, all as reflected in the Plans to be approved by Tenant pursuant to Section 4 of the Lease.
- Site Work: Pro rata share of all site work costs attributable to Phase I work including but not limited to grading and site preparation, paving, striping, landscaping, all other site work, utilities, sewers (sanitary and storm), street improvements, traffic signals and the like installed by the Landlord or the City of Omaha and either paid by Landlord or financed through tax increment financing or special assessments, (Section 11.(b) regarding special assessments notwithstanding).

All Architectural and Engineering Fees relating to the Building and a pro rata share of such fees attributable to Phase I development (excluding all buildings within Phase I).

Pro rata share of the following Soft Costs relating to Phase I:

- A. Construction Loan Fee or Points relating to Phase I
- B. Construction Loan Interest paid in respect of the Construction Loan relating to Phase I to the commencement date of Tenant's lease
- C. Permanent Loan Fee for the permanent loan relating to Phase I
- D. Soil Tests and Surveys, Real Estate Taxes during construction, legal fees relating to loan closings, and Title Insurance Premium and miscellaneous fees, costs and expenses relating to the development, construction and financing of Phase I

Definitions:

1. "Pro rata share" as used herein shall mean that ratio derived by dividing (a) the gross leasable area of the Tenant's leased premises as established by the Parties in accordance with the Lease after completion of construction by (b) the total gross leasable area of all buildings in Phase I; the total gross leasable area of all buildings in Phase I shall be calculated as of the date on which the Tenant opens its Leased Premises for business with the public and shall include those buildings which are under construction but not yet completed.
2. "Phase I" shall mean the area of the Shopping Center outlined in yellow on Exhibit B to the Lease.

FIRST AMENDMENT TO LEASE

This First Amendment to Lease is dated as of July 1, 1991, and is between Fifty Joint Venture, a Nebraska General Partnership, (the "Landlord") and Baker's Supermarkets, Inc., a Nebraska Corporation, (the "Tenant").

Preliminary Statement

The Landlord and Tenant entered into a Lease Agreement (the "Lease") dated as of June 20, 1988, covering certain leased premises (the "Leased Premises") in Spring Valley Plaza Shopping Center which is situated on certain parcels of real estate situated at the southwest corner of 50th & F Street, Omaha, Nebraska, and more particularly described in the Lease (the "Shopping Center").

For the purpose of evidencing their Agreement with respect to various matters, the Parties have entered into this First Amendment to Lease ("First Amendment").

Terms and Conditions

In consideration of the foregoing Preliminary Statement which is repeated in its entirety in this portion of this First Amendment and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant agree as follows:

1. Any inconsistency between the Lease and this First Amendment shall be resolved in favor of this First Amendment. References in this First Amendment to paragraph titles, section numbers, and other terms correspond to those identified or defined in the Lease unless the context clearly requires otherwise.

2. The Commencement Date of the Lease is hereby established as June 20, 1990. The first Lease Year shall commence on January 1, 1991.

3. The legal description of Spring Valley Plaza Shopping Center is hereby revised in its entirety to read as follows:

Lots 1, 2, 3, 4, and 5, Spring
Valley Plaza, a subdivision in
Omaha, Douglas County, Nebraska.

All references to Exhibit A to the Lease shall refer to the immediately preceding legal description of the Shopping Center.

4. The Leased Premises contain 72,407 square feet measured in accordance with the provisions of Section 1. of the Lease.

5. With reference to Section 2.(a) of the Lease, the Parties hereby agree that the monthly fixed rent of \$31,772.53 shall be substituted for the amount originally contained in such Section 2.

6. With reference to Section 2.(b) of the Lease, January 1, 2001 shall be substituted for January 1, 2000. Additionally, the reference to "calendar year 1990" in such Section 2.(b) is hereby revised to read "calendar year 1991".

7. With reference to Section 2.(c) of the Lease, the Consumer Price Index shall be predicated on 1982-84=100.

8. Section 3.(a) is hereby revised in its entirety to read as follows:

(a) The term "Lease Year", as employed herein, is defined to mean a period of twelve (12) consecutive calendar months. The first Lease Year shall commence on the first day of January following the Commencement Date. Each succeeding Lease Year thereafter shall commence on the anniversary date of the commencement of the first Lease Year. The period of the Lease Term commencing as of the Commencement Date and ending December 31, 1990, shall be deemed a "Partial Lease Year". If there be a period at the end of the Lease Term which shall be less than a Lease Year due to an earlier termination of the Lease Term herein created, then such shorter period shall likewise be deemed a "Partial Lease Year".

9. Section 27.(f) is amended in its entirety to read as follows:

"(f) It is understood that Landlord may promulgate reasonable, nondiscriminatory written rules and regulations for the use of the common Areas".

10. Except as modified herein, the Lease is hereby ratified and affirmed in all respects.

Dated as of July 1, 1991.

FIFTY JOINT VENTURE, Landlord

By: Venture-50, Inc.,
Joint Venturer

By: *Carlton Baker*
Title: President

By: Lerner Fifty Partnership
Joint Venturer

By: *[Signature]*
Title: Managing Partner

BAKER'S SUPERMARKETS, INC.,
a Nebraska Corporation, Tenant

Attest: *[Signature]*
By: *[Signature]*
Title: *Chief Accounting Officer*

By: *George E. Whiff*
Title: *Chief Administrative Officer*

LEASE MODIFICATION AGREEMENT

WITNESSETH:

WHEREAS, FIFTY JOINT VENTURE, a Nebraska general partnership ("Landlord"), and Baker's Supermarket, Inc., a Nebraska corporation, entered into a Lease Agreement dated June 20, 1988 ("Lease Agreement"); thereafter modified by a First Amendment to Lease dated July 1, 1991 ("First Amendment") and the Lease Agreement and First Amendment are referred collectively to as the "Lease", and covering certain leased premises, together with all rights, privileges and appurtenances thereunto appertaining located at 4240 South 50th Street, in the Spring Valley Plaza Shopping Center, City of Omaha, County of Douglas, State of Nebraska (the "Leased Premises"); and

WHEREAS, Baker's Food Group, Inc., a Nevada corporation (hereinafter referred to as "Tenant") succeeded to the interest of Baker's Supermarket, Inc. by merger; and

WHEREAS, Landlord and Tenant do now desire to further modify and amend the Lease pursuant to the terms hereof.

NOW, THEREFORE, for and in consideration of One and no/100 Dollar (\$1.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and of the promises and undertakings hereinafter set forth, the parties agree that the Lease shall be and is hereby modified and amended as follows:

1. PREMISES AND TERM.

A. The first two (2) sentences of Section 1 of the Lease Agreement and the first sentence of Section 2 of the First Amendment are deleted and shall be replaced with the following:

"Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord the premises (the "Leased Premises") described herein for a term (the "Lease Term") of twenty-five (25) years ("Lease Years") and any "Partial Lease Year" preceding the first Lease Year, as such terms are hereinafter defined. The Lease Term shall commence as of June 20, 1990 (the "Commencement Date") and shall continue to and include December 31, 2015."

B. Section 3(b) of the Lease Agreement is hereby deleted and shall be replaced with the following:

"Provided that (i) this Lease is then not in default beyond any applicable cure period and is in full force and effect and (ii) Tenant (or a permitted assignee or subtenant) is in possession of the Leased Premises, Tenant (or a permitted assignee or subtenant) shall have the option to renew this Lease for three (3) additional periods of five (5) years each. The first renewal period shall commence on the date following the expiration of the revised Lease Term as set forth in this Lease Modification Agreement. Tenant may exercise each renewal option by either: (i) giving Landlord written notice of the exercise of the renewal option no later than six (6) months prior to the expiration date of the then current term; or (ii) failure to give written notice of the non-exercise of the renewal option on or before six (6) months prior to the expiration of the then current term (in such event, the renewal option shall be considered automatically exercised)."

2. RENT. Section 2 of the Lease Agreement and Sections 5 and 6 of the First Amendment are hereby deleted and shall be replaced with the following:

"Commencing on April 1, 2001, Tenant shall pay rent for the Leased Premises to Landlord in the amount set forth in Schedule 1 to this Lease Modification Agreement during the Lease Term and any renewal period ("Rent"); said Rent payments shall be payable monthly in advance on the first day of each month. Rent for a partial month shall be prorated."

3. ASSIGNMENT AND SUBLETTING.

A. Section 9 of the Lease Agreement is generally modified as follows:

"The provisions of Section 9 of the Lease Agreement are applicable to both an assignment or subletting of Tenant's interest under this Lease and the Leased Premises."

B. Section 9 of the Lease Agreement is deleted and replaced with the following:

"(a) Tenant's interest under this Lease may, at any time and from time to time, be assigned and reassigned, provided that such assignment or reassignment shall be at all times limited to a corporation which is a parent of, subsidiary of or affiliated by stock ownership with Tenant, or to a corporation resulting from any consolidation, reorganization, or merger to which Tenant or any of its subsidiaries or affiliates may be a

party, or to a person or entity which shall acquire substantially all of Tenant's assets wherever located. Subject to the use restrictions provided herein, Tenant and such assignee may at any time and from time to time sublet or license or permit a portion or portions of the Leased Premises, to the extent that the same does not in the aggregate exceed ten thousand (10,000) square feet of floor space, to be used for concessions, leased or licensed departments, and product demonstrations in connection with and as a part of the operation of Tenant's supermarket."

