

United States Bankruptcy Court
Albuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

ORDER ON DEBTOR'S LEASE ESTOPPEL NOTICE

THIS MATTER comes before the Court on the following motions and notices filed by the Debtor Furr's Supermarkets, Inc. (the "Debtor"):

- A. Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief, filed June 1, 2001;
- B. Motion for Order Approving Procedure Relating to the §365(f)(2) Adequate Assurance Requirement for Assignment of Leases, filed July 16, 2001;
- C. Amended Motion For Order Approving Procedure Relating To The §365(B)(1) Cure and Adequate Assurance Requirements for Assumption of Leases, filed July 16, 2001;
- D. Various Notices Relating to the §365(f)(2) Adequate Assurance Requirement for Assignment of Store Leases, Lease Estoppel, and of Final Hearing, served July 26, 2001, July 31, 2001, August 1, 2001, August 17, 2001, August 22, 2001, and August 23, 2001 (together, the "Lease Estoppel Notices").

Objections to the Lease Estoppel Notices relating to the lease documents enclosed by the Debtor were filed by landlords Artesia Partners (objection filed August 2, 2001 for store 907), Charlene Greene (objection filed August 6, 2001 with respect to the ground lease for store 948),

WCH

Werner Kinderman (responses filed on about August 3, 2001 for store # 881, and on or about August 23, 2001 with respect to Stores 881 and 884), Sunwest N.C. Trust (in the form of a letter to Furr's counsel), Furr's 1 LLC (objection filed August 23, 2001 with respect to store 876), and Furr's 2 LLC (objection filed August 23, 2001 with respect to store 875) (together, the "Objectors").

The Court, being duly and fully advised in the premises, FINDS as follows:

- A. The Lease Estoppel Notices given by the Debtor were appropriate under the particular circumstances.
- B. Good cause exists for the entry of this Order.
- C. This Order does not address any lease estoppel matters involving equipment or other personal property leases.

IT IS THEREFORE ORDERED:

1. Except as set forth in paragraph 2 below, each real property lessor identified in Exhibit A hereto (i) is estopped to deny that the copy of the lease the Debtor enclosed with the Lease Estoppel Notice to that lessor, the bates-stamped numbers of which lease are listed in Exhibit A hereto, is not a true and complete copy of the lease between the Debtor, (ii) has waived any objection that there are amendments or modifications to the lease, and (iii) has waived any objection that the Debtor is not the current tenant under the lease.

2. With respect to the Objectors, the copy of the lease the Debtor enclosed in the Lease Estoppel Notice to the Objector is modified as follows:

- a. Artesia Partners. This store lease (#907) has been rejected by Fleming Companies Inc., and the Debtor has withdrawn its lease estoppel proposal for the store.

- b. Charlene Greene. The Debtor's proposed form of lease is modified to include the lease modification attached to this Order as Exhibit B.

JKJ
BTT

With respect to the objection of Werner Kinderman on store #884, the copy of the lease the Debtor enclosed in the Lease Estoppel Notice to Werner Kinderman is modified by the First Amendment to Supermarket Lease, dated December 29, 2000, ATTACHED AS EXHIBIT C IN THE WERNER KINDERMAN OBJECTION, BUT DOES NOT INCLUDE THE LETTER AGREEMENT ATTACHED AS EXHIBIT B. Werner Kinderman. The objection of Werner Kinderman with respect to store #884 is withdrawn, as shown and agreed to by the signature below of Kinderman's counsel. JBS

With respect to the objection of Werner Kinderman on store #881, the copy of the lease the Debtor enclosed in the Lease Estoppel Notice to Werner Kinderman is modified as set forth in the Werner Kinderman's objection.

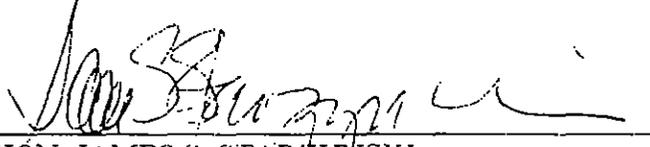
d. Sunwest N.C. Trust. The letter attached hereto as Exhibit C is hereby made a part of the lease for store # 993.

e. Furrs 1 LLC. The Assignment of Lease and Real Property Sublease Agreement (stamped 000022 to 000037) has been terminated and is not part of the lease. The Amendment to Ground Lease attached hereto as Exhibit D is part of the lease. The Ground sublease agreement (stamped 000081 to 000090) is not a part of the lease.

f. Furrs 2 LLC. Furrs 2 LLC is not a party to the Mountain Run Partners-Furr's Supermarkets lease (stamped 000520 to 000546).

3. By the consent of the parties, the documents attached hereto as Exhibit E are made a part of the lease for store #928 between the Debtor and Dyer Street Triangle Joint Venture. In all other respects the enclosed copy of the lease is deemed to be a true and complete copy of the lease between the Debtor and the lessor, with no amendments or modifications thereto, and the Debtor is acknowledged to be the current tenant under the lease.

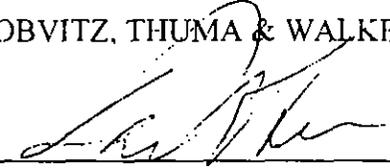
4. This Order shall be effective immediately upon entry. No automatic stay under Fed. R. Civ. P. 62(a) or Bankruptcy Rule 6004(g) applies to this Order.



HON. JAMES S. STARZYNSKI
United States Bankruptcy Judge

Submitted and Agreed to:

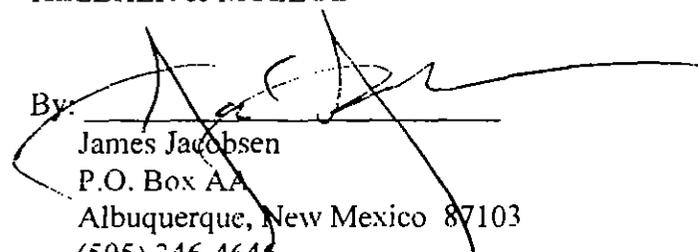
JACOBVITZ, THUMA & WALKER, P.C.

By: 

David T. Thuma
500 Marquette, NW
Suite 650
Albuquerque, NM 87102
(505) 766-9272
(505) 766-9287 (fax)

Agreed:

KELEHER & MCLEOD

By: 

James Jacobsen
P.O. Box AA
Albuquerque, New Mexico 87103
(505) 346-4646
(505) 346-1370
Attorneys for Werner Winderman

LEASE ESTOPPEL SCHEDULE

STORE NO.	LANDLORD	BATES-STAMP NUMBERS
917	Claus Dolling	1212-1253
878	Weingarten Realty	2114-2144
882	CA New Mexico LLC	335-377
904	MALEASE 15 Safe Corp.	2462-2583
916	Lakeway Shopping Center	1188-1215
945	Surway Assoc. Ltd.	1447-1688
912	Kawanakoa, Abigail K. Alta Mae Haugland (ground lease)	1215-1171
914	Bandem Partnership	1172-1187
933	LSF Bassett, L.P.	1254-1307
934	Furrs 6 LLC	1308-1328
935	G.G.I.A. II, Limited	1329-1373
936	Lincoln Trust as Custodian for Daniel Elstein, M.D. Rollerver IRA	1374-1401
937	Furrs 8 LLC	1402-1421
947	Weingarten Realty Investors	1689-1731

