

NORTH CAROLINA )  
FORSYTH COUNTY )

LEASE

87

THIS AGREEMENT and LEASE, made in Winston-Salem, North Carolina this 5 day of January, 1986, between Joseph J. Tomarchio of Dawsonville, Georgia, hereinafter called LANDLORD, and E. T. Gillespie, of U Filler Up, Inc., hereinafter called TENANT.

W I T N E S S E T H:

1. DEMISED PREMISES

That for and in consideration of the rent reserved and of the mutual covenants and agreements herein contained, the LANDLORD does hereby demise and lease unto the TENANT the premises described as follows: The commercial building and lot at 4609 North Cherry Street, Winston-Salem, North Carolina, hereinafter referred to collectively as the "Demised Premises". See Exhibit A for legal description.

2. TERM

For use as business property (service station) and for no other purpose, for the term of 2 years beginning on the 1st day of March, 1986, and ending on the 31st day of January, 1988.

3. RENT

The annual rent for the term of this Lease Agreement shall be Nine Thousand Dollars (\$9,000.00) payable monthly in advance in equal installment of Seven Hundred and Fifty Dollars (\$750.00). Tenant will pay all property taxes for the duration of the lease when due and payable and 1986 taxes will be pro rated commencing March 1, 1986. Each monthly installment shall be paid by the TENANT to the LANDLORD by the first (1ST) day of the month for which such installment shall be applicable. TENANT agrees to pay LANDLORD a late charge of \$15.00 for LANDLORDS efforts in collecting rent not paid when due. TENANT will, without any previous demand therefore, pay the rent at the times and in the manner above provided, said rent always being payable for each month in advance on the

U-FILLER-UP, INC.  
1327 BEAMAN PLACE  
P.O. BOX 9718  
GREENSBORO, NORTH CAROLINA 27429-9766

first day of the month, or if the term begins other than the first day of any month the first payment shall be made on the first day of occupancy, and be for the pro rata part of one month's rent.

#### 4. SECURITY DEPOSIT

The TENANT has deposited with the LANDLORD the sum of \$750.00 as security for the full and faithful performance by the TENANT of all the terms of this Lease required to be performed by the TENANT. Such sum shall be returned to the TENANT after the expiration of this Lease, provided the TENANT has fully and faithfully carried out all of its terms.

#### 5. OPTION TO EXTEND LEASE

LANDLORD agrees that if the TENANT shall not be in default in performing any of its obligations under this Lease, the TENANT shall have and is hereby granted three options to renew this Lease for a term of one year each. Renewal options shall be exercised for by written notice from TENANT to LANDLORD at least forty-five (45) days prior to the end of the preceding term. Each one year option term shall be under the same terms and conditions except that the rent shall be \$1,200.00 per month.

#### 6. HOLDING OVER

Upon the expiration or other termination of the term of this lease, TENANT shall quit and surrender to the LANDLORD the demises premises in a good and clean condition (reasonable wear and tear which is the LANDLORD'S responsibility excepted) and TENANT shall remove all of its property. In the event that TENANT holds over after expiration of the term herein set forth without written consent of the LANDLORD, it shall be deemed a tenant from month to month under the same terms, rents, covenants and conditions herein contained, or the LANDLORD may take such

steps as may be necessary to remove the TENANT from the demised premises.

7. ASSIGNMENT AND SUBLETTING

The TENANT covenants not to assign, transfer, mortgage nor pledge this Leasehold, or to sublet the premises or any part thereof, without the prior written consent of the LANDLORD. Should the LANDLORD consent to the assignment of the lease or to subletting the demised premises in whole or in part, the TENANT does hereby absolutely guarantee the payment of and covenants to pay the rent reserved hereunder until the expiration of the term hereof and no failure of the LANDLORD to promptly collect from any such assignees or subleasees hereunder until the expiration of the term hereof, nor an extension of the time for the payment of such rent, shall release the TENANT from his guarantee of payment of such rent.

8. DAMAGE TO PREMISES

If the demised premises are damaged or destroyed before or during the term of this lease by fire or other casualty, TENANT shall give immediate written notice thereof to LANDLORD; and LANDLORD will reconstruct the demised premises or repair such damage as promptly as practical and TENANT shall meanwhile be entitled to abatement of rental to the extent of the loss of use suffered by it; provided, however, that if the demised premises shall be damaged or destroyed by casualty to the extent of fifty per cent (50%) or more of their replacement value, LANDLORD shall thereupon have an option to terminate this Lease.