"(b)(1) In the event that Tenant shall desire to assign the Lease or sublet the Leased Premises to an occupant other than a corporation described in Section 3B(a) of this Lease Modification Agreement, for any lawful retail use (other than for use as a retail food store), Tenant shall furnish Landlord at least ninety (90) days prior to the effective date ("Tenant's Notice") of any such assignment or subletting the name of such assignee or subtenant and a description of the proposed use of the Leased Premises. Any such assignment or subletting by the Tenant shall be for a use not otherwise prohibited under provisions of this Lease or in violation of any existing exclusive use restriction theretofore granted by Landlord to any tenant or occupant of the shopping center, for which purpose Landlord shall furnish on Tenant's written request a listing of any such restrictions or violation of applicable zoning ordinance. Landlord's written consent to such assignment or subletting, which may be given or withheld arbitrarily, shall be given or withheld forty-five (45) days following notice as above provided. In the event Landlord shall fail to either withhold or give its consent to such assignment or subletting within such forty-five (45) day period, then Landlord shall conclusively be presumed to have assented to such assignment or subletting."

"(b)(2) In the event that Tenant shall desire to assign the Lease or sublet the Leased Premises to an unrelated third party occupant for use as a retail food store, Tenant shall furnish Landlord at least ninety (90) days prior to the effective date of such assignment or subletting the name of the assignee or subtenant. Landlord's written consent to such assignment or subletting shall not be unreasonably withheld and shall be given or withheld within forty-five (45) days following the receipt by Landlord of Tenant's notice as above provided. In the event Landlord shall fail to either withhold or give its consent to such assignment or subletting within such forty-five (45) day period, then Landlord shall conclusively be presumed to have assented to such subletting."

"(b)(3) If Landlord shall notify Tenant of its refusal to consent to such proposed assignment or subletting described in Sections (b)(1) and (b)(2)

above, this Lease shall terminate effective as of forty-five (45) days after Tenant's receipt of Landlord's notice of disapproval. On or before the expiration of such forty-five (45) day period, Tenant shall vacate the Leased Premises and return possession of the Leased Premises to Landlord in the condition required under the Lease; and in the event of a termination as a result of Tenant's Notice, Tenant agrees to pay Landlord Rent and other charges due under the Lease for the remainder of the one (1) year period commencing on Tenant's Notice."

"(b)(4) Notwithstanding any provisions of Section (b) herein, in the event Tenant desires to sell: (i) all of its assets located in the Leased Premises and (ii) all of its assets in the Omaha, Nebraska Metropolitan Statistical Area (other than the assets of Tenant's convenience stores), and (iii) assign its interest in, to and under the Lease; and (iv) assign its interest in, to and under all of its other leases in the Omaha, Nebraska Metropolitan Statistical Area to a single, unrelated third party entity, Landlord agrees that it shall have no right to approve or disapprove such sale of assets and assignment of leases so long as (v) the intended use for the assets and Leased Premises is that of a retail grocery/supermarket store; and (vi) The Kroger Co., as guarantor, and Tenant shall remain liable for all of the remaining Lease obligations (including all currently unexercised, but subsequently exercised options). However, the continuing liability of Dillon Companies, Inc. and The Kroger Co. shall extend only to the primary and option terms and Rent set forth in Schedule 1 to this Lease Modification Agreement and not to any additional term or increased Rent, unless such additional term or increased Rent was agreed to in writing by a tenant (or permitted assignee or subtenant) that is a parent, subsidiary or affiliated entity (by virtue of stock ownership) to either Dillon Companies, Inc. or The Kroger Co. Tenant agrees to provide Landlord with not less than sixty (60) days prior written notice of Tenant's proposed sale of all of its assets and assignment of its interest under all of its leases in the Omaha, Nebraska Metropolitan Statistical Area and evidence sufficient to show that Landlord's consent is not required."

"(c) If Tenant shall sublet the Leased Premises for a fixed monthly rent of more than five percent (5%) more than the fixed monthly rent (defined as direct or indirect obligations of Tenant for the payments of money under the Lease including rental measured by gross receipts or any other manner) provided in the Lease (as adjusted pursuant to this Lease), Tenant shall pay to Landlord the amount of such rent in excess of such five percent (5%) as and when collected from the subtenant. Tenant shall within thirty (30) days (i) next following execution thereof and (ii) next following written request made by Landlord, from time to time, furnish Landlord a copy of any sublease of the Leased Premises or

any modification or amendment thereto certified as accurate by an officer of Tenant."

"(d) It is the specific intent of the parties, and they so confirm, that no subletting of any part as distinct from the entirety of the Leased Premises may be effected, except as limited in subparagraph (a) above, and that any proposed subletting - whether or not assented to by the Landlord - shall be of the aggregate of the Leased Premises to a single prospective sublessee and any unrelated third party sublessee shall not be permitted the right to further sublet or assign his or its sublease of the Leased Premises."

"(e) Notwithstanding any assignment or reassignment permitted by subparagraph (a) above, or subletting to a non-related third party occupant by Tenant, the liability of Baker's Supermarkets, Inc. for payment of the fixed rent, as adjusted pursuant to the terms of this Lease, and the timely performance of all other terms contained in this Lease for the remainder of the term and any renewal thereof shall not be released or reduced."

4. USE AND CONTINUOUS OPERATIONS. Section 10 of the Lease Agreement is hereby amended by the addition of a Section (b)(iv) as follows:

"(b) (iv) If the Tenant of the Leased Premises shall not engage in the sale of intoxicating liquors, including wine or beer, or operate a supermarket grocery thereon, any restriction imposed on Landlord regarding the use of other premises in the shopping center of which the Leased Premises are a part shall be inoperable with respect to the activity in which Tenant is not engaged. For purposes of this Section 4, Tenant shall be deemed to have ceased operating a supermarket grocery store on the Leased Premises in the event it has ceased to use in excess of 750 square feet of floor area (one-half of adjoining aisles being included in the measurement of such area) for the sale of food or food products."

Section 10 of the Lease is further amended by the addition of a new Section (c) as follows:

"(c) Except as otherwise provided in this Lease, Tenant shall continuously use the Leased Premises for the operation of a retail grocery supermarket, except (i) when the Leased Premises are untenable or (ii) during such time as is reasonably necessary to prepare for an assignment of this Lease, or a subletting of all the Leased Premises, or a discontinuance of operations, the authority of which is limited by other provisions herein contained, or the expiration of the term of this Lease. However, the period of non-use under the

circumstances of (ii) above shall not exceed sixty (60) days without the consent of Landlord.

Tenant may discontinue its use of the Leased Premises provided that Tenant shall, at least one hundred twenty (120) days prior to such discontinuance, furnish the Landlord with written notice of such intent ("Tenant's Notice"), setting forth the effective date of such discontinuance (the "Date of Discontinuance"). Commencing immediately upon Landlord's receipt of Tenant's Notice, Landlord shall have the exclusive right, for a period of one hundred eighty (180) days (the "Exclusivity Period") to obtain a substitute tenant for the Leased Premises.

If Landlord is unable to secure a replacement tenant on or before the expiration of the Exclusivity Period, then upon the expiration of the Exclusivity Period, both Landlord and Tenant shall have the right to market the Leased Premises. If Landlord is able to enter into an agreement with a substitute tenant during the Exclusivity Period, then Landlord shall notify Tenant in writing of Landlord's agreement with the substitute tenant (the "Substitute Tenant Notice") and the Lease between Landlord and Tenant for the Leased Premises shall terminate forty-five (45) days following the date Tenant receives Landlord's Substitute Tenant Notice (the "Termination Date"). Tenant shall vacate the Leased Premises and deliver possession thereof back to Landlord in the condition required by the Lease on or before the Termination Date, and both parties and The Kroger Co., as guarantor, shall be released from all further obligations under the Lease.

In addition, as of the Termination Date, Tenant shall pay to Landlord a sum of money (the "Termination Payment") equal to the Rent and other charges that would have otherwise been due and payable by Tenant to Landlord for the period commencing as of the Termination Date and ending upon the first anniversary of Tenant's Notice. Following the expiration of the Exclusivity Period, Tenant shall have the opportunity to assign the Lease or sublet the Leased Premises in accordance with Section 3 of this Lease Modification Agreement and, further, Landlord shall retain the right to terminate the Lease at any time upon not less than forty-five (45) days prior written notice to Tenant, and on or before the Termination Date. If Landlord elects to terminate the Lease, then the Landlord and Tenant and The Kroger Co., as guarantor, shall be released from all further liability or obligation under the Lease from and after the Termination Date. Tenant shall vacate the Leased Premises and deliver possession thereof back to Landlord in the condition required by the Lease. In either event, Tenant shall pay to Landlord the Termination Payment, if required, pursuant to the provisions hereof.

Until the Date of Discontinuance, the undertakings of the parties, one to the other under this Lease, shall remain fully effective to all intents and purposes as if the Date of Discontinuance had been established as the original expiration date of the then Lease Term. If Landlord or Tenant shall fail to exercise the option granted it to terminate and cancel this Lease, the obligations and liabilities of the Tenant, as provided in this Lease, except for its undertaking to continue operations, shall remain unaffected and fully operable."

5. LANDLORD'S TERMINATION RIGHT. Except as otherwise specifically set forth in Section 4 of this Lease Modification Agreement, any right reserved by Landlord under the Lease to terminate such Lease solely in the event of an assignment of the Lease or sublet of the Leased Premises is hereby automatically null and void and of no further force or effect as of the date of this Lease Modification Agreement.

6. LANDLORD'S CONSENT TO ASSIGNMENT. Landlord consents to Tenant's assignment of all of its right, title and interest in, to and under the Lease to Dillon Companies, Inc. Provided, however, Landlord's consent to the aforementioned assignment is contingent upon: (i) Dillon Companies, Inc. executing an assignment and assumption of lease agreement in which Dillon Companies, Inc. agrees to assume the obligations and liabilities of Tenant under said Lease and in form and content acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed; and (ii) The Kroger Co.'s unconditional guarantee of the Lease and all amendments and modifications thereto, including any renewal options, but specifically excluding any additional term or increased Rent beyond that which is specifically set forth in Schedule 1 to this Lease Modification Agreement, agreed to in writing by a tenant (or permitted assignee or subtenant) that is an unrelated third party entity (by virtue of stock ownership) to either Dillon Companies, Inc. or The Kroger Co. The form of Guaranty of Lease for The Kroger Co. is attached hereto as Exhibit "A" and made a part hereof.

