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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,)
a Delaware corporation) No. 11-01-10779-SA
Tax I.D. No. 75-2364418 (Federal);)
02-159595-0 (New Mexico))
)
Debtor.)

**LIMITED OBJECTION OF FLOHO PARTNERS TO
THE DEBTOR'S MOTION FOR ORDER APPROVING SALE
OF SOME OR ALL OF DEBTOR'S OPERATING ASSETS**

FLOHO Partners ("FLOHO"), the owner and landlord of Store #866 (1720 Bridge SW, Albuquerque, New Mexico), Store #891 (2110 Pacheco, Santa Fe, New Mexico) and Store #927 (9348 Dyer, El Paso, Texas) (collectively "FLOHO Unexpired Leases"), by and through its duly authorized attorneys, Kronish Lieb Weincr & Hellman LLP, hereby submits its limited objection under §365 of Title 11 of the United States Code, 11 USC §101 (the "Bankruptcy Code") and Fed. R. Bankr. P. 6006 to the Debtor's Motion For Order Approving Sale Of Some Or All Of Debtor's Operating Assets (the "Motion") as said Motion applies to the alleged monetary defaults relative to the assumption and assignment of the FLOHO Unexpired Leases.

1. On or about June 1, 2001, the Debtor filed the Motion wherein it sought, among other things, (i) approval to sell some or all of its operating assets, (ii) approval for the assumption and assignment of such of the Debtor's unexpired leases as listed on Exhibit 2 of the Motion attached hereto as **Exhibit "A"** and (iii) determining that the defaults set forth on Exhibit 2 of the Motion are the only defaults under the Debtor's unexpired leases that must be cured as a condition to assumption and assignment (the "Cure Amounts").

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2. FLOHO entered into non-residential real property leases with the Debtor for the rental of the FLOHO Unexpired Leases. The term of each FLOHO Unexpired Lease was for a period of twenty (20) years expiring on or about August, 2015. Copies of each lease is attached hereto as **Exhibit "B"**.

3. Pursuant to the FLOHO Unexpired Leases the Debtor is responsible for Common Area Maintenance ("CAM") costs and its portion of the real property taxes which is billed to the Debtor at year end. The Debtor has failed to pay pre-petition CAM costs on Store #866 for the years 1998, 1999, and 2000 and has failed to pay post-petition CAM costs for March through June, 2001. The specific CAM costs both pre and post-petition for Store #866 is detailed and attached as **Exhibit "C"**.

4. The amount as listed for Real Property Taxes due by Debtor to FLOHO on Exhibit 2 of the Motion as it applies to Store #891 and Store #927 are incorrect and underestimated. Store #891's Real Property Tax is listed on Exhibit 2 of the Motion as \$26,689. In fact, FLOHO has already paid the sum of \$28,023.95 (a difference of \$1,334.95) and has been recently charged by the City of Santa Fe the sum of \$9,139.79 for Personal Property Tax. The City of Santa Fe Refuse and Sewer Statement in the sum of \$9,139.79 is attached hereto as **Exhibit "D"**.

5. The amount as listed for Real Property Taxes due by Debtor to FLOHO on Exhibit 2 of the Motion as it applies to Store #927 is \$42,766. In fact, FLOHO for this property has already paid the sum of \$44,254.80 creating a deficiency due FLOHO of \$1,488.88

**ASSUMPTION AND ASSIGNMENT SHOULD
NOT BE APPROVED UNLESS AND UNTIL THE
CORRECT CURE PAYMENTS ARE AGREED TO**

6. The total cure amount for Store #'s 866, 891 and 927 is \$266,462.89, which sum represents pre and post-petition base rent, taxes due and CAM costs. The following is a breakdown of each obligation:

	<u>Base Rent</u>	<u>Real Estate Taxes</u>	<u>CAM Costs</u>	<u>Total</u>
Store #866	\$3,325.00	\$10,460.00	\$157,959.05	\$177,744.05
Store #891	\$9,698.00	\$37,163.74	—	\$ 46,861.74
Store #927	\$3,602.00	\$44,254.80	--	\$ 47,856.80

7. Section 365 of the Bankruptcy Code provides that a debtor may assume and/or assign its executory contract and unexpired leases subject to the approval of the Bankruptcy Court as follows:

...(a) Except as provided in... subsections (b), (c) and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debt the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:

(A) cures, or provides adequate assurance that the trustee will promptly cure such default;

(B) compensates or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease. ...

(b)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if --

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

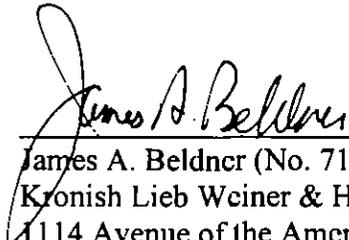
Sec 11 U.S.C. §§365(a), (b)(1), (f)(2). Accordingly, §365 mandates that the trustee promptly cure the default, promptly compensate the party (other than the debtor) which suffered pecuniary loss from the default, and provide adequate assurance of future performance under the agreement.

8. If the Debtor wishes to assume and assign the FLOHO Unexpired Leases to a third party, it must cure all defaults under said leases including paying all amounts due and owing through the sale date and/or the date the FLOHO Unexpired Leases are assumed and assigned.

9. By filing the within Limited Objection FLOHO is not objecting to the sale or the assumption and assignment of the FLOHO Unexpired Leases, however, FLOHO is objecting to the Cure Amounts as reflected by the Debtor and reserves its right to adjust the Cure Amounts as of the date of the actual assumption and assignment to a third party assignee.

10. **WHEREFORE**, it is respectfully requested, that the rights of FLOHO be reserved with respect to the Cure Amounts under the Motion and that such correct amounts be promptly paid as part of any approved sale of the assets subject to the Motion.

Dated: New York, New York
June 20, 2001



James A. Beldner (No. 7166)
Kronish Lieb Weiner & Hellman
1114 Avenue of the Americas
New York, NY 10036
212-479-6000
Counsel for FLOHO Partners

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

In re:

**FURR'S SUPERMARKETS, INC.,)
a Delaware corporation)
Tax I.D. No. 75-2364418 (Federal);)
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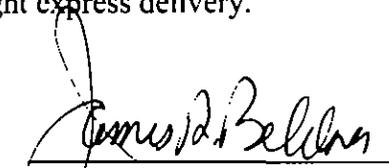
No. 11-01-10779-SA

CERTIFICATE OF SERVICE

JAMES A. BELDNER, being duly sworn, deposes and says:

1. That I am over 18 years of age and reside 3091 Riverside Drive, Wantagh, NY 11793 and I am a partner with the firm of Kronish Lieb Weiner & Hellman LLP, counsel for FLOHO Partners in the above entitled proceeding.

2. That on June 20, 2001, I caused to be served a true copy of the Limited Objection Of FLOHO Partners to The Debtor's Motion For Order Approving Sale Of Some Or All Of Debtor's Operating Assets upon (i) Clerk of the Bankruptcy Court, Federal Building and United States Courthouse, 421 Gold Ave., SW, Third Floor, Albuquerque, N.M. 87102; (ii) Jacobvitz Thuma & Walker, P.C., 500 Marquette N.W., Suite 650, Albuquerque, N.M. 87102, Attn. Robert Jacobvitz, Esq.; and (iii) Skadden, Arps, Slate, Meagher & Flom L.L.P., 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071, Attn. Richard Levin, Esq. by overnight express delivery.



James A. Beldner

15-011 10:49 AM FROM SEVILLE EAST

FAX: 505997259

Furr's Supermarkets
(Revised) Real Property Lease Cure Amounts

Rent, Etc.

LOC.	LOCATION ADDRESS	CITY/STATE	Real. Inc.	Rent Property Taxes	Total
801	700 NORTH MAIN	LAS CRUCES, NM	6,430	0	6,430
811	1700 E. 20TH	FARMINGTON, NM	11,081	9,407	20,488
812	7803 ENCHANTED HILLS BLVD	FARMINGTON, NM	11,450	33,758	45,216
840	4001 E. MAIN ST.	BURJO RANCHO, NM	5,612	7,537	13,169
841sub	7524 W. UNIVERSITY	FARMINGTON, NM	7,563	20,231	26,794
862	701 E. MAIN S.E.	ODessa, TX	4,250	21,852	26,102
865	10701 COORS RD NW, #2	LOE LUNAS, NM	25,834	0	25,834
866	1720 BRIDGE SW	ALBUQUERQUE, NM	3,325	10,460	13,785
868	201 SAN PEDRO S.E.	ALBUQUERQUE, NM	5,219	0	5,219
871	8100 VENTURA NE	ALBUQUERQUE, NM	11,686	14,513	26,199
873	8511 GOLF COURSE RD NW	ALBUQUERQUE, NM	111,286	0	111,286
874	13201 LOMAS NE	ALBUQUERQUE, NM	10,925	15,335	26,260
875	5850 EUBANK NE	ALBUQUERQUE, NM	10,778	13,008	23,787
876	4601 LOUISIANA NE	ALBUQUERQUE, NM	28,190	20,054	48,244
877	2810 JUAN TABO NE	ALBUQUERQUE, NM	68,159	37,642	105,801
878	2280-B WYOMING NE	ALBUQUERQUE, NM	12,633	27,098	39,731
879	1701 CONSTITUTION NE	ALBUQUERQUE, NM	146,766	16,915	163,681
880	108 JUAN TABO NE	ALBUQUERQUE, NM	3,873	8,199	12,072
881	108 JUAN TABO NE	ALBUQUERQUE, NM	21,749	34,958	56,707
881	3501 SOUTHERN BLVD	RIO RANCHO, NM	22,944	24,203	47,147
882	3301 COORS BLVD NW	ALBUQUERQUE, NM	13,286	18,526	31,812
883	4201 CENTRAL NW	ALBUQUERQUE, NM	13,228	20,100	33,328
884	111 COORS BLVD NW	ALBUQUERQUE, NM	0	16,149	16,149
885	4701 FOURTH NW	ALBUQUERQUE, NM	3,069	18,233	21,302
886	5815 WYOMING NE	ALBUQUERQUE, NM	62,015	0	62,015
887	600 TRINITY DRIVE	LOS ALAMOS, NM	7,672	5,926	13,598
888	530 W. CORDOVA ROAD	SANTA FE, NM	2,942	0	2,942
889	1700 ST. MICHAEL'S DR.	SANTA FE, NM	9,698	26,689	36,387
891	2110 PACSIECO	SANTA FE, NM	48,815	5,800	54,615
893	BIG ROCK SHOPPING CTR	ESPANOLA, NM	7,523	23,020	30,543
894	206 MILLS AVENUE	LAS VEGAS, NM	28,405	5,630	34,035
896	1100 PASOE DEL PUEBLO S	TAGE, NM	29,207	0	29,207
897	335 CENTRAL AVE	LOS ALAMOS, NM	3,516	12,238	15,754
898	102 CALDWELL	BELEN, NM	8,708	31,849	40,557
899	901 CALIFORNIA ST. NW	BOCCARRO, NM	4,183	2,008	6,191
901	104 W. TUCUMCARI	TUCUMCARI, NM	3,646	0	3,646
902sub	1301 E. AVENUE D	PORTALES, NM	7,563	7,651	15,214
903	21ST AND PRINCE	CLOVIS, NM	151,254	6,206	161,460
904	721 MICHAM	RUIDOSO, NM	4,642	4,911	9,553
905	205 HIGHWAY 70 W	RUIDOSO, NM	3,862	5,559	11,417
907	1603 WEST MAIN	ARTERIA, NM	5,462	8,383	13,847
908	900 W 2ND STREET	ROSWELL, NM	145,331	9,818	155,149
909	2513 N. MAIN	ROSWELL, NM	4,159	4,737	8,896
911	1300 SOUTH MAIN	ROSWELL, NM	200	3,644	3,844
912	1220 W. HUDSON	SILVER CITY, NM	3,157	0	3,157
913	1701 UNIVERSITY	LAS CRUCES, NM	1,438	3,947	5,385
914	414 E. POVE ST	LAS CRUCES, NM	4,890	6,122	11,012
916	1800 N. DATE	DEMING, NM	1,580	2,612	4,192
917	401 S. MAIN	T OR C, NM	4,478	4,841	9,319
918	NORTH TURNER & BANCOR	LOVINGTON, NM	432	33,347	33,779
926	5111 FAIRBANKS	EL PASO, TX	3,502	39,164	42,666
927	9348 DYER	EL PASO, TX	50,320	9,963	60,283
928	8201 DYER	EL PASO, TX	10,911	19,396	30,307
929CL	8314 N. YARBROUGH	EL PASO, TX	11,043	92,407	104,450
932	8100 LEE TREVINO	EL PASO, TX	6,072	41,089	49,161
933	1117 GERONIMO DRIVE	EL PASO, TX	4,830	44,393	51,223
934	3818 MONTANA	EL PASO, TX	3,411	52,449	55,860
935	1840 LEE TREVINO	EL PASO, TX	6,250	90,469	96,719
936	3914 ALAMEDA	EL PASO, TX	7,938	56,698	64,636
937	8480 VINCOUNT	EL PASO, TX	7,958	57,551	65,509
938	1590 GEORGE DISTER	EL PASO, TX	9,313	75,546	84,859
944	115 AMERICAN AVE. E	EL PASO, TX	68,792	61,412	130,204
945	2050 W. MESA DR	EL PASO, NM			

Exhibit A

(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;

(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 of Lessee;

(7) All receipts from sales to employees made at a discount;

(8) The face value of any travelers checks, money orders, tickets, insurance policies or similar instruments sold by Lessee (included in Gross Sales, however will be the amount of any commissions and/or service charges received by Lessee in connection with such sales);

(9) All receipts from vending machines, weighing machines, stamp machines, video entertainment games, gaming machines, telephones and the like;

(10) Sales made by licensees, concessionaires and subtenants of Lessee so long as such licensees, concessionaires and subtenants are not affiliated with Lessee (although Lessee hereby covenants not to allow such unaffiliated licensees, concessionaires and subtenants to occupy more square footage within the leased premises than is commercially reasonable in light of the market area served by the leased premises);

(11) Any home delivery charges, credit service charges, interest or collection charge for sales on credit made by Lessee.