The TENANT covenants that no nuisance or hazardous trade, occupation, or other activity shall be permitted or carried on in or upon the demised premises, no act or thing shall be done or permitted and nothing shall be kept in or about the demised premises, which will increase the risk of

hazard or fire and no waste shall be permitted or committed upon or any damage done to the demised premises. The TENANT covenants to pay to the LANDLORD upon demand damages for injury to the demised premises which injury shall be caused by the TENANT or the TENANT'S agents, servants, employees or invitees. The TENANT further covenants not to conduct any business or permit any business to be conducted or permit any act or thing contrary to or in violation of the laws of any governmental authority or regulatory agency having jurisdiction over the demised premises or any part thereof.

The LANDLORD agrees that it will keep the demises premises herewith insured against loss or damage by fire with extended coverage to the full, fair insurable value thereof.

The TENANT agrees that it will keep its inventory of merchandise, trade fixtures, equipment and other property of the TENANT located in or on the demised premises insured against loss or damage by fire with extended coverage to the full, fair, insurable value thereof.

In the event that as a result of any act or neglect of the TENANT, its agents, servants, or invitees, or the nature of the business conducted in or on the demised premises, the rate of fire insurance with extended coverage upon the entire premises shall be increased over the rate existing as of the date of the commencement of the term of this Lease, the TENANT, on demand, shall pay to the LANDLORD as additional rent a sum equal to any increase in the cost of such insurance caused by said Act, neglect or nature of business.

It is agreed that the LANDLORD shall not be liable for any loss of or damage or injury to property or person(s) at any time on the demised premises from any occurrence unless such occurrence is due to the negligence of the

LANDLORD. The agreement is that the TENANT will safeguard and/or insure its property at its own risk and expense.

9. TENANT'S ACCEPTANCE OF PROPERTY

At the commencement of the term, the TENANT shall accept the building, improvements, and any equipment on or in the leased premises, in their existing condition. No representation, statement, or warranty, expressed or implied, has been made by or on behalf of the LANDLORD as to such condition, or as to the use that may be made of such property. In no event shall the LANDLORD be liable for any defect in such property or for any limitation on its use.

10. UTILITY CHARGES PAID BY TENANT

The TENANT shall pay or cause to be paid all charges for air conditioning, heat, water, gas, electricity, light, telephone, or any other communication or utility service used in or rendered or supplied to the demised premises throughout the term of this Lease, and to indemnify the LANDLORD and save it harmless against any liability or damages on such account.

11. INSPECTION OF GAS TANKS

LANDLORD agrees to allow TENANT to inspect gas tanks located on the property, prior to occupancy. LANDLORD shall repair any leaks, or TENANT may terminate said Lease. Once said tanks have been inspected and approved by tenant no further problems with said tanks, of any nature whatsoever, shall cause any termination of this lease. Maintenance of said tanks, after approval by tenant, shall be the sole responsibility of tenant.

12. MAINTENANCE AND REPAIR

Lessor shall keep and maintain the roof and structural portions of the Demised Premises except any damage thereto caused by any act or negligence of Lessee,

its employees, agents, invitees, subtenants, licensees, assignees, or contractors, in which event such damage shall be promptly repaired by Lessee. Other than as herein provided, Lessor shall not be responsible to maintain or make any improvements or repairs of any kind, in or upon the Demised Premises.

Lessor shall keep and maintain in good order, condition or repair (which repair shall mean replace if necessary) the Demised Premises and every part thereof, except as hereinbefore provided, including, without limitation, the exterior and interior portions of all doors, door checks, windows, glass, utility facilities, plumbing facilities within the Demised Premises, fixtures, heating and air conditioning equipment.

TENANT will during the term keep and at the expiration thereof deliver up the leased premises in as good order and condition as when said TENANT took possession, reasonable wear and tear which is the LANDLORD'S responsibility and damage by accidental fire and casualty alone excepted. Nor shall the TENANT or its employees or servants make any alterations in, additions or improvements to, the demised premises, without the prior written consent of LANDLORD. All alterations, additions or improvements made by either of the parties hereto upon the demised premises except movable office furniture put in at the expense of the TENANT shall be the property of the LANDLORD, and shall remain upon, and be surrendered with the leased premises at the termination of this Lease. Additional partitions, plumbing, or wiring installed or requested after the beginning date of this Lease, shall be installed at the TENANT'S expense, but under the LANDLORD'S supervision, except as otherwise provided in writing.

TENANT will not overload floors, nor install any heavy business machines, including computers, or any heavy equipment of any kind, without prior written approval of LANDLORD, which, if granted, said equipment or machines shall be moved and installed at the expense of TENANT. Any special reinforcing or other provisions required, adequate to carry the weight and absorb and prevent noise and vibration, shall be at TENANT'S expense.

