

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

APR 11 2011 10:46 AM
CLERK OF COURT
ALBUQUERQUE, N.M.

IN RE: §
FURR'S SUPERMARKETS, INC., §
INC., §
DEBTOR. §

NO. 11-01-10779-SA
Chapter 11

**RESPONSE TO TRUSTEE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON TGAAR, INC.'S MOTION FOR PAYMENT
OF ADMINISTRATIVE EXPENSES
AND
TGAAR'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW, TGAAR PROPERTIES, INC., d/b/a WESTWOOD VILLAGE SHOPPING CENTER ("TGAAR Properties") and TGAAR West Texas, Inc. ("TGAAR West Texas") and, pursuant to Bankruptcy Rule 7056 and Fed. R. Civ. Proc. 56, file this Response To Trustee's Motion for Partial Summary Judgment on TGAAR, Inc.'s Motion for Payment of Administrative Expenses and TGAAR's Cross-Motion for Partial Summary Judgment (referred to as the "Response/MPSJ"), would show unto the Court as follows:

I.

GENERAL

1. This Response/MPSJ is based upon the following:

A. The pleadings of the parties herein, specifically including TGAAR's Amended Motion/Application for Payment of Administrative Expenses.

B. The Affidavit of Gary Baily and Gary Glasscock (the "Affidavit") attached hereto, together with all exhibits attached thereto.

C. All other matters properly of record.

2. The pleadings and summary judgment evidence demonstrate that there are numerous genuine issues of material fact with respect to each of the matters asserted in the

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Trustee's Motion for Partial Summary Judgment (the "Trustee's Motion") and that such Motion should be denied.

3. The pleadings and summary judgment evidence further demonstrate that there are no genuine issues of material fact with respect to any of the matters asserted by TGAAR Properties or TGAAR West Texas (collectively referred to hereinafter as "TGAAR") in its Cross-Motion for Partial Summary Judgment and that such Cross-Motion should be granted.

II.

UNDISPUTED AND DISPUTED FACTS IN THE TRUSTEE'S MOTION

1. TGAAR agrees with the facts contained in paragraphs 1, 2, and 5-8 of the Chapter 7 Trustee's Motion.

2. TGAAR denies the allegations of paragraph 3 of the Trustee's Motion because the Debtor-in-possession exercised its option in writing to extend the lease for an additional 5-year period during the Chapter 11 case (Affidavit ¶6). The extension of the Lease became a new post-petition obligation entered into and incurred in the ordinary course of business during the Chapter 11 case and could not thereafter be rejected. (Affidavit ¶6).

3. TGAAR denies the allegations in paragraph 4 of the Motion (Affidavit ¶10).

4. TGAAR was represented by different counsel during 2001. TGAAR admits the allegations in ¶'s 9 and 10 of the Trustee's Motion but would show that it contacted the debtor-in-possession and, after the conversion to Chapter 7, the Chapter 7 Trustee on numerous occasions regarding the removal of the Equipment and the charge for storage of said Equipment (Affidavit ¶'s 12-16). The Chapter 7 Trustee represented to TGAAR's representatives on February 25, 2002 that TGAAR should be paid for storage of the equipment in Store #966 or that the equipment should be abandoned to TGAAR (Affidavit ¶15).

III.

ADDITIONAL UNDISPUTED FACTS

1. Debtor Furr's Supermarkets, Inc. (the "Debtor") operated a large number of grocery stores in Texas and elsewhere. Many of the stores the Debtor operated were leased under "non-residential leases," including "Store #966" located in Midland, Texas. After experiencing financial difficulties, the Debtor filed for bankruptcy protection on February 8, 2001 (Dkt. #1).

2. Prior the expiration of the 60-day acceptance or rejection period under 11 U.S.C. §365 (d)(4), the Debtor filed a motion to extend time to accept or reject certain leases, including the "Lease" on Store #966 (Dkt. #157). Such motion was granted on April 16, 2001 (Dkt. #326).

3. On June 25, 2001, the Debtor and Fleming Companies, Inc. ("Fleming") executed an "Asset Purchase Agreement" pursuant to which the Debtor agreed to sell and Fleming agreed to purchase certain of the Debtor's stores and other assets, including Store #966 (See Dkt. #542).

4. On July 3, 2001, this Court approved the Asset Purchase Agreement by its Order Granting Motion to Sell Some or All of Debtor's Operating Assets (Dkt. #710; the "Order Approving Sale").

5. On July 20, 2001, this Court entered an Order Approving Procedure Relating to the §365 (f)(2) Adequate Assurance Requirement for Assignment of Leases (Dkt. #762; the "Assignment Order") and a related Confidentiality Protective Order (Dkt. #763; the "Confidentiality Order").

6. Section 13.5(b) of the Asset Purchase Agreement provides that Fleming shall have the right to assign its rights and obligations thereunder with respect to any store to one or more Third Party Purchasers. (See Affidavit ¶7, Exhibit "C")

7. On July 26, 2001, Fleming sent out a Third Party Purchaser Notice, pursuant to the afore-mentioned §13.5(b) of the Asset Purchase Agreement that notified the Debtor that Mal Enterprises, Inc. would purchase Store #966. TGAAR received a copy of such Third Party Purchaser Notice (Affidavit ¶7; Exhibit "C").

8. At the time of the bankruptcy filing, TGAAR West Texas owned (and TGAAR Properties managed as the agent for TGAAR West Texas) the land and improvements in Midland, Texas known in this bankruptcy case as "Store #966." The Debtor was occupying such Store #966 under a "Shopping Center Lease" that was initially executed on August 14, 1980 by Safeway Stores, Incorporated ("Safeway"), as lessee (Affidavit ¶'s 3-4).

9. The Shopping Center Lease was subsequently amended on August 24, 1981, to extend the term to December 31, 2001 (Affidavit ¶4). The Shopping Center Lease and the amendment are collectively hereinafter referred to as the "Lease." TGAAR Properties and TGAAR West Texas are collectively referred to hereinafter as "TGAAR."

10. The Lease provides (¶16) for six (6) extension options of five (5) years each, which options may be exercised by the lessee by giving six (6) months written notice before the expiration of the current term of the Lease. The Lease also provides (¶8) that the "Lessee agrees to repair all damage to the leased premises caused by lessee's use other than (1) ordinary wear and tear, . . . and that on surrendering possession it will leave the leased premises in good condition, allowance being made for ordinary wear and tear . . . On surrendering possession . . . lessor agrees to accept the leased premises in a neat and clean condition . . ." The Lease provides (¶9) that "Lessee may remove [fixtures] from the leased premises at any time but shall repair any damage caused by removal" (Affidavit ¶3; Exhibit "A").

11. On October 29, 1987, Safeway assigned the Lease to Furr's, Inc., which assumed the obligations thereunder. On or about March 11, 1991, Furr's, Inc. assigned its interest in the Lease to the Debtor. Store #966 was thereafter occupied by the Debtor and operated as a grocery store until after the Debtor filed its bankruptcy petition on February 8, 2001 (Affidavit ¶5).

12. On or about June 1, 2001, the Debtor filed its Motion for Order Approving Sale of Some or All of the Debtor's Operating Assets and Granting Related Relief; Notice of Auction Sale or Some or All of Debtor's Operating Assets and Opportunity to Submit Bids (the "Sale Motion"). Pursuant to the Sale Motion, the Debtor was seeking to liquidate and sell certain of its assets, including Store #966 and the Lease (Dkt. #710).

13. Representatives of the Debtor and TGAAR communicated during June, 2001 concerning whether the Debtor would exercise its option to extend the Lease. On June 18, 2001, the Debtor exercised, in writing, during the Chapter 11 case, the Debtor's option to extend the Lease for an additional five (5) year period. The term of the Lease for Store #966 was thereby extended until December 31, 2006. Such extension of the Lease occurred prior to any "rejection" of the Lease (Affidavit ¶6; Exhibit "B").

14. By extending the Lease, the Debtor created a new post-petition obligation in the ordinary course of its business during the Chapter 11 case. The extension to the Lease was necessary in order for the Debtor-in-possession to sell Store #966 to Fleming (otherwise, the Debtor would have had very little to sell since the pre-petition Lease terminated by its terms on December 21, 2001) (Affidavit ¶6).

15. On or about July 3, 2001, the Sale Motion was granted pursuant to the Order (i) Approving Asset Purchase Agreement with Fleming Companies, Inc. (ii) Authorizing the Sale of

All or Substantially All of the Debtor's Operating Assets and the Transactions Contemplated by Asset Purchase Agreement, and (iii) Granting Related Relief (Dkt. #710; the "Sale Order").

16. Subsequent to the entry of the Sale Order, the purchaser under the Sale Motion, Fleming Companies, Inc., elected not to purchase Store #966 (or the Lease). TGAAR was notified of such decision not to purchase Store #966 on or about December 12, 2001. (Affidavit ¶8).

17. On September 6, 2001, an Order (Dkt. #1031) was entered rejecting the Lease for Store #966.

18. By letter dated August 23, 2001, the Debtor notified TGAAR that it "will be closing all Stores effective August 31, 2001" (Affidavit ¶9).

19. By letter dated August 31, 2001 the Debtor sent the keys to Store #966 to TGAAR. Such letter stated that the Debtor "hereby surrenders possession of the premises to you effective August 31, 2001", but Debtor did not do so as the Debtor (and later the Chapter 7 Trustee) left the equipment in Store #966 for over ten months after August 31, 2001. Such letter also requested TGAAR to bid on the equipment that was still located in Store #966 (Affidavit ¶10; Exhibit "D").

20. After receipt of the August 31, 2001 letter, the Debtor's representative told TGAAR that he thought that the Debtor would accept an offer of between \$5-10,000 for all of the equipment left in Store #966 (Affidavit ¶11).

21. On September 13, 2001, TGAAR responded to the letter of August 31, 2001, by sending a bid for \$5,775 for all of the equipment and assets of the Debtor in Store #966. Implicit in such offer was TGAAR's agreement to assume the clean-up costs and the costs of repair that would result when the equipment was removed, which costs far exceed the monetary offer of

\$5,775.00. When no response to TGAAR's bid was received, TGAAR unsuccessfully attempted to contact the Debtor on numerous occasions. After a while, the Debtor's phones were disconnected making contact impossible (Affidavit ¶12; Exhibit "E").

22. After August 31, 2001, TGAAR requested the Debtor (and later, the Chapter 7 Trustee) to actually vacate the premises. Such requests were heeded (Affidavit ¶13).

23. Because the Debtor continued to use Store #966 to store and protect the equipment, beginning in October, 2001, TGAAR sent monthly invoices to the Debtor for "equipment storage" (Affidavit ¶14, Exhibit "F").

24. On December 19, 2001, the Chapter 11 bankruptcy case was converted to a case under Chapter 7 (Dkt. #1424).

25. On February 25, 2002, TGAAR's representative received a telephone call from the Chapter 7 Trustee inquiring about the invoices she had received for equipment storage in Store #966. After the facts were explained to the Chapter 7 Trustee by TGAAR, she advised TGAAR that the bankruptcy estate should either pay the equipment storage or abandon the equipment in Store #966 to TGAAR. The Chapter 7 Trustee also stated that she would promptly get back to TGAAR (Affidavit ¶15).

26. After waiting patiently for more than two weeks, TGAAR attempted to contact the Chapter 7 Trustee by telephone, to no avail. Approximately 5-6 additional attempts to make contact with the Chapter 7 Trustee were made, also to no avail (Affidavit ¶16).

27. Following the filing of a motion (Dkt. #1642) on April 24, 2002, an "Auction Order" (Dkt. #1674) was entered on May 22, 2002. Such Order gave the Chapter 7 Trustee access to Store #966 to conduct the auction. The auction to sell equipment was held in Store #966 on May 30, 2002 (Affidavit ¶17).