There shall not be deducted from Gross Sales any income, excess profits, franchise or other taxes based upon or measured by income. The sale of Lessee's fixtures or equipment or all or a substantial part of its stock-in-trade and merchandise at a sale other than at retail or sales of waste material such as meat and produce trimmings, cardboard and bones (not sold to the public) shall not be included in Gross Sales.

Lessee neither makes an express nor an implied covenant to operate in the leased premises, nor does it make any representation or warranty as to the sales which it expects to make therein. Nor does Lessee make an express or implied covenant not to operate another store within the same geographic area or trade area as the leased premises. Lessee does agree that so long as it operates in the leased premises it will do so on days of the year and during business hours which are commercially reasonable in the market area in which the leased premises are located. Nothing herein shall be deemed to create a partnership or joint venture by or between Lessor and Lessee.

Lessee shall keep accurate records of all sales made on the premises in accordance with usual accounting practices applicable to Lessee's business. On or before the sixtieth (60th) day following the last day of each calendar year during the term of this lease and on or before the sixtieth (60th) day following the last day of this lease, Lessee shall mail to Lessor, at the place where rent is payable, a Gross Sales Statement. Such Gross Sales Statement shall show the Gross Sales made by Lessee in the leased premises during the preceding calendar year, or, if appropriate, the relevant portion thereof in the case of the Gross Sales Statement delivered after the expiration of this lease, together with any additional bonus payment due. Such statements shall show Gross Sales after the deductions 1 through 11 outlined above. Such annual statement shall be taken as final and correct, except Lessor (by a certified public accountant of good national reputation or acceptable to Lessee) shall have the right after the close of each calendar year to examine and audit Lessee's records of sales made on the leased premises during such calendar year, upon giving Lessee written notice to that effect within six (6) months after the expiration of such calendar year. Lessor agrees to hold in confidence all sales and related information furnished by Lessee. Any audits or examinations shall not be made more often than once for any year, and shall be at the sole cost and expense of Lessor and must be completed with all reasonable diligence, unless such an audit discloses that Gross Sales for any particular year were understated by more than 3%, in which case Lessee shall promptly reimburse Lessor for the reasonable costs of such audit.



ARTICLE THIRD (TAXES, UTILITY CHARGES, ETC.): Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the original lease term or any renewal thereof. In the event that any governmental authority imposes a tax, charge or other imposition which is based upon the rents or other obligations payable to Lessor under this lease, Lessee shall pay the same to the governmental authority or to Lessor if Lessor is responsible to collect the same. Nothing contained herein shall be deemed to obligate Lessee with respect to Lessor's income, inheritance or successor taxes or impositions. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and Lessor shall pay the prorated share thereof for the period subsequent to the term, and Lessee shall pay the prorated share thereof for the term of this lease.

This lease is and shall be deemed and construed to be a "triple net lease" and Lessee shall pay to Lessor the rent, the possible bonus payment and all other additional rent free of all charges, assessments, impositions, or deductions of any kind and without demand, abatement, deduction, or set-off except as otherwise expressly provided in Article Tenth. Under no circumstances or conditions shall Lessor be expected or required to make any payment of any kind or be under any other obligation or liability hereunder. Except as otherwise expressly provided in this lease, Lessee shall have no right to terminate this Lease, and the obligations of Lessee under this Lease shall not be affected for any reason, including, without limitation, damage to or destruction of all or any part of the leased premises, the prohibition, limitation, or restriction of Lessee's use of the leased premises, the interference with such use by any individual or entity, notwithstanding any present or future law to the contrary, except as expressly provided in this lease. It is the intention of Lessor and Lessee that the rent, possible bonus payment and the other additional rent payable to or on behalf of Lessor shall continue to be payable in all events and the obligations of Lessee hereunder shall be unaffected, except as specifically provided otherwise in this lease.

Should Lessor pledge the leased premises or any part thereof as security for a debt, such pledge being referred to herein as a Mortgage, the lien of each such Mortgage shall be subject and subordinate to this lease and to the leasehold estate created hereby and to all amendments of this lease. So long as any Mortgage shall constitute a lien on the fee title to the leased premises, no agreement hereafter made amending this lease in any way (other than the correction of scrivener's errors) shall be binding upon the holder of any Mortgage if not consented to in writing by such holder, and any such holder or purchaser or grantee shall be entitled to enforce this lease in accordance with its terms prior to such amendment. If the holder of any Mortgage shall succeed to Lessor's estate in the leased premises, Lessee shall attorn to such holder, and Lessee shall promptly, upon the request of any such holder, execute and deliver any instrument reasonably requested by such holder evidencing such agreement to attorn.

ARTICLE FOURTH (INSTALLATION AND REMOVAL OF FIXTURES, SIGNS, ETC.): Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building improvements such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize signs in and over the leased premises and on the outside of the building improvements thereon. Personal property, fixtures and equipment used in the conduct of Lessee's business (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the building improvements) placed by Lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term), shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by Lessee at any time. Lessor also recognizes that Lessee may finance Lessee's fixtures and equipment and in such event a third party may have a security interest or an ownership interest in such fixtures and equipment. Lessor hereby waives any security interest it may have, at law or in equity (statutory or contractual), relative to Lessee's fixtures, equipment and inventory. Upon request of Lessee, Lessor will execute such further



instruments as are reasonably required by Lessee to confirm Lessor's waiver of such security interest. Lessor hereby acknowledges that Lessee's equipment lienholders or equipment lessors shall also have the right to remove such fixtures and equipment, so long as such removal is accomplished in a workmanlike manner and with as little disruption as possible to the operation and maintenance of the building. Any damage caused the leased premises by the removal of such property shall be repaired by Lessee at its expense.

ARTICLE FIFTH (LESSEE'S ASSUMPTION OF LIABILITY): Lessee agrees that it will indemnify and save Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks, except such as may arise out of the willful or negligent act of Lessor, or Lessor's agents or employees. Lessee shall maintain insurance for the mutual benefit of Lessor and Lessee against claims for bodily injury or property damage, under a policy of comprehensive general liability insurance, with such limits as Lessee may deem reasonable in its business, but not less than \$5,000,000 combined single limit. Such insurance policies shall name Lessor and Lessee as the insureds as their respective interests may appear and shall provide that the policies will not be canceled except upon thirty (30) days' prior written notice to each named insured, loss payee and mortgagee. Upon execution of this lease, Lessee shall deliver to Lessor certificates of insurance evidencing the policies of insurance described above. Nothing contained in this lease shall prevent Lessee from obtaining insurance of the kind and in the amounts required (in articles fifth and eleventh of this lease) under a blanket insurance policy or policies which cover other properties owned or operated by Lessee or any affiliate of Lessee as well as the leased premises.

ARTICLE SIXTH (REPAIRS, ALTERATIONS, ETC.): Lessee agrees that Lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises or to the improvements thereon during the lease term or any renewal thereof. Lessor agrees that Lessee may make, or permit to be made, such alterations and improvements to the leased premises as Lessee may deem desirable for the use thereof and may, at Lessee's option and without cost to Lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following:

- I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely affected thereby, and/or
- II. Construct an addition, or additions, to any building or improvements located on the leased premises, said addition or additions to be located either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, and/or
- III. Raze any building or improvements situated on the leased premises and erect a new building or improvement, either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, which shall be of a value not less than the market value of the building or improvement so razed at the time of demolition.

If Lessee constructs additions or building improvements in accordance with II or III above on land leased by Lessee, Lessor's prior written consent to the lease terms shall be required. At the expiration or termination of this lease, or any extension or renewal thereof, Lessee shall leave the leased premises in good condition, allowance being made for ordinary wear and tear and damage by fire, or by earthquake, or by the elements, excepted as provided elsewhere in this lease, and Lessee shall not be required to restore



the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that Lessor shall accept the leased premises with such alterations, remodeling, additions, or new construction as may have been made pursuant to the authorization contained in this article. Notwithstanding the foregoing sentence, Lessor, may in its reasonable judgment, at lease expiration or termination, require Lessee to remove any interior walls, obstructions or partitions constructed by Lessee, so long as such removal is done in a workmanlike manner and without jeopardizing the structural integrity of the leased premises. Lessee agrees that it will not permit any mechanic's, materialmen's, or other liens to stand against the leased premises for work or materials furnished Lessee in connection with any such alterations, remodeling, additions or new construction, it being provided, however, that Lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, Lessee shall immediately pay any judgment or decree rendered against Lessee, with all proper costs and charges and shall cause any such lien to be released of record without cost to Lessor.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Two Million and No/100 Dollars (\$2,000,000) or more, Lessee shall give Lessor thirty (30) days' prior written notice of such plans along with a description in reasonable detail of the planned improvements.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Five Hundred Thousand and No/100 Dollars (\$500,000.00) or more, Lessee may, on completion of said improvements, offer to sell the same, together with any additional land owned by Lessee adjoining the leased premises, to Lessor for an amount not greater than the cost thereof. (If the additional land adjoining the leased premises is leased by Lessee rather than owned, Lessee shall, as part of this offer to sell, offer to assign its Lessee's interest in the ground lease to Lessor.) Lessor and Lessee shall promptly enter into good faith negotiations relative to Lessor's purchase (at Lessee's cost) and leaseback of such improvements and/or land. Should Lessor and Lessee reach agreement relative to such a sale and leaseback this lease will be modified to reflect any changes necessary, including but not limited to, adding any additional land to the leased premises and adjusting the rents hereunder. Should Lessor and Lessee not reach agreement relative to such a sale and leaseback within one hundred twenty (120) days of Lessee's offer to sell the additional improvements and/or land, this lease shall remain in effect unmodified except that should Lessee, during the original term or any option term, construct new improvements, pursuant to the provisions of subparagraphs II or III hereof, either wholly or partially on additional land adjoining the leased premises, then, unless Lessor purchases said new improvements and additional land Lessee shall convey its ownership or lessee's interest in said additional land to Lessor, and Lessor and Lessee shall enter into a Lease Modification Agreement incorporating said additional land into the leased premises.

ARTICLE SEVENTH (ASSIGNMENT AND SUBLETTING): Lessee shall have the right, without Lessor's consent, to assign or transfer this lease or to underlease or sublet the whole or any part of said leased premises to an affiliate of Lessee or to any retail operator so long as such sublessee or assignee has a history indicative of, and can reasonably be expected to, meet or exceed the sales volumes being achieved by Lessee in the leased premises immediately prior to such assignment, transfer, underlease or sublease. Such an assignment, transfer, underlease or sublease is referred to as a Comparable Transaction. In the event of a Comparable Transaction, this lease shall not be amended in any way. Lessee may assign, transfer this lease, underlease or sublet the whole or any part of the leased premises to any other party (A Dissimilar Transaction) with Lessor's consent not to be unreasonably withheld. In the case of a Dissimilar Transaction the rent under this lease shall be adjusted to be the greater of the rent specified in the first



paragraph of section 2 of this lease or the average of the last three years' of rents and bonus payments. In addition, Lessee shall pay to Lessor fifty percent (50%) of any sum or the money equivalent of other economic consideration received by Lessee directly or indirectly in connection with a Dissimilar Transaction, whether described as rent or otherwise, which exceeds, in the aggregate, the total sums which Lessee is obligated to pay Lessor under this lease. Should Lessee assign this lease it shall nevertheless remain primarily liable to Lessor for full payment of the rent, possible bonus payment and Lessee's other obligations under this lease. Lessee may also mortgage this lease without the prior consent of Lessor, however, Lessee shall remain primarily liable to Lessor for full payment of rent, possible bonus payment and Lessee's other obligations under this Lease.

