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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:	)	
	)	Case No. 11-01-10779-SA
FURR'S SUPERMARKETS, INC.,	)	
	)	Chapter 7
Debtor	)	

RESPONSE OF EL PASO PROPERTIES, INC. IN OPPOSITION TO CHAPTER 7 TRUSTEE'S MOTION TO EXTEND TIME WITHIN WHICH THE DEBTOR MAY ASSUME OR REJECT THE EL PASO WAREHOUE LEASE

El Paso Properties, Inc. ("El Paso") by its undersigned counsel, respectfully submits this response in opposition to the "Chapter 7 Trustee's Motion to Extend Time Within Which the Debtor [*sic*] May Assume or Reject the El Paso Warehouse Lease" (the "Trustee's Motion"). In support of its objections to the Trustee's Motion, El Paso represents:

Introduction

1. El Paso is the owner of warehouse and distribution center located at 9820 Railroad Drive and 9601 Railroad Drive in El Paso, Texas (the "Warehouse"). At the time of the commencement of this Chapter 11 case, Furr's Supermarkets, Inc. (the "Debtor") was the lessee of the Warehouse under an unexpired lease (the "Warehouse Lease"). In the Trustee's Motion, the Debtor's Chapter 7 Trustee (the "Trustee") seeks an order extending to June 30, 2002 the time within which the Trustee must move to assume or reject the Warehouse Lease pursuant to 11 U.S.C. § 365. El Paso opposes any such extension for the following reasons:

(1) The Trustee has failed to perform all the obligations of the Debtor arising from and after the order for relief under the Warehouse Lease, as required

by 11 U.S.C. § 365(d)(3), and is unable to offer any reasonable assurance that she will ever be able to meet these obligations.

(2) The Debtor's leasehold interest under the Warehouse Lease has no value.

(3) In any event, the Debtor's leasehold interest is fully encumbered, so even if the Warehouse Lease did have any value, that value would inure to the exclusive benefit of the Debtor's secured creditors, rather than to the bankruptcy estate.

Accordingly, the Trustee should be directed to reject the Warehouse Lease and surrender possession of the Warehouse to El Paso immediately.

History of the Case

2. The facts leading up to the filing of the Trustee's Motion are not in dispute. As averred in paragraphs 1 and 2 of the Trustee's Motion, the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code on February 8, 2001, and converted the Chapter 11 case to a liquidation case under Chapter 7 of the Bankruptcy Code on December 19, 2001. The Trustee was appointed on that date.

The Warehouse Lease

3. The Warehouse Lease, which is dated as of March 1, 1973, was originally entered into between El Paso as lessor and Safeway Stores, Incorporated as lessee. A copy of the Warehouse Lease is annexed hereto as Exhibit A.

4. The Debtor is the current assignee of the Warehouse Lease.

5. The original term of the lease expired on September 30, 1998. The Warehouse Lease has been renewed for a 5-year period ending September 30, 2003.

6. Pursuant to a sublease dated October 19, 1998, the Debtor subleased the Warehouse to Pinnacle Logistics, Inc. By letter dated January 10, 2002, counsel for the Trustee notified El Paso that the sublease between the Debtor and Pinnacle Logistics, Inc. had been terminated. The Warehouse is presently unoccupied.

The Attempts to Sell the Debtor's Interest In the Lease

7. All or substantially all of the Debtor's operating assets were exposed for sale at public auction on or about June 25, 2001. Although most of the operating assets were sold at this auction, no one purchased the Debtor's leasehold interest under the Warehouse Lease.

8. On October 1, 2001, prior to the conversion of the case, the Debtor filed a motion in this Court seeking approval of the Debtor's employment of RJL Real Estate Consultants ("RJL") to market the Debtor's leasehold interest under the Warehouse Lease. This Court approved the Debtor's employment of RJL, and has also authorized the Trustee to continue such employment.

9. RJL has been attempting to sell the Debtor's leasehold interest under the Warehouse Lease since October, 2001, without any success.

The Relief Requested by the Trustee

10. In paragraph 4 of the Trustee's Motion, the Trustee avers that she "seeks an Order under Bankruptcy Code §365(d)(1) extending until June 30, 2002 the time within which she must move to assume or reject the Warehouse Lease." However, paragraph (1) of subsection (d) of §365 relates only to executory contracts and unexpired leases of residential real property or of personal property of the Debtor. It has no application whatsoever to "an unexpired lease of non-residential real property" such as the Warehouse Lease. The relief which the Trustee seeks, if it were available at all, would be available only under 11 U.S.C. §365(d)(4).

11. El Paso agrees with the averment in paragraph 3 of the Trustee's Motion that "the Warehouse Lease will be automatically rejected on February 17, 2002 unless the Court enters an Order before that date extending the deadline by which the Trustee may assume or reject the Warehouse Lease." However, the automatic rejection of the Warehouse Lease will take place pursuant to 11 U.S.C. §365(d)(4) rather than §365(d)(1) as alleged by the Trustee. Specifically, paragraph (4) of subsection (d) of 365 provides in relevant part:

> ... in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of non-residential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such non-residential real property to the lessor.

The Trustee's Duty to Timely Perform All the Obligations of the Debtor Arising From and After the <u>Order For Relief Under the Warehouse Lease</u>

12. Paragraph (3) of subsection (d) of section 365 of the Bankruptcy Code, 11 U.S.C. 365, provides in relevant part:

> The trustee shall timely perform all the obligations of the debtor, except to those specified in §365(b)(2), arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding §503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period.