28. Under the Auction Order, Store #966 was required to be left by the auctioneer in a "broom clean" condition. That also has not occurred (Affidavit ¶18). The auctioneer was the agent of the Chapter 7 Trustee.

29. Despite such auction, much of the equipment (plus an enormous amount of junk and trash) remained in Store #966 well after the date of such auction (Affidavit ¶19). Exhibit "A" attached to the original motion (which Exhibit is incorporated by reference herein) and Exhibit "G" to the Affidavit consists of photos of Store #966 taken after the July 3, 2002 letter (referred to below) was received.

30. The auctioneer represented to TGAAR that all equipment would be removed from Store #966 promptly (within 4-5 days) after the auction. Such did not occur (Affidavit ¶20).

31. After numerous protests by TGAAR, a letter dated July 3, 2002 (the "July 3, 2002 Letter"), was finally received by TGAAR from counsel to the Chapter 7 Trustee allowing TGAAR to take possession of Store #966 and remove the large volume of equipment, junk and trash that remained in Store #966, that is shown in the photos attached as Exhibit "G" to the Affidavit (Affidavit ¶21, Exhibit "H").

32. From December 19, 2001, the date of conversion of the case to a Chapter 7 bankruptcy case, until receipt of the July 3, 2002 Letter, TGAAR was unlawfully deprived of possession and use of Store #966. The automatic stay under 11 U.S.C. §362 was in effect and TGAAR's representatives had been advised not to "touch" the equipment in Store #966. TGAAR was effectively prohibited until July 3, 2002 from removing the equipment and junk in Store #966 and from taking possession of Store #966. The Chapter 7 Trustee used the automatic stay to remain in possession of and actually use Store #966 to the benefit of the bankruptcy estate, albeit contrary to the wishes and over the protests of TGAAR (Affidavit 22).

33. Until the letter of July 3, 2002 was received, TGAAR could not begin to remove the remaining equipment, junk and trash and get Store #966 into a condition so could be shown to prospective tenants. In fact, Store #966 was left in such a dismal state that, TGAAR could not show Store #966 to potential tenants until large amounts were expended to "clean-up" Store #966 (Affidavit ¶23). See also Exhibit "G" to the Affidavit.

34. TGAAR estimates that the cost, including "dump fees," for simply removing the remaining equipment, junk and trash from Store #966 will be at least \$15,000.00 (Affidavit ¶24). Under the Auction Order (Dkt. #1674), such clean-up was required to have been conducted by the Chapter 7 Trustee's agent, the auctioneer (Affidavit ¶24).

35. Substantial damage occurred to Store #966 when certain of the equipment sold at the auction was removed from Store #966. Such damage could have been avoided or greatly reduced had different methods been used to remove the equipment. TGAAR protested the method of removal before the equipment was removed but the buyers advised that the auctioneer authorized such methods of removal and proceeded to remove the equipment and cause substantial damage to the store premises (Affidavit ¶25).

36. TGAAR estimates that it will cost at least \$120,000.00 to repair the damage done to Store #966 by the buyers that removed the equipment under the guidance of the auctioneer. TGAAR requested the Chapter 7 Trustee to provide TGAAR with a list of the names and addresses of such buyers, but such list has not yet been received (Affidavit ¶26).

37. Store #966 contains approximately 44,000 square feet. The Chapter 7 Trustee used Store #966 to store and protect the equipment pending the auction and also to conduct the auction. TGAAR has received nothing for the use and possession of Store #966 for the period subsequent to August 31, 2001 (Affidavit ¶27).

38. Monthly rentals under the Lease (including CAM) are \$19,043.77/month, plus reimbursement for ad valorem taxes, which total approximately \$33,000.00/year (Affidavit ¶28). A holdover tenant is required, under Texas law, to pay rent on the terms that are contained in the original lease. Alternatively, the landlord may treat the holdover tenant as a trespasser. A party, including a Chapter 7 Trustee or a Debtor-in-possession, that possesses the premises without authority or right to do so is a trespasser and is liable as such.

39. At the very least, TGAAR should be allowed an administrative expense claim for the use and possession of Store #966 based on the fair market value of comparable storage space in Midland, Texas. Comparable storage space (not shopping center rental space) in Midland, Texas rents for \$3.00/sq. ft./yr.

40. Rather than use Store #966, without TGAAR's consent, for storage and to conduct the auction, the Chapter 7 Trustee had an alternative; namely, the Chapter 7 Trustee could have moved the equipment to a different facility (as they did with the food and goods on the shelves), stored it at such facility and then conducted the auction at such facility (or other facility). The costs of any such removal and storage would have been far more than the "auction" proceeds and more than the storage costs that should be paid to TGAAR for the period of actual use and possession of Store #966 (Affidavit ¶29).

41. TGAAR has had to pay all the expenses for utilities and all ad valorem taxes during the period (September 1, 2001 to July 3, 2002) that the Debtor-in-possession and the Chapter 7 Trustee actually used and possessed Store #966 to store and protect the equipment (Affidavit ¶30).

IV.

SUMMARY OF ADMINISTRATIVE EXPENSE CLAIMS

1. The administrative expense claims made by TGAAR are summarized as follows:
 - a. Chapter 11 Claim for Rent/Possession – Pre-Petition Lease. From August 31, 2001 until conversion on December 18, 2001, during which the Debtor-in-possession had actual and effective use and possession of Store #966 and used it to store and protect the equipment. During such period, the amount of rent under the terms of the Lease totals \$68,244.51, plus prorated ad valorem taxes of \$9,854.79 ($109/365 \times \$33,000.00$). TGAAR should be allowed a Chapter 11 administrative expense claim of \$78,099.30 (based on 108 days of actual possession and usage) based on the rental rates under the Lease for the period from September 1, 2001 to December 18, 2001. If TGAAR is not allowed an administrative expense claim based on the rental rate in the Lease, TGAAR should be allowed an administrative expense claim based on the cost of comparable storage space in Midland, Texas (\$3.00/sq. ft./yr.). (Affidavit ¶31.a.)
 - b. Chapter 7 Claim for Rent/Possession – Pre-Petition Lease. For the period from December 19, 2001 (the day after conversion) through December 31, 2001 (the last days of the original Lease), during which the Chapter 7 Trustee had actual and effective possession and use of Store #966, the amount of rent under the terms of the Lease totals \$8,139.24 ($13/365 \times \$19,043.77/\text{mo.} \times 12 \text{ mo.}$), plus prorated ad valorem taxes of \$1,175.34 ($13.365 \times \$33,000.00$). TGAAR should be allowed a Chapter 7 administrative expense claim of \$9,314.58 (based on 13 days of possession and usage) based on the rental rates under the original Lease for the period from December 19, 2001 to December

31, 2001. If TGAAR is not allowed an administrative expense claim based on the rental rate in the Lease, TGAAR should be allowed an administrative expense claim based on the cost of comparable storage space in Midland, Texas (\$3.00/sq. ft./yr.). (Affidavit ¶31.b.)

c. Chapter 7 Administrative Expense – Post-Petition Lease Obligation. For the five (5) years of the extended Lease term (a post-petition obligation), the amount of rent under the terms of the Lease totals \$1,142,626.20(60 mo. x \$19,043.77/mo.) plus estimated ad valorem taxes of \$165,000.00 (5 yrs. x \$33,000.00). TGAAR should be allowed a Chapter 7 administrative expense claim of \$1,307,626.20 for the 5-year period of the post-petition extension of the Lease. At the very least, TGAAR should be allowed a Chapter 7 administrative expense claim of \$131,837.35 ($\$19,043.77 \times 12 \text{ mo.} \times 184/365 + \$33,000.00 \times 184/365$) for the 184 days during 2002 (January 1, 2002 to July 3, 2002) that the Chapter 7 Trustee actually used and possessed Store #966 to store and protect the equipment. (Affidavit ¶31.c.)

d. Chapter 7 Administrative Expense – Clean-up of Midland Store. The Auction Order required the auctioneer to leave Store #966 in a “broom clean” condition. The Lease required that Store #966 be left in a “neat and clean condition.” Such was not done. The auctioneer is the agent of the Chapter 7 Trustee. The costs of the clean-up is estimated at \$10,000.00 and such amount should be allowed as a Chapter 7 administrative expense claim (Affidavit ¶31.d.).

e. Chapter 7 Administrative Expense – Damage to Midland Store. Substantial damage resulted when the buyers, acting under the guidance of the auctioneer, removed the equipment from Store #966 following the auction. The Lease

allowed the lessee's fixtures to be removed from Store #966, but states that they "shall repair any damage caused by removal." None of the damage, which was very substantial, that was caused by removal has been repaired by the auctioneer or the Chapter 7 Trustee. It is estimated that the cost to repair the damage will be \$100,000.00. TGAAR should be allowed a Chapter 7 administrative expense claim of \$100,000.00 (Affidavit ¶31.c.).

V.

CONCLUSION

The foregoing analysis and the summary judgment evidence attached hereto and incorporated by reference herein demonstrates that there are numerous genuine issues of material fact with respect to each of the matters asserted in the Trustee's Motion which preclude the granting of such Motion. TGAAR therefore respectfully requests that the Court deny the Trustee's Motion for Partial Summary Judgment in its entirety.

The foregoing analysis and the summary judgment evidence demonstrates that there are no genuine issues of material fact with respect to any of the matters asserted in TGAAR's Cross-Motion for Partial Summary Judgment and that this Court should grant TGAAR's Cross-Motion for Partial Summary Judgment as follows:

1. Chapter 11 Claim for Rent/Possession Pre-Petition Lease. From August 31, 2001 until conversion on December 18, 2001, during which the Debtor-in-possession had actual and effective use and possession of Store #966 and used it to store and protect the equipment, TGAAR should be granted summary judgment allowing it a Chapter 11 administrative expense claim of \$78,099.30.

2. Chapter 7 Claim for Rent/Possession – Pre-Petition Lease. For the period from December 19, 2001 (the day after conversion) through December 31, 2001 (the last days of the

original Lease), during which the Chapter 7 Trustee had actual and effective possession and use of Store #966, TGAAR should be granted summary judgment allowing it a Chapter 7 administrative expense claim of \$9,314.58.

3. Chapter 7 Administrative Expense – Post-Petition Lease Obligation. For the five (5) years of the extended Lease term (a post-petition obligation), TGAAR should be granted summary judgment allowing it a Chapter 7 (or Chapter 11) administrative expense claim of \$1,307,626.20.

4. Chapter 7 Administrative Expense – Clean-up of Midland Store. For not complying with the Auction Order and for leaving Store #966 in a disastrous condition (as opposed to a “broom clean” condition), TGAAR should be granted summary judgment and allowed a Chapter 7 administrative expense claim in an amount to be determined at the trial of this matter.

5. Chapter 7 Administrative Expense – Damage to Midland Store. For the substantial amount of damage that resulted when the buyers, acting under the guidance of the auctioneer, removed the equipment from Store #966 following the auction, TGAAR should be granted summary judgment and allowed a Chapter 7 administrative expense claim in an amount to be determined at the trial of this matter.

Dated this 29th day of October, 2002.

Respectfully submitted,

ROBERT K. WHITT
State Bar No. 21386500
505 N. Big Spring, Suite 402
Midland, Texas 79701
(915) 686-2000 / FAX: (915) 686-2009

BY: 
Robert K. Whitt

**ATTORNEY FOR TGAAR PROPERTIES, INC.,
d/b/a WESTWOOD VILLAGE SHOPPING
CENTER and TGAAR WEST TEXAS, INC.**

CERTIFICATE OF SERVICE

I certify that on the 29th day of October, 2002, I overnighted via UPS a copy of the foregoing pleading to the following persons:

David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, NM 87102


Robert K. Whitt

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

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|-----------------------------------|---|--------------------------|
| IN RE: | § | |
| | § | NO. 7-01-10779-SA |
| FURR'S SUPERMARKETS, INC., | § | |
| | § | Chapter 7 |
| | § | |
| DEBTOR. | § | |

AFFIDAVIT OF GARY R. BAILY AND GARY GLASSCOCK

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, on this day personally appeared the undersigned affiants who, after being duly sworn, did depose on their oaths and say as follows:

1. Our names are Gary R. Baily and Gary Glasscock. We are both over the age of 21 years, have never been convicted of a crime, have personal knowledge of the matters stated herein and are fully competent to testify to the matters stated herein.