ARTICLE EIGHTH (HOLDING OVER): If Lessee holds over or remains in possession of the leased premises after expiration of this lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being exercised by written notice, such holding over or continued possession shall, if rent is paid by Lessee, and accepted by Lessor for or during any period of time Lessee holds over or remains in possession, create a tenancy from month to month only, at the last monthly rental and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

ARTICLE NINTH (QUIET POSSESSION): Lessor covenants that Lessor is seized of the leased premises and has full right to make this lease and that so long Lessee is not in default hereunder, Lessee shall have quiet and peaceful possession thereof as against any adverse claim of Lessor or any party claiming under Lessor.

ARTICLE TENTH (LESSEE'S DEFAULT AND LESSOR'S DEFAULT): In case Lessee shall default in the performance of any covenant or agreement herein contained, and such default shall continue, for thirty (30) days following non-monetary defaults or seven (7) days following monetary defaults, after receipt by Lessee of written notice thereof given by Lessor, then Lessor may, at its option, declare the term of this lease ended, and may re-enter upon the leased premises either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by Lessor of the right of re-entry shall not be a bar to or prejudice in any way any other legal remedies available to Lessor. In case Lessor shall default in the performance of any covenant or agreement contained herein, and such default shall continue for thirty (30) days after receipt by Lessor of written notice given by Lessee, Lessee shall then have the right to effect the cure of such default, but Lessor shall remain financially liable to Lessee for any sums, and interest at the maximum legal rate thereon, so expended. If Lessee pays any installment of rent after the seven (7) day period referred to above, Lessee shall also be liable for additional rent calculated as five percent (5%) of the monthly rent so paid. If additional rent is not paid by Lessee by the due date of the next monthly rent payment, such failure shall constitute a default under the terms of this lease. If any default by Lessor or Lessee cannot reasonably be cured within the relevant seven (7) day or thirty (30) day period, that period shall be extended as long as necessary only so long as the curing party is diligently pursuing the cure. Should Lessor give Lessee prior written notice of the name and address of Lessor's mortgagee, lender or lienholder(s), hereafter referred to as Lessor's Lender, Lessee agrees to provide Lessor's Lender with simultaneous notice of any Lessor's default and agrees to cooperate with Lessor's Lender should Lessor's Lender choose to cure the default on behalf of the Lessor. Lessee also agrees to accept the Lessor's Lender's cure of any Lessor's default. The performance of each and every agreement herein contained on the part of Lessor shall be a condition precedent to the right of Lessor to collect rent hereunder or to enforce this lease as against Lessee.

In May of 1995 Lessor and Lessee entered into a lease covering a property in Santa Fe, New Mexico and contemporaneously with this lease, Lessor and Lessee are entering into two other leases. Those three leases are described in Exhibit B attached hereto. A failure of Lessee to pay rent, possible bonus



payment or any additional rents due under any one of these three other leases entered into by Lessor and Lessee, may, at the option of Lessor, be treated as a failure to pay rent under any or all of the four leases then in effect.

ARTICLE ELEVENTH (DAMAGE BY CASUALTY): Lessee agrees that it will, during the original term hereof, or any renewal thereof, at its expense keep in effect upon the leased premises, fire insurance with extended coverage endorsement, written by a responsible insurance company or insurance companies authorized to do business in the state in which the leased premises are located. Such policies shall be in an amount equal to not less than one hundred (100%) of the actual cash value (defined as replacement cost less depreciation) of the building improvements thereon, with such blanket limits and deductible provisions as are reasonable and customary in Lessee's business. Such policy or policies of insurance will name Lessor and Lessee as the insureds as their respective interests may appear, will provide that they cannot be canceled except upon thirty (30) days' written notice and will provide that payment for any losses covered under or by said policy or policies of insurance shall be made to Lessor and/or Lessee and/or any mortgagee and/or assignee designated by Lessor from time to time, as their respective interests may appear. Lessor agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the original term or any renewal thereof Lessee will (if such fire or casualty has caused destruction reasonably estimated at less than 35% of the full replacement value of the improvements), promptly rebuild or repair said building improvements, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. Should the fire or other casualty occur during the original term and should the destruction caused be reasonably estimated at 35% or more of the full replacement value of the improvements, Lessee may elect not to rebuild or repair said building improvements and in such event Lessee shall, within ninety (90) days after such loss or damage, give sixty (60) days' notice in writing to Lessor (and any Lessor's Lender) of Lessee's intention to terminate this lease. On expiration of said sixty (60) days' notice this lease shall be canceled and all parties shall be relieved of all liabilities hereunder, not previously accrued. Should this lease be canceled Lessee shall be deemed to and does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to Lessor, or as directed by Lessor, by said insurance company or companies. Notwithstanding the foregoing, should Lessee elect to rebuild the building improvements after a fire or other casualty and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.

Should the fire or other casualty occur during a renewal option term and Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage give Lessor sixty (60) days' notice, in writing, canceling and terminating the renewal term then in effect (and any pre-exercised renewal terms). On expiration of said sixty (60) days' notice, the renewal term shall cease and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

Lessee shall carry business interruption insurance in amounts and on terms commercially reasonable in light of the location, nature and use of the leased premises.

ARTICLE TWELFTH (CONDEMNATION, EMINENT DOMAIN): In the event that Lessee receives notice of any threatened condemnation or other proceeding in the nature of the exercise of powers of eminent domain, which in the sound business judgment of Lessee is within the power of the relevant person, corporation or government entity, Lessee shall give prompt written notice thereof to Lessor and Lessor's Lender, if any. In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the original term hereof condemn and acquire title to all of the leased premises, or



(in Lessee's reasonable business judgment) any operationally significant portion thereof, or to any indispensable easement appurtenant to the leased premises, in or by condemnation proceedings pursuant to any law, general, special or otherwise, Lessee may elect within ninety (90) days after such condemnation or acquisition of title by such person or corporation, to give written notice to Lessor of its intention to terminate this lease as of sixty (60) days after the date of that notice. In the event this lease is so canceled Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings relative to its own property (including, but not limited to, its trade fixtures and equipment and its leasehold interest) and Lessor shall be entitled to and shall receive any all award or payment made in said condemnation proceedings relative to its interest in the leased premises. Should Lessee, however, remain in possession and not elect to give such notice of termination of this lease, this lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the building portion of the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. (Lessor shall be entitled to any portion of such award or payment made in respect of the land portion of the leased premises.) With the proceeds of the award or payment assigned to Lessee, Lessee shall diligently make all repairs or alterations, if any, to the leased premises made necessary by such condemnation. Lessee agrees to use its best efforts to repair and/or rebuild the building improvements in such a manner that the restored building improvements, as much as possible, have a market value at least equal to their market value prior to condemnation. Should the cost of such repairs or alterations be more than the award or payment, Lessee agrees to pay the balance. Should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor such remaining balance of such award or payment. Following the making of the condemnation award or payment, this lease shall terminate as to the portion of the leased premises so taken and the rental payments for each month thereafter during the original term hereof and during any renewal terms hereof shall be reduced. The monthly rent reduction shall be in a just amount according to the extent and nature of the taking. Until the amount of the reduction is determined by Lessor and Lessee, Lessee shall pay the full rent provided for in this lease immediately prior to the taking, but once the monthly reduction is determined, Lessor shall refund to Lessee the amount of the monthly reduction which Lessee has paid in the meantime, with interest thereon at the legal rate.

Notwithstanding the foregoing paragraph, should Lessee elect to rebuild the building improvements after a condemnation or other taking, and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.

Should the condemnation occur during a renewal option term, Lessee shall, within sixty (60) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair the leased premises. If Lessee elects to terminate the renewal term, Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest and Lessor shall be entitled to receive and retain any award or payment made in respect of the leased premises. Should Lessee, however, elect to remain in possession, the renewal term shall continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to Lessee, Lessee shall make all repairs or alterations, if any, to the leased premises made necessary by such condemnation; should the cost



of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor the remaining balance of such award or payment.

The provisions of this lease dealing with condemnation shall also apply to transfers made in lieu of condemnation.

ARTICLE THIRTEENTH (NOTICES): Any notice provided for herein shall be given by certified or registered United States mail, postage prepaid, or by overnight delivery service capable of verifying receipt thereof. If the notice is to Lessor it shall be addressed to Lessor in care of the person to whom rent is then payable at the address to which rent is then mailed, with a copy to any Lessor's Lender. If the notice is to Lessee, it shall be addressed to Furr's Supermarkets, Inc., 1730 Montano Road, N.W., Albuquerque, New Mexico 87107, Attention: Real Estate with a copy to James S. Pleasant, Esq., Gardere & Wynne, L.L.P., 1601 Elm Street, Suite 3000, Dallas, Texas 75201. Written notice of late rent payments may be given by facsimile to Lessee at (505) 344-1118, so long as such facsimile transmissions are given in addition to at least one of the forms of notice described in the first three sentences of this paragraph.

ARTICLE FOURTEENTH : Intentionally Deleted.

ARTICLE FIFTEENTH (BANKRUPTCY): Should Lessee file any petition or institute any proceedings under the Bankruptcy Act whether as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any other Act or Acts, either as a bankrupt or as an insolvent, wherein or whereby Lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts, or to effect a plan of reorganization, or for any other similar relief, or if any such petition or proceedings of the same or similar kind or character be filed or taken against Lessee, or if any receiver for all or a substantial part of the business of Lessee shall be appointed by any court, and such petition or proceeding shall not be set aside or dismissed or the appointment of said receiver revoked within sixty (60) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this lease on the giving to Lessee of sixty (60) days' notice in writing

Should Lessee have assigned this lease in accordance with Article Seventh hereof, and should Lessee's assignee file any petition under the Bankruptcy Act which results in the rejection of this lease, by Lessee's assignee or by operation of law, and should Lessee remain liable under the terms of this lease, Lessor hereby grants Lessee the right to re-enter the leased premises for purposes of possession or reletting thereof, pursuant to the provisions of this lease. Such re-entry shall be under the terms of this Lease.

ARTICLE SIXTEENTH (LESSOR'S RIGHT OF ENTRY): Lessor reserves the right to enter upon the leased premises during business hours at any time to inspect the same or to make such repairs as Lessor may deem advisable (even though the same may not be required by this lease), or for the purpose of exhibiting the same to persons wishing to purchase the same. Lessor also reserves the right, at any time within one hundred (100) days next preceding the expiration of the term hereby granted or any renewal thereof, provided said term has not been extended by Lessee's exercise of the option privileges contained in Article Seventeenth hereof, to place notices on the front of the leased premises offering said leased premises "to let" or "for sale", and such notice or notices shall not be removed by Lessee, or Lessee's agents or employees. Such notices, however, shall not be placed upon the doors or windows of the building improvements.

ARTICLE SEVENTEENTH (LESSEE'S OPTION PRIVILEGES): Lessor hereby grants to Lessee, the right, at Lessee's option to extend the term of this lease for five (5) separate and additional periods of five (5) years each after the expiration of the term hereof on the same terms and conditions. Each of these renewal options shall be automatically effective unless Lessee sends written notice to Lessor declining to renew this lease. Such notice not to renew shall be given to Lessor or delivered or mailed to



Lessor, in care of the party to whom rent is then payable, at the address to which rent is then payable. Such notice not to renew shall be given at least one hundred and eighty (180) days prior to the expiration of the original term or the renewal term then in effect. In the event this lease is renewed the parties agree that a new lease need not be executed, but that this lease, will remain in full force and effect, changed only as to the matters specified in this article.

ARTICLE EIGHTEENTH: Intentionally Deleted.

ARTICLE NINETEENTH (COMPLIANCE WITH LAWS AND ENVIRONMENTAL): Lessee agrees throughout the original term of this lease or any renewal thereof to comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction of the leased premises. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold Lessor harmless against the consequences of any violation thereof by Lessee. Lessee specifically agrees that, except in accordance with relevant federal and state regulations, no hazardous waste or toxic substance will be generated, treated, stored, disposed of, or released from or onto the leased premises by Lessee, its employees or agents. Although Lessee shall not be responsible for any toxic or hazardous releases from or onto the leased premises caused by persons other than Lessee, its employees or agents, Lessee does agree to use its best efforts to inform Lessor of any such releases of which Lessee becomes aware.

ARTICLE TWENTIETH (REMEDIES CUMULATIVE): No remedy herein conferred upon or reserved to Lessor or to Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE TWENTY-FIRST (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.

ARTICLE TWENTY-SECOND (SHORT FORM OF LEASE): Lessor and Lessee agree that if requested by either party, each will cooperate in the preparation, execution and recording of a memorandum or short form of this lease and any amendments hereto.

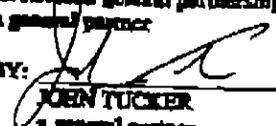
ARTICLE TWENTY-THIRD (RIGHT OF FIRST REFUSAL): At any time during the term of this lease, should the Lessor receive a bona fide, acceptable offer to the Lessor for the purchase of the whole or any part of the leased premises, the Lessor shall send notice of such offer to Lessee. Such notice shall specify the exact terms of said offer. Lessee shall have ten (10) days to agree to match such offer, in which case, Lessor shall enter into a contract to convey the leased premises, or the relevant portion thereof, to Lessee on such terms and conditions.