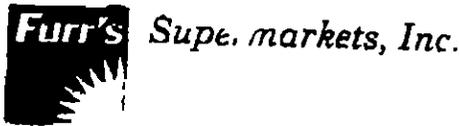
EXHIBIT

A

STORE NO.	LANDLORD	BATES-STAMP NUMBERS
918	Claus Dolling	2584-2613
928	Dyer Street Triangle JT Venture	2718-2756
948	Western Properties Assocs Two Green/Watkins (ground lease)	1732-1773
977	Rosche One Interests, L.P.	1809-1843
987	Tri State Commercial	1844-1873
875	Furrs 2 LLC Mountain Run Partners Ltd.	501-547
876	Mossman-Gladden (ground lease) Furrs 1 LLC	1-102
879	Keleher Realty, Inc.	548-577
884	Werner Kinderman	378-475
891	Seville East	578-595
897/887	Developers Diversified Realty Corp.	831-871
899	Centeramerica Property Trust, L.P.	872-928
885	Furr's Supermarkets, Inc.	Not applicable
888	P.O.B. Apollo Santa Fe L.P.	1981-2031

STORE NO.	LANDLORD	BATES-STAMP NUMBERS
889	Nydes Properties	0534-0621
901	Rosche One Interests, L.P.	0929-0963
993	Sunwest N.O.P., Inc.	1874-1980
874	River Oaks Properties, Ltd.	2088-2113
881	Werner Kinderman	2275-2365
896	Cruz Alta Plaza	685-800
886	Weingarten Realty Investors	0476-0533
913	Greer Enterprises	111552-111588

X



July 6, 1998

CERTIFIED MAIL Z219 051 122
Return Receipt Requested

Charlene W. Green
821 Lakeway
El Paso, TX 79932

Re Ground Lease - Store No. 948
201 E Kerbey - El Paso, Texas

Dear Ms. Green

This letter serves as notice that Furr's Supermarkets, Inc. as Assignee of the Lease dated January 17, 1978 between Charlene W. Green, tenant in common as to an undivided 60.3794% of the lease premises and Florence M. Watkins, tenant in common as to an undivided 39.6206% of the leased premises as lessor, and Safeway Stores, Incorporated as Lessee hereby exercises the first five-year option of the Lease for the above-mentioned property. The new lease termination date is September 30, 2003

Sincerely,

Kathy Komoll

Kathy Komoll
Vice President of Real Estate

Z 219 051 122

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do not use for International Mail (See Reverse)

Postage	\$
Carrier Fee	
Special Delivery Fee	
Registered Delivery Fee	
Return Receipt (Printing & Paper Charges)	
Return Receipt (Special Delivery, Ins. & Signature Agent)	
TOTAL Postage & Fees	\$
Postmark of Date	7/6

PS Form 3800, April 1995

SENDER:

- Complete items 1 through 3 for address services.
- Complete items 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Registered Delivery

3. Attach Addressed to:

4a. Article Number: Z 219 051 122

4b. Service Type:

- Registered Insured
- Certified COD
- Express Mail Return Receipt for Merchandise

7. Date of Delivery: JUL 11 1998

8. Addressee's Address (Only if not listed and fee is paid): 001771

9. Signature (Addressee): *Charlene W. Green*

10. Signature (Agent): *[Signature]*

Furr's Supermarkets, Inc.
1730 Montano Road, N.
Albuquerque, N.M. 87111
505-344-7525
Fax 505-344-1118

EXHIBIT
L-6

EXHIBIT

B

REAL ESTATE
OFFICE OF THE PARTNERSHIP
 111 GREAT NECK ROAD
 SUITE 412
 GREAT NECK, NEW YORK 11021
 (516) 487-0800
 FAX (516) 487-5880

November 23, 1998

copy

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mrs. Charlene Green
821 Lakeway
El Paso, TX 79932

Re: Ground Lease
201 E. Kerbey
El Paso, TX

Dear Mrs. Green:

By letter dated August 16, 1996 Western Properties Associates II exercised the first of its seven options to renew the Ground Lease for the above-mentioned location. This first option commenced on October 1, 1998.

In accordance with Paragraph 15 of the Ground Lease, "Renewal Options", we are hereby exercising the remaining six options to renew, each for a term of five years at the rent listed below:

- 2nd five-year renewal term - \$2,656.00
- 3rd five-year renewal term - \$2,656.00
- 4th five-year renewal term - \$2,656.00
- 5th five-year renewal term - \$2,989.33
- 6th five-year renewal term - \$3,322.66
- 7th five-year renewal term - \$3,656.00

The last of the five-year renewal terms expires on September 30, 2033.

Kindly acknowledge that the remaining six options have been exercised by signing a copy of this letter and returning it to me.

Very truly yours,

WESTERN PROPERTIES
ASSOCIATES II

Sheldon J. Streisand
 Sheldon J. Streisand,
 General Partner

*Permatex'd
to sign & return*

SJS:kp



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ASSIGNMENT OF LEASE

The undersigned executors of the Estate of Florence Martha Ament Watkins, Deceased, hereby transfer and assign all right and title of the decedent's estate to Charlene W. Green in that certain Lease dated January 17, 1978 by and between Charlene W. Green and Florence M. Watkins as Lessor and Safeway Stores, Incorporated, as Lessee, of the property described below:

Lots One (1) through Twenty (2), both inclusive, and the Closed Alley in said Block, being all of the Block 184, ALEXANDER ADDITION to the City of El Paso, El Paso County, Texas.

TOGETHER WITH the South 1/2 of vacated New York Street lying between the East line of North Main Street and the West line of North Stanton Street.

TOGETHER WITH all of lessor's interest in adjoining streets, sidewalks and highways.

EXECUTED this 2nd day of February, 1991.

THE ESTATE OF FLORENCE MARTHA
AMENT WATKINS, Deceased

BY: *Martha Charlene Watkins Green*
MARTHA CHARLENE WATKINS GREEN,
Joint Independent Executor

BY: *Jay Catham Morran*
JAY CATHAM MORRAN,
Joint Independent Executor

BY: *Samuel S. Sipes*
SAMUEL S. SIPES,
Joint Independent Executor

SS:cj/561/1302.013

.001769



STATE OF TEXAS)
)
COUNTY OF EL PASO)

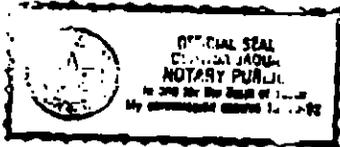
This instrument was acknowledged before me on this 22nd day of February, 1991 by Martha Charlene Watkins Green, Joint Independent Executor of the Estate of Florence Martha Ament Watkins.



Cynthia J. Jarama
Notary Public in and for
State of Texas

STATE OF TEXAS)
)
COUNTY OF EL PASO)

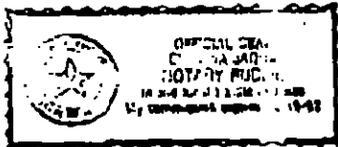
This instrument was acknowledged before me on this 22nd day of February, 1991 by Jay Statham Morran, Joint Independent Executor of the Estate of Florence Martha Ament Watkins.



Cynthia J. Jarama
Notary Public in and for
State of Texas

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 22nd day of February, 1991 by Samuel S. Sipes, Joint Independent Executor of the Estate of Florence Martha Ament Watkins.