2. We are both officers, directors and owners of TGAAR Properties, Inc. ("TGAAR Properties") and TGAAR West Texas, Inc. ("TGAAR West Texas"). We have been engaged in the commercial real estate business for in excess of 12 years in Midland, Texas and other parts of West Texas and New Mexico and are familiar with the commercial real estate business in Midland, Texas.

3. At the time of the bankruptcy filing by Furr's Supermarkets, Inc. (the "Debtor") on February 8, 2001, TGAAR West Texas owned (and TGAAR Properties managed as the agent for TGAAR West Texas) the land and improvements (described in the Shopping Center Lease that is part of Exhibit "A" attached hereto) and the Debtor was operating a grocery store thereon

(Store #966). TGAAR West Texas and TGAAR Properties are collectively hereinafter referred to as "TGAAR."

4. Such Shopping Center Lease was initially executed on August 14, 1980 by Safeway Stores, Incorporated ("Safeway"), as lessee. Such Shopping Center Lease was subsequently amended on August 24, 1981, to extend the term to December 31, 2001. True and correct copies of the Shopping Center Lease and the amendment thereto are attached as Exhibit "A" and are collectively referred to hereinafter as the "Lease".

5. On October 29, 1987, Safeway assigned the Lease to Furr's, Inc. On or about March 11, 1991, Furr's, Inc. assigned its interest in the Lease to the Debtor. Store #966 was thereafter occupied by the Debtor and operated as a grocery store until August 31, 2001. TGAAR was the assignee and owner of the lessor's interest in the Lease at the time the bankruptcy was filed.

6. Representatives of the Debtor and TGAAR communicated during June, 2001 concerning whether the Debtor would exercise its option to extend the Lease. Under the terms of the Lease, the option to extend the Lease was required to be exercised by June 30, 2001. The Debtor exercised, during the Chapter 11 case, the Debtor's option to extend the Lease for an additional five (5) year period by sending TGAAR a letter dated June 18, 2001. A true and correct copy of the letter dated June 18, 2001 exercising the five year option to extend the Lease is attached as Exhibit "B". The term of the Lease for Store #966 was thereby extended until December 31, 2006. By extending the Lease, the Debtor created a new post-petition obligation in the ordinary course of its business during the Chapter 11 case. The extension was a reasonably common transaction that would be entered into by similar businesses in the normal course of business. Such extension was necessary to enable the Debtor to sell Store #966 to

Fleming Companies, Inc ("Fleming"). Without such extension, the Debtor had very little to sell (i.e., the pre-petition Lease terminated December 31, 2001, by its terms).

7. On July 26, 2001, Fleming sent out a Third Party Purchaser Notice, pursuant to §13.5(b) of the Assct Purchase Agreement between Fleming and the Debtor that gave notice that MAL Enterprises, Inc. would purchase Store #966. TGAAR received a copy of such Third Party Purchaser Notice, a true and correct copy of which is attached as Exhibit "C".

8. It is my understanding that the purchaser under the Asset Purchase Agreement, Fleming, elected not to purchase Store #966 (or the Lease). TGAAR was notified of such decision not to purchase Store #966 on or about August 12, 2001.

9. By letter dated August 23, 2001, the Debtor notified TGAAR that it "will be closing all Stores effective August 31, 2001."

10. By letter dated August 31, 2001 the Debtor sent the keys to Store #966 to TGAAR. A true and correct copy of such letter is attached as Exhibit "D". Such letter stated that the Debtor "hereby surrenders possession of the premises to you effective August 31, 2001," but Debtor did not do so as the Debtor (and later the Chapter 7 Trustee) left the equipment in Store #966 for over ten (10) months after August 31, 2001. Such letter also requested TGAAR to bid on the equipment that was still located in Store #966.

11. After receipt of the August 31, 2001 letter, the Debtor's representative told TGAAR that he thought that the Debtor would accept an offer of between \$5,000-10,000 for all of the equipment left in Store #966.

12. On September 13, 2001, TGAAR responded to the letter of August 31, 2001, by sending a bid for \$5,775 for all of the equipment and assets of the Debtor remaining in Store #966. A true and correct copy of the letter dated September 13, 2001 is attached as Exhibit "E". Implicit in such offer was TGAAR's agreement to assume the clean-up costs and the costs of

repair that would result when the equipment was removed. Such costs far exceeded the monetary offer of \$5,775.00. When no response to TGAAR's bid was received, TGAAR unsuccessfully attempted to contact the Debtor on numerous occasions. After a while, the Debtor's phones were disconnected making contact impossible.

13. After August 31, 2001, TGAAR requested the Debtor (and later, the Chapter 7 Trustee) to actually vacate the premises. Such requests were not heeded.

14. Because the Debtor continued to use Store #966 to store and protect the equipment, beginning in October, 2001, TGAAR sent monthly invoices to the Debtor for "equipment storage." True and correct copies of such invoices are attached as Exhibit "F".

15. On February 25, 2002, TGAAR's representative received a telephone call from the Chapter 7 Trustee inquiring about the above-described invoices that she had received for equipment storage in Store #966. After the facts were explained to the Chapter 7 Trustee by TGAAR, she advised TGAAR that the bankruptcy estate should either pay the equipment storage or abandon the equipment in Store #966 to TGAAR. The Chapter 7 Trustee also stated that she would promptly get back to TGAAR.

16. After waiting patiently for more than two weeks, TGAAR attempted to contact the Chapter 7 Trustee by telephone, to no avail. Approximately 5-6 additional attempts to make contact with the Chapter 7 Trustee by telephone were made, also to no avail.

17. The auction to sell equipment was held in Store #966 on May 30, 2002, following entry of an "Auction Order."

18. Under the Auction Order, Store #966 was required to be left by the auctioneer in a "broom clean" condition. That has not occurred.

19. Despite such auction, much of the equipment (plus an enormous amount of junk and trash) remained in Store #966 well after the date of such auction. True and correct copies of

photos of Store #966 taken shortly after July 3, 2002 are attached as Exhibit "G" (copies of such photos were also attached to the original motion filed by TGAAR).

20. The auctioneer represented to TGAAR that all equipment would be removed from Store #966 promptly (within 4-5 days) after the auction. Such did not occur.

21. After numerous protests by TGAAR, a letter dated July 3, 2002 (the "July 3, 2002 Letter"), was finally received by TGAAR from counsel to the Chapter 7 Trustee allowing TGAAR to take possession of Store #966 and remove the large volume of equipment, junk and trash that still remained in Store #966. A true and correct copy of the July 3, 2002 Letter is attached as Exhibit "H".

22. From September 1, 2001 until receipt of the July 3, 2002 Letter, TGAAR was deprived of possession and use of Store #966. The automatic stay under 11 U.S.C. §362 was in effect and TGAAR's representatives had been advised not to "touch" the equipment in Store #966. TGAAR was effectively prohibited until July 3, 2002 from removing the equipment and junk in Store #966 and from taking possession of Store #966. The Debtor and the Chapter 7 Trustee used the automatic stay to remain in possession of and actually use Store #966 to the benefit of the bankruptcy estate, albeit contrary to the wishes and over the protests of TGAAR.

23. Until the July 3, 2002 Letter was received, TGAAR could not begin to remove the remaining equipment, junk and trash and get Store #966 into a condition so could be shown to prospective tenants. In fact, Store #966 was left in such a dismal state that, prior to July 3, 2002, TGAAR could not show Store #966 to potential tenants until large amounts were expended to "clean-up" Store #966. See Exhibit "G".

24. TGAAR estimates that the cost, including "dump fees" for simply removing the remaining equipment, junk and trash from Store #966, will be at least \$15,000.00. Under the

Auction Order, such clean-up was required to have been conducted by the Chapter 7 Trustee's agent, the auctioneer. The Lease (¶'s 7-8) also required such clean-up.

25. Substantial damage occurred to Store #966 when certain of the equipment sold at the auction was removed from Store #966. Such damage could have been avoided or greatly reduced had different methods been used to remove the equipment. TGAAR protested the method of removal before the equipment was removed but the buyers advised that the auctioneer authorized such methods of removal and proceeded to remove the equipment and cause substantial damage to the store premises.

26. TGAAR estimates that it will cost at least \$120,000.00 to repair the damage done to Store #966 by the buyers that removed the equipment under the guidance of the auctioneer. TGAAR requested the Chapter 7 Trustee to provide TGAAR with a list of the names and addresses of such buyers, but such list has not yet been received.

27. Store #966 contains approximately 44,000 square feet. The Chapter 7 Trustee used Store #966 to store and protect the equipment pending the auction and also to conduct the auction. TGAAR has received nothing from the Debtor or the Chapter 7 Trustee for the use and possession of Store #966 for the period subsequent to August 31, 2001.

28. Monthly rentals under the Lease (including CAM) are \$19,043.77/month, plus reimbursement for ad valorem taxes totaling approximately \$33,000.00/year.

29. Rather than use Store #966, without TGAAR's consent, for storage and to conduct the auction, the Debtor-in-possession and the Chapter 7 Trustee had an alternative; namely, the Debtor-in-possession and the Chapter 7 Trustee could have moved the equipment to a different facility (as the Debtor-in-possession did with respect to the foods and goods on the shelves), stored it at such facility and then conducted the auction at such facility (or at another

facility). The costs of any such removal and storage would have been far more than the auction proceeds.

30. TGAAR has had to pay all the expenses for utilities and all ad valorem taxes during the period (September 1, 2001 to July 3, 2002) that the Debtor and the Chapter 7 Trustee actually used and possessed Store #966 to store and protect the equipment.

31. The administrative expense claims made by TGAAR are summarized as follows:

a. Chapter 11 Claim for Rent/Possession – Pre-Petition Lease. From August 31, 2001 until conversion on December 18, 2001, during which the Debtor-in-possession had actual and effective use and possession of Store #966 and used it to store and protect the equipment, the amount of rent under the terms of the Lease totals \$68,244.51, plus prorated ad valorem taxes of \$9,854.79 ($109/365 \times \$33,000.00$). For this period, TGAAR should be allowed an administrative expense claim of \$77,099.30.

b. Chapter 7 Claim for Rent/Possession – Pre-Petition Lease. For the period from December 19, 2001 (the day after conversion) through December 31, 2001 (the last days of the Lease), during which the Chapter 7 Trustee had actual and effective possession and use of Store #966, the amount of rent under the terms of the Lease totals \$8,139.24 ($13/365 \times \$19,043.77/\text{mo.} \times 12 \text{ mo.}$), plus prorated ad valorem taxes of \$1,175.34 ($13.365 \times \$33,000.00$). For this period, TGAAR should be allowed an administrative expense claim of \$9,314.58.

c. Chapter 7 Administrative Expense – Post-Petition Lease Obligation. For the five (5) years of the extended Lease term (a post-petition obligation), the amount of rent under the terms of the Lease totals \$1,142,626.20 ($60 \text{ mo.} \times \$19,043.77/\text{mo.}$) plus estimated ad valorem taxes of \$165,000.00 ($5 \text{ yrs.} \times \$33,000.00$). For this five year

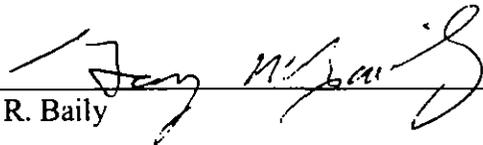
period of the post-petition extension to the Lease, TGAAR should be allowed an administrative expense claim of \$1,307,626.20.

d. Chapter 7 Administrative Expense -- Clean-up of Midland Store. The Auction Order required the auctioneer to leave Store #966 in a "broom clean" condition. The Lease (§8) required that Store #966 be left in a "neat and clean condition." Such was not done. The costs of the clean-up of Store #966 are not yet known but are estimated to be at least \$15,000.00.