ARTICLE TWENTY-FOURTH (ARTICLE TITLES): The article titles contained in the parentheses after the number of each article are inserted only as a manner of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect the terms and provisions hereof.

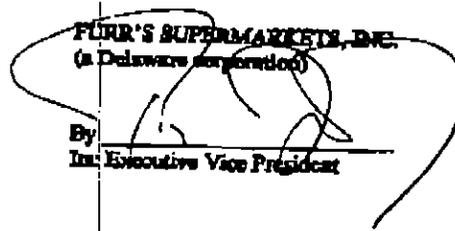
FLOHO PARTNERS
a New Mexico general partnership

By: **SEVILLE EAST,**
an Arizona general partnership
a general partner

BY: 
JOHN TUCKER
a general partner

LESSOR

FURR'S SUPERMARKETS, INC.
(a Delaware corporation)

By: 
In: **Executive Vice President**

LESSEE



NORTHPARK PROPERTY DESCRIPTION

Lot 7, Block 6, NORTHGATE REPLAT "C", an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 62, Page 45, Real Property Records, El Paso County, Texas, contains 318,818 square feet or 7.319 acres, more or less.

Exhibit A



Other Lessor/Lessee Leases Referenced in Article Tenth

Store #891 located at 2110 Pacheco, Santa Fe, New Mexico

Store #866 located at 1720 Bridge SW, Albuquerque, New Mexico

Store #949 located at 809 West Pierce, Carlsbad, New Mexico

Exhibit B

S/LB 929 (Rev. 4/95)



Facility #927
El Paso, Texas

This lease, made the 1st day of September 1995, between Floho Partners, a New Mexico general partnership herein referred to as Lessor, and FURR'S SUPERMARKETS, INC., a Delaware corporation, hereinafter referred to as Lessee:

WITNESSETH: That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

ARTICLE FIRST (PROPERTY DESCRIPTION, TERM AND USE): Lessor does hereby lease to Lessee the following described real property and the buildings and improvements thereon in the City of Albuquerque, County of Bernalillo, State of New Mexico designated as 1720 Bridge SW, and described in Exhibits "A" attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for an original term of twenty (20) years, commencing with the first day of September, 1995, and extending to and including the last day of August, 2015, as such may be extended pursuant to Article Seventeenth hereof.

Lessee may use the leased premises for any lawful purpose.

ARTICLE SECOND (RENT): Lessee does hereby agree to pay to Lessor, as the rent of the leased premises during the preliminary term the sum THIRTEEN THOUSAND THREE HUNDRED AND 00/100 DOLLARS (\$13,300.00) on the first day of each calendar month during the original term. Said payments shall be made by checks or drafts payable to Floho Partners and mailed to _____ or by checks or drafts made payable to any other payee or mailed to any other address which Lessor, or any successor in interest of Lessor, may in writing designate. The rent for any fractional calendar month shall be prorated and paid on the first day of such fractional month.

In addition to the rent described above, Lessee shall also be liable for a possible bonus payment in the amount, if any, by which one percent (1.0%) of Gross Sales made by Lessee in the leased premises in each calendar year of the lease term exceeds FIFTEEN MILLION NINE HUNDRED SIXTY THOUSAND AND XX/100 DOLLARS (\$15,960,000) (said fifteen million nine hundred sixty thousand dollar figure being referred to as the "Breaking Point"). For any fractional period of a calendar year in which this lease is in effect, the possible bonus payment for said fractional period shall be prorated based on the Gross Sales made by Lessee in the leased premises during said fractional period and a pro rata calculation of the Breaking Point over said fractional period.

The term Gross Sales as used in this lease shall mean the aggregate of all moneys received by Lessee from sales of goods, wares, merchandise, and services to the public made for cash or credit on the leased premises, during the term hereof, excluding:

- (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;

* The legal description attached as Exhibit A-1 hereto in addition to the leased premises also includes an adjacent shopping center owned by Lessor at the commencement of this lease. Lessor and Lessee intend that this lease only cover a portion of the land described in Exhibit A-1. That intended portion is depicted on the drawing attached as Exhibit A-2. Lessee covenants to obtain a legal description of that portion, satisfactory to Lessor and Lessee, by November 1, 1995. At that time this lease will be amended to include a legal description of only the leased premises.



(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 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, wholesalers 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;

(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 of Lessee;

(7) All receipts from sales to employees made at a discount;

(8) The face value of any travelers checks, money orders, tickets, insurance policies or similar instruments sold by Lessee (included in Gross Sales, however will be the amount of any commissions and/or service charges received by Lessee in connection with such sales);

(9) All receipts from vending machines, weighing machines, stamp machines, video entertainment games, gaming machines, telephones and the like;

(10) Sales made by licensees, concessionaires and subtenants of Lessee so long as such licensees, concessionaires and subtenants are not affiliated with Lessee (although Lessee hereby covenants not to allow such unaffiliated licensees, concessionaires and subtenants to occupy more square footage within the leased premises than is commercially reasonable in light of the market area served by the leased premises);

(11) Any home delivery charges, credit service charges, interest or collection charge for sales on credit made by Lessee.

There shall not be deducted from Gross Sales any income, excess profits, franchise or other taxes based upon or measured by income. The sale of Lessee's fixtures or equipment or all or a substantial part of its stock-in-trade and merchandise at a sale other than at retail or sales of waste material such as meat and produce trimmings, cardboard and bones (not sold to the public) shall not be included in Gross Sales.

Lessee neither makes an express nor an implied covenant to operate in the leased premises, nor does it make any representation or warranty as to the sales which it expects to make therein. Nor does Lessee make an express or implied covenant not to operate another store within the same geographic area or trade area as the leased premises. Lessee does agree that so long as it operates in the leased premises it will do so on days of the year and during business hours which are commercially reasonable in the market area in which the leased premises are located. Nothing herein shall be deemed to create a partnership or joint venture by or between Lessor and Lessee.

Lessee shall keep accurate records of all sales made on the premises in accordance with usual accounting practices applicable to Lessee's business. On or before the sixtieth (60th) day following the last day of each calendar year during the term of this lease and on or before the sixtieth (60th) day following the last day of this lease, Lessee shall mail to Lessor, at the place where rent is payable, a Gross Sales Statement. Such Gross Sales Statement shall show the Gross Sales made by Lessee in the leased premises during the preceding calendar year, or, if appropriate, the relevant portion thereof in the case of the Gross Sales Statement delivered after the expiration of this lease, together with any additional bonus payment due. Such statements shall show Gross Sales after the deductions 1 through 11 outlined above. Such annual statement shall be taken as final and correct, except Lessor (by a certified public accountant of good national reputation or acceptable to Lessee) shall have the right after the close of each calendar year to examine and audit Lessee's records of sales made on the leased premises during such calendar year, upon giving Lessee written notice to that effect within six (6) months after the expiration of such calendar year. Lessor agrees to hold in confidence all sales and related information furnished by Lessee. Any audits or examinations shall not be made more often than once for any year, and shall be at the sole cost and expense of Lessor and must be completed with all reasonable diligence, unless such an audit discloses that Gross



Sales for any particular year were understated by more than 3%, in which case Lessee shall promptly reimburse Lessor for the reasonable costs of such audit.

ARTICLE THIRD (TAXES, UTILITY CHARGES, ETC.): Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the original lease term or any renewal thereof. In the event that any governmental authority imposes a tax, charge or other imposition which is based upon the rents or other obligations payable to Lessor under this lease, Lessee shall pay the same to the governmental authority or to Lessor if Lessor is responsible to collect the same. Nothing contained herein shall be deemed to obligate Lessee with respect to Lessor's income, inheritance or successor taxes or impositions. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and Lessor shall pay the prorated share thereof for the period subsequent to the term, and Lessee shall pay the prorated share thereof for the term of this lease.

This lease is and shall be deemed and construed to be a "triple net lease" and Lessee shall pay to Lessor the rent, the possible bonus payment and all other additional rent free of all charges, assessments, impositions, or deductions of any kind and without demand, abatement, deduction, or set-off except as otherwise expressly provided in Article Tenth. Under no circumstances or conditions shall Lessor be expected or required to make any payment of any kind or be under any other obligation or liability hereunder. Except as otherwise expressly provided in this lease, Lessee shall have no right to terminate this Lease, and the obligations of Lessee under this Lease shall not be affected for any reason, including, without limitation, damage to or destruction of all or any part of the leased premises, the prohibition, limitation, or restriction of Lessee's use of the leased premises, the interference with such use by any individual or entity, notwithstanding any present or future law to the contrary, except as expressly provided in this lease. It is the intention of Lessor and Lessee that the rent, possible bonus payment and the other additional rent payable to or on behalf of Lessor shall continue to be payable in all events and the obligations of Lessee hereunder shall be unaffected, except as specifically provided otherwise in this lease.

Should Lessor pledge the leased premises or any part thereof as security for a debt, such pledge being referred to herein as a Mortgage, the lien of each such Mortgage shall be subject and subordinate to this lease and to the leasehold estate created hereby and to all amendments of this lease. So long as any Mortgage shall constitute a lien on the fee title to the leased premises, no agreement hereafter made amending this lease in any way (other than the correction of scrivener's errors) shall be binding upon the holder of any Mortgage if not consented to in writing by such holder, and any such holder or purchaser or grantee shall be entitled to enforce this lease in accordance with its terms prior to such amendment. If the holder of any Mortgage shall succeed to Lessor's estate in the leased premises, Lessee shall attorn to such holder, and Lessee shall promptly, upon the request of any such holder, execute and deliver any instrument reasonably requested by such holder evidencing such agreement to attorn.

ARTICLE FOURTH (INSTALLATION AND REMOVAL OF FIXTURES, SIGNS, ETC.): Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building improvements such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize signs in and over the leased premises and on the outside of the building improvements thereon. Personal property, fixtures and equipment used in the conduct of Lessee's business (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the building improvements) placed by Lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term), shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by Lessee at any time. Lessor also recognizes that Lessee may finance Lessee's fixtures and equipment and in such event a



third party may have a security interest or an ownership interest in such fixtures and equipment. Lessor hereby waives any security interest it may have, at law or in equity (statutory and contractual), relative to Lessee's fixtures, equipment and inventory. Upon request of Lessee, Lessor will execute such further instruments as are reasonably required by Lessee to confirm Lessor's waiver of such security interest. Lessor hereby acknowledges that Lessee's equipment lienholders or equipment lessors shall also have the right to remove such fixtures and equipment, so long as such removal is accomplished in a workmanlike manner and with as little disruption as possible to the operation and maintenance of the building. Any damage caused the leased premises by the removal of such property shall be repaired by Lessee at its expense.

ARTICLE FIFTH (LESSEE'S ASSUMPTION OF LIABILITY): Lessee agrees that it will indemnify and save Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks, except such as may arise out of the willful or negligent act of Lessor, or Lessor's agents or employees. Lessee shall maintain insurance for the mutual benefit of Lessor and Lessee against claims for bodily injury or property damage, under a policy of comprehensive general liability insurance, with such limits as Lessee may deem reasonable in its business, but not less than \$5,000,000 combined single limit. Such insurance policies shall name Lessor and Lessee as the insureds as their respective interests may appear and shall provide that the policies will not be canceled except upon thirty (30) days' prior written notice to each named insured, loss payee and mortgagee. Upon execution of this lease, Lessee shall deliver to Lessor certificates of insurance evidencing the policies of insurance described above. Nothing contained in this lease shall prevent Lessee from obtaining insurance of the kind and in the amounts required (in articles fifth and eleventh of this lease) under a blanket insurance policy or policies which cover other properties owned or operated by Lessee or any affiliate of Lessee as well as the leased premises.

ARTICLE SIXTH (REPAIRS, ALTERATIONS, ETC.): Lessee agrees that Lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises or to the improvements thereon during the lease term or any renewal thereof. Lessor agrees that Lessee may make, or permit to be made, such alterations and improvements to the leased premises as Lessee may deem desirable for the use thereof and may, at Lessee's option and without cost to Lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following:

- I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely affected thereby, and/or
- II. Construct an addition, or additions, to any building or improvements located on the leased premises, said addition or additions to be located either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, and/or
- III. Raze any building or improvements situated on the leased premises and erect a new building or improvement, either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, which shall be of a value not less than the market value of the building or improvement so razed at the time of demolition.