13. CONDEMNATION

In the event the whole or a substantial part of the demised building, of which the leased premises are a part, shall be lawfully condemned or taken in any manner for any public use, the LANDLORD or TENANT may at its option terminate the estate hereby granted from the time the title to, or right to possession of, said premises shall vest in or be taken by public authority and the LANDLORD alone shall be entitled to any or all income rent awards or any interest therein whatsoever which may be paid or made in connection with such public use. TENANT'S recourse in that event shall be against the public authority responsible of the taking as provided by Law.

14. QUIET ENJOYMENT

The LANDLORD agrees that the TENANT upon paying the stipulated rent and upon keeping and performing the agreements and covenants herein contained, shall hold and have quiet enjoyment of the premises for the term aforesaid, subject, however, to the covenants and conditions of this Lease.

15. NOTICES

Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be given or served and shall not be deemed to

have been duly given or served unless in writing and forwarded by registered or certified mail and addressed as follows:

TO THE LANDLORD: Joseph J. Tomarchio

Route 4, Box 4305  
Dawsonville, GA 30534

TO THE TENANT:

Such addresses may be changed from time to time by either party by service of notices as above provided.

16. OBLIGATION OF SUCCESSORS

The LANDLORD and the TENANT agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns. The provisions of the foregoing sentence shall not be construed as granting to the TENANT the right to assign any of its rights under this Agreement without the prior written approval of the LANDLORD.

17. LIENS

The TENANT agrees that it will not permit the lien of any contractor, subcontractor, mechanic, laborer or materialman to be and remain a lien upon the demised premises or upon the right, title or interest of the TENANT created by this Lease, after the indebtedness secured by such lien shall have become due unless the same is in the process of being actually contested in good faith on the part of the TENANT and that in any event the TENANT will protect, indemnify and save harmless the LANDLORD from and in respect of any and all such liens.



18. RIGHT OF RE-ENTRY UPON DEFAULT

The TENANT covenants that if the rent reserved by this Lease or any part thereof shall be unpaid for a period of ten (10) days after it is due or if TENANT violates any other covenant of this Lease, which TENANT is required to keep LANDLORD may at any time give TENANT notice that such default exists and if TENANT does not cure default within fifteen (15) days thereafter LANDLORD may, at its option, terminate this Lease and enter upon the demised premises for the purpose of evicting TENANT in such a manner as allowed by North Carolina law, and take possession of the demised premises.

If the LANDLORD shall at any time terminate this Lease because of any default set out in this paragraph, in addition to other remedies it may have, it may recover from the TENANT all damages that it may suffer by reason of the termination of the Lease, including, but not limited to, the cost of recovering possession of the demised premises, and any loss of income which LANDLORD suffers because of the early termination of this Lease and/or any other matters for which TENANT is financially responsible under this Lease.

19. WAIVER

It is mutually covenanted and agreed by and between the parties hereto that the failure to the LANDLORD to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Lease, or to exercise any option herein conferred, shall not be considered or construed as waiving or relinquishing for the future any such conditions, covenant, terms, provisions or options, but the same shall continue and remain in full force and effect. The receipt of any sum paid by the TENANT to the LANDLORD after breach of any conditions, covenant, term or provision herein contained and construed as payment

for use and occupation and not as rent, unless such breach shall be expressly waived in writing by the LANDLORD.

#### 20. MODIFICATION

It is mutually covenanted and agreed between the parties hereto that this Lease constitutes the entire contract between the parties and no oral agreement or statement made by said parties or either of them or their agents, before or after the execution of this Lease, shall be binding upon the parties hereto or either of them. Nothing herein contained shall be deemed or construed to be a waiver on the part of the LANDLORD of any right or remedy in law or otherwise, which the LANDLORD may have become entitled to by reason of the breach of any of the TENANT'S agreements herein contained.

#### 21. SUBORDINATION

This Lease may be subjected and subordinated to all mortgages and deeds of trust which may now or hereafter affect the real property of which the demised premises form a part and to all renewals, modification, consolidation, replacements and extensions thereof at the option of the LANDLORD.

#### 22. NUISANCE

TENANT shall not permit a nuisance caused by TENANT or TENANT'S employees or invitees to exist upon the demised premises, and TENANT hereby saves LANDLORD harmless from any and all acts committed or permitted by the TENANT upon the demised resulting from the creation of a nuisance or other use of the premises prohibited by law.

#### 23. TAXES

TENANT covenants and agrees to pay promptly all taxes and assessments of every kind or nature which may now or may hereafter be imposed or assessed upon the demised premises, except as otherwise expressly provided in this

Lease Agreement. LANDLORD shall not be required to pay any taxes or assessments of any nature imposed or assessed upon fixtures, equipment, merchandise or other property kept or installed in the demised premises or brought thereon by TENANT or any other person, but such shall be the obligation of the TENANT, and TENANT agrees that it will promptly pay all such taxes or assessments as the same come due.