Cynthia J. Jarama
Notary Public in and for
State of Texas

AFTER RECORDING RETURN TO:

Martha Charlene Watkins Green
821 Lakeway
El Paso, Texas 799

003897

9.8
101753 - 1109

Furr's Store No. 345 (Store Lease)
201 E. Kerbey, El Paso, Texas

ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY LEASE

THIS ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY LEASE is entered into this 11th day of March, 1991, by and between FURR'S, INC., a Delaware corporation ("Assignor"), and FURR'S SUPERMARKETS, INC., a Delaware corporation ("Assignee").

W I T N E S S E T H:

WHEREAS, in an Asset Purchase Agreement dated as of January 28, 1991, as heretofore amended, by and between Assignor, Furr's Beverage Company of Texas, Inc., S&B Beverage Company, Inc., and Assignee, Assignor agreed to assign to Assignee all of Assignor's right, title, and interest in, to, and under the lease of real property more particularly described on Exhibit B attached hereto (the "Real Property Lease"), which affects the real property described on Exhibit A attached hereto; and

WHEREAS, pursuant to the Asset Purchase Agreement, Assignee agreed to assume and perform Assignor's obligations under the Real Property Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby grants, bargains, sells, transfers, assigns, and conveys to Assignee all of Assignor's right, title, and interest in, to, and under the Real Property Lease and the real property and improvements described therein.

Assignee hereby accepts the foregoing assignment from Assignor and assumes and agrees to perform all of the obligations of the tenant under the Real Property Lease accruing from and after the date hereof.

This Assignment and Assumption of Real Property Lease is made pursuant and subject to the Asset Purchase Agreement and incorporates all of the terms and conditions therein. The Asset Purchase Agreement does not reserve to Assignor any lien or interest in the Real Property Lease or the real property and improvements described therein.

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This Assignment and Assumption of Real Property Lease shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

EXECUTED AND DELIVERED the day and year first written above.

FURR'S, INC.,
a Delaware corporation

By: William C. Lang
William C. Lang
Senior Vice President - Finance

FURR'S SUPERMARKETS, INC.,
a Delaware corporation

By: Jen W. Friederich
Jen W. Friederich
Chief Executive Officer

STATE OF TEXAS)
COUNTY OF DALLAS)

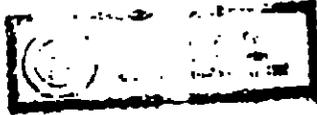
This instrument was acknowledged before me on March 1, 1991, by WILLIAM C. LANG, Senior Vice President - Finance, of Furr's, Inc., a Delaware corporation, on behalf of said corporation.

Bucky F. Jurick
Notary Public, State of Texas



STATE OF TEXAS)
COUNTY OF DALLAS)

This instrument was acknowledged before me on March 14, 1991, by JAN C. FRIEDERICH, Chief Executive Officer of Furr's Supermarkets, Inc., a Delaware corporation, on behalf of said corporation.



Furr's Supermarkets
Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Teri N. Wingle.
Legal Assistant
Gardner & Wynne
1601 Elm Street
Suite 1000
Dallas, Texas 75201-4761

6096/56115/56146/0405
29978/563

2286 0312

001765

Furr's Store No. 345 (Store Lease
201 E. Kerby, El Paso, Texas)

EXHIBIT A

Lots 1-8 and the South 6 feet of Lot 9 and the South 8.67 feet of Lot 12 and all of Lots 13-20, Block 192, ALEXANDER ADDITION, an addition to the City of El Paso, El Paso County, Texas; together with the North 1/2 of vacated New York Street lying between the East line of North Mesa and the West line of North Stanton Street and that portion of the alley in Block 192 of the Alexander Addition, both of which were closed by an ordinance of the City of El Paso, Texas of record in Book 777, Page 118, County Clerk's Records, El Paso County, Texas.

00261/8739W

001766 2286 0313

Furr's Store No. 345 (Store Lease)
201 E. Kerby, El Paso, Texas

EXHIBIT B

Lease dated September 20, 1978 between Western Properties Associates Two, a New Jersey limited partnership, and Safeway Stores, Incorporated, a Maryland corporation; Short Form Lease dated September 20, 1978, recorded October 25, 1978 as Instrument No. 35532, Book 94, Page 1798, Real Property Records, El Paso County, Texas, as assigned to Furr's, Inc., a Texas corporation, by way of that certain Assignment and Assumption Agreement dated October 29, 1987, between Safeway Stores, Incorporated, a Delaware corporation, and Furr's, Inc., a Texas corporation, recorded as Instrument No. 81661, Book 1862, Page 0599, Real Property Records, El Paso County, Texas.

2/2/78

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2009/30210

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2286 0314

SunWest N.O.P., INC.

4444 WESTGROVE
SUITE 200
DALLAS, TEXAS 75248

*F
left side*

September 15, 1989

Mr. Jan U. Friederich
Furr's, Inc.
P. O. Box 1650
Lubbock, TX 79408

RE: Sublease dated September 30, 1986 by and between Safeway Stores, Inc. as assigned to SunWest NOP, Inc. and Furr's, Inc., Facility #7862, Monahans, TX

Dear Mr. Friederich:

A review of referenced lease revealed a typographical error in the sixth renewal option. This letter agreement is being entered into to amend the commencement date of the last two years of the sixth renewal option. The sublease specifies a rental of \$44,313 commencing June 1, 2028 through September 30, 2031 and \$50,960 commencing October 30, 2031 through May 31, 2033. Obviously this is in error and should have commenced October 1, 2031. Therefore, Article 17. (ii) 6. is hereby deleted in its entirety and replaced by the following.

6. Minimum rent during the sixth renewal option period shall be FORTY-FOUR THOUSAND THREE HUNDRED THIRTEEN AND NO/100 DOLLARS (\$44,313.00) per month commencing June 1, 2028 through September 30, 2031 and FIFTY THOUSAND NINE HUNDRED SIXTY AND NO/100 DOLLARS (\$50,960.00) per month commencing October 1, 2031 through May 31, 2033.

If you are in agreement, please sign in the space provided, returning one copy to me for our files.

Sincerely,

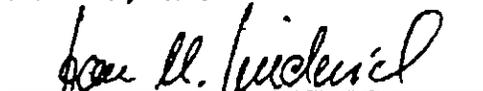
SUNWEST NOP, INC.



Lee Mecham
President

AGREED AND ACCEPTED THIS 19 DAY OF September, 1989

FURR'S, INC.



Jan U. Friederich

SEP 21 REC'D

EXHIBIT

C

SENT BY:

11-11-97 : 20:07 ;

505 888 1635;# 2/ 7

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97123299

Lawyer's Title Insurance Corp.
TI# 972982500

6887

AMENDMENT TO GROUND LEASE

This Amendment to Ground Lease is entered into as of this 14th day of November, 1997 between ~~FREDERICK M. MOSSMAN AND EDWARD GLADDEN TRUST~~ ~~substituted by FREDERICK M. MOSSMAN AND EDWARD GLADDEN, as trustees~~ ("Lessor") and FURRS I, LLC, a Delaware limited liability company ("Lessee"), successor in the leasehold estate interest from Safeway Stores, Incorporated ("Safeway").

PRELIMINARY STATEMENT

Lessor and Safeway entered into a Ground Lease dated as of October 1, 1982 which demises certain premises located in Albuquerque, New Mexico and more particularly described therein ("premises"). Subsequently, Safeway assigned its leasehold interest in the Ground Lease to Furr's, Inc. and Furr's, Inc. assigned its interest to 10TSM Corp. 10TSM Corp. has assigned its interest to Lessee.