If Lessee constructs additions or building improvements in accordance with II or III above on land leased by Lessee, Lessor's prior written consent to the lease terms shall be required. At the expiration or termination of this lease, or any extension or renewal thereof, Lessee shall leave the leased premises in



good condition, allowance being made for ordinary wear and tear and damage by fire, or by earthquake, or by the elements, excepted as provided elsewhere in this lease, and Lessee shall not be required to restore the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that Lessor shall accept the leased premises with such alterations, remodeling, additions, or new construction as may have been made pursuant to the authorization contained in this article. Notwithstanding the foregoing sentence, Lessor, may in its reasonable judgment, at lease expiration or termination, require Lessee to remove any interior walls, obstructions or partitions constructed by Lessee, so long as such removal is done in a workmanlike manner and without jeopardizing the structural integrity of the leased premises. Lessee agrees that it will not permit any mechanic's, materialmen's, or other liens to stand against the leased premises for work or materials furnished Lessee in connection with any such alterations, remodeling, additions or new construction, it being provided, however, that Lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, Lessee shall immediately pay any judgment or decree rendered against Lessee, with all proper costs and charges and shall cause any such lien to be released of record without cost to Lessor.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Two Million and No/100 Dollars (\$2,000,000) or more, Lessee shall give Lessor thirty (30) days' prior written notice of such plans along with a description in reasonable detail of the planned improvements.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Five Hundred Thousand and No/100 Dollars (\$500,000.00) or more, Lessee may, on completion of said improvements, offer to sell the same, together with any additional land owned by Lessee adjoining the leased premises, to Lessor for an amount not greater than the cost thereof. (If the additional land adjoining the leased premises is leased by Lessee rather than owned, Lessee shall, as part of this offer to sell, offer to assign its Lessee's interest in the ground lease to Lessor.) Lessor and Lessee shall promptly enter into good faith negotiations relative to Lessor's purchase (at Lessee's cost) and leaseback of such improvements and/or land. Should Lessor and Lessee reach agreement relative to such a sale and leaseback this lease will be modified to reflect any changes necessary, including but not limited to, adding any additional land to the leased premises and adjusting the rents hereunder. Should Lessor and Lessee not reach agreement relative to such a sale and leaseback within one hundred twenty (120) days of Lessee's offer to sell the additional improvements and/or land, this lease shall remain in effect unmodified except that should Lessee, during the original term or any option term, construct new improvements, pursuant to the provisions of subparagraphs II or III hereof, either wholly or partially on additional land adjoining the leased premises, then, unless Lessor purchases said new improvements and additional land Lessee shall convey its ownership or Lessee's interest in said additional land to Lessor, and Lessor and Lessee shall enter into a Lease Modification Agreement incorporating said additional land into the leased premises.

ARTICLE SEVENTH (ASSIGNMENT AND SUBLETTING): Lessee shall have the right, without Lessor's consent, to assign or transfer this lease or to underlease or sublet the whole or any part of said leased premises to an affiliate of Lessee or to any retail operator so long as such sublessee or assignee has a history indicative of, and can reasonably be expected to, meet or exceed the sales volumes being achieved by Lessee in the leased premises immediately prior to such assignment, transfer, underlease or



sublease." Such an assignment, transfer, underlease or sublease is referred to as a Comparable Transaction. In the event of a Comparable Transaction, this lease shall not be amended in any way. Lessee may assign, transfer this lease, underlease or sublet the whole or any part of the leased premises to any other party (A Dissimilar Transaction) with Lessor's consent not to be unreasonably withheld. In the case of a Dissimilar Transaction the rent under this lease shall be adjusted to be the greater of the rent specified in the first paragraph of section 2 of this lease or the average of the last three years' of rents and bonus payments. In addition, Lessee shall pay to Lessor fifty percent (50%) of any sum or the money equivalent of other economic consideration received by Lessee directly or indirectly in connection with a Dissimilar Transaction, whether described as rent or otherwise, which exceeds, in the aggregate, the total sums which Lessee is obligated to pay Lessor under this lease. Should Lessee assign this lease it shall nevertheless remain primarily liable to Lessor for full payment of the rent, possible bonus payment and Lessee's other obligations under this lease. Lessee may also mortgage this lease without the prior consent of Lessor, however, Lessee shall remain primarily liable to Lessor for full payment of rent, possible bonus payment and Lessee's other obligations under this lease.

ARTICLE EIGHTH (HOLDING OVER): If Lessee holds over or remains in possession of the leased premises after expiration of this lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being exercised by written notice, such holding over or continued possession shall, if rent is paid by Lessee, and accepted by Lessor for or during any period of time Lessee holds over or remains in possession, create a tenancy from month to month only, at the last monthly rental and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

ARTICLE NINTH (QUIET POSSESSION): Lessor covenants that Lessor is seized of the leased premises and has full right to make this lease and that so long Lessee is not in default hereunder, Lessee shall have quiet and peaceful possession thereof as against any adverse claim of Lessor or any party claiming under Lessor.

ARTICLE TENTH (LESSEE'S DEFAULT AND LESSOR'S DEFAULT): In case Lessee shall default in the performance of any covenant or agreement herein contained, and such default shall continue, for thirty (30) days following non-monetary defaults or seven (7) days following monetary defaults, after receipt by Lessee of written notice thereof given by Lessor, then Lessor may, at its option, declare the term of this lease ended, and may re-enter upon the leased premises either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by Lessor of the right of re-entry shall not be a bar to or prejudice in any way any other legal remedies available to Lessor. In case Lessor shall default in the performance of any covenant or agreement contained herein, and such default shall continue for thirty (30) days after receipt by Lessee of written notice given by Lessee, Lessee shall then have the right to effect the cure of such default, but Lessor shall remain financially liable to Lessee for any sums, and interest at the maximum legal rate thereon, so expended. If Lessee pays any installment of rent after the seven (7) day period referred to above, Lessee shall also be liable for additional rent calculated as five percent (5%) of the monthly rent so paid. If additional rent is not paid by Lessee by the due date of the next monthly rent payment, such failure shall constitute a default under the terms of this lease. If any default by Lessor or Lessee cannot reasonably be cured within the

** At the commencement of this lease, the Lessor also owns a shopping center adjacent to the leased premises. In the event Lessor grants any tenants in such shopping center exclusive use rights, Lessor may give Lessee written notice thereof. Lessee may not, without Lessor's prior written consent, assign, transfer, underlease or sublease to an operator whose intended use conflicts with any exclusive use rights (of which the Lessee has been notified) the Lessor has granted to any tenant occupying more than 5,000 square feet of space in such adjacent shopping center.

relevant seven (7) day or thirty (30) day period, that period shall be extended as long as necessary only so long as the curing party is diligently pursuing the cure. Should Lessor give Lessee prior written notice of the name and address of Lessor's mortgagee, lender or lienholder(s), hereafter referred to as Lessor's Lender, Lessee agrees to provide Lessor's Lender with simultaneous notice of any Lessor's default and agrees to cooperate with Lessor's Lender should Lessor's Lender choose to cure the default on behalf of the Lessor. Lessee also agrees to accept the Lessor's Lender's cure of any Lessor's default. The performance of each and every agreement herein contained on the part of Lessor shall be a condition precedent to the right of Lessor to collect rent hereunder or to enforce this lease as against Lessee.

In May of 1995 Lessor and Lessee entered into a lease covering a property in Santa Fe, New Mexico and contemporaneously with this lease, Lessor and Lessee are entering into two other leases. Those three leases are described in Exhibit B attached hereto. A failure of Lessee to pay rent, possible bonus payment or any additional rents due under any one of these three other leases entered into by Lessor and Lessee, may, at the option of Lessor, be treated as a failure to pay rent under any or all of the four leases then in effect.

ARTICLE ELEVENTH (DAMAGE BY CASUALTY): Lessee agrees that it will, during the original term hereof, or any renewal thereof, at its expense keep in effect upon the leased premises, fire insurance with extended coverage endorsement, written by a responsible insurance company or insurance companies authorized to do business in the state in which the leased premises are located. Such policies shall be in an amount equal to not less than one hundred (100%) of the actual cash value (defined as replacement cost less depreciation) of the building improvements thereon, with such blanket limits and deductible provisions as are reasonable and customary in Lessee's business. Such policy or policies of insurance will name Lessor and Lessee as the insureds as their respective interests may appear, will provide that they cannot be canceled except upon thirty (30) days' written notice and will provide that payment for any losses covered under or by said policy or policies of insurance shall be made to Lessor and/or Lessee and/or any mortgagee and/or assignee designated by Lessor from time to time, as their respective interests may appear. Lessor agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the original term or any renewal thereof Lessee will (if such fire or casualty has caused destruction reasonably estimated at less than 35% of the full replacement value of the improvements), promptly rebuild or repair said building improvements, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. Should the fire or other casualty occur during the original term and should the destruction caused be reasonably estimated at 35% or more of the full replacement value of the improvements, Lessee may elect not to rebuild or repair said building improvements and in such event Lessee shall, within ninety (90) days after such loss or damage, give sixty (60) days' notice in writing to Lessor (and any Lessor's Lender) of Lessee's intention to terminate this lease. On expiration of said sixty (60) days' notice this lease shall be canceled and all parties shall be relieved of all liabilities hereunder, not previously accrued. Should this lease be canceled Lessee shall be deemed to and does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to Lessor, or as directed by Lessor, by said insurance company or companies. Notwithstanding the foregoing, should Lessee elect to rebuild the building improvements after a fire or other casualty and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.

Should the fire or other casualty occur during a renewal option term and Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage give Lessor sixty (60) days' notice, in writing, canceling and terminating the renewal term then in effect (and any pre-exercised renewal terms). On expiration of said sixty (60) days' notice, the renewal



term shall cease and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

Lessee shall carry business interruption insurance in amounts and on terms commercially reasonable in light of the location, nature and use of the leased premises.

ARTICLE TWELFTH (CONDEMNATION, EMINENT DOMAIN): In the event that Lessee receives notice of any threatened condemnation or other proceeding in the nature of the exercise of powers of eminent domain, which in the sound business judgment of Lessee is within the power of the relevant person, corporation or government entity, Lessee shall give prompt written notice thereof to Lessor and Lessor's Lender, if any. In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the original term hereof condemn and acquire title to all of the leased premises, or (in Lessee's reasonable business judgment) any operationally significant portion thereof, or to any indispensable easement appurtenant to the leased premises, in or by condemnation proceedings pursuant to any law, general, special or otherwise, Lessee may elect within ninety (90) days after such condemnation or acquisition of title by such person or corporation, to give written notice to Lessor of its intention to terminate this lease as of sixty (60) days after the date of that notice. In the event this lease is so canceled Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings relative to its own property (including, but not limited to, its trade fixtures and equipment and its leasehold interest) and Lessor shall be entitled to and shall receive any all award or payment made in said condemnation proceedings relative to its interest in the leased premises. Should Lessee, however, remain in possession and not elect to give such notice of termination of this lease, this lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the building portion of the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. (Lessor shall be entitled to any portion of such award or payment made in respect of the land portion of the leased premises.) With the proceeds of the award or payment assigned to Lessee, Lessee shall diligently make all repairs or alterations, if any, to the leased premises made necessary by such condemnation. Lessee agrees to use its best efforts to repair and/or rebuild the building improvements in such a manner that the restored building improvements, as much as possible, have a market value at least equal to their market value prior to condemnation. Should the cost of such repairs or alterations be more than the award or payment, Lessee agrees to pay the balance. Should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor such remaining balance of such award or payment. Following the making of the condemnation award or payment, this lease shall terminate as to the portion of the leased premises so taken and the rental payments for each month hereafter during the original term hereof and during any renewal terms hereof shall be reduced. The monthly rent reduction shall be in a just amount according to the extent and nature of the taking. Until the amount of the reduction is determined by Lessor and Lessee, Lessee shall pay the full rent provided for in this lease immediately prior to the taking, but once the monthly reduction is determined, Lessor shall refund to Lessee the amount of the monthly reduction which Lessee has paid in the meantime, with interest thereon at the legal rate.

Notwithstanding the foregoing paragraph, should Lessee elect to rebuild the building improvements after a condemnation or other taking, and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.



Should the condemnation occur during a renewal option term, Lessee shall, within sixty (60) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair the leased premises. If Lessee elects to terminate the renewal term, Lessor shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest and Lessor shall be entitled to receive and retain any award or payment made in respect of the leased premises. Should Lessee, however, elect to remain in possession, the renewal term shall continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to Lessee, Lessee shall make all repairs or alterations, if any, to the leased premises made necessary by such condemnation; should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor the remaining balance of such award or payment.

The provisions of this lease dealing with condemnation shall also apply to transfers made in lieu of condemnation.

ARTICLE THIRTEENTH (NOTICES): Any notice provided for herein shall be given by certified or registered United States mail, postage prepaid, or by overnight delivery service capable of verifying receipt thereof. If the notice is to Lessor it shall be addressed to Lessor in care of the person to whom rent is then payable at the address to which rent is then mailed, with a copy to any Lessor's Lender. If the notice is to Lessee, it shall be addressed to Furr's Supermarkets, Inc., 1730 Montano Road, N.W., Albuquerque, New Mexico 87107, Attention: Real Estate with a copy to James S. Pleasant, Esq., Gardere & Wynne, L.L.P., 1601 Elm Street, Suite 3000, Dallas, Texas 75201. Written notice of late rent payments may be given by facsimile to Lessee at (505) 344-1118, so long as such facsimile transmissions are given in addition to at least one of the forms of notice described in the first three sentences of this paragraph.