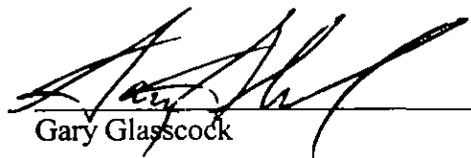
e. Chapter 7 Administrative Expense -- Damage to Midland Store. Substantial damage resulted when the buyers, acting under the guidance of the auctioneer, removed the equipment from Store #966 following the auction. The Lease allowed the lessee's fixtures to be removed from Store #966, but states that they "shall repair any damage caused by removal." None of the damage which was very substantial, that was caused by removal has been repaired by the auctioneer or by the Chapter 7 Trustee. Such damages are very substantial. It is estimated that the cost to repair the damages will be at least \$120,000.00.

We have read the foregoing statements and they are true and correct.

FURTHER AFFIANTS SAITH NOT.



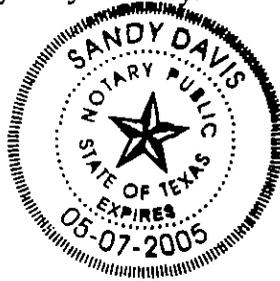
Gary R. Baily

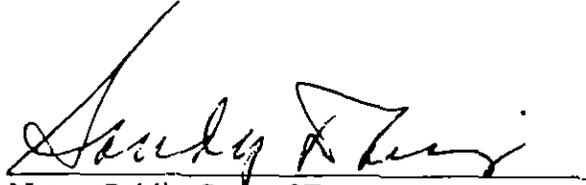


Gary Glasscock

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 28th day of October, 2002, by Gary R. Baily.

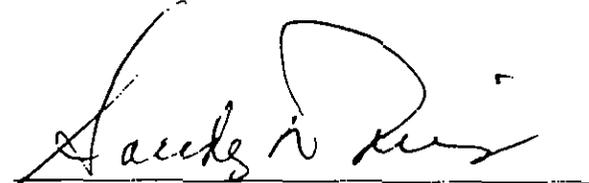



Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 28th day of October, 2002, by Gary Glasscock.




Notary Public, State of Texas

FIRST SHOPPING CENTER LEASE MODIFICATION AGREEMENT

THIS FIRST SHOPPING CENTER LEASE MODIFICATION AGREEMENT made this 24th day of August, 1981 by and between WESTWOOD JOINT VENTURE, a General Partnership, lessor, and SAFEWAY STORES, INCORPORATED, a Maryland corporation, lessee.

I. RECITALS

1.1 By lease dated August 14, 1980 hereinafter referred to as "said lease", lessor leased to lessee certain real property situated in the city of Midland, County of Midland, State of Texas which property is more particularly described in said lease.

1.2 Lease Paragraph 1 reads, in part, as follows:

"TO HAVE AND TO HOLD the leased premises, together with all Appurtenances, for a term of twenty (20) years commencing August 1, 1981 and ending July 31, 2001."

II. AGREEMENTS

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

III. TERMS

3.1 The last sentence of Paragraph 1 of said lease is hereby deleted and the following sentence is hereby substituted therefor:

"TO HAVE AND TO HOLD the leased premises, together with all Appurtenances, for a term of twenty (20) years, commencing January 1, 1982 and ending December 31, 2001."

3.2 Except as herein modified, said lease dated August 14, 1980 shall remain in full force and effect.

3.3 This First Shopping Center Lease Modification Agreement shall become effective as of the date of its execution by all parties hereto.

3.4 Each and all of the covenants, terms, agreements, and obligations of this First Shopping Center Lease Modification Agreement shall extend to and bind and inure to the benefit of the successors and/or assigns of the lessor and the lessee; herein the singular number includes the plural and one gender includes the others.

IN WITNESS WHEREOF, the lessor and lessee have executed this agreement.

WESTWOOD JOINT VENTURE
(A General Partnership)

By [Signature]
Its Managing General Partner
(LESSOR)

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By [Signature]
Its Assistance Vice President
By [Signature]
Its Assistant Secretary



Store No. 50, Division El Paso
Location Midland, Texas
Document Date 8/24/81
Page 1 of 1

Exhibit A

SHOPPING CENTER LEASE

THIS LEASE is made this 14th day of August 1980 between WESTWOOD JOINT VENTURE, a General Partnership, lessor, and SAFEWAY STORES, INCORPORATED, a Maryland corporation, lessee, on the following terms and conditions:

1. Premises. Term. Lessor hereby leases to lessee a portion of the following-described real property in the City of Midland, County of Midland, State of Texas:

The real property described in Exhibit "B" attached hereto and made a part hereof.

on which property lessor is to construct the Westwood Village Shopping Center (herein called the "shopping center") as shown on the plan dated August 15, 1980 attached hereto as Exhibit "A". The portion of the shopping center hereby leased (herein called the "leased premises") is designated "Safeway" and outlined in RED on Exhibit "A", and includes the building, or portion of building, and related improvements to be constructed thereon by lessor in accordance with the provisions of this lease.

TO HAVE AND TO HOLD the leased premises, together with all appurtenances, for a term of twenty (-- 20 --) years commencing August 1, 1981 and ending July 31, 2001.

2. Rent. Lessee agrees to pay rent in the sum of _____ DOLLARS (\$) on the first day of each calendar month during the term by checks or drafts payable to and mailed to _____ at _____ or as designated in writing by lessor. The rent for any fractional calendar month shall be pro-rated.

Sal

Store No. 501 Base

2. Rent. Lessee agrees to pay the following rents, by checks or drafts payable to

WESTWOOD JOINT VENTURE
and mailed to Westwood Joint Venture
at P.O. Box 16432, Ft. Worth, Texas 76133
or as designated in writing by lessor:

(a) A fixed minimum rent in the sum of --SEVENTEEN THOUSAND SEVEN HUNDRED--
-TWENTY TWO AND 18/100-----DOLLARS (\$17,722.18--) payable in advance on the first day of
each calendar month during the term. The minimum rent for any fractional calendar month shall be prorated

(b) A percentage rent in the amount, if any, by which one and one-quarter per cent (1 1/4%)
of gross sales made by lessee in the leased premises in each calendar year
of the lease term exceeds the minimum rent for the same calendar year. It
is agreed that the percentage rent paid to lessor, after all deductions
and offsets from percentage rent, shall not exceed thirty per cent of the
annual minimum rent, which percentage of annual rental shall be herein-
after known as the "ceiling amount". The ceiling amount shall increase
(i.e., be in excess of the percentage of annual rental stated) by an
amount equal to five per cent (5%) each renewal option period, commencing
with the first five (5) year option (i.e., thirty five per cent (35%)
during the first option, forty per cent (40%) during the second option,
etc., up to sixty per cent (60%) for the sixth five (5) year option period).

If lessee occupies the leased premises for a fractional period of
a calendar year, percentage rent for said fractional period shall be prorated based on the annual rate of gross sales made by lessee
in the leased premises during said fractional period and the annual rate of minimum rent for said fractional period.

On or before the forty-fifth day following each December thirty-first during the term and the last day of the term lessee
shall mail to lessor, at the place where rent is payable, a statement showing gross sales made by lessee in the leased premises
during the term of this lease for the calendar year or portion thereof last preceding the due date of such statement together with
any percentage rent due.

The term "gross sales" as used herein shall not include any of the following: (1) credits or refunds to customers for
merchandise returned or exchanged; (2) transfers of merchandise from the leased premises to other stores or warehouses of lessee
or its affiliated companies; (3) any sales taxes or other taxes imposed under any laws, ordinances, orders or regulations, whether
now or hereafter in force, upon or based upon the gross receipts of lessee or the sale or sales price of merchandise and which must
be paid by lessee, whether or not collected by lessee from its customers; (4) returns of merchandise to shippers or manufacturers;
(5) the net amount of discounts allowed to any customer pursuant to any customary and reasonable policy adopted by lessee,
including in such discounts, but not by way of limitation, the net amount of any discounts allowed by way of or resulting from the
issuance to customers of trading stamps or other evidences of purchase for immediate or future exchange for merchandise or
other things of value; and (6) merchandise or other things of value issued in redemption of such trading stamps or other evidences
of value, or issued as a premium or otherwise in connection with any sales promotion program of lessee. Lessor agrees to hold in
confidence all sales and related information furnished by lessee. Lessee makes no representation or warranty as to the sales
which it expects to make in the leased premises.

The provisions of this paragraph apply to the sales made by
any party occupying the leased premises.

End
Store No. 50 Div. El Paso
Location Midland, Texas
Document Date August 14, 1980
Page 1A of 11 pages

3. Lessor's title. Short Form Lease. Zoning. Lessor covenants that lessor has lawful title to the shopping center and full right to make this lease. This lease shall not be recorded; however, to establish the status of lessor's title and to establish the priority of lessee's lease, lessor and lessee shall, simultaneously with the execution of this lease, execute a short form of this lease which shall be recorded by lessee immediately after execution at the expense of lessor. Within thirty (30) days after the date of recording the short form lease, lessor, at its expense, shall provide lessee with current evidence, satisfactory to lessee from a responsible title insurance company of the status of lessor's title to the shopping center and with a licensed surveyor's recent survey of the shopping center which is satisfactory to lessee. Lessor further covenants that, at the time of the recording of the short form lease, the shopping center will be free from encumbrances except those agreed to in writing by lessee and that there will be no zoning or other ordinances, or title or other matters, except those agreed to in writing by lessee, which will restrict lessee's operation of a general mercantile business (including the sale of alcoholic beverages if not prohibited by law and if lessee obtains all necessary licenses and/or permits at lessee's expense) in the leased premises or the use of the common areas of the shopping center as provided for in this lease, and that so long as lessee is not in default lessee shall have quiet and peaceful possession of the leased premises and enjoy all rights herein granted without interference. In the event of any violation of any of the covenants made by lessor in this paragraph, lessee may cancel this lease by notice to lessor.

4. Common areas. Completion of shopping center. All those portions of the shopping center not shown as building areas on Exhibit "A" shall be common areas for the sole and exclusive joint use of all tenants in the shopping center, their customers, invitees and employees, and lessor hereby grants to lessee and its customers, invitees and employees the right of such exclusive joint use of all of said common areas. Lessor agrees that, at lessor's expense, all common areas will be maintained in good repair, kept clean and kept clear of snow and ice and adequately lighted when stores are open for business. Lessor agrees that all buildings in the shopping center shall not exceed one story in height (but may include mezzanines). Lessor further agrees that all buildings in the shopping center other than the building on the leased premises will be completed as shown on Exhibit "A" and ready for occupancy by not later than the lease commencement date as specified in Paragraph 1, that, following completion of construction of any portion of the shopping center, the sizes and arrangements of said buildings and common areas (including parking areas and traffic circulation and flow patterns) will not be changed without lessee's written consent, and that if said buildings are not so completed or if said sizes or arrangements are changed without lessee's written consent, lessee may cancel this lease by notice to lessor.

The provisions of Paragraphs 4 and 5 hereof notwithstanding, in the event lessor has not commenced the construction of all buildings in the shopping center including the building on the leased premises on or before

February 1, 1981, lessee may cancel this lease by notice to lessor. The words

"commenced the construction" as used herein being defined to mean the completion of foundations of all such buildings.