Lessor and Lessee now desire to modify the Ground Lease in certain respects.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by each of the parties hereto, Lessor and Lessee hereby agree to amend the Ground Lease as follows:

- The following Section 28 is hereby added to the Ground Lease:

28. Mortgaging of Leasehold Estate.

"(a) Lessee may, without the consent of Lessor, mortgage or otherwise encumber by a similar instrument, only the leasehold estate of Lessee (not Lessor's fee estate) created by this Ground Lease or its rights hereunder (the "Leasehold Estate" and to the extent such mortgage or similar instrument grants a first priority lien upon the leasehold estate of Lessee created by this Ground Lease (relative to any other mortgage existing, from time to time), then such mortgage or other similar shall hereinafter be referred to as the "Leasehold Mortgage"). It is acknowledged that initially, the Mortgage, Security Agreement and Fixture Financing Statement (the "Original Mortgage") granted by Lessee in favor of Bostonia American Group-I, Inc. and its successors and assigns (collectively, "Original Mortgagee") is the initial Leasehold Mortgage. The mortgagee under the Leasehold Mortgage or the other holders of the indebtedness secured by the Leasehold Mortgage (the "Leasehold Mortgagee") shall notify Lessor, in the manner hereinafter provided for the giving of notice, of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee, provided that no

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
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FMO

**FREDERICK M. MOSSMAN AND EDWARD GLADDEN, CO-TRUSTEES UNDER THAT CERTAIN TRUST CREATED IN ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF MARY K. MOSSMAN AND IN ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF FREDERICK A. MOSSMAN

EXHIBIT

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SENT BY:

11-11-97 : 20:08 :

505 888 1635:# 3/ 7

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such formal notice shall be required in the case of the Original Mortgage..

- (b) Lessor will, simultaneously with the giving any notice to Lessee (i) of an Event of Default (ii) of a matter on which a default may be predicated or claimed, (iii) of a termination of this Ground Lease, or (iv) of a condition which, if continued, may lead to a termination of this Ground Lease, give to Leasehold Mortgagee duplicate copies thereof and of any process in connection with any action or proceeding brought to terminate or otherwise affect this Ground Lease. Leasehold Mortgagee will have a period of 30 days after receipt of Lessor's notice for remedying an Event of Default. Lessor and Lessee agree to accept such performance on the part of a Leasehold Mortgagee as though the same had been done or performed by Lessee.
- (c) Further, if Leasehold Mortgagee cannot reasonably effectuate the curing of any default beyond applicable cure or grace period under Section 9 hereof (an "Event of Default") without possession of the premises, or because the Event of Default cannot with reasonable diligence be cured by the Leasehold Mortgagee, then in addition to the foregoing, Lessor agrees that it will take no action to terminate this Ground Lease by reason of the occurrence of such an Event of Default, without first giving to such Leasehold Mortgagee such additional period of time as is reasonably necessary within which either to (i) in the case of an Event of Default which can be cured with the exercise of reasonable diligence by Leasehold Mortgagee, obtain possession of the premises (including possession by a receiver) and thereafter to cure such Event of Default or (ii) in the case of an Event of Default which cannot with reasonable diligence be cured by Leasehold Mortgagee, institute foreclosure proceedings and complete such foreclosure or otherwise to acquire Lessee's interest under this Ground Lease with diligence and without unreasonable delay and upon such foreclosure (whether or not Leasehold Mortgagee is the purchaser at foreclosure) or any transfer of the Lessee's interest in the Lease to Leasehold Mortgagee or its affiliate in lieu of foreclosure. Leasehold Mortgagee shall not be required to continue such foreclosure proceedings if a default shall be cured by Lessee and the Lessor agrees to accept such cure by Lessee.
- (d) In the event of a termination of this Ground Lease prior to its stated expiration date, Lessor agrees that it will give each Leasehold Mortgagee notice of such termination and will enter into a new lease of the premises with Leasehold Mortgagee or at the request of Leasehold Mortgagee with an assignee, designee or nominee of Leasehold Mortgagee, for the remainder of the Term effective as of the date of such

SENT BY:

11-11-97 : 20:08 :

505 888 1635;# 4/7

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termination upon the same covenants, agreements, terms, provisions and limitation herein contained except for requirements which are no longer applicable or have already been performed, provided (i) the Leasehold Mortgagee makes written request upon Lessor for such new lease within sixty days after the giving of the aforesaid notice and agrees to cure all prior monetary defaults and any non-monetary defaults that are reasonably curable by Leasehold Mortgagee and (ii) Leasehold Mortgagee or the assignee, designee or nominee of Leasehold Mortgagee executes and delivers such new lease within a reasonable period of time after Leasehold Mortgagee's request therefor. The provisions of this subsection shall survive the termination of this Ground Lease and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent contract among Lessor, Lessee and any Leasehold Mortgagee. Any new lease made pursuant to this Section 28 shall have the same priority as this Ground Lease and shall be superior to any mortgage or other lien, charge or encumbrance on the fee interest of the premises to the same extent as did this Ground Lease before its termination.

- (e) Lessor acknowledges that Lessee has agreed with Leasehold Mortgagee that this Ground Lease will not be amended, canceled or modified nor will the premises be surrendered to Lessor by Lessee, without the prior written consent of the Leasehold Mortgagee.
- (f) The name of the Leasehold Mortgagee shall be added to the "loss payable endorsement" of any and all insurance policies required to be carried by Lessee under this Ground Lease.
- (g) No payment made to Lessor by the Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Ground Lease and any such Leasehold Mortgagee having made payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the immediate return of any such payment.
- (h) The liability under this Ground Lease of any Leasehold Mortgagee which acquires any interest in this Ground Lease or the premises through foreclosure or deed in lieu of foreclosure or otherwise shall be limited to liabilities arising from acts or omissions of the Leasehold Mortgagee during its ownership of the leasehold estate, and in no event shall exceed such Leasehold Mortgagee's interest in the premises. Further, the purchasers at any sale of the Lessee's interest in this Ground Lease or the leasehold estate hereby created and any assignee or transferee of Lessee's interest in this Ground Lease and of the leasehold estate hereby created under any instrument of assignment or

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6890

transfer in lieu of foreclosure of any Leasehold Mortgage, shall assume performance of all the terms, covenants and conditions on the part of the Lessee to be performed hereunder only during the period of such assignee or transferee's ownership of the premises, and not before.

- (i) In the event that Leasehold Mortgagee or its assigns have acquired title to the Lessee's interest in the premises by foreclosure or deed in lieu thereof, Lessor (to the extent it has not had its estate foreclosed upon or delivered a deed in lieu of foreclosure simultaneously or contemporaneously with such foreclosure or deed-in-lieu of foreclosure of Lessee's interest in the Premises, with the intent in either case that there be a merger of the respective fee and leasehold interests in the Premises) will recognize Leasehold Mortgagee as its Lessee under the Ground Lease. Any subsequent assignment, sale or transfer of the Lease (and the Lessee's interest therein) by the Leasehold Mortgagee or any subletting of the Leased Property made by Leasehold Mortgagee shall not require the consent of Lessor.
- (j) Lessor agrees that the Leasehold Mortgagee shall have the right to remove from the Leased Property any of the Lessee's personal property which is located at, constructed upon or affixed to the Premises (the "Lessee's Property"), whenever the Leasehold Mortgagee shall elect to enforce the security interests given by the Lessee therein, either during the term of the Lease or within 120 days after the expiration thereof or the early termination thereof, or for such additional period required by the entry of any order prohibiting Leasehold Mortgagee's timely enforcement of such rights. Furthermore, Lessor hereby disclaims any title to or rights in the Lessee's Property and subordinates to Leasehold Mortgagee's security interests therein any Lessor's lien, encumbrance or other interest which the Lessor may now or hereafter have or acquire therein under the Lease or applicable law.
- (k) In the event that Leasehold Mortgagee succeeds to the interest of Lessee or any successor to Lessee's interest in the Ground Lease, then Lessor hereby agrees, if Leasehold Mortgagee attorns to Lessor as provided herein, to accept Leasehold Mortgagee and to recognize Leasehold Mortgagee as its Lessee under the Lease for the then remaining balance of the term thereof, and upon request of Leasehold Mortgagee, Lessor and Leasehold Mortgagee shall execute and deliver to Lessor and Leasehold Mortgagee an agreement of attornment reasonably satisfactory to Lessor and Leasehold Mortgagee.
- (l) If Lessee (or any trustee of Lessee) shall reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Lessor shall serve on Leasehold Mortgagee written notice of such rejection, together with a