ARTICLE FOURTEENTH: Intentionally Deleted

ARTICLE FIFTEENTH (BANKRUPTCY): Should Lessee file any petition or institute any proceedings under the Bankruptcy Act whether as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any other Act or Acts, either as a bankrupt or as an insolvent, wherein or whereby Lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts, or to effect a plan of reorganization, or for any other similar relief, or if any such petition or proceedings of the same or similar kind or character be filed or taken against Lessee, or if any receiver for all or a substantial part of the business of Lessee shall be appointed by any court, and such petition or proceeding shall not be set aside or dismissed or the appointment of said receiver revoked within sixty (60) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this lease on the giving to Lessee of sixty (60) days' notice in writing.

Should Lessee have assigned this lease in accordance with Article Seventh hereof, and should Lessee's assignee file any petition under the Bankruptcy Act which results in the rejection of this lease, by Lessee's assignee or by operation of law, and should Lessee remain liable under the terms of this lease, Lessor hereby grants Lessee the right to re-enter the leased premises for purposes of possession or reletting thereof, pursuant to the provisions of this lease. Such re-entry shall be under the terms of this Lease.

ARTICLE SIXTEENTH (LESSOR'S RIGHT OF ENTRY): Lessor reserves the right to enter upon the leased premises during business hours at any time to inspect the same or to make such repairs as Lessor may deem advisable (even though the same may not be required by this lease), or for the purpose of exhibiting the same to persons wishing to purchase the same. Lessor also reserves the right, at any time



within one hundred (180) days next preceding the expiration of the term hereby granted or any renewal thereof, provided said term has not been extended by Lessee's exercise of the option privileges contained in Article Seventeenth hereof, to place notices on the front of the leased premises offering said leased premises "to let" or "for sale", and such notice or notices shall not be removed by Lessee, or Lessee's agents or employees. Such notices, however, shall not be placed upon the doors or windows of the building improvements.

ARTICLE SEVENTEENTH (LESSEE'S OPTION PRIVILEGES): Lessor hereby grants to Lessee, the right, at Lessee's option to extend the term of this lease for five (5) separate and additional periods of five (5) years each after the expiration of the term hereof on the same terms and conditions. Each of these renewal options shall be automatically effective unless Lessee sends written notice to Lessor declining to renew this lease. Such notice not to renew shall be given to Lessor or delivered or mailed to Lessor, in care of the party to whom rent is then payable, at the address to which rent is then payable. Such notice not to renew shall be given at least one hundred and eighty (180) days prior to the expiration of the original term or the renewal term then in effect. In the event this lease is renewed the parties agree that a new lease need not be executed, but that this lease, will remain in full force and effect, changed only as to the matters specified in this article.

ARTICLE EIGHTEENTH: Intentionally Deleted.

ARTICLE NINETEENTH (COMPLIANCE WITH LAWS AND ENVIRONMENTAL): Lessee agrees throughout the original term of this lease or any renewal thereof to comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction of the leased premises. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold Lessor harmless against the consequences of any violation thereof by Lessee. Lessee specifically agrees that, except in accordance with relevant federal and state regulations, no hazardous waste or toxic substance will be generated, treated, stored, disposed of, or released from or onto the leased premises by Lessee, its employees or agents. Although Lessee shall not be responsible for any toxic or hazardous releases from or onto the leased premises caused by persons other than Lessee, its employees or agents, Lessee does agree to use its best efforts to inform Lessor of any such releases of which Lessee becomes aware.

ARTICLE TWENTIETH (REMEDIES CUMULATIVE): No remedy herein conferred upon or reserved to Lessor or to Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE TWENTY-FIRST (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.

ARTICLE TWENTY-SECOND (SHORT FORM OF LEASE): Lessor and Lessee agree that if requested by either party, each will cooperate in the preparation, execution and recording of a memorandum or short form of this lease and any amendments hereto.

ARTICLE TWENTY-THIRD (RIGHT OF FIRST REFUSAL): At any time during the term of this lease, should the Lessor receive a bona fide, acceptable offer to the Lessor for the purchase of the whole or any part of the leased premises, the Lessor shall send notice of such offer to Lessee. Such notice shall specify the exact terms of said offer. Lessee shall have ten (10) days to agree to match such offer, in



This lease, made the 5th day of May 1995, between Seville East, an Arizona general partnership herein referred to as Lessor, and FURR'S SUPERMARKETS, INC., a Delaware corporation, hereinafter referred to as Lessee;

WITNESSETH: That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

ARTICLE FIRST (PROPERTY DESCRIPTION, TERM AND USE): Lessor does hereby lease to Lessee the following described real property and the buildings and improvements thereon in the City of Santa Fe, County of Santa Fe, State of New Mexico designated as 2110 Peabeco, and described in Exhibit "A" attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for preliminary term of 28 days beginning May 5, 1995 and terminating May 31, 1995 and an original term of twenty (20) years, commencing with the first day of June, 1995, and extending to and including the last day of May, 2015, as such may be extended pursuant to Article Seventeenth hereof.

Lessee may use the leased premises for any lawful purpose.

ARTICLE SECOND (RENT): Lessee does hereby agree to pay to Lessor, as the rent of the leased premises during the preliminary term the sum of THIRTY TWO THOUSAND FIVE HUNDRED THIRTY FOUR DOLLARS AND 95/100 DOLLARS (\$32,534.95) on May 5, 1995 and the sum of THIRTY EIGHT THOUSAND SEVEN HUNDRED NINETY ONE AND 67/100 DOLLARS (\$38,791.67) on the first day of each calendar month during the original term. Said payments shall be made by checks or drafts payable to Seville East and mailed to 722 Camino Oeste del Sol Santa Fe, N.M. 87501, or by checks or drafts made payable to any other payee or mailed to any other address which Lessor, or any successor in interest of Lessor, may in writing designate. The rent for any fractional calendar month shall be prorated and paid on the first day of such fractional month.

In addition to the rent described above, Lessee shall also be liable for a possible bonus payment in the amount, if any, by which one and one-half percent (1.5%) of Gross Sales made by Lessee in the leased premises in each calendar year of the lease term exceeds TWENTY-SIX MILLION AND XX/100 DOLLARS (\$26,000,000) (said twenty-six million dollar figure being referred to as the "Breaking Point"). For any fractional period of a calendar year in which this lease is in effect, the possible bonus payment for said fractional period shall be prorated based on the Gross Sales made by Lessee in the leased premises during said fractional period and a pro rata calculation of the Breaking Point over said fractional period.

The term Gross Sales as used in this lease shall mean the aggregate of all moneys received by Lessee from sales of goods, wares, merchandise, and services to the public made for cash or credit on the leased premises, during the term hereof, excluding:

- (1) Credits or refunds to customers for merchandise returned or exchanged;

* Lessee is currently planning a remodel of the leased premises. Lessee expects to spend approximately \$500,000 modifying the building improvements on the leased premises. Once the remodeling project is completed (as evidenced by a certificate furnished by Lessee) this lease will be modified to reflect a Breaking Point of THIRTY-ONE MILLION THIRTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE AND XX/100 DOLLARS (\$31,033,333). Should Lessee fail to complete the remodeling project currently planned, or a substantially similar project, Lessee shall pay to Lessor \$500,000 and this lease will be modified to reflect a monthly rent of THIRTY-THREE THOUSAND TWO-HUNDRED FIFTY AND XX/100 DOLLARS (\$33,250.00).



(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 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, wholesalers 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;

(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 of Lessee;

(7) All receipts from sales to employees made at a discount;

(8) The face value of any travelers checks, money orders, tickets, insurance policies or similar instruments sold by Lessee (included in Gross Sales, however will be the amount of any commissions and/or service charges received by Lessee in connection with such sales);

(9) All receipts from vending machines, weighing machines, stamp machines, video entertainment games, gaming machines, telephones and the like;

(10) Sales made by licensees, concessionaires and subtenants of Lessee so long as such licensees, concessionaires and subtenants are not affiliated with Lessee (although Lessee hereby covenants not to allow such unaffiliated licensees, concessionaires and subtenants to occupy more square footage within the leased premises than is commercially reasonable in light of the market area served by the leased premises);

(11) Any home delivery charges, credit service charges, interest or collection charge for sales on credit made by Lessee.

There shall not be deducted from Gross Sales any income, excess profits, franchise or other taxes based upon or measured by income. The sale of Lessee's fixtures or equipment or all or a substantial part of its stock-in-trade and merchandise at a sale other than at retail or sales of waste material such as meat and produce trimmings, cardboard and bones (not sold to the public) shall not be included in Gross Sales.

Lessee neither makes an express nor an implied covenant to operate in the leased premises, nor does it make any representation or warranty as to the sales which it expects to make therein. Nor does Lessee make an express or implied covenant not to operate another store within the same geographic area or trade area as the leased premises. Lessee does agree that so long as it operates in the leased premises it will do so on days of the year and during business hours which are commercially reasonable in the market area in which the leased premises are located. Nothing herein shall be deemed to create a partnership or joint venture by or between Lessor and Lessee.

Lessee shall keep accurate records of all sales made on the premises in accordance with usual accounting practices applicable to Lessee's business. On or before the sixtieth (60th) day following the last day of each calendar year during the term of this lease and on or before the sixtieth (60th) day following the last day of this lease, Lessee shall mail to Lessor, at the place where rent is payable, a Gross Sales Statement. Such Gross Sales Statement shall show the Gross Sales made by Lessee in the leased premises during the preceding calendar year, or, if appropriate, the relevant portion thereof in the case of the Gross Sales Statement delivered after the expiration of this lease, together with any additional bonus payment due. Such statements shall show Gross Sales after the deductions 1 through 11 outlined above. Such annual statement shall be taken as final and correct, except Lessor (by a certified public accountant of good national reputation or acceptable to Lessee) shall have the right after the close of each calendar year to examine and audit Lessee's records of sales made on the leased premises during such calendar year, upon giving Lessee written notice to that effect within six (6) months after the expiration of such calendar year. Lessor agrees to hold in confidence all sales and related information furnished by Lessee. Any audits or examinations shall not be made more often than once for any year, and shall be at the sole cost and expense of Lessor and must be completed with all reasonable diligence, unless such an audit discloses that Gross

Sales for any particular year were understated by more than 3%, in which case Lessee shall promptly reimburse Lessor for the reasonable costs of such audit.

ARTICLE THIRD (TAXES, UTILITY CHARGES, ETC.): Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the original lease term or any renewal thereof. In the event that any governmental authority imposes a tax, charge or other imposition which is based upon the rents or other obligations payable to Lessor under this lease, Lessee shall pay the same to the governmental authority or to Lessor if Lessor is responsible to collect the same. Nothing contained herein shall be deemed to obligate Lessee with respect to Lessor's income, inheritance or successor taxes or impositions. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and Lessor shall pay the prorated share thereof for the period subsequent to the term, and Lessee shall pay the prorated share thereof for the term of this lease.

This lease is and shall be deemed and construed to be a "triple net lease" and Lessee shall pay to Lessor the rent, the possible bonus payment and all other additional rent free of all charges, assessments, impositions, or deductions of any kind and without demand, abatement, deduction, or set-off except as otherwise expressly provided in Article Tenth. Under no circumstances or conditions shall Lessor be expected or required to make any payment of any kind or be under any other obligation or liability hereunder. Except as otherwise expressly provided in this lease, Lessee shall have no right to terminate this Lease, and the obligations of Lessee under this Lease shall not be affected for any reason, including, without limitation, damage to or destruction of all or any part of the leased premises, the prohibition, limitation, or restriction of Lessee's use of the leased premises, the interference with such use by any individual or entity, notwithstanding any present or future law to the contrary, except as expressly provided in this lease. It is the intention of Lessor and Lessee that the rent, possible bonus payment and the other additional rent payable to or on behalf of Lessor shall continue to be payable in all events and the obligations of Lessee hereunder shall be unaffected, except as specifically provided otherwise in this lease.

Should Lessor pledge the leased premises or any part thereof as security for a debt, such pledge being referred to herein as a Mortgage, the lien of each such Mortgage shall be subject and subordinate to this lease and to the leasehold estate created hereby and to all amendments of this lease. So long as any Mortgage shall constitute a lien on the fee title to the leased premises, no agreement hereafter made amending this lease in any way (other than the correction of scrivener's errors) shall be binding upon the holder of any Mortgage if not consented to in writing by such holder, and any such holder or purchaser or grantee shall be entitled to enforce this lease in accordance with its terms prior to such amendment. If the holder of any Mortgage shall succeed to Lessor's estate in the leased premises, Lessee shall attorn to such holder, and Lessee shall promptly, upon the request of any such holder, execute and deliver any instrument reasonably requested by such holder evidencing such agreement to attorn.