*provided, however, store fronts and interiors of other shops need not be installed until the requirements of the individual tenants are determined, except that lessor shall install neat and clean temporary store fronts of painted plywood within six (6) months following acceptance of possession of the leased premises herein;

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5. **Construction of common areas and lessee's building. Plans and specifications.** Lessor agrees, at lessor's sole cost, risk and expense, to construct on the common areas a sign tower for lessee, all parking and service areas, sidewalks, driveways and related improvements shown on Exhibit "A" and to construct on the leased premises a building or portion of a building, all in accordance with plans and specifications to be prepared at lessor's expense by Barnes/Seagraves and Foster, Henry, Henry & Thorpe, ^{INC.} Architect, and approved in writing by lessor and lessee. Lessee shall furnish lessor with drawings and/or specifications setting forth lessee's requirements to be incorporated in the plans and specifications to be prepared by the architect. Upon approval by the parties, the plans and specifications shall become a part of this lease as though set out in full herein. If, for any reason whatsoever, the plans and specifications are not approved by both parties on or before December 1, 1980, either party may cancel this lease by notice to the other party within ninety (90) days thereafter. Lessee may have the plans and specifications revised, at lessor's expense, if more than ninety (90) days elapse between the date of approval of plans and specifications and the date of commencement of construction of the building on the leased premises. Lessor agrees to complete said construction work (which shall include lessor's obtaining and furnishing to lessee of any certificate of occupancy or like document required by lawful authority) by not later than the date of commencement of the term of this lease specified in Paragraph 1. Lessee may enter upon the leased premises during the course of construction to inspect the construction work and to install its fixtures and equipment and such entry shall not constitute acceptance of possession of the leased premises by lessee.

6. **Acceptance of possession.** The term of this lease shall not commence until lessee accepts possession of the leased premises. Lessee shall accept possession of the leased premises (1) upon completion of construction of the buildings in the shopping center other than the leased premises in accordance with Paragraph 4, and (2) when the work referred to in Paragraph 5 is fully completed in accordance with the plans and specifications and exclusive possession of the leased premises is delivered to lessee. If lessee accepts possession of the leased premises on a date other than the commencement date specified in Paragraph 1, the term shall commence on the date lessee accepts possession but the expiration date specified in Paragraph 1 shall remain unchanged. If, for any reason whatsoever, the leased premises are not ready for occupancy within ninety (90) days after the commencement date specified in Paragraph 1, lessee may cancel this lease by notice to lessor. Notwithstanding the provisions of Paragraph 2, the rent shall not commence, become due, or be payable until thirty (30) days after the term of this lease commences

or until the date lessee opens for business in the leased premises, whichever shall first occur. Notwithstanding anything the contrary herein, if the lessor is delayed in making the leased premises ready for occupancy as a direct result of riot, insurrection, fire, Acts of God, operation of law or governmental regulation or order, an extension of one (1) working day will be allowed lessor for each working day of such cause; provided, however, that in any and all events, if the leased premises are not ready for occupancy within one hundred twenty (120) days after the commencement date specified in paragraph 1, lessee may cancel this lease by notice to lessor. Notwithstanding the provisions of paragraph 1, the rent shall not commence, become due, or be payable until 30 days after the term of this lease commences or until the date lessee opens for business in the leased premises, whichever shall first occur. Notwithstanding anything herein to the contrary, lessee shall not be required to accept possession of the leased premises during December, if lessee so elects.

7. **Lessor's repairs.** Lessor agrees to keep the building structure on the leased premises (including, without limitation, the roof, roof structures and supports, foundation and structural supports, walls, structural portion of the floors, chimneys, skylights, gutters, downspouts and exterior doors) and all heating, ventilating and cooling equipment, wiring, plumbing, sprinkler system and plate glass in good repair during the lease term and to paint the exterior when needed in colors approved by lessee. If lessee is deprived of the use of a substantial portion of the leased premises during the making of any repairs, improvements or alterations by lessor under any provision of this lease, the rent shall be abated or proportionately reduced according to the extent to which lessee is deprived of such use. Notwithstanding the foregoing, lessor shall not be responsible for maintenance and repair of the exterior doors, heating, ventilating and cooling equipment, wiring, plumbing, plate glass, interior painting, or floor surfacing after the first twelve (12) months of the lease term, except for repairs where damage is covered by lessor's policy of fire and extended coverage insurance or by warranties supplied by lessor's contractors.

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Location Midland, Texas
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8. Lessee's repairs. Utilities. Lessee agrees to repair all damage to the leased premises caused by lessee's use other than (1) ordinary wear and tear and (2) those instances where the lessor has assumed the repair responsibility elsewhere in this lease, and that on surrendering possession it will leave the leased premises in good condition, allowance being made for ordinary wear and tear, damage by fire, the elements or other casualty, or resulting from the acts of persons other than lessee, or from defects therein, being excepted. Lessee may make such repairs, alterations and improvements to the leased premises as lessee deems desirable but lessee agrees not to permit any liens to stand against the leased premises for work done or materials furnished. Lessee may paint the interior of the building on the leased premises in such colors as lessee elects. Lessee shall have the exclusive right to paint, erect or authorize signs in, on or about the building on the leased premises and may, at any time, remove signs and color effects installed by lessee. On surrendering possession lessee shall not be required to restore the leased premises to their condition at the commencement of the term, and lessor agrees to accept the leased premises ^{in a neat and clean condition} with alterations and improvements made by lessee. Lessee agrees to pay all charges for electricity, gas, heat, water, ^{garbage pick-up} telephone and other utility services used by lessee on the leased premises.

*Any signs subsequent to the original signs, which were approved in the plans and specifications referred to in paragraph 5 hereof, shall be similar in size and location.

9. Lessee's fixtures. Lessee may install in the leased premises such fixtures and equipment as lessee deems desirable and all of said items shall remain lessee's property whether or not affixed or attached to the leased premises. Lessee may remove said items from the leased premises at any time but shall repair any damage caused by removal.

10. Compliance with laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises and, if required solely by reason of lessee's type of business, to make nonstructural repairs, improvements and alterations to the interior of the building on the leased premises required by such authority. Lessor agrees to make all other repairs, improvements or alterations to the leased premises and the common areas required by such authority.

11. Damage by casualty. If the leased premises are damaged by fire, the elements or other casualty, lessor shall promptly repair all damage and restore the leased premises to their condition just prior to the damage. If lessee is deprived of the use of any substantial portion of the leased premises either by reason of said damage or during restoration, the rent shall be abated or proportionately reduced according to the extent to which lessee is deprived of such use. Lessee agrees to keep in effect on the leased premises fire insurance with extended coverage endorsement in an amount not less than eighty per cent (80%) of the insurable value of the building improvements thereon. Unless this lease is terminated as provided below, the insurance proceeds shall be used for the repair or restoration of the leased premises. If ~~lessee's~~ ^{lessee's} insurance policy permits the release of others from liability for loss from casualties insured against, such release from liability is hereby granted to ~~lessee~~ ^{lessor} to the extent of ~~lessee's~~ ^{lessor's} actual recovery of loss under such policy. If the leased premises are damaged by fire, the elements or other casualty to the extent of seventy-five per cent (75%) or more of the insurable value thereof, lessee may terminate this lease as of the date of the damage by notice to lessor within thirty (30) days after said date. If any adjoining buildings are constructed in such a manner as to make a sprinklered rate inapplicable for the insurance to be provided by lessee as required herein, lessor shall reimburse lessee for the difference between the sprinklered rate and the unsprinklered rate on lessee's building on the leased premises. In the event this lease is terminated due to damage by casualty, the insurance proceeds for damage to the leased premises shall be paid to the lessor to be used as he so determines.

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Sal

six (6) months'

16. **Options for renewal.** Lessee, at lessee's option, by giving lessor ~~the~~ written notice before the expiration of the term or option term then in effect, may extend the term of this lease for six (6) separate and additional periods of five (5) years each on the same terms and conditions, ~~and the lease shall be deemed to be extended for such periods unless the lessee gives written notice to the lessor before the expiration of the term or option term then in effect.~~

17. **Holding over.** If lessee remains in possession of the leased premises after the expiration of this lease, such continued possession shall, if rent is paid by lessee and accepted by lessor, create a month-to-month tenancy on the terms herein specified, and said tenancy may be terminated at any time by either party by thirty (30) days' notice to the other party.

18. **Notices.** Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, addressed, if to lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to lessee, to it at P.O. Box 4800, El Paso, Texas 79914.

The person and the place to which notices are to be mailed may be changed by either party by notice to the other party.

19. **Principal tenants.** Lessor covenants that, by not later than ninety (90) days before the lease commencement date specified in Paragraph 1, lessor will furnish lessee with proof satisfactory to lessee that lessor has entered into leases with tenants from the following categories for space in the shopping center in the location shown on Exhibit "A" and in an amount not less than the amount set opposite each category designation, for a term not less than the number of years set opposite the category designation:

| | | | | |
|------------|-------|---------|----|-------|
| Drug Store | 7,800 | sq. ft. | 15 | years |
| | | sq. ft. | | years |
| | | sq. ft. | | years |

Lessor covenants that each category's tenant's lease will be noncancellable except for cancellation rights based on default, casualty damage or condemnation which are substantially similar to such cancellation rights set forth in this lease, the words "substantially similar" being defined for this purpose to mean that the event, act, or inaction, which gives said tenant a right to cancel its lease would also under the terms of this lease give the herein lessee the right to cancel this lease if such event, act, or inaction was experienced by the herein lessee rather than by said tenant. Lessor covenants that all of said tenants will have opened their respective stores to the general public for business by not later than the lease commencement date as defined in Paragraph 6. If any of said covenants are not fulfilled, lessee may, at its option until said covenants are fulfilled, either (1) notwithstanding the provisions of Paragraph 6 refuse to accept possession of the leased premises until said covenants are fulfilled, or (2) accept possession of the leased premises and open for business without incurring any obligation for minimum rent and only incurring an obligation for ~~such~~ percentage rent, if any, otherwise specified in this lease, provided that the obligation for ~~such~~ the percentage rent shall in no event exceed the minimum rent otherwise payable.

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If any lease referred to above is cancelled prior to the expiration of the term prescribed for that lease, except pursuant to a cancellation right substantially similar (as defined above) to the cancellation rights contained in this lease for default, casualty damage or condemnation, lessee's obligation to pay minimum rent shall cease as of the date of such cancellation and lessee's

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obligation for minimum rent shall not resume until (1) lessor shall have furnished lessee with proof satisfactory to lessee that lessor has entered into a lease with another tenant of the same category ("replacement tenant") for the same space in the shopping center and for a term of not less than the remainder of the term specified in such cancelled lease and (2) such replacement tenant shall have opened its store to the general public for business. If the replacement tenant has not opened its store to the general public for business within one hundred eighty (180) days after such principal tenant's lease is cancelled, lessee may, at its option, cancel this lease by notice to lessor.

20. Future expansion. It is understood and agreed that lessee, at any time during the lease term, may have a building addition made to the leased premises. Said building addition is to be located within that portion of the common area shown outlined in GREEN on Exhibit "A" and marked "Safeway Expansion Area." It is also agreed that in connection with the building addition to the leased premises, lessee may have the then existing building on the leased premises remodeled (said building addition and said remodeling, if its inclusion is requested by lessee is hereinafter referred to as "said addition"). Said addition shall be made on the following terms and conditions.

(a) If lessee desires said addition, it shall give written notice to lessor and request lessor to build said addition according to plans and specifications which shall be prepared by lessee and approved by lessor, said approval not to be unreasonably withheld. Lessor shall obtain bids for said addition from at least three (3) general contractors approved by lessee. Lessee shall have the right to review and approve all bids received by lessor, and the award of the contract.

(b) Commencing on the date of completion of said addition by lessor in accordance with the plans and specifications, the minimum monthly rent payable by lessee under Paragraph 2(a) hereof shall be increased by that amount necessary to fully amortize the cost of said addition with interest on the monthly declining straight line balance thereof at the Industrial "A" rated bond rate (long-term) in effect at time of completion over the remainder of the original term (or at lessee's election, also over one or more option terms which shall be exercised by lessee in the hereinafter mentioned Lease Modification Agreement) from the date of completion.