24. ENTRY OF LANDLORD

The LANDLORD shall have the right to enter in and upon said demised premises at all reasonable times for the purpose of (a) examination and inspection thereof, (b) making repairs, replacements, alterations or additions to said premises, and (c) exhibiting the demised premises to prospective tenants, purchasers, etc.

25. OPTION TO PURCHASE

The TENANT is hereby given the option to purchase the leased property owned by the LANDLORD during the lease period at a price of \$115,000.00. Such option shall be exercised by the TENANT by written notice to the LANDLORD not less than 120 days before the end of the lease period. If such option is exercised, the LANDLORD and TENANT will, within the 120 day notice period, execute and deliver a formal contract of sale.

Adjustments and prorations for taxes, water rates, and insurance premiums are to be made as of the date of closing. The deed shall be the statutory short form for recording and shall be executed and acknowledged and have documentary stamps in the proper amount affixed thereto by the LANDLORD at the LANDLORD's expense, so as to convey to

the TENANT the fee simple title to the leased property,  
subject only to standard easements and restrictions of  
record.

This option shall not extend beyond the original  
two year lease term. Specifically, it shall not be  
exercisable during any lease option extensions.

In testimony whereof, the LANDLORD has caused this  
Lease to be executed by Joseph J. Tomarchio, its  
OWNER and the TENANT has caused this Lease to be  
executed by E.T. Gillespie, its V.P.,  
said parties have set their hands and seals to this  
Agreement and Lease, in duplicate originals, the day and  
year first written above.

LANDLORD:

BY Joseph J. Tomarchio  
Joseph J. Tomarchio

TENANT:

BY E.T. Gillespie V.P.  
U Filler Op INC

STATE OF North Carolina  
COUNTY OF Guilford

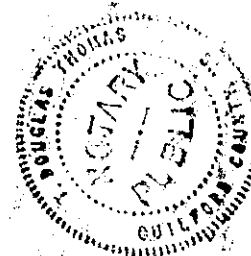
I, T. Douglas Thomas, a Notary Public  
of Guilford County, certify that  
E.T. Gillespie personally appeared before me  
this day and signed the foregoing document.

Witness my hand and Notarial Seal this the 21<sup>st</sup> day  
of February, 1986

T. Douglas Thomas  
Notary Public

My commission expires:

8/7/88

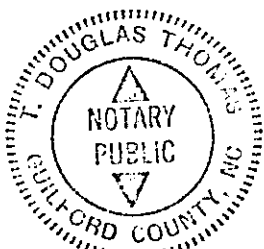


1633P3234

STATE OF North Carolina  
COUNTY OF Guilford

I, T. Douglas Thomas, a Notary Public  
of Guilford County, certify that  
Joseph J. Tomatlio personally appeared before me  
this day and signed the foregoing document.

Witness my hand and Notarial Seal this the 27th day  
of February, 1976



T. Douglas Thomas  
Notary Public

My commission expires:

8/7/88

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of T. Douglas Thomas N.P.  
Guilford Co (here give name and official title of the officer signing the certificate—passed upon)

is (are) certified to be correct. This the 27th day of Feb, 1988

**FEB 12 2 02 PM 1988** Deas, Register of Deeds

L.E. SPEAS By Jessie Holden

Deputy-Register

Probate and Filing Fee \$

34.00

paid. REGISTER OF DEEDS  
FORSYTH CTY., N.C.

VXP

1633P3235

EXHIBIT A

BEGINNING at an iron stake at the Northeast corner of the intersection of North Cherry Street Extended and Melody Lane, and running thence with the East margin of North Cherry Street Extended North 12 deg. 08' East 76.60 feet and continuing North 12 deg. 11' East 99.95 feet to an iron stake in said East margin of said street, said point being the Southwest corner of Lot Number 12 as shown on the map of Marvin Grove as recorded in Plat Book 3, at page 40, in the Office of the Register of Deeds of Forsyth County; thence with the South property line of said Lot 12, South 89 deg. 38' East 116.20 feet to an iron stake, the Northwest corner of a lot sold by Taylor Oil Company to Lewis E. Hubbard by deed dated June 25, 1964; thence with the West line of said Hubbard lot South 00 deg. 32' West 172.95 feet to an iron stake in the North margin of Melody Lane; thence with the North margin of Melody Lane North 89 deg. 40' West 151.56 feet to the place of BEGINNING.

Same being the western portions of Lots 10 and 11 of Marvin Grove, as recorded in Plat Book 3, at page 40, Forsyth County, same being also a part of Lot 6 and the lot designated "Reuben E. Ziglar" which is a resubdivision of Lots 10 and 11 as shown on the revised map of parts of Marvin Grove, recorded in Plat Book 6, at Page 184, Forsyth County Public Registry.

1633P3236