7. CONTINGENCY. The effectiveness of this Lease Modification Agreement and the rights and obligations of Landlord and Tenant hereunder are expressly contingent upon the closing of the purchase and sale of the Baker's Supermarket by Tenant and Fleming Companies, Inc., as Seller, to Dillon Companies, Inc. and The Kroger Co., as Buyer.

8. NO OTHER MODIFICATION. All other terms and conditions of said Lease and of any previous amendments and modifications thereof shall remain unchanged.

9. BINDING EFFECT. The provisions of this Lease Modification Agreement shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

10. COUNTERPARTS. This Lease Modification Agreement may be executed in counterparts by Landlord and Tenant and such counterparts taken together shall constitute one agreement.

IN WITNESS WHEREOF, this Lease Modification Agreement has been executed as of March 23rd, 2001 (as to Landlord) and _____, 2001 (as to Tenant).

Signed and acknowledged
in triplicate in the presence of:

Witnesses for Landlord:

John Kammer
Barbara E. Peterson

John Kammer
Barbara E. Peterson

Witnesses for Tenant:

LANDLORD:

FIFTY JOINT VENTURE, a Nebraska general partnership

By: Venture-50, Inc., a Nebraska corporation,
Joint Venturer

By: [Signature]

Title: VICE PRESIDENT

By: Lerner Fifty Partnership, a Nebraska
general partnership, Joint Venturer

By: [Signature]

Title: Partner

TENANT:

BAKER'S FOOD GROUP, INC.,
a Nevada corporation

By: _____

Title: _____

(Landlord/Corporate Acknowledgment)

STATE OF NEBRASKA)
) .ss:
COUNTY OF DOUGLAS)

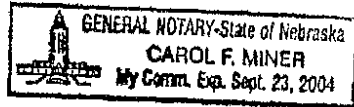
This day, before me, a Notary Public of the State and County aforesaid, personally appeared JEFFREY M. KEATING, VICE PRESIDENT of VENTURE-50, INC., a Nebraska corporation, Joint Venturer of FIFTY JOINT VENTURE, a Nebraska general partnership, Landlord in the foregoing Lease Modification Agreement, with whom I am personally acquainted and who upon oath acknowledged himself to be such officer of VENTURE-50, INC., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation and partnership.

Witness my hand and official seal this 23RD day of MARCH, 2001.

Carol F. Miner
Notary Public

My commission expires:

9-23-04



STATE OF NEBRASKA)
) .ss:
COUNTY OF DOUGLAS)

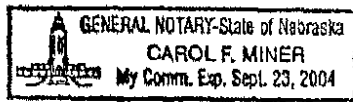
This day, before me, a Notary Public of the State and County aforesaid, personally appeared JAY R. LERNER, PARTNER of LERNER FIFTY PARTNERSHIP, a Nebraska general partnership, Joint Venturer of FIFTY JOINT VENTURE, a Nebraska general partnership, Landlord in the foregoing Lease Modification Agreement, with whom I am personally acquainted and who upon oath acknowledged himself to be such officer of LERNER FIFTY PARTNERSHIP, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the partnerships.

Witness my hand and official seal this 23RD day of MARCH, 2001.

Carol F. Miner
Notary Public

My commission expires:

9-23-04



6. LANDLORD'S CONSENT TO ASSIGNMENT. Landlord consents to Tenant's assignment of all of its right, title and interest in, to and under the Lease to Dillon Companies, Inc. Provided, however, Landlord's consent to the aforementioned assignment is contingent upon: (i) Dillon Companies, Inc. executing an assignment and assumption of lease agreement in which Dillon Companies, Inc. agrees to assume the obligations and liabilities of Tenant under said Lease and in form and content acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed; and (ii) The Kroger Co.'s unconditional guarantee of the Lease and all amendments and modifications thereto, including any renewal options, but specifically excluding any additional term or increased Rent beyond that which is specifically set forth in Schedule 1 to this Lease Modification Agreement, agreed to in writing by a tenant (or permitted assignee or subtenant) that is an unrelated third party entity (by virtue of stock ownership) to either Dillon Companies, Inc. or The Kroger Co. The form of Guaranty of Lease for The Kroger Co. is attached hereto as Exhibit "A" and made a part hereof.

7. CONTINGENCY. The effectiveness of this Lease Modification Agreement and the rights and obligations of Landlord and Tenant hereunder are expressly contingent upon the closing of the purchase and sale of the Baker's Supermarket by Tenant and Fleming Companies, Inc., as Seller, to Dillon Companies, Inc. and The Kroger Co., as Buyer.

8. NO OTHER MODIFICATION. All other terms and conditions of said Lease and of any previous amendments and modifications thereof shall remain unchanged.

9. BINDING EFFECT. The provisions of this Lease Modification Agreement shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

10. COUNTERPARTS. This Lease Modification Agreement may be executed in counterparts by Landlord and Tenant and such counterparts taken together shall constitute one agreement.

IN WITNESS WHEREOF, this Lease Modification Agreement has been executed as of _____, 2001 (as to Landlord) and March 26th 2001 (as to Tenant).

JOB

Signed and acknowledged
in triplicate in the presence of:

Witnesses for Landlord:

Witnesses for Tenant:

LANDLORD:

FIFTY JOINT VENTURE, a Nebraska general
partnership

By: Venture-50, Inc., a Nebraska corporation,
Joint Venturer

By: _____

Title: _____

By: Lerner Fifty Partnership, a Nebraska
general partnership, Joint Venturer

By: _____

Title: _____

TENANT:

BAKER'S FOOD GROUP, INC.,
a Nevada corporation

By: Michael R. Berdewitz

Title: Vice President

(Tenant Acknowledgment)

STATE OF Oklahoma)
) .ss:
COUNTY OF Oklahoma)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Michael P. Bokwith, Vice President of BAKER'S FOOD GROUP, INC., a Nevada corporation, with whom I am personally acquainted and who upon oath acknowledged himself to be the Vice President of BAKER'S FOOD GROUP, INC., Tenant in the foregoing Lease Modification Agreement, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation.

Witness my hand and official seal this 22nd day of March, 2001.

Karen M. Williams
Notary Public

My commission expires:

8/6/02

(Tenant Acknowledgment)

STATE OF _____)
) ss:
COUNTY OF _____)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared _____, _____ of BAKER'S FOOD GROUP, INC., a Nevada corporation, with whom I am personally acquainted and who upon oath acknowledged himself to be the _____ of BAKER'S FOOD GROUP, INC., Tenant in the foregoing Lease Modification Agreement, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation.

Witness my hand and official seal this ___ day of _____, 2001.

Notary Public

My commission expires:

SCHEDULE 1

Baker's Supermarket - Spring Valley

<u>Term</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>From</u>	<u>Through</u>
Primary	\$414,822.12	\$34,568.51	04/01/01	12/31/15
Option #1	\$552,128.24	\$46,010.69	01/01/16	12/31/20
Option #2	\$607,341.07	\$50,611.76	01/01/21	12/31/25
Option #3	\$668,075.17	\$55,672.93	01/01/26	12/31/30

EXHIBIT "A"

GUARANTY OF LEASE

THIS GUARANTY OF LEASE is entered into on the _____ day of _____, 2001, by and between PDM, Inc., a Nebraska corporation, hereinafter "Landlord", and THE KROGER CO., an Ohio corporation, hereinafter "Guarantor".

WHEREAS, Baker's Food Group, Inc., a Nevada corporation ("Baker's") and successor-in-interest by merger to Baker's Supermarkets, Inc., and Landlord entered into a Lease Agreement dated _____, 2000 (collectively, the "Lease"), for certain premises located at _____ (the "Demised Premises"); and

WHEREAS, on _____, 2001, Baker's assigned all of its right, title, interest and estate in, to and under the Lease to Dillon Companies, Inc., a Kansas corporation ("Tenant");

WHEREAS, Landlord would not otherwise consent to the assignment of the Lease by Baker's to Tenant without Guarantor's execution of said Guaranty of Lease.

NOW THEREFORE, for and in consideration of the Demised Premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each, the parties hereto agree as follows:

1. Guarantor hereby guarantees to Landlord the payment of any sum of money due and owing by Tenant to Landlord or any obligation for the payment of money which Tenant may have pursuant to the terms of the Lease, and the full and timely performance by Tenant of all terms, covenants, conditions and other obligations of Tenant under the Lease.
2. The obligations of the Guarantor under this Guaranty are direct, unconditional and completely independent of the obligations of Tenant except as otherwise set forth herein.
3. Landlord may exercise any of its rights under this Guaranty, including without limitation, bringing and prosecuting any action against Guarantor without the necessity of joining Tenant, or any other guarantor of Tenant's obligations under the Lease, to the action or previously proceeding against, or exhausting any other remedies, against Tenant or any other guarantor of Tenant's obligations under the Lease.
4. The liability assumed by Guarantor under this Guaranty shall not be affected by Landlord's acceptance of any settlement or composition offered by Tenant decreed with respect to Tenant by any court, either in liquidation, readjustment, receivership, bankruptcy or otherwise, except only to the extent that such settlement has resulted in actual payment of a part of the indebtedness under said Lease, and then only to that extent.
5. This instrument is a continuing, binding, absolute and unconditional guarantee which shall remain in full force and effect until all payments due under said Lease have been paid or until terminated by agreement between the parties hereto or as hereinafter set forth.