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6891

statement of all sums at the time due under this Ground Lease (without giving effect of any acceleration) and of all other defaults under this Ground Lease then known to Lessor. Leasehold Mortgage shall have the right, but not the obligation, to serve on Lessor within thirty (30) days after service of the notice provided in the preceding sentence, a notice that Leasehold Mortgagee elects to (i) succeed to Lessee's interest in this Lease, and (ii) cure all defaults outstanding thereunder (x) concurrently with such succession as to defaults in the payment of money, and (y) within sixty (60) days after the date of such succession as to other defaults, except for defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code. If Leasehold Mortgagee serves such notice of succession, then, as between Lessor and Leasehold Mortgagee (i) the rejection of this Ground Lease by Lessee shall not constitute a termination of this Ground Lease, (ii) Leasehold Mortgagee may succeed to the obligations of the Lessee under this Ground Lease without any instrument or assignment of transfer from the Lessee, (iii) Leasehold Mortgagee's rights under this Ground Lease shall be free and clear of all rights, claims and encumbrances of or in respect of the Lessee (except those of Lessor), and (iv) Leasehold Mortgagee shall consummate the succession of this Ground Lease and the payment of the amounts payable by it to the Lessor pursuant to this Section at a closing to be held at the offices of the Lessor (or its attorneys) within thirty (30) days after Leasehold Mortgagee shall have served the notice of succession hereinabove provided. Upon a subsequent assignment of this Ground Lease by Leasehold Mortgagee, Leasehold Mortgagee shall be relieved of all obligations and liabilities arising from and after the date of such assignment."

2. Lessor and Lessee confirm that the term of the Ground Lease commenced on or about September 1, 1983 and will expire on August 31, 2029. This section has the effect of extending the original term of the Lease as provided herein and terminating any and all remaining renewal options under the Lease.

3. Section 24 is amended by striking the words "Twelve Million Seven Hundred Fifty Thousand" in the fourth line thereof and by inserting in their place the number "\$9,876,000".

4. Except as modified hereby, the Ground Lease has not been modified to date and there are no other agreements relating to the premises or the Ground Lease as between Lessor and Lessee, except "Grant of Easements with Covenants and Restrictions" dated January 8, 1970 and 5 amendments thereto.

5. To the best knowledge of Lessor, as of the date hereof, Lessee has fully performed all obligations under the Ground Lease to date and Lessor has no existing claims, counterclaims or set offs asserted or pending against Lessee.

SENT BY:

11-11-97 : 20:10 :

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6892

However, Lessee has been notified that current real estate taxes are due and payable by Lessee.

6. To the best of Lessor's knowledge, Lessor's fee interest in the premises is not subject to any existing mortgages or other instruments or agreements which would give rise to a security interest therein.

7. Except as modified hereby, the Ground Lease remains unmodified and in full force and effect.

8. Nothing in this Amendment to Ground Lease shall be deemed, interpreted or construed as subordinating the fee or consenting to a mortgage on Lessor's fee interest in the premises.

IN WITNESS WHEREOF, the parties have executed this Amendment to Ground Lease as of the date and year first written above.

~~** FREDERICK M. MOSSMAN and PHYLLIS H. GLADDEN TRUST~~

By: [Signature]
F.M. Mossman, Co-Trustee

By: [Signature]
E. Gladden, Co-Trustee

FURRS I, LLC

By: _____
David M. Marks, President
Furrs Manager I, Inc.
Its: Manager

****FREDERICK M. MOSSMAN AND EDWARD GLADDEN, CO-TRUSTEES UNDER THAT CERTAIN TRUST CREATED IN ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF MARY K. MOSSMAN AND ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF FREDERICK #64026A v1 - (XCHILLIF - dq)B011.DOC - 19201/63 A. MOSSMAN**

6893

We hereby acknowledge that on November 12, 1997, we executed the original Amendment to Ground Lease between Frederick M. Mossman and Edward Gladden, Co-Trustees, as Lessor, and Furrs 1, LLC, as Lessee.

Frederick M. Mossman
FREDERICK M. MOSSMAN,
Co-Trustee

Edward Gladden
EDWARD GLADDEN
Co-Trustee

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on November 14, 1997, by FREDERICK M. MOSSMAN, and EDWARD GLADDEN, Co-Trustees under that certain Trust created in Article VI, Paragraph C.1 of the Last Will and Testament of Mary K. Mossman and in Article VI, Paragraph C.1 of the Last Will and Testament of Frederick A. Mossman.

MY COMMISSION EXPIRES:
7-28-99

Deanna M. Watson
NOTARY PUBLIC

5894

However, Lessee has been notified that current real estate taxes are due and payable by Lessee.

6. To the best of Lessor's knowledge, Lessor's fee interest in the premises is not subject to any existing mortgages or other instruments or agreements which would give rise to a security interest therein.

7. Except as modified hereby, the Ground Lease remains unmodified and in full force and effect.

8. Nothing in this Amendment to Ground Lease shall be deemed, interpreted or construed as subordinating the fee or consenting to a mortgage on Lessor's fee interest in the premises.

IN WITNESS WHEREOF, the parties have executed this Amendment to Ground Lease as of the date and year first written above.

as FREDERICK M. MOSSMAN and PHYLLIS A. GLADEN/TRUSTEES:

By: [Signature]
F.M. Mossman, Co-Trustee

By: [Signature]
E. Gladen, Co-Trustee

FURS I, LLC

By: [Signature]
David M. Mark, President
Furs Manager I, Inc.
Is: Manager

**FREDERICK M. MOSSMAN AND EDWARD GLADEN, CO-TRUSTEES UNDER THAT CERTAIN TRUST CREATED IN ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF MARY K. MOSSMAN AND ARTICLE VI, PARAGRAPH C.1 OF THE LAST WILL AND TESTAMENT OF FREDERICK MOSSMAN (1-UCHELLK - 1/18/11/DOC - 1/20/11) A. MOSSMAN

6896

PARCEL 1B (Leasehold):

Portions of Tracts B and C, Stardust Skies, Unit 4 as the same are shown and designated on the plat entitled "UNIT 4 of STARDUST SKIES, AN ADDITION TO THE CITY OF ALBUQUERQUE, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico on May 12, 1960 in Volume D2, folio 97 and being more particularly described as follows:

BEGINNING at the most Northwesterly corner of the parcel herein described a point on the Southerly right of way line of Montgomery Boulevard N.E. (a 5/8" rebar and survcap stamped HUGG LS 5823" - set), whence the Northeast corner of Tract A of said Stardust Skies, Unit 4 bears S 89 deg. 46' 00" W, 256.10 feet distant (informational tie only);