(c) If lessor advises lessee within thirty (30) days of lessee's written notice that it is unable or unwilling to construct said addition or if construction has not commenced within ~~thirty (30) days~~ ^{six (6) months} after the approval of the plans and specifications, as aforesaid, then lessee may, at its sole cost and expense, make such addition to the leased premises; provided, however, that (1) said addition is in accordance with the aforesaid approved plans and specifications, (2) there shall be no additional minimum rent payable by lessee, and (3) lessee will indemnify and save harmless lessor from and against any and all manner of claims for liens, for wages or materials, or for damage to person or property caused during the making of or in connection with said addition. In the event lessee chooses to make the addition, lessor hereby gives lessee its consent to alter the shopping center common areas in the vicinity of the leased premises to the extent lessee finds necessary to construct said addition and to conveniently use the leased premises as expanded. Lessor hereby gives its consent to any action taken by lessee in applying for any and all permits, licenses, certificates, variances or other entitlements for use (hereinafter "permits") which lessee finds necessary or desirable and lessor hereby appoints lessee its agent for applying for said permits. Lessor further agrees to cooperate with lessee in arranging for the release and/or relocation and/or the granting of any utility easements as may be required by lessee for said addition.

(d) If lessee constructs said addition, lessee may deduct from percentage rent, if any, ~~any amount in excess of the amount of percentage rent~~ ^{in excess} after all other offsets and deductions against percentage rent provided in this lease are first taken, an amount equal to said ~~percentage rent~~ ^{percentage rent} until such time as the balance in the amortization account, as hereinafter created, equals zero. An amortization account shall be created to record the operation of the provisions of this paragraph. The original balance of said account shall be the cost of said addition. Interest, at the Industrial "A" rated bond rate (long-term) in

*in excess of the percentage rent paid by lessee for the last full calendar year prior to the completion of the addition

Store No. 50 Dc El Paso
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effect at the time of completion of said addition, shall accrue on the balance of said account for the previous calendar year on January 1 of each year. Interest shall be prorated from the date of completion to December 31 of the year of completion of said addition. After accrual of said interest, lessee shall deduct from said account an amount equal to the amount to be deducted, under the provisions of this paragraph, from percentage rent.

(c) The "cost of said addition" as used herein shall include architect fees for preparation of plans and specifications, the construction contract price for the construction and making of said addition (including site development and parking improvements, contractor's performance bond, surveys, soil tests, permit fees, and other costs directly relating to the construction), but shall not include legal fees or finance costs. Lessor shall have the right to review and approve all plans and specifications, which approval shall not be unreasonably withheld.

(d) The "cost of said addition" shall be determined by the party having said addition made furnishing the other party, within sixty (60) days of the completion of said addition, paid invoices, contracts or such other documents as establish the payment or obligation to pay for the cost of said addition.

(e) Upon completion of said addition and determination of the cost of said addition, but in no event later than ninety (90) days after completion of said addition, the lessor and lessee shall execute a Lease Modification Agreement which shall set forth (1) the cost of said addition, (2) the date of completion of said addition, (3) the new extent of the leased premises, by including the expansion area within the RED outline on a new Exhibit "A" to the lease, (4) the Industrial "A" rated bond rate (long-term) in effect at the time of completion of said addition, and (5) if lessor constructed said addition, shall exercise the option periods, if any, which lessee has elected to use in the amortization of the cost of said addition, as provided in (b) above, and (6) set forth the revised minimum monthly rent.

21. **Separation of uses.** Lessor recognizes lessee's customers' need for adequate parking facilities in close proximity to the leased premises, and the importance of protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long-term parking by patrons or employees of certain types of business establishments. Lessor further recognizes lessee's interest in not having tenants occupying space in close proximity to the leased premises who create or cause excessive noise, litter or odor. To safeguard lessee's interest in a clean, quiet and odor free environment and adequate parking for its customers, lessor conveys and agrees that it shall not permit the use or operation of any portion of the shopping center, within ^{fifty (50)} two hundred feet (~~250~~) of any exterior building wall of the leased premises for a restaurant (fast food or sit-down) or entertainment or recreational activities such as, but not limited to, bowling alleys, theaters, carnivals or other places of public or private amusement.

22. **Remedies cumulative.** No remedy herein conferred upon or reserved to lessor or lessee shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

23. **Automatic termination.** Notwithstanding anything herein to the contrary, if this lease has not previously been terminated and term of this lease has not commenced by three ⁽³⁾ years from the date of this lease, this lease shall thereupon automatically terminate.

24. **Attorney's fees.** If lessor or lessee files a suit against the other which is in any way connected with this lease, the unsuccessful party shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

Store No. 50 Div. El Paso
Location Midland, Texas
Document Date August 14, 1980
Page B of 11 pages

25. Paragraph headings. The paragraph headings of this lease are inserted only for reference and in no way define, limit, or describe the scope or intent of this lease nor affect its terms and provisions.

26. Lease execution and change. It is understood and agreed that until this lease is fully executed and delivered by both lessor and the authorized corporate officers of lessee there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. It is further agreed that once this lease is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed and this lease once executed and delivered shall not be modified, changed or altered in any respect except by a writing executed and delivered in the same manner as required for this lease.

27. Rights of successors. All of the rights and obligations of the parties under this lease shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

28. Real Property Taxes. Lessor agrees to pay all real property taxes on the entire shopping center and all improvements thereon with reimbursement by lessee of a portion thereof as hereinafter provided. Lessor agrees to obtain separate tax bills on lessee's building, the remaining buildings in the shopping center, and the land of the shopping center. Lessee shall reimburse lessor for all taxes assessed against lessee's building and lessee's share of the taxes assessed against the land of the shopping center provided lessor requests such reimbursement not later than ninety (90) days after the delinquent date for such taxes. "lessee's share" as used herein shall be a fraction, the numerator of which fraction shall be the building ground floor area on the leased premises and the denominator of which shall be the total building area in the shopping center, including the building on the leased premises as shown on Exhibit "A". In the event lessor is unable to obtain separate tax bills on lessee's building and the remaining buildings in the shopping center, then lessee shall pay its share of taxes on the shopping center building areas as "lessee's share" as defined above. Lessee shall so reimburse lessor within thirty (30) days after receipt of satisfactory evidence of lessor's payment of such taxes and the amount due from lessee. Lessee shall not be obligated to pay any portion of any penalty for delinquent payment by lessor of such taxes. Any tax reimbursement by lessee hereunder shall be prorated as of the commencement and termination or expiration dates of this lease. Lessee reserves the right to appear before the appropriate tax authority for the purpose of protesting any taxes or assessments. In the event any percentage rent shall be payable to lessor under paragraph 2 of this lease for any calendar year, all sums paid by lessee under this paragraph during the same calendar year shall be deducted from percentage rent otherwise payable to lessor.

29. Soil Tests. Lessor agrees to furnish soil tests, site analysis, and an overall grading plan of the entire shopping center to lessee at least thirty (30) days prior to submitting plans and specifications to lessee.

Store No. 50 Dlx El Paso
Location Midland, Texas
Document Date August 14, 1980
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enc

10/2/00
10/2/00
10/2/00
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10/2/00

30. Common Area Maintenance. Lessee agrees to reimburse lessor for lessee's share of the actual costs incurred by lessor including but not limited to lighting the common area, in keeping same clean, keeping cleared of snow and ice and in maintaining the common areas in good repair, excluding, however, the costs of any capitalizable building improvements or additions to the common area. Lessee shall so reimburse lessor after receipt of satisfactory evidence of said costs and amount due from lessee, but not more than once each month. Such costs shall be kept at a reasonable minimum. Lessee's share shall be a fraction of said costs, the numerator of which fraction shall be the building floor area on the leased premises and the denominator of which shall be the total building floor area of the shopping center including the building on the leased premises, as shown on Exhibit "A". Lessor agrees that in no event shall the amounts payable by lessee under this paragraph in any calendar year exceed the sum of 15¢ per calendar year for each square foot of the building area on the leased premises. Lessee agrees, however, at the end of any five (5) year period of the lease term and extension thereof, to review with lessor the costs as referred to above. If lessee's share of said costs is in excess of 15¢ per square foot per year and said costs are, in lessee's opinion, reasonable, then lessee will agree to increase the maximum amount payable under this paragraph for the remainder of the lease term (including option periods) to such an amount as will reimburse lessor for its reasonable costs at the time of review.

In the event any percentage rent shall be payable to lessor under paragraph 2 of this lease for any calendar year, all sums paid by lessee under this paragraph during the same calendar year shall be deducted from the percentage rent otherwise payable to lessor.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the day and year first above written.

WESTWOOD JOINT VENTURE
(a General Partnership)

By *[Signature]*
Its Managing General Partner

(Lessor)

(Corporate Seal)

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By *[Signature]*
Its Vice President
↑
Assistant
By *[Signature]*
Its Assistant Secretary

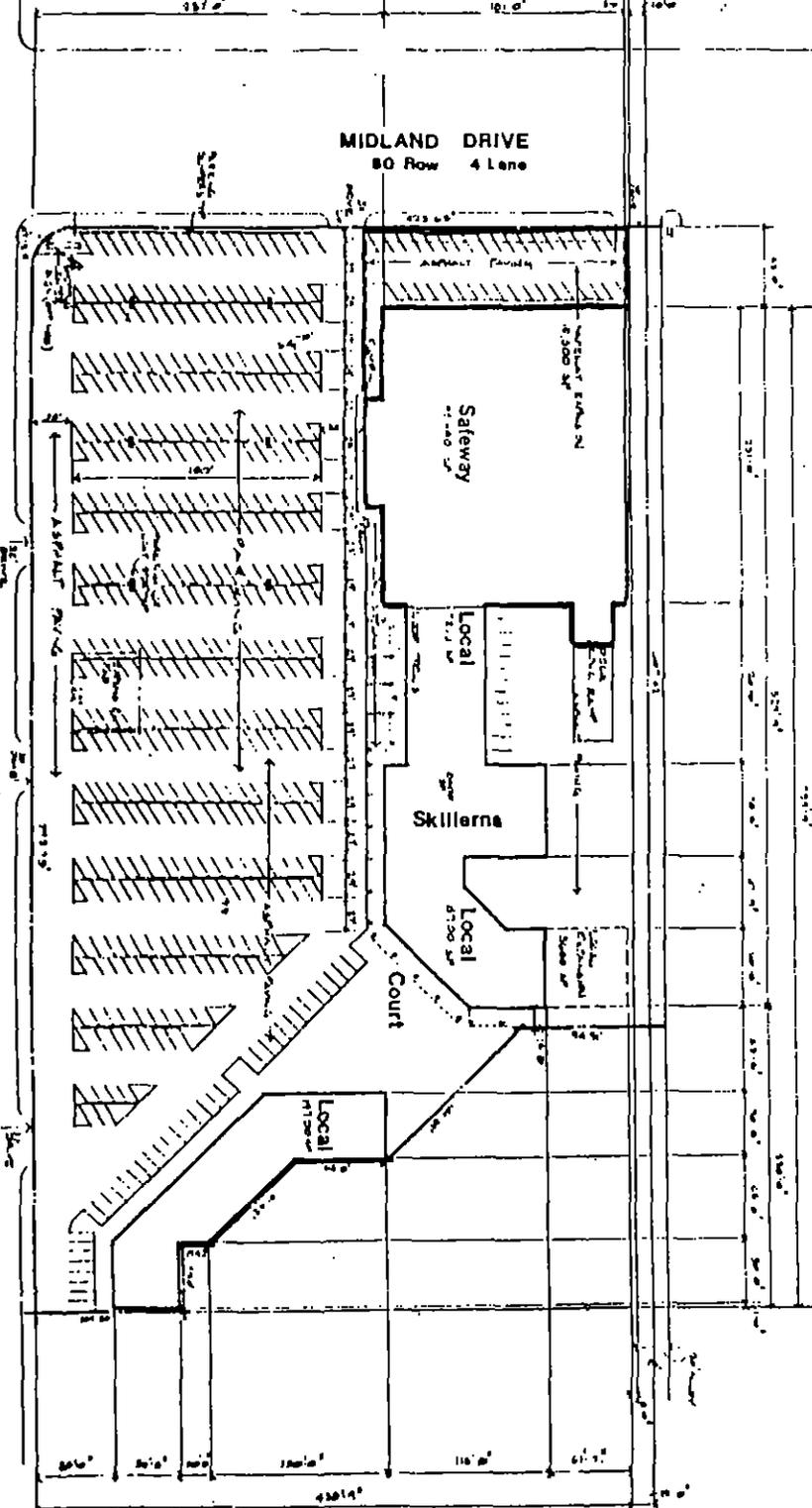
(Lessee)