6. The provisions of the Lease may be changed by agreement between Landlord and Tenant at any time, or by course of conduct, without the consent of, or without notice to, Guarantor. Guarantor's obligations hereunder shall continue in favor of Landlord notwithstanding any extension, modification, assignment or alteration of said Lease by Landlord and Tenant or their successors and assigns, and notwithstanding any assignment of said Lease or subletting of all or part of the Demised Premises, with or without the consent of Landlord; no extension, modification, alteration or assignment of said Lease or subletting of the Demised Premises shall in any manner release or discharge Guarantor from its obligations hereunder, except as hereinafter set forth. This Guaranty shall not be affected by Landlord's failure or delay in enforcing any of its rights against Guarantor or Tenant. Notwithstanding anything contained herein to the contrary, Guarantor's liability hereunder shall not be increased by any modification to the Lease executed by a tenant (or permitted assignee or subtenant) that is an unrelated third party (by virtue of stock ownership) to either Dillon Companies, Inc. or The Kroger Co.

7. Guarantor agrees to pay any expenses incurred by and shall indemnify Landlord in the collection and, enforcement of this Guaranty and all obligations of Tenant under the Lease, including costs and reasonable attorneys' fees (including those incurred for appellate, administrative or bankruptcy proceedings) in the event that Landlord shall be resort to the courts or require the services of an attorney to collect under this Guaranty or enforce the obligations of Tenant under the Lease.

8. Any of the above to the contrary notwithstanding, this Guaranty shall be limited to the obligations of the Tenant in said Lease or incurred by Landlord in enforcing this Guaranty, including reasonable attorneys' fees and expenses.

9. The rights and authority granted to Landlord in this Guaranty shall inure to the benefit of its successors and assigns, except as hereinafter set forth.

10. If the obligations of Tenant are guaranteed by more than one party, their obligations shall be joint and several, and the release of any of such guarantors shall not release any other of such guarantors.

11. Time shall be of the essence with respect to all of the provisions of this Guaranty.

12. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

13. The undersigned individual represents to Landlord that he or she is authorized to execute this Guaranty of Lease on behalf of Guarantor, and that all corporate action of Guarantor necessary to authorize the execution of this Guaranty of Lease on behalf of Guarantor has been taken.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on the date set forth above to be effective on the date the Lease is assigned to Tenant.

Witnesses:

THE KROGER CO.,
an Ohio corporation

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____ the _____ of The Kroger Co., an Ohio corporation, on behalf of the corporation, as Guarantor.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

Notary Public - State of Ohio

LEASE MODIFICATION AGREEMENT NO. 2

WITNESSETH:

WHEREAS, FIFTY JOINT VENTURE, a Nebraska general partnership ("Landlord"), and Baker's Supermarket, Inc., a Nebraska corporation, entered into a Lease Agreement dated June 20, 1988 ("Lease Agreement"); thereafter modified by a First Amendment to Lease dated July 1, 1991 ("First Amendment") and a Lease Modification Agreement dated March 26, 2001 ("Lease Modification") and the Lease Agreement, First Amendment and Lease Modification are referred collectively to as the "Lease", and covering certain leased premises, together with all rights, privileges and appurtenances thereunto appertaining located at 4240 South 50th Street, in the Spring Valley Plaza Shopping Center, City of Omaha, County of Douglas, State of Nebraska (the "Leased Premises"); and

WHEREAS, Dillon Companies, Inc., a Kansas corporation, hereinafter referred to as "Tenant" is the assignee of Baker's Food Group, Inc., a Nevada corporation (successor to the interest of Baker's Supermarket, Inc. by merger); and

WHEREAS, Landlord and Tenant do now desire to further modify and amend the Lease pursuant to the terms hereof.

NOW, THEREFORE, for and in consideration of the contemporaneous payment by Tenant to Landlord in the amount of One Hundred Seventy-Two Thousand Seven Hundred Eighteen and 54/100 Dollars (\$172,718.54) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and of the promises and undertakings hereinafter set forth, the parties agree that the Lease shall be and is hereby modified and amended as follows:

1. RENT. Section 2 of the Lease Modification is hereby deleted and shall be replaced with the following:

"Commencing on April 1, 2001, Tenant shall pay rent for the Leased Premises to Landlord in the amount set forth in Schedule 1 to this Lease Modification Agreement No. 2 during the Lease Term and any renewal period ("Rent"); said Rent payment shall be payable monthly in advance on the first day of each month. Rent for a partial month shall be prorated."

2. NO OTHER MODIFICATION. All other terms and conditions of said Lease and of any previous amendments and modifications thereof shall remain unchanged.

3. BINDING EFFECT. The provisions of this Lease Modification Agreement No. 2 shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

4. COUNTERPARTS. This Lease Modification Agreement No. 2 may be executed in counterparts by Landlord and Tenant and such counterparts taken together shall constitute one agreement.

Signed and acknowledged
in triplicate in the presence of:

Witnesses for Landlord:

[Signature]
William E. Peterson

LANDLORD:

FIFTY JOINT VENTURE, a Nebraska
general partnership

By: Venture-50, Inc., a Nebraska corporation,
Joint Venturer

By: [Signature]
Title: VICE PRESIDENT

By: Lerner Fifty Partnership, a Nebraska
general partnership, Joint Venturer

Catherine Ehlinger
William E. Peterson

By: [Signature]
Title: Partner

TENANT:

DILLON COMPANIES, INC., a Kansas
corporation

Witnesses for Tenant:

Lyleia H. Cook
Deborah J. Bruns

By: [Signature]
Title: VP



AGREED AS TO FORM AND CONTENT:

GUARANTOR:

The Kroger Co., an Ohio corporation

By: *Jeffrey M. Keating*

Title: *VP*



Landlord/Corporate Acknowledgment

STATE OF NEBRASKA)
) .ss:
COUNTY OF DOUGLAS)

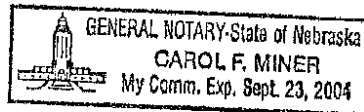
This day, before me, a Notary Public of the State and County aforesaid, personally appeared *JEFFREY M. KEATING*, *VICE PRESIDENT* of VENTURE-50, INC., a Nebraska corporation, Joint Venturer of FIFTY JOINT VENTURE, a Nebraska general partnership, Landlord in the foregoing Lease Modification Agreement, with whom I am personally acquainted and who upon oath acknowledged himself to be such officer of VENTURE-50, INC., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation and partnership.

Witness my hand and official seal this *10th* day of *APRIL*, 2001.

Carol F. Miner
Notary Public

My commission expires:

9-23-04



STATE OF NEBRASKA)
) .ss:
COUNTY OF DOUGLAS)

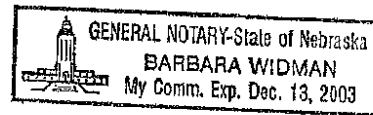
This day, before me, a Notary Public of the State and County aforesaid, personally appeared Jay R. Lerner, Partner of LERNER FIFTY PARTNERSHIP, a Nebraska general partnership, Joint Venturer of FIFTY JOINT VENTURE, a Nebraska general partnership, Landlord in the foregoing Lease Modification Agreement, with whom I am personally acquainted and who upon oath acknowledged himself to be such officer of LERNER FIFTY PARTNERSHIP, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the partnerships.

Witness my hand and official seal this 10th day of April, 2001.

Barbara Widman
Notary Public

My commission expires:

12-13-03



TENANT/CORPORATE ACKNOWLEDGMENT

OHIO
STATE OF ~~KANSAS~~)
) .ss:
COUNTY OF HAMILTON)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared LAWRENCE M. TILNER, VICE PRESIDENT of DILLON COMPANIES, INC., a Kansas corporation, with whom I am personally acquainted and who upon oath acknowledged himself to be the VICE PRESIDENT of DILLON COMPANIES, INC., Tenant in the foregoing Lease Modification No. 2, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation.

Witness my hand and official seal this 12th day of April, 2001.

Sylvia H. Cook
Notary Public

My commission expires:

SYLVIA H. COOK
Notary Public, State of Ohio
My Commission Expires June 12, 2005

SCHEDULE 1

Baker's Supermarket - Spring Valley

<u>Term</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>From</u>	<u>Through</u>
Primary	\$451,183.92	\$37,598.66	04/01/01	12/31/05
Primary	\$414,822.12	\$34,568.51	01/01/06	12/31/15
Option #1	\$552,128.24	\$46,010.69	01/01/16	12/31/20
Option #2	\$607,341.07	\$50,611.76	01/01/21	12/31/25
Option #3	\$668,075.17	\$55,672.93	01/01/26	12/31/30

PDM, Inc.
8805 Indian Hills Drive, Suite 210
Omaha, Nebraska 68114

March 8, 2005

Mr. Jeffrey J. Bieber
Manager, Real Estate
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100

Mr. Richard Juro
President
No Frills Plattsmouth, Inc.
11163 Mill Valley Road
Omaha, Nebraska 68154

**RE: Baker's #314
4240 South 50th Street ("Leased Premises")
Omaha, Nebraska**

Dear Mr. Bieber and Mr. Juro:

Reference is made to a certain Lease Agreement dated June 20, 1988, by and between Fifty Joint Venture, a Nebraska general partnership ("Landlord") and Baker's Supermarkets, Inc., a Nebraska corporation; thereafter modified by First Amendment to Lease dated July 1, 1991. The Baker's Food Group, a Nevada corporation, succeeded to the interest of Baker's Supermarkets, Inc. by merger and entered into a Lease Modification Agreement with Landlord dated March 23, 2001, wherein Landlord consented to the assignment of Tenant's interest under the Lease to Dillon Companies, Inc., a Kansas corporation (hereinafter referred to as "Tenant"). Landlord and Tenant thereafter entered into Lease Modification Agreement No. 2, executed by Landlord on April 10, 2001 and by Tenant on April 12, 2001. Landlord and Tenant entered into a Mutual Release and Settlement Agreement, executed by Landlord on January 8, 2004 and by Tenant on January 16, 2004. The Lease Agreement, First Amendment to Lease, Lease Modification Agreement, Lease Modification Agreement No. 2, and Mutual Release Settlement Agreement shall collectively be referred to herein as the "Lease," covering the above referenced Leased Premises.