Thence, N 89 deg. 46' 00" E, 100.00 feet along said Southerly right of way line of Montgomery Boulevard N.E. to the Northeast corner of the Tract herein described (a 5/8" rebar and survcap stamped "HUGG LS 5823" - set);

Thence, S 01 deg. 24' 37" W, 360.61 feet to a point, (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

5897

LEGAL DESCRIPTION CONTINUED

Thence, S 47 deg. 47' 24" E, 34.55 feet to a point on curve on the Northwesterly right of way line of Natalie Avenue N.E., (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set); Thence Southwesterly and Northwesterly along the Northwesterly, Westerly and Northerly right of way line of Natalie Avenue N.E. for the following Seven (7) courses:

Southwesterly, 131.26 feet along the arc of a curve to the left (said curve having a radius of 180.00 feet and a chord which bears S 21 deg. 19' 08" W, 128.37 feet) to a point of tangency (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

Thence, S 00 deg. 25' 40" W, 106.72 feet to a point of curvature, (a 5/8" rebar found in place);

Thence, Southwesterly, 39.27 feet along the arc of a curve to the right (said curve having a radius of 25.00 feet and a chord which bears S 45 deg. 25' 40" W, 35.35 feet) to a point of compound curvature and the most Southeasterly corner of the parcel herein described, (a concrete nail and shinner in asphalt found in place);

Thence Northwesterly, 115.53 feet along the arc of a curve to the right (said curve having a radius of 811.62 feet and a chord which bears N 85 deg. 29' 40" W, 115.43 feet) to a point of tangency, (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

Thence, N 81 deg. 25' 00" W, 203.10 feet to a point of curvature, (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

Thence, Northwesterly, 124.07 feet along the arc of a curve to the left (said curve having a radius of 871.62 feet and a chord which bears N 85 deg. 29' 40" W, 123.96 feet) to a point of reverse curvature and the most Southwesterly corner of the parcel herein described, (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

Thence, Northwesterly, 39.57 feet along the arc of a curve to the right (said curve having a radius of 24.92 feet and a chord which bears N 44 deg. 04' 52" W, 35.55 feet) to a point of tangency on the Easterly right of way line of Louisiana Boulevard N.E., (a 5/8" rebar and survcap stamped "HUGG L.S. 5823" set);

Thence, N 01 deg. 24' 37" E, 198.50 feet along said Easterly right of way line of Louisiana Boulevard N.E. to a point, (a PK nail and shinner in the asphalt - found in place);

Thence, N 89 deg. 46' 00" E, 406.41 feet to a point (a cross (X) scribed on concrete sidewalk - set);

Thence, N 01 deg. 24' 37" E, 359.78 feet to the most Northwesterly corner and point of beginning of the parcel herein described.

SAVE AND EXCEPT THE FOLLOWING:

A certain tract of land located within the Corporate Limits of the City of Albuquerque, New Mexico, comprising a portion of Tract C, Unit 4, of the Stardust Skies Addition, as shown on the plat filed in the office of the County Clerk of Bernalillo County on May 12.

6898

LEGAL DESCRIPTION CONTINUED

BEGINNING at a point whence the south southeast return of the southwest corner of Tract C, bears N 88 deg. 21' 20" W a distance of 37.02 feet; thence N 00 deg. 29' 01" W a distance of 209.52 feet; thence N 89 deg. 30' 59" E a distance of 173.00 feet; thence S 00 deg. 29' 01" E a distance of 232.72 feet; thence N 81 deg. 25' 00" W a distance of 87.59 feet; thence along the arc of a curve to the left with delta = 05 deg. 43' 19", R = 871.62, and L 87.05 feet to the point of beginning.

PARCEL II:

A non-exclusive easement for roadways, walkways, ingress and egress and parking of motor vehicles as set forth in those certain Grant of Easements with Covenants and Restrictions Affecting Land and Amendments thereto recorded in Book Misc. 160, page 688; in Book Misc. 306, page 257; in Book Misc. 431, page 576; in Book Misc. 665, page 101; in Book Misc. 964, page 611 and in Book Misc. 224-A, page 649, records Bernalillo County, New Mexico, located upon Tract A-1 of a replat of Tract A and a portion of Tract C of Unit No. 4 of STARDUST SKIES, an addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the replat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on January 30, 1970, in Plat Book A2, folio 195; Tract M of Plat of Tract M, a replat of the remainder of Tracts B and C STARDUST SKIES UNIT NO. 4, Albuquerque, New Mexico, as the same is shown and designated on the replat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico, on March 12, 1985, in Plat Book C26, folio 136; and Tracts B and C, STARDUST SKIES, UNIT 4, as the same are shown and designated on the plat entitled "Unit 4 of Stardust Skies, an addition to the City of Albuquerque, New Mexico", filed in the office of the County Clerk of Bernalillo County, New Mexico on May 12, 1960 in Volume D2, folio 97.

81678

106-1500
07.
11/16Store No. 30
El Paso, TexasASSIGNMENT AND ASSUMPTION AGREEMENT

For good and valuable consideration received by SAFEWAY STORES, INCORPORATED, a Delaware corporation and successor in interest to Safeway Stores, Incorporated, a Maryland corporation (herein, the "Assignor"), from FURR'S, INC., a Texas corporation (herein, the "Assignee"), the sufficiency of which consideration is hereby acknowledged by Assignor, Assignor has granted, sold, assigned, transferred, conveyed and delivered and does hereby grant, sell, assign, transfer, convey and deliver unto Assignee, its successors and assigns, all of Assignor's estate, right, title and interest in, to and under that certain Lease as modified, amended, supplemented and/or extended (collectively called the "Lease") as set forth on Exhibit B attached hereto and by this reference incorporated as a part hereof, whereby the lessor named therein has leased to Assignor an interest in real property (herein, the "Property") as more particularly described in the Exhibit A legal description attached hereto and by this reference incorporated as a part hereof, and, including without limitation, any option to purchase the Property or right of first refusal to purchase the Property granted to Assignor under the provisions of the Lease, all license agreements, warranty agreements, easements, reciprocal parking agreements and other agreements affecting or pertaining to the same.

To have and to hold the same unto Assignee, its successors and assigns, for the remainder of the term of the Lease, and Assignor does hereby bind itself, its successors and assigns, to warrant and defend, all and singular, the Lease unto the Assignee, its successors and assigns, for the remainder of the term of the Lease, against every person whomsoever lawfully claiming the same or any part thereof, subject to all matters of record in El Paso County, Texas which do not adversely affect the ability of Assignee to conduct a grocery business as heretofore conducted by Assignor, and subject to the covenants herein by Assignee and the conditions herein contained and henceforth to be performed and observed.

In consideration of the foregoing assignment and for other good and valuable consideration received by Assignee from Assignor, Assignee hereby accepts said assignment subject to and upon the terms and conditions set forth in this instrument and the Lease. Assignee agrees that it shall have no claim or remedy against Assignor by virtue of the lessor's act or failure to act under the Lease from and after the Effective

EXHIBIT
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Date set forth below. Assignee hereby covenants with Assignor and lessor, for the benefit of any assignee or successor in interest of lessor, that Assignee and its successors and assigns will henceforth assume and agree to keep, perform, fulfill or cause to be performed all of the terms, covenants, conditions and obligations contained in the Lease which, by the terms thereof, are imposed upon Assignor and which accrue from and after the Effective Date, including but not limited to payment of the rent therein reserved.