Store No. . . 50 . . . Div. . El Paso.
Location . . . Midland, Texas
Document Date . . . AUGUST 14, 1980
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[Handwritten mark]

WEST ILLINOIS AVE.
80 Row 4 Lane

MIDLAND DRIVE
80 Row 4 Lane



Project Tabulation

| LAND AREA | SQ. FEET |
|-----------------|----------|
| BUILDING AREA: | |
| SAFETYWAY | 8,500 |
| SKILLERNA | 4,700 |
| LOCAL BUILDINGS | 11,200 |
| PARKING | 1,000 |
| COURT | 1,000 |
| TOTAL | 26,400 |

UTAH PRESCRIPTION
TRUCK & EQUIPMENT OF 2014
LOCATED AT 5000 W. 10000 N.
BLVD. IN THE TRUCK AREA SUBJECT
TO LOCAL COURT TRUCKS

1-50



EXHIBIT "A"

JAC

WESTWOOD VILLAGE

THE ARCHITECT
DORNER/SECRAI

EXHIBIT B
LEGAL DESCRIPTION
FOR
7.39 ACRES OUT OF
BLOCK 15
SECTION 5
OXFORD HEIGHTS

Commencing at the most southeasterly corner of Oxford Heights, Section 3, Lot 1, Block 13, as recorded in Vol. 623, Page 50, Deed Records, Midland County, Texas; Thence S 74° 45'00" W a distance of 648.58 feet to the point of beginning.

- THENCE S 15°15'00" E a distance of 94.41 feet to a point for a corner;
THENCE S 60°15'00" E a distance of 141.89 feet to a point for a corner;
THENCE S 15°15'00" E a distance of 65.0 feet to a point for a corner;
THENCE S 60°15'00" E a distance of 91.92 feet to a point for a corner;
THENCE S 15°15'00" E a distance of 19.41 feet to a point for a corner;
THENCE N 74°45'00" E a distance of 50.0 feet to a point for a corner;
THENCE S 15°15'00" E a distance of 109.50 feet to a point for a corner, said point being in the north right-of-way line of West Illinois Avenue;
THENCE S 74°45'00" W a distance of 792.75 feet, along the north right-of-way line of West Illinois Avenue to the beginning of a curve to the right with a radius of 30.0 feet;
THENCE In a northwesterly direction along said curve 47.12 feet;
THENCE N 15°15'00" W 423.65 feet along the east right-of-way line of North Midland Drive to a point for a corner;
THENCE N 74°45'00" E 607.42 feet to the point of beginning and containing 7.39 acres of land more or less.

pac





June 18, 2001

CERTIFIED MAIL P 219 051 150
Return Receipt Requested

Gary Glasscock
Westwood Village Shopping Center
c/o TGAAR Properties
3300 N. "A" Street
Midland, TX 79705

Re. Store No. 966
4380 W. Illinois - Midland, Texas

Dear Mr. Glasscock:

Please be advised that Furr's Supermarkets, Inc. hereby exercises the first five (5) year option period provided in paragraph 16 of the Lease dated August 14, 1980 and the First Shopping Center Lease Modification Agreement dated August 24, 1981 for the above-mentioned property. This lease will now expire on December 31, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Mortensen", with a long horizontal flourish extending to the right.

Steven L. Mortensen
President and
Chief Operating Officer

FURRS Supermarkets, Inc.
P.O. Box 10267
Albuquerque, N.M. 87184
Phone: 505-998-3677
Fax: 505-944-2677

Exhibit B



THIRD PARTY PURCHASER NOTICE

This Third Party Purchaser Notice is given pursuant to the Asset Purchase Agreement dated June 25, 2001 between Furr's Supermarkets, Inc. ("Seller") and Fleming Companies, Inc. ("Purchaser") (the "Asset Purchase Agreement"). All capitalized terms shall have the meaning set forth in the Asset Purchase Agreement.

WHEREAS, on June 25, 2001, Seller and Purchaser executed an Asset Purchase Agreement pursuant to which Seller shall sell to Purchaser, or its assignees and designees, and Purchaser, or its assignee and designees, shall purchase from Seller, certain of the Store Properties and the Purchased Assets.

WHEREAS, on July 3, 2001, the United States Bankruptcy Court for the District of New Mexico (the "Bankruptcy Court") approved the Asset Purchase Agreement by its Order Granting Motion to Sell Some or All of Debtor's Operating Assets.

WHEREAS, on July 20, 2001, the Bankruptcy Court entered an Order Approving Procedure Relating to the §365(f)(2) Adequate Assurance Requirement for Assignment of Leases (the "Assignment Order") and a related Confidentiality Protective Order (the "Confidentiality Order").

WHEREAS, Section 13.5(b) of the Asset Purchase Agreement contemplates that the Purchaser shall have the right to assign its rights and obligations thereunder with respect to any Purchased Assets to one or more Third Party Purchasers.

NOW THEREFORE, NOTICE IS HEREBY GIVEN THAT:

1. Purchaser designates the Third Party Purchasers set forth on Exhibit A as the parties to whom the Leases and Purchased Assets relating to the Store Properties set forth opposite the name of such Third Party Purchasers are to be assigned and transferred.
2. The documentation contemplated in the Assignment Order will be provided to Seller by the Third Party Purchaser under separate cover. All of such documentation shall be considered "Confidential" within the meaning of the Confidentiality Order.
3. The delivery of this Third Party Purchaser Notice is without prejudice to Purchaser's right to supplement this Third Party Purchaser Notice or to deliver to Seller additional or amended Third Party Purchaser Notices prior to the Closing Date in accordance with the Asset Purchase Agreement. Such Third Party Purchaser Notices may pertain to different Store Properties or may change the identity of the Third Party Purchaser identified in this Third Party Purchaser Notice.

Dated as of this 26th day of July, 2001.

FLEMING COMPANIES, INC.

By [Signature]
Name Matt Hildreth
Title Sr. V.P., Finance & Treasurer

Exhibit C

EXHIBIT A

THIRD PARTY PURCHASERS

| Store Properties | Third Party Purchaser |
|---|--|
| 812 7800 Enchanted Hills Blvd. Rio Rancho, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 866 1720 Bridge SW Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 868 201 San Pedro SE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 874 13201 Lomas NE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 876 4601 Louisiana NE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 877 2910 Juan Tabo NE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 878 2280-B Wyoming NE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |

| Store Properties | Third Party Purchaser |
|---|--|
| 880 108 Juan Tabo NE Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 881 3301 Southern Blvd. Rio Rancho, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 882 3301 Coors Blvd. NW Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 883 4201 Central NW Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 884 111 Coors Blvd. NW Albuquerque, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 893 Big Rock Shopping Center Española, NM | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 945 8050 W. Mesa Dr. El Paso, TX | NEWCORP (to be formed as New Mexico limited liability company) Attn: Gene Denison & Jan Friederich 10605 Royal Birksdale N.E. Albuquerque, NM 87111 (505) 269-6078 |
| 917 401 S. Main Lovington, NM | Stansell & Jameson, Inc. Attn: Kent Jameson 906 W. Ave. D Lovington, NM 88260 (505) 396-6363 |

| Store Properties | Third Party Purchaser |
|--|--|
| 885 4701 Fourth Street, NW Albuquerque, NM | Pay and Save, Inc. Attn: Roger Lowe 1804 Hall Avenue Littlefield, TX 79339 (806) 385-3366 |
| 888 530 W. Cordova Road Santa Fe, NM | Pay and Save, Inc. Attn: Roger Lowe 1804 Hall Avenue Littlefield, TX 79339 (806) 385-3366 |
| 889 1700 St. Michael's Drive Santa Fe, NM | Pay and Save, Inc. Attn: Roger Lowe 1804 Hall Avenue Littlefield, TX 79339 (806) 385-3366 |
| 901 104 W. Tucumcari Tucumcari, NM | Pay and Save, Inc. Attn: Roger Lowe 1804 Hall Avenue Littlefield, TX 79339 (806) 385-3366 |
| 993 1201 S. Stockton Street Monahans, TX | Pay and Save, Inc. Attn: Roger Lowe 1804 Hall Avenue Littlefield, TX 79339 (806) 385-3366 |
| 912 1220 N. Hudson Silver City, NM | W&N Enterprises, Inc. Attn: Jim Nennich 3130-A Hwy 180 East Silver City, NM 88061 (505) 388-1551 |
| 914 414 E. Pine Street Deming, NM | W&N Enterprises, Inc. Attn: Jim Nennich 3130-A Hwy 180 East Silver City, NM 88061 (505) 388-1551 |
| 933 1117 Geronimo Dr. El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 934 3518 Montana El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |

| Store Properties | Third Party Purchaser |
|---|---|
| 935 1840 Lee Trevino El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 936 5514 Alameda El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 937 9480 Viscount El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 947 6021 N. Mesa Dr. El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 952 951 N. Resler Dr. El Paso, TX | Big 8 Foods, Ltd. Attn: Richard Powell 1480-A George Dieter El Paso, TX 79936 (915) 857-6030 |
| 916 1900 N. Date <i>Truth or Consequences, NM</i> | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 857-6030 |
| 918 North Turner & Sanger Hobbs, NM | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |
| 927 9348 Dyer El Paso, TX | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |
| 928 8201 Dyer El Paso, TX | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |

| Store Properties | Third Party Purchaser |
|--|---|
| 948 201 E. Kerbey El Paso, TX | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |
| 977 104 N. Second Alpine, TX | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |
| 987 1300 W Dickenson Blvd. Fort Stockton, TX | South Carolina Erica, Inc. Attn: Ray Shalek 1926 North Bryant Blvd. San Angelo, TX 76903 (915) 658-5602 |
| 907 1602 West Main Artesia, NM | Fenn & Claiborne Foods, LLC Fenn's Thriftway 111 N. Atkinson Roswell, NM 88201 (505) 627-5560 |
| 926 5111 Fairbanks El Paso, TX | Food City Attn: Stanley Santos 5400 Alameda El Paso, TX 79905 (915) 779-3641 |
| 938 1590 George Dieter El Paso, TX | Food City Attn: Stanley Santos 5400 Alameda El Paso, TX 79905 (915) 779-3641 |
| 898 102 Caldwell Belen, NM | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 904 721 Mecham Ruidoso, NM | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 908 900 W. 2d Street Roswell, NM | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |

| Store Properties | Third Party Purchaser |
|--|---|
| 909 2513 N. Main Roswell, NM | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 954 321 S. Main Anthony, TX | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 966 4340 W Illinois Midland, TX | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 967 2208 Big Spring Road Midland, TX | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |
| 989 1210 Main Street Andrews, TX | MAL Enterprises, Inc. Attn: Jere Lawrence and Jay Lawrence 1219 East Broadway Sweetwater, TX 79556 (915) 236-6351 |



Supermarkets, Inc.

August 31, 2001

Dear Landlord:

Enclosed are the keys to your store leased by Furr's Supermarkets, Inc. Furr's hereby surrenders possession of the premises to you effective August 31, 2001.