In accordance with Section 3.B.(b)(2) of the Lease Modification Agreement dated March 23, 2001, Tenant is required to furnish Landlord with the name of subtenant at least ninety (90) days prior to the effective date of such subletting. Landlord's consent to such subletting shall be

given or withheld within forty-five (45) days following the receipt by Landlord of Tenant's notice as above provided.

It is Tenant's desire to sublet the entire Leased Premises to No Frills Plattsmouth, Inc., a Nebraska corporation ("Subtenant") for use as a retail food store. Tenant and Subtenant have requested that Landlord waive the ninety (90) day notice period as described in the preceding paragraph and consent to such subletting at the earliest possible date.

Landlord hereby consents to the subletting between Tenant and Subtenant of the entire Leased Premises for use as a retail food store on the express condition that: (a) Tenant shall remain primarily liable to Landlord for payment of rent and other charges due under the Lease and for the performance of all the covenants of the Tenant under the Lease; (b) The Kroger Co. reaffirms its unconditional guarantee of the Lease and all amendments and modifications thereto, including any renewal options, to the extent any of the renewal options are exercised; (c) Tenant shall be responsible for all costs and expenses associated with the restoration of the building fascia necessitated by the removal of Tenant's existing building sign. Such restoration shall, (i) be completed prior to the installation of Subtenant's building sign, (ii) be performed by a Landlord approved contractor, and (iii) be accomplished in accordance with Landlord's specifications and requirements; (d) Subtenant's building sign shall be individual channel letters without a sign background, internally illuminated with neon lighting, and without exposed electrical conduit wiring, boxes, or transformers; and (e) the Leased Premises shall not be closed to the public in excess of four (4) consecutive days during the transition of retail food store operations from Tenant to Subtenant.

Landlord agrees that subject to the use restrictions provided within the Lease, Subtenant may at any time and from time to time sublet or license or permit a portion or portions of the Leased Premises, to the extent that the same does not in the aggregate exceed ten thousand (10,000) square feet of floor space, to be used for concessions, leased or licensed departments, and product demonstrations in connection with and as a part of the operation of Subtenant's supermarket. Public access to all such areas, sublet, leased or licensed, shall be from within the Leased Premises. Access directly from the common areas of the shopping center shall be strictly prohibited.

Subject to the use restrictions provided within the Lease, Subtenant may assign the Sublease approved in this letter or sublet the entire Leased Premises only (a) if and to the extent that such an assignment or sublease is permitted by the Lease (disregarding the prohibition against assignment and subletting by a sublessee set forth in paragraph 3(d) of the Lease Modification Agreement), and (b) after notifying and obtaining the consent of the Landlord as required by the Lease and obtaining the written consent of the Tenant. Notwithstanding any such assignment or subletting proposed by Subtenant and Landlord's consent, whether given or withheld, Tenant shall remain liable to Landlord under the Lease and The Kroger Co. shall remain as guarantor of the Lease.

By signing below, Landlord agrees that if Landlord notifies Tenant in writing of any default under the Lease, Landlord will concurrently notify Subtenant in writing of such default and will permit Subtenant to cure the default within the cure period provided in the Lease. Landlord understands and agrees that this agreement is intended to be for the benefit of Subtenant and that in entering into the Sublease Agreement, Subtenant will justifiably rely on this agreement by

Landlord to give Subtenant such notice and opportunity to cure such default by Tenant. Notices hereunder from Landlord to Subtenant shall be deemed served if delivered by recognized courier service such as Federal Express or if mailed by registered or certified mail, addressed to Subtenant at: 11163 Mill Valley Road, Omaha, Nebraska 68154. Such notices shall be deemed effectively delivered and served upon being postmarked for United States mail or delivered to such courier service.

Also, in accordance with Section 3.B.(c) of the Lease Modification Agreement dated March 23, 2001, please provide Landlord with a copy of the fully executed sublease between Tenant and Subtenant.

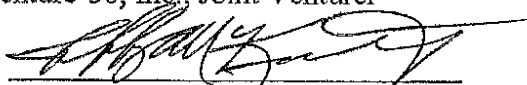
Landlord's consent to the proposed subletting herein, and all other provisions of this letter shall become null and void if Tenant and Subtenant have not fully executed a Sublease Agreement covering the Leased Premises, prior to May 1, 2005.

If you should have any questions, please contact me at (402) 392-1157, extension 203.

Sincerely,

Fifty Joint Venture, Landlord

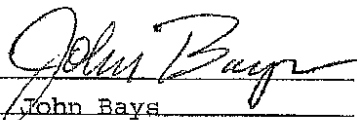
By: Venture-50, Inc., Joint Venturer

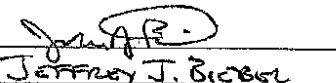
By: 
Jeffrey M. Keating, Vice President

Accepted and agreed to this 21ST day of MARCH, 2005.

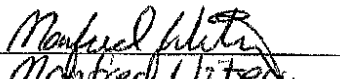
Dillon Companies, Inc.

The Kroger Co.

By: 
Name: John Bays
Title: Vice President
Date: 3-21-05

By: 
Name: Jeffrey J. Biebol
Title: MANAGER
Date: 3/21/05

No Frills Plattsmouth, Inc.

By: 
Name: Manfred Witecy
Title: C.O.O.
Date: 3/24/05

ROOFOPTIONS

Management Report



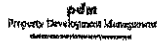
4212 S. 50th St., Omaha, NE

Prepared For

gda
Property Development Management
www.gdam.com

In 2005 the tenant of the supermarket had a new EPDM membrane roof installed. At the property owners request, RoofOptions inspected the roof on 12-8-2008. That inspection revealed that the existing roof system was overlaid onto the previous roof system without a tear-off. The perimeter and penetration flashing areas failed and were wide open to water infiltration. The roof system was saturated and no longer was a viable waterproofing system. The overlay project, along with associated detailing was not installed per any manufacturers or NRCA specifications and/or guidelines. The report concluded by recommending a complete tear-off and installation of a new roof system as the only viable solution.

This report is of a follow-up roof inspection conducted on 1-21-2014.

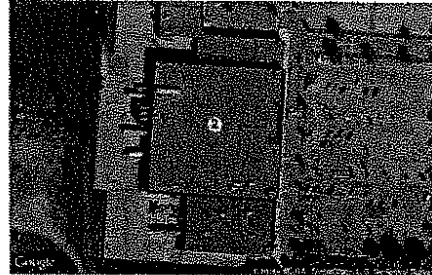


Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

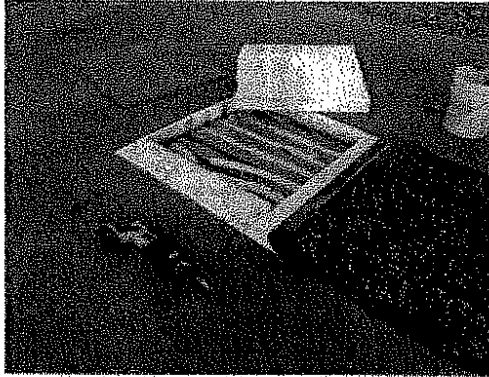
Observations

Section: Supermarket
Size: 72367

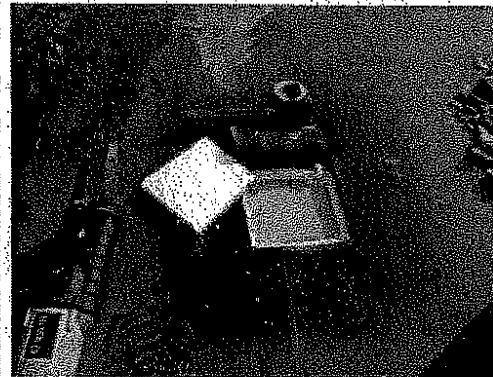
Inspection Date: 01/21/2014
Inspector: Jeff Ham



Composition



TC-1
Acoustic flue filled deck
.75" fiberboard
3.5" eps
60 mil EPDM (2 layers)
Ballast



TC-near radius and low slope
Concrete
.5" eps
2 layers 60 mil EPDM
Ballast

Site Overview
Section 1
Section 2
Budget Match
Composition
Observations

pdms
Property Development Management

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Observations
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



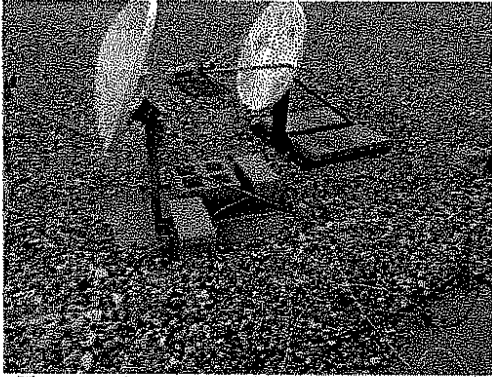
Site Overview
Section 1
Section 2
Budget Matrix
Observations

Penetration 1



Small RTU fan, plumbing stack, and pitch box.

Satellite



There are 4 on the main roof.