Each of Assignee and Assignor agrees that within (five (5) business days after receiving any notice from lessor relating to performance of Assignor's or Assignee's obligations under the Lease, the recipient of such notice shall send a copy of the same to the other party at the address shown beneath the applicable signature below, or to any other address either party from time to time may designate.

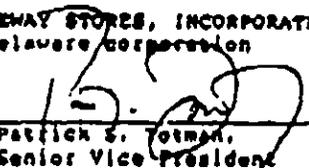
Assignee further agrees, at its sole cost and expense, to save harmless and to indemnify Assignor against any and all liability (including any claims for any personal injury, damage or destruction of real or personal property or any reasonable attorneys' fees incurred by Assignor in defending itself) accruing under the Lease from and after the Effective Date, except as to any liability arising from any default of Assignor under the Lease occurring prior to the Effective Date. Assignor agrees to save harmless and to indemnify Assignee against any and all liabilities (including any claim for any personal injury, damage or destruction of real or personal property or any reasonable attorneys' fees incurred by Assignee in defending itself) accruing under the Lease before the Effective Date that are not charged to Assignor in the provisions made at the Effective Date pursuant to that certain Asset Purchase Agreement dated April 7, 1987, between Assignor, S & P Beverage Company, Assignee, S & B Beverage Company, Inc. and Furr's Beverage Company of Texas, Inc., as amended by that certain letter agreement dated April 10, 1987, as amended by that certain letter agreement dated August 16, 1987 and as further amended by that certain Third Amendment to Asset Purchase Agreement dated as of October 29, 1987.

It is the intention of the parties hereto that the terms and provisions of this instrument shall become effective and operative from and after October 29, 1987 (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this instrument on October 27, 1987.

***ASSIGNOR*:**

SAFEMAY STORES, INCORPORATED,
a Delaware corporation

By: 
Patrick S. Tolman,
Senior Vice President

Address: 201 Fourth Street
Oakland, California 94660
Attn: Real Estate
Law Division

***ASSIGNEE*:**

FURR'S, INC.,
a Texas corporation

By: 
Charles C. Maddell, Jr.,
Senior Vice President

Address: 1708 Avenue C
Lubbock, Texas 79401
Attn: Jan Friederich

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the 24 day of October, 1987, by Patrick S. Totman, Senior Vice President of Safeway Stores, Incorporated, a Delaware corporation, on behalf of said corporation.



Teri Hunter
Notary Public in and for
the State of Texas
Printed Name: Teri Hunter
My Commission Expires: 11-22-97

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the 24 day of October, 1987, by Clyde C. Waddell, Jr., Senior Vice President of Furr's, Inc., a Texas corporation, on behalf of said corporation.



Alice Schroeder
Notary Public in and for
the State of Texas
Printed Name: Alice Schroeder
My Commission Expires: 4-25-90

8870W

State No. 10
El Paso, Texas

Exhibit A

TRACT 1:

All that part of Section 12 in block 81 of TSP 2 of the Texas and Pacific Railway Co. Surveys in El Paso County, Texas, lying West of Highway U.S. 54, described as follows:

Beginning at a point, said point being the intersection of the south R.O.W. line of Hercules Avenue and the east R.O.W. line of Sheridan Road in the City of El Paso, El Paso County, Texas, and being further described as the northwest corner of Section 12, Blk 81, Tap, 2, of the Texas and Pacific Railway Co. Surveys, El Paso County, Texas:

Thence N 88 degrees 49 minutes E a distance of 338.72 feet along the southerly R.O.W. line of Hercules Avenue to a point:

Thence S 29 degrees 27 minutes W a distance of 150.00 feet to a point:

Thence N 88 degrees 49 minutes E a distance of 76.76 feet to a point:

Thence S 29 degrees 27 minutes W a distance of 170.21 feet along the westerly R.O.W. line of U.S. Highway 54 to a point:

Thence S 88 degrees 49 minutes W a distance of 130.41 feet to a point on the easterly R.O.W. line of Sheridan Road:

Thence N 1 degree 11 minutes W a distance of 447.61 feet along the easterly R.O.W. line of Sheridan Road to a point, said point being the point of beginning, containing 2.68 acres.

TRACT 2:

Beginning at a point on the south right-of-way line of Hercules Avenue and located South 1 degree 11 minutes East a distance of 45.00 feet, then North 88 degrees 49 minutes East a distance of 381.77 feet from a City of El Paso monument on the northwest corner of Section 12, Block 81, Township 2 in the Texas and Pacific Railroad Surveys in El Paso County, Texas--said monument also being on the point of intersection of the center lines of Hercules Avenue and Sheridan Road:

1862 0676

Store No. 30
El Paso, Texas

(Exhibit A continued)

Thence North 88 degrees 49 minutes East a distance of 100.00 feet along said south right-of-way line to its intersection with the northwesterly right-of-way line of Dyer Street:

Thence South 29 degrees 27 minutes West along said northwesterly right-of-way line a distance of 150.00 feet:

Thence South 88 degrees 49 minutes West a distance of 100.00 feet:

Thence North 29 degrees 27 minutes East a distance of 100.00 feet to the point of beginning.

Described parcel lies within said Section 12 and contains 12906.7 square feet equal to 0.296 acre.

0029/8739W

1862 0677

Store No. 30
8201 Dyer Street
El Paso, Texas

Exhibit B

Shopping Center Lease dated May 21, 1963 between Eugene R. Smith and Safeway Stores, Incorporated, a Maryland corporation, as modified by Supplemental Agreement dated January 29, 1963, Second Supplemental Lease Agreement dated October 1, 1975 and Third Supplemental Lease Agreement dated May 7, 1976; Short Form Lease dated May 21, 1963, recorded October 24, 1963 as Instrument No. 10533, Vol. 1766, Page 81, County Clerk's Records, El Paso County, Texas, as modified by Amendment of Short Form Lease dated May 7, 1976, recorded June 24, 1976 as Instrument No. 95504, Book 700, Page 1772, County Clerk's Records, El Paso County, Texas.

8263W

RETURN TO:
TITLE RESOURCES CORPORATION
2121 SAN JACINTO TOWER
SUITE 1660
DALLAS, TX 75201

8/28/01 / 12
1862 (1578

81678

NOV 13 2001

NOV 13 3:59

Robert Kemp Smith
COUNTY CLERK

STATE OF TEXAS
COUNTY OF EL PASO

NOV 13 1987

[Signature]

COUNTY CLERK, EL PASO COUNTY, TEXAS

1862 0679

*Exhibits
Excluded
later if
necessary*

SUPPLEMENTAL AGREEMENT

Supplementing the lease dated the 21st day of May, 1963,
by and between EUGENE R. SMITH, Trustee, Lessor, and SAFEWAY
STORES, INCORPORATED, Lessee, said lease is hereby amended by
mutual consent as follows:

1. Paragraph 1 of said lease is hereby changed to read:

"1. Premises. Term. Lessor hereby leases to
Lessee a portion of the following described real
property in the City and County of El Paso, State
of Texas:

Beginning at the point of intersection of the South
right-of-way line of Hercules Avenue and the East
right-of-way line of Sheridan Road; said point of
intersection being North 88° 49' East a distance of
45.00 feet, then South 1° 11' East a distance of 45.00
feet from a City of El Paso monument on the Northwest
corner of Section 12, Block 81, Township 2, Texas and
Pacific Surveys, El Paso County, Texas:

Thence North 88° 49' East along said South
right-of-way line a distance of 336.72 feet;

Thence South 29° 27' West a distance of 150.00
feet;

Thence North 88° 49' East a distance of 100.00 feet
to a point on the westerly right-of-way line of
Dyer Street;

Thence South 29° 27' West along said westerly
right-of-way line a distance of 370.21 feet;

Thence South 88° 49' West a distance of 173.65
feet to a point on the said East right-of-way
line of Sheridan Road;

Thence North 1° 11' West along said East right-of-
way line a distance of 447.61 feet to the point
of beginning.