Furr's would like to discuss with you how best to dispose of the equipment Furr's owns that is in your store. Furr's is willing to be flexible about selling the equipment to you, ~~selling the equipment to a potential new tenant, or removing the equipment.~~ Please contact Craig Franks at 505/944-2683 so we can discuss how to proceed in a mutually beneficial manner to deal with Furr's equipment in the store.

505 944 2671

Some of the equipment in the store may be leased to Furr's by third parties. With respect to such equipment, you will need to contact the equipment lessor to discuss removal or other disposition of the equipment. I can provide you with the names and addresses of the equipment lessors that have equipment in your store. My direct number is 505/761-0931.

Very truly yours,

Carolyn Novis

Carolyn Novis
Furr's Supermarkets, Inc.

Exhibit D

Furr's Supermarkets, Inc.
P.O. Box 10267
Albuquerque, N.M. 87184
Phone: 505-998-3877
Fax: 505-944-2677



100% Recycled Paper

TGAAR

TGAAR PROPERTIES

MEMORANDUM

To: Furr's Supermarket's
Mr. Craig Franks

From: Gary M. Glasscock

Date: September 13, 2001

Re: Store #966
4310 W. Illinois
Midland, TX

TGAAR Properties is willing to purchase all the equipment and all miscellaneous items remaining in the store for a total of \$5,775.00, effective immediately. This offer is subject to withdrawal after September 17, 2001, at 5:00 p.m.

Very truly yours,

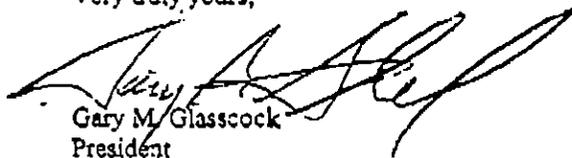

Gary M. Glasscock
President

Exhibit E

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
1163
Invoice Date:
Oct 12, 2001
Page:
1

Duplicate

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID
FURR'S

Customer PO

Payment Terms

Net 1st of Next Month
Ship Date Due Date
11/1/01

Sales Rep ID

Shipping Method

Airborne

| Quantity | Item | Description | Unit Price | Extension |
|----------|------|---|------------|-----------|
| | | EQUIPMENT STORAGE FEE FOR OCTOBER 2001 | | 15,000.00 |

| | |
|----------------------|------------------|
| Subtotal | 15,000.00 |
| Sales Tax | |
| Total Invoice Amount | 15,000.00 |
| Payment Received | |
| TOTAL | 15,000.00 |

Check No:

Exhibit F

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
1164
Invoice Date:
Nov 6, 2001
Page:
1

Duplicate

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID
FURR'S

Customer PO

Payment Terms

Net 1st of Next Month

Sales Rep ID

Shipping Method

Ship Date

Due Date

Airborne

12/1/01

Quantity

Item

Description

Unit Price

Extension

NOVEMBER 2001 STORAGE FEE

15,000.00

Subtotal 15,000.00

Sales Tax

Total Invoice Amount 15,000.00

Payment Received

TOTAL 15,000.00

Check No:

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
1165
Invoice Date:
Dec 10, 2001
Page:
1

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID

FURR'S

Sales Rep ID

Customer PO

Shipping Method

Airborne

Payment Terms

Net 1st of Next Month

Ship Date

Due Date

1/1/02

| Quantity | Item | Description | Unit Price | Extension |
|----------|------|---------------------------|------------|-----------|
| | | DECEMBER 2001 STORAGE FEE | | 15,000.00 |

Check No:

| | |
|----------------------|------------------|
| Subtotal | 15,000.00 |
| Sales Tax | |
| Total Invoice Amount | 15,000.00 |
| Payment Received | |
| TOTAL | 15,000.00 |

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
1166
Invoice Date:
Jan 8, 2002
Page:
1

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID

FURR'S

Sales Rep ID

Customer PO

Shipping Method

Airborne

Payment Terms

Net 1st of Next Month

Ship Date

Due Date

2/1/02

| Quantity | Item | Description | Unit Price | Extension |
|----------|------|--------------------------|------------|-----------|
| | | JANUARY 2002 STORAGE FEE | | 15,000.00 |

Check No:

| | |
|----------------------|------------------|
| Subtotal | 15,000.00 |
| Sales Tax | |
| Total Invoice Amount | 15,000.00 |
| Payment Received | |
| TOTAL | 15,000.00 |

Invoice

TGAAR West Texas, Inc.
 3300 N. A, Building 2
 Suite 100
 Midland, TX 79705
 USA
 Voice: 915-685-1980
 Fax: 915-685-1242

Invoice Number:
 1167
 Invoice Date:
 Feb 15, 2002
 Page:
 1

Sold To:
 Furr's Supermarket
 Ms. Carolyn Novis
 P O Box 10267
 Albuquerque, TX 87184

Ship to:

Customer ID

FURR'S

Customer PO

Shipping Method

Airborne

Payment Terms

Net 1st of Next Month

Ship Date

Due Date

3/1/02

Sales Rep ID

Quantity

Item

Description

FEBRUARY 2002 STORAGE FEE

Unit Price

Extension

10,000.00

| | |
|----------------------|------------------|
| Subtotal | 10,000.00 |
| Sales Tax | |
| Total Invoice Amount | 10,000.00 |
| Payment Received | |
| TOTAL | 10,000.00 |

Check No:

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
1168
Invoice Date:
Mar 12, 2002
Page:
1

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID
FURR'S

Customer PO

Payment Terms

Net 1st of Next Month

Sales Rep ID

Shipping Method

Ship Date

Due Date

Airborne

4/1/02

Quantity

Item

Description

Unit Price

Extension

MARCH 2002 STORAGE FEE

10,000.00

| | |
|----------------------|------------------|
| Subtotal | 10,000.00 |
| Sales Tax | |
| Total Invoice Amount | 10,000.00 |
| Payment Received | |
| TOTAL | 10,000.00 |

Check No:

Invoice

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Invoice Number:
996
Invoice Date:
Apr 18, 2002
Page:
1

Duplicate

Sold To:
Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID

FURR'S

Customer PO

Payment Terms

Net 1st of Next Month

Sales Rep ID

Shipping Method

Ship Date

Due Date

Airborne

5/1/02

Quantity

Item

Description

Unit Price

Extension

EQUIPMENT STORAGE FEE

10,000.00

| | |
|----------------------|------------------|
| Subtotal | 10,000.00 |
| Sales Tax | |
| Total Invoice Amount | 10,000.00 |
| Payment Received | |
| TOTAL | 10,000.00 |

Check No:

Invoice

Invoice Number:

1169

Invoice Date:

May 8, 2002

Page:

1

TGAAR West Texas, Inc.
3300 N. A, Building 2
Suite 100
Midland, TX 79705
USA
Voice: 915-685-1980
Fax: 915-685-1242

Sold To:

Furr's Supermarket
Ms. Carolyn Novis
P O Box 10267
Albuquerque, TX 87184

Ship to:

Customer ID

FURR'S

Customer PO

Payment Terms

Net 1st of Next Month

Sales Rep ID

Shipping Method

Ship Date

Due Date

Airborne

6/1/02

Quantity

Item

Description

Unit Price

Extension

MAY 2002 STORAGE FEE

10,000.00

| | |
|----------------------|------------------|
| Subtotal | 10,000.00 |
| Sales Tax | |
| Total Invoice Amount | 10,000.00 |
| Payment Received | |
| TOTAL | 10,000.00 |

Check No:

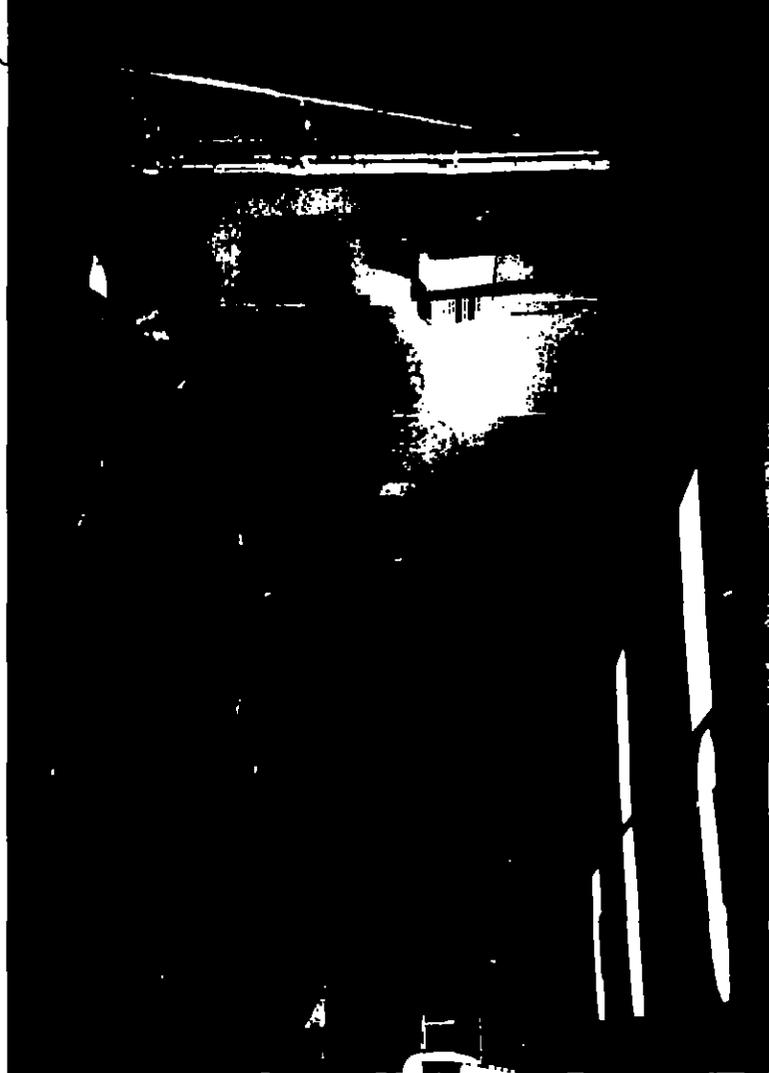


Exhibit G







JACOBVITZ, THUMA & WALKERA PROFESSIONAL CORPORATION
ATTORNEYS AT LAWROBERT H. JACOBVITZ
DAVID T. THUMA
THOMAS D. WALKER500 MARQUETTE N.W., SUITE 650
ALBUQUERQUE, NM 87102TELEPHONE
(505) 766-9272
FACSIMILE
(505) 766-9287

July 3, 2002

VIA FACSIMILE (915) 686-2009Robert K. Whitt
505 North Big Spring
Suite 402
Midland, TX 79701Re: Former Furr's Store #966

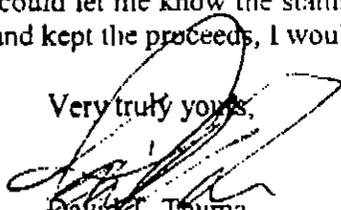
Dear Mr. Whitt:

I spoke with the auctioneer, Walter Parker, and your client can go ahead and dispose of any remaining property in the main portion of the former store.

I understand from talking with Mr. Parker that he was not allowed into the back of the store. Because of that, he does not know what is back there and whether there is anything of value that is secured by the lenders' security interest in Furr's equipment. Because neither he nor I know what personal property may still remain in the back room that the landlord refused to allow the auctioneer to sell or even look at, I cannot give you permission to sell any of those items, if there are any.

I also understand that the landlord refused to let Mr. Parker sell four walk-in refrigerators. These items are clearly trade fixtures and would be available for sale. Mr. Parker says he could have received approximately \$4,000 if he had been allowed to sell the walk-in refrigerators. If you could let me know the status of those units and whether the landlord has since sold them and kept the proceeds, I would appreciate it.

Very truly yours,


David T. Thuma
For the Firm

DTT/mlh

cc: Paul Fish (via fax)
Jennie Behles (via fax)Exhibit H