Overview



Facing northeast

Overview



Facing northwest

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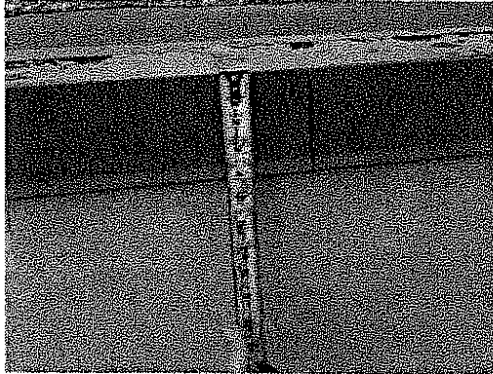
Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Observations (continued)
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



South drip edge



The drip edge metal has a 4" face. A 1.5" gravel stop. With a 3" fastening flange.

Overview



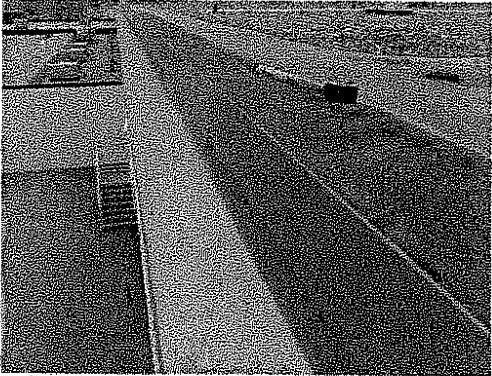
Facing southwest

Overview



Facing southeast

North wall gravel stop



Along the entire north wall is a gravel stop metal. The face measures 8" with a slight bend 4 3/8" from the top to prevent "oil canning" which is a warped appearance. The gravel stop returns 1.5" to the roof.

Site Overview
Section 1
Section 2
Budget Matrix
Competition
Observations
Partitions
Roofing

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Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Observations (continued)
Section: Supermarket
Size: 72367
Inspection Date: 01/21/2014
Inspector: Jeff Ham

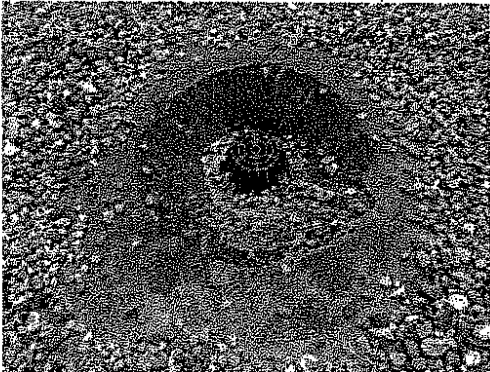


Scupper



There are 2 scuppers along the west wall. They are roughly 25' in from each corner. These are 12" wide

Drain



There are 6 internal drains along both the north and south wall. There are 12 total 5" drains. The drains are set in from the west and east walls 15' and are roughly 45' apart

Overview



Radius roofs



Roof measures 27'x40' FA EPDM with a through wall scupper in the southwest corner

Site Overview
Section 1
Composition
Section 2
Budget Matrix

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Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Observations (continued)
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Overview



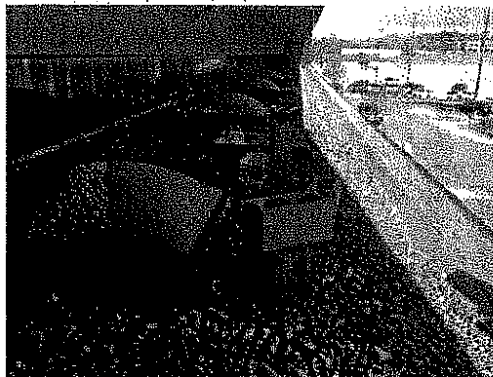
South canopy facing north

Overview



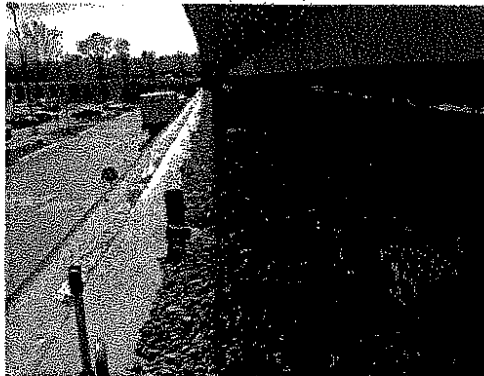
South canopy facing south

Overview



North canopy facing north

Overview



North canopy facing south

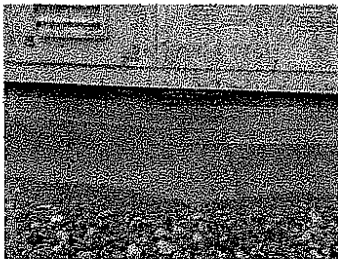
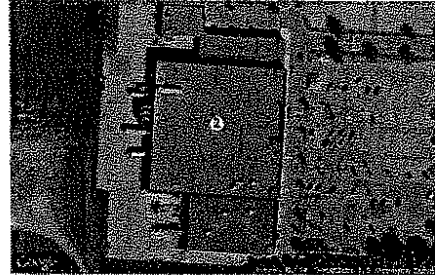
Site Overview
Section 1
Section 2
Budget Alerts
Composition
Observations
Environmental
Schools

pds
Property Development Management

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Open Flashing (Emergency)

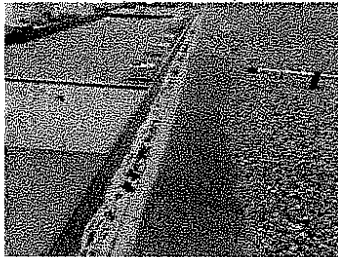
Quantity: 112 LF

Deficiency:

The failure of the EPDM flashings can be traced back to insufficient and improper termination details during the re-roof project of 2005. The termination detail does not meet NRCA or manufacturer guidelines.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Improper repair (Emergency)

Quantity: 500 LF

Deficiency:

The north an south perimeter was repaired with a bur material. The repair material is NOT compatible with the existing EPDM material. The asphalt-based repair material used is further deteriorating the EPDM membrane.

Corrective Action:

Due to Improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.

Site Overview
Section 1
Section 2
Competition
Bulldozing
Clearing

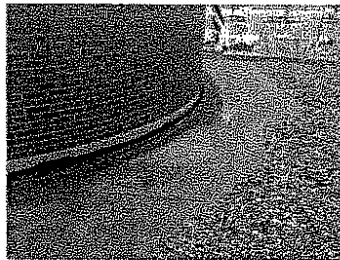
gdm
Property Development Management

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Previous Repair Failure (Emergency)

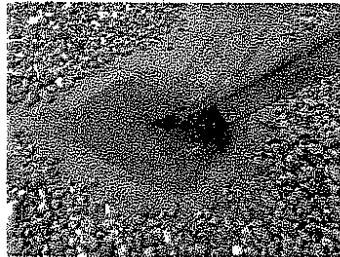
Quantity: 60 LF

Deficiency:

Existing repair failing due to age or improper repair. This was also attempted to be repaired with an asphalt like material. This will need a completely new flashing.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Punctures, Rips or Tears (Emergency)

Quantity: 40 LF

Deficiency:

Rips and tears at these support posts are a result of improper installation methods along with subsequent incorrect repair procedures.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.

Site Overview
Section 1
Section 2
Composition
Subject Matter

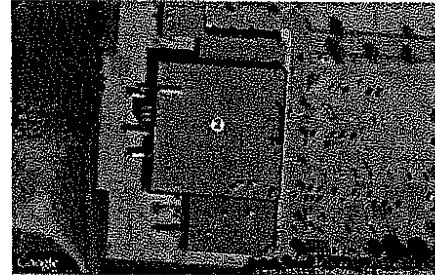
pd/m
Property Development Management

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Tenting (Emergency)

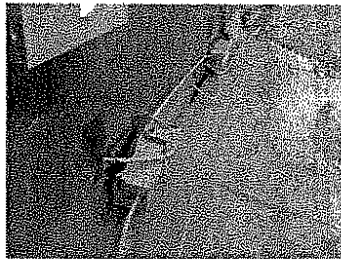
Quantity: 70 LF

Deficiency:

Tenting of the membrane at wall flashing areas are typical of an aging and failed EPDM roof system. The extent of membrane that is disbonded from the substrate at this wall indicates insufficient coverage rates of adhesive application during 2005 installation.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Open Seams (Emergency)

Quantity: 10 LF

Deficiency:

This deficiency indicates the lack of proper roof/wall termination detail during 2005 installation.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.

Site Overview
Section 1
Section 2
Budget Matrix
Compliance
Observations
Findings
Summary

pdm
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Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Punctures, Rips or Tears (Emergency)

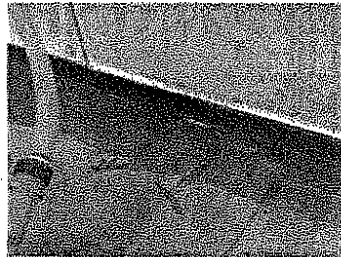
Quantity: 80 LF

Deficiency:

The wall flashing at this curved/raised radius roof has completely failed. A combination of improper detailing and incorrect/incompatible repair materials used here has caused the flashing to fail.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Punctures, Rips or Tears (Emergency)

Quantity: 1 EA

Deficiency:

This close-up picture of base flashing highlights the use of asphalt-based, incompatible repair material and improper base termination detailing used during the 2005 installation.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.