ARTICLE FOURTH (INSTALLATION AND REMOVAL OF FIXTURES, SIGNS, ETC.): Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building improvements such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize signs in and over the leased premises and on the outside of the building improvements thereon. Personal property, fixtures and equipment used in the conduct of Lessee's business (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the building improvements) placed by Lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term), shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by Lessee at any time. Lessor also recognizes that Lessee may finance Lessee's fixtures and equipment and in such event a third party may have a security interest or an ownership interest in such fixtures and equipment. Lessor hereby waives any security interest it may have, at law or in equity, relative to Lessee's fixtures and

equipment. Upon request of Lessee, Lessor will execute such further instruments as are reasonably required by Lessee to confirm Lessor's waiver of such security interest. Lessor hereby acknowledges that Lessee's equipment lienholders or equipment lessors shall also have the right to remove such fixtures and equipment, so long as such removal is accomplished in a workmanlike manner and with as little disruption as possible to the operation and maintenance of the building. Any damage caused the leased premises by the removal of such property shall be repaired by Lessee at its expense.

ARTICLE FIFTH (LESSEE'S ASSUMPTION OF LIABILITY): Lessee agrees that it will indemnify and save Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks, except such as may arise out of the willful or negligent act of Lessor, or Lessor's agents or employees. Lessee shall maintain insurance for the mutual benefit of Lessor and Lessee against claims for bodily injury or property damage, under a policy of comprehensive general liability insurance, with such limits as Lessee may deem reasonable in its business, but not less than \$5,000,000 combined single limit. Such insurance policies shall name Lessor and Lessee as the insureds as their respective interests may appear and shall provide that the policies will not be canceled except upon thirty (30) days' prior written notice to each named insured, loss payee and mortgagee. Upon execution of this lease, Lessee shall deliver to Lessor certificates of insurance evidencing the policies of insurance described above. Nothing contained in this lease shall prevent Lessee from obtaining insurance of the kind and in the amounts required (in articles fifth and eleventh of this lease) under a blanket insurance policy or policies which cover other properties owned or operated by Lessee or any affiliates of Lessee as well as the leased premises.

ARTICLE SIXTH (REPAIRS, ALTERATIONS, ETC.): Lessee agrees that Lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises or to the improvements thereon during the lease term or any renewal thereof. Lessor agrees that Lessee may make, or permit to be made, such alterations and improvements to the leased premises as Lessee may deem desirable for the use thereof and may, at Lessee's option and without cost to Lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following:

- I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely affected thereby, and/or
- II. Construct an addition, or additions, to any building or improvements located on the leased premises, said addition or additions to be located either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, and/or
- III. Raze any building or improvements situated on the leased premises and erect a new building or improvement, either on the leased premises or wholly or partially on additional land (owned or leased by Lessee or Lessor) adjoining the leased premises, which shall be of a value not less than the market value of the building or improvement so razed at the time of demolition.

If Lessee constructs additions or building improvements in accordance with II or III above on land leased by Lessee, Lessor's prior written consent to the lease terms shall be required. At the expiration or termination of this lease, or any extension or renewal thereof, Lessee shall leave the leased premises in good condition, allowance being made for ordinary wear and tear and damage by fire, or by earthquake, or by the elements, excepted as provided elsewhere in this lease, and Lessee shall not be required to restore the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that Lessor shall accept the leased premises with such alterations, remodeling, additions, or

new construction as may have been made pursuant to the authorization contained in this article. Notwithstanding the foregoing sentence, Lessor, may in its reasonable judgment, at lease expiration or termination, require Lessee to remove any interior walls, obstructions or partitions constructed by Lessee, so long as such removal is done in a workmanlike manner and without jeopardizing the structural integrity of the leased premises. Lessee agrees that it will not permit any mechanic's, materialmen's, or other liens to stand against the leased premises for work or materials furnished Lessee in connection with any such alterations, remodeling, additions or new construction, it being provided, however, that Lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, Lessee shall immediately pay any judgment or decree rendered against Lessee, with all proper costs and charges and shall cause any such lien to be released of record without cost to Lessor.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Two Million and No/100 Dollars (\$2,000,000) or more, Lessee shall give Lessor thirty (30) days' prior written notice of such plans along with a description in reasonable detail of the planned improvements.

Should Lessee, during the original term hereof exercise any of its rights granted pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost of the new improvements constructed pursuant to said subparagraphs is Five Hundred Thousand and No/100 Dollars (\$500,000.00) or more, Lessee may, on completion of said improvements, offer to sell the same, together with any additional land owned by Lessee adjoining the leased premises, to Lessor for an amount not greater than the cost thereof. (If the additional land adjoining the leased premises is leased by Lessee rather than owned, Lessee shall, as part of this offer to sell, offer to assign its Lessee's interest in the ground lease to Lessor.) Lessor and Lessee shall promptly enter into good faith negotiations relative to Lessor's purchase (at Lessee's cost) and leaseback of such improvements and/or land. Should Lessor and Lessee reach agreement relative to such a sale and leaseback this lease will be modified to reflect any changes necessary, including but not limited to, adding any additional land to the leased premises and adjusting the rents hereunder. Should Lessor and Lessee not reach agreement relative to such a sale and leaseback within one hundred twenty (120) days of Lessee's offer to sell the additional improvements and/or land, this lease shall remain in effect unmodified except that should Lessee, during the original term or any option term, construct new improvements, pursuant to the provisions of subparagraphs II or III hereof, either wholly or partially on additional land adjoining the leased premises, then, unless Lessor purchases said new improvements and additional land Lessee shall convey its ownership or lessee's interest in said additional land to Lessor, and Lessor and Lessee shall enter into a Lease Modification Agreement incorporating said additional land into the leased premises.

ARTICLE SEVENTH (ASSIGNMENT AND SUBLETTING): Lessee shall have the right, without Lessor's consent, to assign or transfer this lease or to underlease or sublet the whole or any part of said leased premises to an affiliate of Lessee or to any retail operator so long as such sublessee or assignee has a history indicative of, and can reasonably be expected to, meet or exceed the sales volumes being achieved by Lessee in the leased premises immediately prior to such assignment, transfer, underlease or sublease. Such an assignment, transfer, underlease or sublease is referred to as a Comparable Transaction. In the event of a Comparable Transaction, this lease shall not be amended in any way. Lessee may assign, transfer this lease, underlease or sublet the whole or any part of the leased premises to any other party (A Dissimilar Transaction) with Lessor's consent not to be unreasonably withheld. In the case of a Dissimilar Transaction the rent under this lease shall be adjusted to be the greater of the rent specified in the first paragraph of section 2 of this lease or the average of the last three years' of rents and bonus payments. In addition, Lessee shall pay to Lessor fifty percent (50%) of any sum or the money equivalent of other economic consideration received by Lessee directly or indirectly in connection with a Dissimilar Transaction, whether described as rent or otherwise, which exceeds, in the aggregate, the total sums which Lessee is obligated to pay Lessor under this lease. Should Lessee assign this lease it shall nevertheless

remain primarily liable to Lessor for full payment of the rent, possible bonus payment and Lessee's other obligations under this lease. Lessee may also mortgage this lease without the prior consent of Lessor, however, Lessee shall remain primarily liable to Lessor for full payment of rent, possible bonus payment and Lessee's other obligations under this Lease.

ARTICLE EIGHTH (HOLDING OVER): If Lessee holds over or remains in possession of the leased premises after expiration of this lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being exercised by written notice, such holding over or continued possession shall, if rent is paid by Lessee, and accepted by Lessor for or during any period of time Lessee holds over or remains in possession, create a tenancy from month to month only, at the last monthly rental and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

ARTICLE NINTH (QUIET POSSESSION): Lessor covenants that Lessor is seized of the leased premises and has full right to make this lease and that so long Lessee is not in default hereunder, Lessee shall have quiet and peaceful possession thereof as against any adverse claim of Lessor or any party claiming under Lessor.

ARTICLE TENTH (LESSEE'S DEFAULT AND LESSOR'S DEFAULT): In case Lessee shall default in the performance of any covenant or agreement herein contained, and such default shall continue, for thirty (30) days following non-monetary defaults or seven (7) days following monetary defaults, after receipt by Lessee of written notice thereof given by Lessor, then Lessor may, at its option, declare the term of this lease ended, and may re-enter upon the leased premises either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by Lessor of the right of re-entry shall not be a bar to or prejudice in any way any other legal remedies available to Lessor. In case Lessor shall default in the performance of any covenant or agreement contained herein, and such default shall continue for thirty (30) days after receipt by Lessor of written notice given by Lessee, Lessee shall then have the right to effect the cure of such default, but Lessor shall remain financially liable to Lessee for any sums, and interest at the maximum legal rate thereon, so expended. If Lessee pays any installment of rent after the seven (7) day period referred to above, Lessee shall also be liable for additional rent calculated as five percent (5%) of the monthly rent so paid. If additional rent is not paid by Lessee by the due date of the next monthly rent payment, such failure shall constitute a default under the terms of this lease. If any default by Lessor or Lessee cannot reasonably be cured within the relevant seven (7) day or thirty (30) day period, that period shall be extended as long as necessary only so long as the curing party is diligently pursuing the cure. Should Lessor give Lessee prior written notice of the name and address of Lessor's mortgagee, lender or lienholder(s), hereafter referred to as Lessor's Lender, Lessee agrees to provide Lessor's Lender with simultaneous notice of any Lessor's default and agrees to cooperate with Lessor's Lender should Lessor's Lender choose to cure the default on behalf of the Lessor. Lessee also agrees to accept the Lessor's Lender's cure of any Lessor's default. The performance of each and every agreement herein contained on the part of Lessor shall be a condition precedent to the right of Lessor to collect rent hereunder or to enforce this lease as against Lessee.

Within one year of the execution of this lease, Lessor and Lessee intend to enter into three other leases covering other properties. Those leases are described in Exhibit B attached hereto. A failure of Lessee to pay rent, possible bonus payment or any additional rents due under any one of these three other leases being entered into by Lessor and Lessee, may, at the option of Lessor, be treated as a failure to pay rent under any or all of the four leases then in effect.

ARTICLE ELEVENTH (DAMAGE BY CASUALTY): Lessee agrees that it will, during the original term hereof, or any renewal thereof, at its expense keep in effect upon the leased premises, fire insurance with extended coverage and endorsement, written by a responsible insurance company or insurance companies authorized to do business in the state in which the leased premises are located. Such policies

shall be in an amount equal to not less than one hundred (100%) of the actual cash value (defined as replacement cost less depreciation) of the building improvements thereon, with such blanket limits and deductible provisions as are reasonable and customary in Lessee's business. Such policy or policies of insurance will name Lessor and Lessee as the insureds as their respective interests may appear, will provide that they cannot be canceled except upon thirty (30) days' written notice and will provide that payment for any losses covered under or by said policy or policies of insurance shall be made to Lessor and/or Lessee and/or any mortgagee and/or assignee designated by Lessor from time to time, as their respective interests may appear. Lessor agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the original term or any renewal thereof Lessee will (if such fire or casualty has caused destruction reasonably estimated at less than 35% of the full replacement value of the improvements), promptly rebuild or repair said building improvements, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. Should the fire or other casualty occur during the original term and should the destruction caused be reasonably estimated at 35% or more of the full replacement value of the improvements, Lessee may elect not to rebuild or repair said building improvements and in such event Lessee shall, within ninety (90) days after such loss or damage, give sixty (60) days' notice in writing to Lessor (and any Lessor's Lender) of Lessee's intention to terminate this lease. On expiration of said sixty (60) days' notice this lease shall be canceled and all parties shall be relieved of all liabilities hereunder, not previously accrued. Should this lease be canceled Lessee shall be deemed to and does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to Lessor, or as directed by Lessor, by said insurance company or companies. Notwithstanding the foregoing, should Lessee elect to rebuild the building improvements after a fire or other casualty and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.

Should the fire or other casualty occur during a renewal option term and Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage give Lessor sixty (60) days' notice, in writing, canceling and terminating the renewal term then in effect (and any pre-exercised renewal terms). On expiration of said sixty (60) days' notice, the renewal term shall cease and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

Lessee shall carry business interruption insurance in amounts and on terms commercially reasonable in light of the location, nature and use of the leased premises.