All of described parcel lies in said Section 12, and
contains 124,144.72 square feet equal to 2.850 acres.

on which property Lessor is to construct a shopping
center (hereinafter called "Shopping Center") as shown
on the plat attached hereto as Exhibit "B". The
portion of the shopping center hereby leased (herein

called the "leased premises") is designated "Safeway" and outlined in red crayon on Exhibit "B" and includes the building and related improvements constructed thereon by Lessor.

TO HAVE AND TO HOLD the leased premises, together with all appurtenances for the term of twenty years commencing January 1, 1965, and ending December 31, 1984.
1985. E.P.
K.S.
M

2. The leased premises as defined in Paragraph 1 constitutes the following described land (and improvements thereon) located in the City and County of El Paso, State of Texas:

Beginning at a point located South 1° 11' East a distance of 110.00 feet, then North 88° 49' East a distance of 50.00 feet from a City of El Paso monument on the Northwest corner of Section 12, Block 81, Township 2, Texas and Pacific Surveys, El Paso County, Texas:

Thence North 88° 49' East a distance of 142.00 feet;

Thence South 1° 11' East a distance of 155.00 feet;

Thence South 88° 49' West a distance of 122.00 feet;

Thence South 1° 11' East a distance of 25.00 feet;

Thence South 88° 49' West a distance of 20.00 feet;

Thence North 1° 11' West a distance of 180.00 feet to the point of beginning.

Described parcel lies within said Section 12 and contains 22510.00 square feet equal to 0.517 acre.

3. Lessee acknowledges that the improvements required to be constructed by LESSOR on the leased premises have been completed in accordance with the terms of the lease and said improvements are accepted by Lessee as "ready for occupancy" as that term is used in Paragraph 5 of the lease, such acceptance date being the above mentioned commencement date of this

lease.

4. On said Exhibit "B" and outlined in blue crayon is space for an additional store on land described as follows:

Beginning at a point located South 1° 11' East a distance of 265.40 feet, then North 88° 49' East a distance of 72.00 feet from a City of El Paso monument on the Northwest corner of Section 12, Block 81, Township 2, Texas, and Pacific Surveys, El Paso County, Texas;

Thence North 88° 49' East a distance of 120.00 feet;

Thence South 1° 11' East a distance of 96.00 feet;

Thence South 88° 49' West a distance of 100.00 feet;

Thence South 1° 11' East a distance of 65.00 feet;

Thence South 88° 49' West a distance of 20.00 feet;

Thence North 1° 11' West a distance of 161.00 feet to the point of beginning.

Described parcel lies within said Section 12 and contains 12820.00 square feet equal to 0.294 acre.

This space is reserved by lessor for a future tenant.

This space is excluded from all provisions of the lease, except the provisions of paragraph 14 thereof as modified in paragraph 9 hereinbelow. The property remaining as shown on Exhibit "B" and embraced in the legal description in paragraph 1 above, after excluding leased premises and space reserved for future tenant, constitutes the common areas as mentioned in paragraph 4 of the lease. Lessee acknowledges that lessor has completed the improvements on the common areas in accordance with the terms of the lease and the same are accepted by lessee as of the above-mentioned commencement date of this lease. The common areas are for the equal and joint use of lessee and future tenant of lessor and of customers, invitees and employees as stated in paragraph 4 of the lease.

5. Exhibit "C" shows by metes and bounds the location of the leased premises and space for additional store and the remaining area being the common area.

6. The fixed minimum monthly rental to be paid by Lessee to Lessor under said lease is hereby agreed to be \$1,804.37. This fixed minimum monthly rental is established in accordance with the terms of Paragraph 26 of the lease.

7. Lessee agrees that if the leased premises or any part thereof or premises of which the leased premises are a part are at any time subject to a first mortgage or a first deed of trust and this lease or the rentals are assigned to such mortgagee, trustee or beneficiary and the Lessee is given written notice thereof, including the post office address of such assignee, then the Lessee shall not terminate this lease for any default on the part of the Lessor without first giving written notice to such assignee, specifying the default in reasonable detail, and affording such assignee a reasonable opportunity to make performance for and on behalf of the Lessor.

8. Lessee makes no objection to the following title exceptions which will appear in mortgagee's title policy to be issued to Lessor's mortgagee covering the leased premises and part of the common areas, namely;

All restrictive covenants affecting the above described property but the Company guarantees that any such restrictive covenants have not been violated so as to affect, and that a future violation thereof will not affect the validity or priority of the mortgage hereby insured; there appearing none of record;

Taxes for the year 1965 and subsequent years, but which are not yet due and payable;

Reservation of all minerals to the State of Texas, set out in patent in Book 25, pg. 468, Deed Records, El Paso County, Texas;

and Lessee agrees none of these title exceptions is or will be deemed a breach of the terms of the lease by Lessor.

9. That the provisions of paragraph 14 of the lease shall be amended to read as follows:

"14. Competitive business. Lessor covenants not to permit over 1500 square feet of sales area (including aisle space adjacent thereto) in any store in the shopping center, other than lessee's, to be devoted to the sale of food for off-premises consumption, except that a restaurant may be operated in the shopping center. In the event of a violation of this covenant, lessee may cancel this lease by notice to lessor. Lessee agrees that during the term hereof no part of the leased premises will be used for the sale of pharmaceutical items requiring the services or supervision of a licensed or registered pharmacist under the laws of the State of Maryland or an otherwise qualified pharmacist. The foregoing shall not be deemed to prohibit the lessee from selling those nonfood items, including, but not limited to, health and beauty aid items which it customarily handles and sells in its Safeway supermarkets in the State of Maryland."

10. That except as herein modified and as previously modified, the lease shall remain in full force and effect.

EXECUTED this 29th day of January, 1965.

Eugene R. Smith, Trustee
EUGENE R. SMITH, Trustee

LESSOR

(Corporate Seal)

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By *Henry S. Sunderland*
Its Assistant Vice President

By *Paul W. M...*
Its Assistant Secretary

LESSEE

STATE OF TEXAS }
COUNTY OF EL PASO } ss.

Before me, the undersigned authority, a Notary Public in and for El Paso County, Texas, on this day personally appeared EUGENE R. SMITH, Trustee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 29th day of January, 1965.

(Notarial Seal)

[Signature]
NOTARY PUBLIC in and for El Paso County, Texas.
My commission expires June 1, 1965.

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared HARRY D. SUNDERLAND and PAUL W. MOUSER, known to me to be the persons whose names are subscribed to the foregoing instrument as Assistant Vice President and Assistant Secretary, respectively, of SAFEWAY STORES, INCORPORATED, a Maryland corporation, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 29th day of January, 1965. My commission expires: January 28, 1966.

(Notarial Seal)

[Signature]
W. J. JOAQUIN
NOTARY PUBLIC in and for the State of California, with principal office in the County of Alameda.

Texas Acknowledgment.