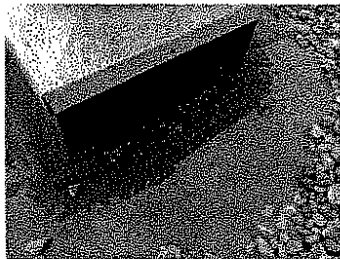
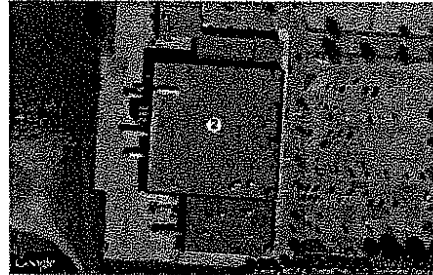
Site Overview
Section 1
Section 2
Budget Matrix

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Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Punctures, Rips or Tears (Emergency)

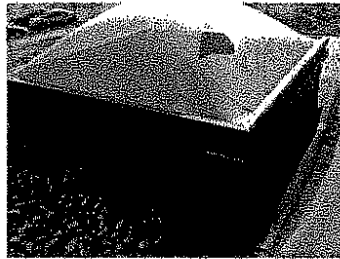
Quantity: 2 EA

Deficiency:

Curbs have been repaired using asphalt-based repair materials. These materials are incompatible with the existing EPDM roof and are causing the material to break down. Additionally, the installation of this base flashing detail was installed incorrectly.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Broken skylight (Remedial)

Quantity: 1 EA

Deficiency:

The 41" single clear pane skylight is broken.

Corrective Action:

Replace with new skylights per manufacturers details and recommendations.

Site Overview
Section 1
Composition
Section 2
Budget Matrix

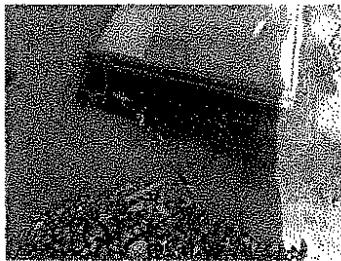
pdm
Property Development Management

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Punctures, Rips or Tears (Emergency)

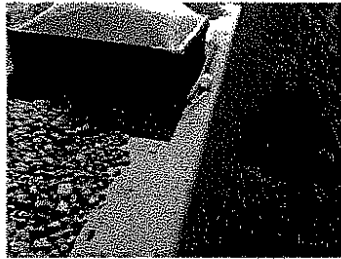
Quantity: 70 LF

Deficiency:

Base flashing repairs made in this area have failed. Failure is primarily due to sub-standard repair scope of work and procedures. Proper repair materials were used here, they simply weren't installed correctly and the repair has failed.

Corrective Action:

Due to improper installation of roof system in 2005 and subsequent improper repair attempts the roof is failed. Repairs are not recommended.



Membrane shrinkage (Remedial)

Quantity: 1 EA

Deficiency:

This entire roof section is failing due to the membrane shrinking.

Corrective Action:

The roof needs to be replaced

Site Overview
Section 1
Comparison
Section 2
Budget Safety
Questions
Comments

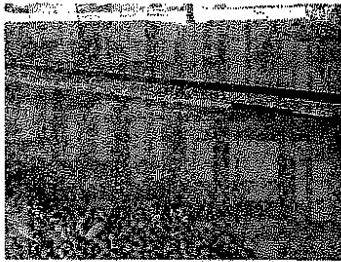
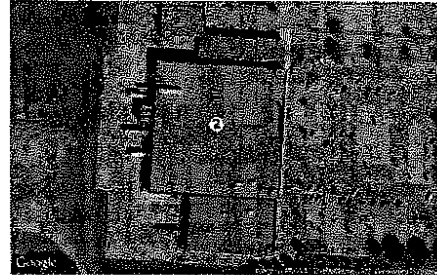
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Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Deficiencies (continued)

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Improper repair method (Remedial)

Quantity: 260 LF

Deficiency:

The east and west sides of both canopy roofs were repaired with an asphalt-based material. The EPDM membrane is showing signs of deterioration in these areas due to the improper repair material.

Corrective Action:

A reroof of both sections would be the best course of action due to age and current condition.

Site Overview
Section 1
Section 2
Budget Matrix
Construction Observations

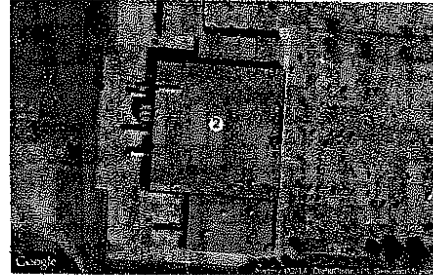


Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Summary

Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Condition Summary

Membrane: F
 Flashings: F
 Sheet Metal: C-

Overall: F

F

Overall Grade

- A = 10 Years or more of service life remaining (Mint)
- B = 8-10 Years of service life remaining (Above Average)
- C = 5-7 Years of service life remaining (Average)
- D = 2-4 Years of service life remaining (Below Average)
- F = Less than 1 Year of service life remaining (Failed)

Estimated Replacement: 2014

Comments:

RoofOptions inspected the roof area originally in 2008. That report indicated a roof installation that did not meet manufacturers specification and details. This condition exists in 2014 as the roof continues to deteriorate due to inadequate detailing and installation in numerous areas of the roof.

Attempts to repair the failed roof system with improper materials have further deteriorated the membrane allowing water to enter the roof system and structure in numerous areas.

The roof system was installed improperly and has failed beyond repair. A replacement is necessary to keep the building water tight and eliminate the potential for structural deck corrosion and moisture to remain in the roof.

Recommendations

The roof system is failed beyond repair. It was installed improperly and continues to deteriorate. The current condition of base flashings, perimeters and field seams is allowing water to enter the roof system in multiple areas.

The current condition of the roof and subsequent water infiltration has the potential to significantly impact the condition of the steel decking structure. Because the EPS insulation found within the roof system does not hold water, but the underlying woodfiber board that is sitting directly on the deck does hold water, there is a real potential that insulation saturation and moisture sitting on the steel decking will cause corrosion and weakening of

Site Overview
 Section 1
 Section 2
 Budget Matrix
 Comparison
 Description
 Location

the steel deck. This condition will significantly increase roof replacement costs in the future.

Due to the overall condition of this roof, we would not advise spending any further money on repairs. A roof replacement is required.

The below budget is simply that, a planning number for future capital roof replacement costs. This budget reflects the complete removal of the existing roof system and insulation down to the steel decking structure. Any potential steel deck remediation would occur on a unit cost basis. Following the preparation of the steel deck, new code compliant insulation would be installed followed by a single-ply roof membrane system. The roof system would be warranted by the manufacturer for both labor and material for a period of 15 years.

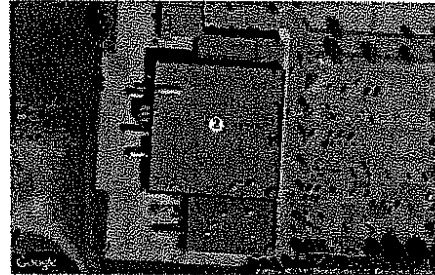
Estimated Replace Costs: \$506,569.00

pdm
Property Development Management
www.pdmproperty.com

Spring Valley Shopping Center
4212 S. 50th St.
Omaha, NE

Budget Matrix
Section: Supermarket
Size: 72367

Inspection Date: 01/21/2014
Inspector: Jeff Ham



Site Overview
Section 1
Composition
Section 2
Budget Matrix

2 - Supermarket (72,367 SF)

Deficiency	Qty	Emergency	Remedial	Replacement	Total
Punctures, Rips or Tears	80 LF	\$0.00			
Punctures, Rips or Tears	2 EA	\$0.00			
Punctures, Rips or Tears	1 EA	\$0.00			
Open Flashing	112 LF	\$0.00			
Improper repair	500 LF	\$0.00			
Previous Repair Failure	60 LF	\$0.00			
Punctures, Rips or Tears	40 LF	\$0.00			
Tenting	70 LF	\$0.00			
Open Seams	10 LF	\$0.00			
Broken skylight	1 EA		\$0.00		
Punctures, Rips or Tears	70 LF	\$0.00			
Membrane shrinkage	1 EA		\$0.00		
Improper repair method	260 LF		\$0.00		
Full Replacement	72,367 SF			\$506,569.00	
Total		\$0.00	\$0.00	\$506,569.00	\$0.00



January 10, 2016

Fifty Joint Venture
John Karnish
C/O PDM
111 N 102nd CT Ste 325
Omaha, NE 68114

RE: Old No Frills
4240 S 50th St
Omaha, NE

Dear Mr. Karnish,

I am in receipt of the roof evaluation report from Roof Management dated October 20, 2015. It appears that they are in agreement with our report stating the roof on the above location needs to be replaced as soon as possible to prevent further damage to the structure and interior.

We are pleased to be able to furnish you a proposal to replace the roof with a like roof system installed per the manufacturers specifications and details. Because the amount of damage to the existing insulation and deck will not be known until the roof is removed, there will be a line item cost for those different items.

The existing ballast rock is old and has a lot of broken rock and debris in it. This rock will need to be removed and new ballast rock installed to meet the manufacturers guidelines for ballast rock. The perimeter sheet metal will need to be replaced along with reattaching the wood blocking as necessary to be able to furnish a roof system the will not be susceptible to wind damage. Any HVAC and refrigeration equipment that will have to be either moved or raised for the installation of the new roof system is not included in our number. We will work with the firm you chose to use for this work. The refrigeration equipment on the low west roof area will have to be removed to be able to install a new roof system.