ARTICLE TWELFTH (CONDEMNATION, EMINENT DOMAIN): In the event that Lessee receives notice of any threatened condemnation or other proceeding in the nature of the exercise of powers of eminent domain, which in the sound business judgment of Lessee is within the power of the relevant person, corporation or government entity, Lessee shall give prompt written notice thereof to Lessor and Lessor's Lender, if any. In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the original term hereof condemn and acquire title to all of the leased premises, or (in Lessee's reasonable business judgment) any operationally significant portion thereof, or to any indispensable easement appurtenant to the leased premises, in or by condemnation proceedings pursuant to any law, general, special or otherwise, Lessee may elect within ninety (90) days after such condemnation or acquisition of title by such person or corporation, to give written notice to Lessor of its intention to terminate this lease as of sixty (60) days after the date of that notice. In the event this lease is so canceled Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings relative to its own property (including, but not limited to, its trade fixtures and equipment and its leasehold interest) and Lessor shall be entitled to and shall receive any all award or payment made in said condemnation proceedings relative to its interest in the leased premises. Should Lessee, however, remain in possession and not elect to give such notice of termination of this lease, this lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, Lessee

shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the building portion of the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. (Lessor shall be entitled to any portion of such award or payment made in respect of the land portion of the leased premises.) With the proceeds of the award or payment assigned to Lessee, Lessee shall diligently make all repairs or alterations, if any, to the leased premises made necessary by such condemnation. Lessee agrees to use its best efforts to repair and/or rebuild the building improvements in such a manner that the restored building improvements, as much as possible, have a market value at least equal to their market value prior to condemnation. Should the cost of such repairs or alterations be more than the award or payment, Lessee agrees to pay the balance. Should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor such remaining balance of such award or payment. Following the making of the condemnation award or payment, this lease shall terminate as to the portion of the leased premises so taken and the rental payments for each month thereafter during the original term hereof and during any renewal terms hereof shall be reduced. The monthly rent reduction shall be in a just amount according to the extent and nature of the taking. Until the amount of the reduction is determined by Lessor and Lessee, Lessee shall pay the full rent provided for in this lease immediately prior to the taking, but once the monthly reduction is determined, Lessor shall refund to Lessee the amount of the monthly reduction which Lessee has paid in the meantime, with interest thereon at the legal rate.

Notwithstanding the foregoing paragraph, should Lessee elect to rebuild the building improvements after a condemnation or other taking, and in the event any Lessor's Lender requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such Lessor's Lender upon the condition that said Lessor's Lender shall agree to pay said proceeds to Lessee during the restoration of the leased premises. Such payments will be made by Lessor's Lender against certificates of Lessee detailing the work and cost thereof during construction.

Should the condemnation occur during a renewal option term, Lessee shall, within sixty (60) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair the leased premises. If Lessee elects to terminate the renewal term, Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest and Lessor shall be entitled to receive and retain any award or payment made in respect of the leased premises. Should Lessee, however, elect to remain in possession, the renewal term shall continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to Lessee, Lessee shall make all repairs or alterations, if any, to the leased premises made necessary by such condemnation; should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor the remaining balance of such award or payment.

The provisions of this lease dealing with condemnation shall also apply to transfers made in lieu of condemnation.

ARTICLE THIRTEENTH (NOTICES): Any notice provided for herein shall be given by certified or registered United States mail, postage prepaid, or by overnight delivery service capable of verifying receipt thereof. If the notice is to Lessor it shall be addressed to Lessor in care of the person to whom rent is then payable at the address to which rent is then mailed, with a copy to any Lessor's Lender. If the notice is to Lessee, it shall be addressed to Furr's Supermarkets, Inc., 1730 Montano Road, N.W., Albuquerque, New Mexico 87107, Attention: Real Estate with a copy to James S. Pleasant, Esq., Gardner & Wynne, L.L.P., 1601 Elm Street, Suite 3000, Dallas, Texas 75201. Written notice of late rent payments may be given by facsimile to Lessee at (505) 344-1118, so long as such facsimile transmissions

are given in addition to at least one of the forms of notice described in the first three sentences of this paragraph.

ARTICLE FOURTEENTH : Intentionally Deleted.

ARTICLE FIFTEENTH (BANKRUPTCY): Should Lessee file any petition or institute any proceedings under the Bankruptcy Act whether as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any other Act or Acts, either as a bankrupt or as an insolvent, wherein or whereby Lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts, or to effect a plan of reorganization, or for any other similar relief, or if any such petition or proceedings of the same or similar kind or character be filed or taken against Lessee, or if any receiver for all or a substantial part of the business of Lessee shall be appointed by any court, and such petition or proceeding shall not be set aside or dismissed or the appointment of said receiver revoked within sixty (60) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this lease on the giving to Lessee of sixty (60) days' notice in writing.

Should Lessee have assigned this lease in accordance with Article Seventh hereof, and should Lessee's assignee file any petition under the Bankruptcy Act which results in the rejection of this lease, by Lessee's assignee or by operation of law, and should Lessee remain liable under the terms of this lease, Lessor hereby grants Lessee the right to re-enter the leased premises for purposes of possession or reletting thereof, pursuant to the provisions of this lease. Such re-entry shall be under the terms of this Lease.

ARTICLE SIXTEENTH (LESSOR'S RIGHT OF ENTRY): Lessor reserves the right to enter upon the leased premises during business hours at any time to inspect the same or to make such repairs as Lessor may deem advisable (even though the same may not be required by this lease), or for the purpose of exhibiting the same to persons wishing to purchase the same. Lessor also reserves the right, at any time within one hundred (100) days next preceding the expiration of the term hereby granted or any renewal thereof, provided said term has not been extended by Lessee's exercise of the option privileges contained in Article Seventeenth hereof, to place notices on the front of the leased premises offering said leased premises "to let" or "for sale", and such notice or notices shall not be removed by Lessee, or Lessee's agents or employees. Such notices, however, shall not be placed upon the doors or windows of the building improvements.

ARTICLE SEVENTEENTH (LESSEE'S OPTION PRIVILEGES): Lessor hereby grants to Lessee, the right, at Lessee's option to extend the term of this lease for five (5) separate and additional periods of five (5) years each after the expiration of the term hereof on the same terms and conditions. Each of these renewal options shall be automatically effective unless Lessee sends written notice to Lessor declining to renew this lease. Such notice not to renew shall be given to Lessor or delivered or mailed to Lessor, in care of the party to whom rent is then payable, at the address to which rent is then payable. Such notice not to renew shall be given at least one hundred and eighty (180) days prior to the expiration of the original term or the renewal term then in effect. In the event this lease is renewed the parties agree that a new lease need not be executed, but that this lease, will remain in full force and effect, changed only as to the matters specified in this article.

ARTICLE EIGHTEENTH: Intentionally Deleted.

ARTICLE NINETEENTH (COMPLIANCE WITH LAWS AND ENVIRONMENTAL): Lessee agrees throughout the original term of this lease or any renewal thereof to comply with all laws,

ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction of the leased premises. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold Lessor harmless against the consequences of any violation thereof by Lessee. Lessee specifically agrees that, except in accordance with relevant federal and state regulations, no hazardous waste or toxic substance will be generated, treated, stored, disposed of, or released from or onto the leased premises by Lessee, its employees or agents. Although Lessee shall not be responsible for any toxic or hazardous releases from or onto the leased premises caused by persons other than Lessee, its employees or agents, Lessee does agree to use its best efforts to inform Lessor of any such releases of which Lessee becomes aware.

ARTICLE TWENTIETH (REMEDIES CUMULATIVE): No remedy herein conferred upon or reserved to Lessor or to Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE TWENTY-FIRST (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.

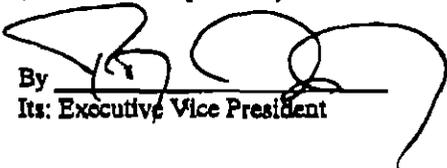
ARTICLE TWENTY-SECOND (SHORT FORM OF LEASE): Lessor and Lessee agree that if requested by either party, each will cooperate in the preparation, execution and recording of a memorandum or short form of this lease and any amendments hereto.

ARTICLE TWENTY-THIRD (RIGHT OF FIRST REFUSAL): At any time during the term of this lease, should the Lessor receive a bona fide, acceptable offer to the Lessor for the purchase of the whole or any part of the leased premises, the Lessor shall send notice of such offer to Lessee. Such notice shall specify the exact terms of said offer. Lessee shall have ten (10) days to agree to match such offer, in which case, Lessor shall enter into a contract to convey the leased premises, or the relevant portion thereof, to Lessee on such terms and conditions.

ARTICLE TWENTY-FOURTH (ARTICLE TITLES): The article titles contained in the parentheses after the number of each article are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect the terms and provisions hereof.

By 
Seville East
Partner
By _____

LESSOR

FURR'S SUPERMARKETS, INC.
(a Delaware corporation)
By 
Its: Executive Vice President

LESSEE



EXHIBIT "A"

Lot 2A of the survey of Tracts 1A, 2A and Evelyn Parsons Tract 2, Plaza Del Sur Shopping Center, in Phase S, of the City of Santa Fe, Santa Fe County, New Mexico, recorded in Plat Book 239, page 048, and being more particularly described by metes and bounds as follows:

Beginning at the northeast corner of the tract from whence a chiseled cross in concrete bears North 88° 08' 58" East, 9.04 feet; from whence Santa Fe Control Station "CFFC 101" bears South 88° 34' 43" East, 928.01 feet; thence, from said point of beginning South 07° 06' 22" East, 313.29 feet to a found rebar with plastic cap PS #4078;
thence along the arc of a curve to the left 267.75 feet, with a radius of 1,465.36 feet and a long chord of South 12° 20' 49" East, 267.38 feet to a found rebar with cap PS #4078;
thence along the arc of a curve to the right 36.59 feet, with a radius of 19.76 feet, and a long chord of South 35° 28' 32" West, 31.58 feet to a found rebar with cap PS #4078;
thence South 88° 30' 44" West, 322.82 feet to a found rebar with cap PS #4078;
thence North 01° 28' 47" West, 546.14 feet to a found rebar with cap PS #4078;
thence along the arc of a curve to the left 47.52 feet, with a radius of 60.00 feet, and a long chord of North 65° 50' 00" East, 46.28 feet to a found rebar with cap PS #4078;
thence along the arc of a curve to the right 71.27 feet, with a radius of 90.00 feet, and a long chord of North 65° 50' 00" East, 69.43 feet to a found rebar with cap PS #4078;
thence North 01° 28' 47" West, 7.88 feet to a found rebar with cap PS #4078;
thence North 88° 08' 58" East, 153.92 feet to the point and place of beginning.

Other Anticipated Lessor/Lessee Leases Referenced in Article Tenth

Store #866 located at 1720 Bridge SW, Albuquerque, New Mexico

Store #927 located at Northpark Mall, El Paso, Texas

Store #949 located at 809 West Pierce, Carlsbad, New Mexico

Exhibit B



#866 - G.F.F Plaza - Albuquerque, NM

FURRS' A/R RECONCILIATION

PRE PETITION

Base Rent Pre petition 2/01/01 to 2/07/01		\$ 3,325.00
Previous Year CAM	1998	\$ 35,485.53
Previous Year CAM	1999	\$ 32,107.77
Previous Year CAM	2000	\$ 71,006.75
Common Area Maint	1-Jan	\$ 2,875.85
Common Area Maint Pre-petition 2/01/01 to 2/07/01		\$ 868.91
Common Area Maint Post-petition 2/08/01 to 2/28/01		\$ 2,006.74
Total Pre-Petition		\$ 147,258.45

POST PETITION

Common Area Maint	1-Mar	\$ 2,875.85
Common Area Maint	1-Apr	\$ 2,875.86
Common Area Maint	1-May	\$ 2,875.85
Common Area Maint	1-Jun	\$ 2,875.85
Total Post-Petition due		\$ 10,702.60

TOTAL DUE AS OF 6/14/01

\$ 157,960.05

Exhibit C



City of Santa Fe, New Mexico



ASSESSMENTS*P.O. BOX 5439*SANTA FE, NEW MEXICO 87502-5439
Refuse and Sewer Statement

*****AUTO**3-DIGIT 871 1 1837

FLOHO PARTNERS
4411 THE 25 WAY NE # 100
ALBUQUERQUE NM 87109-5858
|||

Amount Paid \$
Bill Date Mar 07, 2001
Account Number 00167628

Total Due \$9,138.79
Due Date March 31 2001

00000913979001676283

Please fold along perforation, then tear

PLEASE MAKE NAME/ADDRESS CHANGES TO ABOVE PORTION AND RETURN WITH PAYMENT

			Page 1
		Bill Date	Mar 07, 2001
		Account Number	00167628
Previous Balance	Current Penalty	Current Charge	Total Due
\$8,618.48	1% Per Month	\$820.31	\$9,138.79
Account Balance	\$9,138.78		

Service Address: 2110 PACHECO ST
Billing For: - 02/28/01
RollOff CustO 30yd Comp Specia
RollOff CustO 30yd Comp Specia
Special Charge
Billing For: - 02/28/01

\$173.25
\$173.25
\$.00

Sewer Com Fixed Rate
Sewer Com Variable Rate
Service Address: OTHER CHARGES
NSF Payment Fee
Total Current Charges

\$2.61
\$155.45
\$15.75
\$520.31

FOR BILLING INQUIRIES CALL (505)955-8551
REFUSE PICK-UP INQUIRIES (505)955-2200
Beginning in December city residents may
obtain MULCH at NO CHARGE. Please call
(505) 955-2200 for more information

Exhibit D