6102 Arbor Street #5 - Omaha, NE 68106
Phone: 402-348-0909 - Fax: 402-348-0101
www.independentroofing.net



Old No Frills

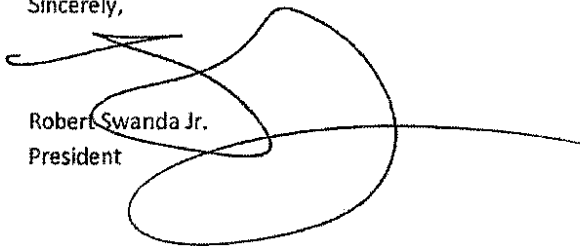
Page 2

There also may be some parapet wall repairs that we do not know the extent of the damage until the cap metal and flashing material is removed. This work will also need to be done on a time and material basis. Any masonry or EFIS work necessary to make building watertight will be done by the owner.

The existing roof insulation does not meet the code requirements for "R" value. I will include an add to increase the insulation to meet the code requirements.

Again, we thank you for the opportunity to submit this proposal to you for your consideration. Please let us know if you have any questions at all.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Swanda Jr.", is written over a large, circular scribble. The signature is positioned to the right of the typed name.

Robert Swanda Jr.
President

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www.independentroofing.net



Roof Proposal: Old No Frills Space
4240 S 50th St
Omaha, NE

FOR: Approximately 76,000 Square Feet - 7 roof areas

- Remove existing ballast rock from roof and dispose of off site.
- Remove the existing membranes (2) down to the existing insulation.
- Remove the insulation (approximately 4' x 4' area) to check for deck deterioration per every 2,000 sq. ft. of roof removed or under any damaged or wet insulation.
- Replace any damage or wet insulation on a sq. ft. basis.
- If deck is rusty, wire brush rusty area to remove rust. Prime and coat with recommended coating for steel decking. Work to be done on a sq. ft. basis.
- If deck is deteriorated, replace with like deck making sure the replacement spans two joists minimum. If deck is painted on the underside, it will be the owners' responsibility to paint.
- Any HVAC equipment or refrigeration equipment that needs to be raised or moved to install the new roof system is the owners' responsibility.
- Remove and replace damaged interior parapet wall plywood on a sq. ft. basis.
- Furnish and install a new ballasted EPDM roof system complete with all necessary EPDM flashings.
- Furnish and install new 24ga prefinished (standard color only) sheet metal cap and exterior sheet metal.
- Furnish owner with a 15-year labor and material warranty from the manufacturer.

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Roof Proposal: Old No Frills Space

Page 2

PRICE: Three hundred seventy three thousand four hundred and eighty and no/100 Dollars
(\$373,480.00)

ADDS:

- | | |
|--------------------------------------|--------------------|
| 1. 1.5" isocyanurate roof (R-8.6) | ADD: \$72,000.00 |
| 2. Clean, prime and paint metal deck | ADD: \$2.65 sq.ft. |
| 3. Replace metal deck | ADD: \$5.25 sq.ft. |
| 4. Plywood replacement parapet walls | ADD: \$2.95 sq.ft. |
| 5. HVAC and Refrigeration work | By Owner |
| 6. Masonry and EFIS work | By Owner |

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GENERAL CONDITIONS

2. This contract incorporates all of the agreements of the parties to date. Any changes, alterations or additions thereto shall not be binding or enforceable unless approved in writing by both parties.
3. If roof tear-off is to be performed, Contractor shall not be responsible for damages caused by water penetration into the building resulting from moisture contained or trapped in or under the existing roof surface, which is released during tear-off. Unless written arrangements are made in advance, Contractor shall not be responsible for damages from leaks through any area of the existing (present) roof surface where Contractor has not performed tear-off surface preparation work.
4. Damage occurring to the installed roofing membrane, resulting from acts of other contractors or persons authorized by Owner to conduct operations above or upon the installed membrane, shall be the responsibility of the Owner.
5. Contractor accepts no liability to indemnify or hold Owner harmless for damages to person or property, except those that are the direct result of Contractor's negligent error or omission which occur during performance of Contractor's work.
6. Each paragraph of the General Conditions and the Contract Conditions shall be construed as an express condition of this contract in consideration of the contract price agreed to herein by Contractor.

CONTRACT CONDITIONS - DUTIES AND RESPONSIBILITIES OF CONTRACTOR

7. Contractor's price includes furnishing all labor, material and equipment necessary to complete the contract, subject only to latent conditions of the work area, which could not be reasonably anticipated by the examination of core samples, or the visual inspection ordinarily employed in the roofing trade. If such latent conditions cause or require additional labor or material in the performance of the contract, Contractor shall promptly notify Owner of such condition, and such additional material and work will be supplied and performed on a time-and-materials basis by Contractor, unless the parties agree to a stated price for such additional work.
8. Contractor will perform the work specified herein in accordance with the written specifications, if any, attached to or stated in the counteract and the specifications of the Manufacturer of the roofing system to be installed, so that the installation will qualify for the issuance of the Manufacturer's warranty (identified above) to Owner. Contractor shall not be responsible for any defects or deficiencies in said specifications. Contractor EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE with the respect to said specifications.
9. Contractor makes no warranty respecting "Wind Uplift Resistance" of the installed roof system. If a "Factory Mutual Insurance Co. Wind Uplift Standard" is specified, Contractor represents only that the roofing system installed is represented by the Manufacturer thereof to meet such specified standard.
10. Contractor warrants that the materials and accessories supplied will be those specified for this Contract and will be new and of recent manufacture and free from obvious defects. Contractor shall not be responsible for latent defects in material and accessories.
11. Contractor shall not be responsible for damages arising from delay due to inclement weather (including the threat of inclement weather), strikes, fires, accidents, delays in shipment or delivery of Manufacturer's materials, or other causes beyond its reasonable control; or, if any interruption of Contractor's work occurs by reason of operations of other contractors at the job site, or from Owner's failure to provide Contractor with reasonable access to the job site to perform this contract.
12. Contractor will have Worker's Compensation Insurance in limits required by state law and Comprehensive General Liability Insurance coverage in force for all of its operations under this contract.
13. Contractor shall take all reasonable safety precautions with respect to its work, and shall have responsibility for compliance of its equipment and employees with all applicable laws, ordinance, rules, regulations and orders of any public authority for the safety and health of persons on the job site. Contractor shall have specific responsibility for housekeeping in its immediate work area, and will remove rubbish and debris caused by its work. Contractor shall not be responsible for the safety and health of any persons present at the job site who are not employees of Contractor.

DUTIES AND RESPONSIBILITIES OF OWNER

14. Owner represents to Contractor that the roof deck on which the installation is to be made in a sound weight-bearing condition, sufficient for the purposes of Contractor's work and that all surfaces to be utilized by Contractor for fastening, adhering or attaching the roofing system will be adequate for the installation to be performed. Promptly after execution of this agreement and prior to commencement of contractor's work, Owner will inform Contractor in writing of any deck or subsurface conditions which could be damaged by penetrations made by Contractor in installing the roofing system.
15. At the time Contractor commences its work, Owner will provide Contractor with exclusive access and use of all roof areas where work is to be performed and such additional area as are reasonably necessary for the Contractor to perform its work without interruption. All roof area work surfaces shall be free of debris and in a dry accessible condition. If preliminary work on the roof area is to be performed by others prior to Contractor's work, such work will be complete. Contractor shall not be required to perform its work while snow or other moisture conditions exist on the roof surface, unless Owner provides for removal or curing of such conditions.
16. Owner shall make no changes in the scope of the roof installation described herein or the specifications which would tend to disqualify the installation from the issuance of the Manufacturer's warranty referred to above.
17. If Contractor's work is to be inspected by Owner's representative, or an architect, Owner agrees to firm arrangements to have such person available promptly after notice to make inspection as Contractor's progresses, so as not cause delay. Owner Designates _____ to execute additional work orders or changes and to act for and on behalf of Owner to accept completed work.
18. If, in order for Contractor to perform its work under this contract, it becomes necessary to disconnect, remove, relocate or otherwise deal with any mechanical or other equipment located on the deck or other surface on which Contractor's work is to be performed, Owner or Owner's agent shall provide for the disconnection, removal, relocation or other appropriate action with respect to such mechanical or other equipment and further, shall provide for the reconnection, replacement or relocation of such mechanical or other equipment following completion of Contractor's work. Contractor shall have no responsibility with respect to any such rooftop equipment, unless it is specifically provided otherwise in this Agreement.
19. Owner agrees to provide at its expense builder's risk insurance for the benefit and protection of Contractor.
20. Prior to Contractor's commencement of performance of its work under this contract, an appropriate number of test of substances and materials above and below the roof deck shall be conducted by or on behalf of the Owner, at Owner's expense, to determine if asbestos or similar hazardous substances are present above or below the roof deck, which could be disturbed or otherwise affected by Contractor's work under this contract. If such tests indicate the presence of asbestos or similar hazardous substance, Contractor may, at its option, (a) terminate this agreement upon written notice by Contractor to Owner; (b) delay commencement of performance of its work under this contract until such products or materials, and any hazards connected therewith, are located and abated, encapsulated or removed (in which case Contractor shall receive an extension of time to complete its work hereunder and compensation for delays encountered as a result of such situation and correction); or (c) proceed to locate, abate, encapsulate and remove such products or materials and any hazards connected therewith at a price to be determined by mutual agreement of Contractor and Owner and to be paid by Owner. If contractor proceeds with its work under this agreement on the assumption that there is asbestos or similar hazardous substance present, based upon results of tests conducted prior to commencement of its performance and does in fact encounter any such products or materials in the course of performing its work, or if such hazardous materials are encountered by any other firm performing work at the job site, and Contractor determines that such materials present a hazard to its employees, Contractor shall have the right to discontinue its work and remove its employees from the job site until such products or materials, and any hazards connected therewith are located and abated, encapsulated or removed or it is determined that no hazard exists (as the case may be) and Contractor shall receive an extension of time to complete its work hereunder and compensation for delays encountered as a result of such situation and correction.