13. This Court has not extended the time for the Trustee's performance of her obligations under the Warehouse Lease.

14. As set forth more fully below, the Trustee has defaulted in the payment and performance of numerous obligations arising under the Warehouse Lease from and after the order for relief in this case under the Bankruptcy Code.

15. By letter dated January 18, 2002, addressed to David T. Thuma, Esquire, counsel to the Trustee, counsel for El Paso made demand on the Trustee for performance of her statutory obligations under 11 U.S.C. § 365(d)(3). A copy of that letter is attached hereto as Exhibit B.

16. As set forth more fully below, the Trustee has not complied with El Paso's demand.

The Defaults Under the Warehouse Lease

A. Failure to Pay Base Rent

17. As provided in Article Second and Schedule B of the Warehouse Lease, rent in the amount of $66,000.00 per calendar quarter is payable in arrears on the last day of each calendar quarter.

18. Despite El Paso's demand for payment, the Trustee has failed to pay the quarterly rental installment in the amount of $66,000.00 that came due on December 31, 2001.

B. Failure to Pay Taxes and Utilities

19. Article Third of the Warehouse Lease provides in part:

> 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, assessments (including assessments for benefits from public works or improvements, whether or not begun or completed prior to the commencement of the term of this Lease and whether or not to be completed within said term), personal property taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, which shall or may during the term hereof be charged, laid, levied, assessed, imposed, become due and payable, or become liens upon, or arise in connection with the use, occupancy of possession of or grow due or payable out of, or for the Leased Premises during the lease term or any renewal thereof.

20. The El Paso City Tax Office has confirmed that, as of January 24, 2002, the following taxes and related penalties and interest were due and owing in respect of the Warehouse:

Taxes for the 2000 tax year:	$215,350.87
Penalties and interest	92,449.49
Taxes for the 2001 tax year	219,802.45
Total	$527,602.81

21. The Trustee has failed to pay any portion of the foregoing amounts, with the result that penalties and interest continue to accrue on the taxes for the 2000 tax year, and began to accrue on February 1, 2002 on the taxes for the 2001 tax year.

22. El Paso is informed and believes that, because there are no funds in the estate, the Trustee is not currently paying for any utilities supplied to the Warehouse. However, the amount of outstanding utility charges in respect of the Warehouse is unknown to El Paso.

23. The curtailment of utility services to the Warehouse would present a significant risk of injury to person and property. For example, if the Warehouse is not heated, the sprinkler system may freeze.

C. Failure to Maintain and Repair the Premises

24. Article Sixth of the Warehouse Lease provides in part:

> Lessee shall, at all times during the lease term or any renewal thereof, and at its own cost and expense, put, keep, replace and maintain in thorough repair and good, safe and substantial order and condition, except for reasonable ordinary wear and tear under the circumstances, all buildings and improvements erected on the Leased Premises, or forming a part thereof (including all building equipment which is an integral part of the building structures), both inside and outside, structural and non-structural, extraordinary and ordinary.

25. During a visit to the Warehouse on January 26, 2002, the following repair and maintenance deficiencies were observed:

(a) The Warehouse roof is leaking. Approximately one-quarter of the roof needs to be replaced.

(b) The large air compressor for the sprinkler system needs to be replaced. The sprinkler system is inoperable without it.

(c) Ammonia gas is leaking for the refrigeration system, and is present in the freezer and cooler.

(d) The air compressors for the refrigeration system require overhauling.

(e) There is a sprinkler system leak in the dry goods area.

(f) A light pole in the parking lot has apparently been damaged in a vehicle collision, and is leaning at an angle.

(g) Various locks on doors to the Warehouse premises have been broken.

(h) The Warehouse needs to be cleaned. Several discarded batteries are on the premises, and must be disposed of.

(i) The sprinkler system in the Warehouse may not be up to current fire code specifications.

(j) The truck repair facility needs to be cleaned, including disposal of old oil and trash.

(k) The office building requires cleaning.

(l) The exterior metal frame structure of the office building needs to be sandblasted and painted.

D. <u>Failure to Insure</u>

26. Under Article Fifth of the Warehouse Lease, the lessee is required to maintain public liability insurance in respect of the property, and under Article Eleventh of the Warehouse Lease, the lessee is required to maintain fire insurance with extended coverage on the property.

27. Despite repeated demands, the Trustee has failed to provide any evidence that the required insurance coverage is in place.

E. Failure to Provide Security

28. The Warehouse is unoccupied, and constitutes an attractive nuisance.

29. So far as El Paso has been able to determine, the Trustee has made no arrangements for providing security guard services at the property.

F. Additional Rent

30. All of the foregoing payment obligations constitute "additional rent" under Article Nineteenth of the Warehouse Lease, which provides:

> This is a net lease, it being the intention of the parties hereto that Lessee shall pay as additional rent, without offset, all costs of maintenance, taxes and other charges that are assessed or levied against said premises, including without limitation the costs, taxes and charges set forth in this Lease. All taxes, charges, costs and expenses which Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, all other damages, costs and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Lessee on Lessee's part to comply with the covenants, agreements, terms and conditions of this Lease on Lessee's part to be performed, and each or any of them, shall be deemed to be additional rent and in the event of non-payment Lessor shall have all the rights and remedies herein provided in the case of rent.

The Flawed Rationale for the Trustee's Motion

31. The rationale for the Trustee's Motion is set forth in paragraph 5 of the Motion, which provides:

> The Warehouse Lease is one of the most valuable remaining assets in the estate. The Trustee expects to become and remain current on post-petition rent and other obligations under the Warehouse Lease. The estate's secured lenders have agreed to pay all amounts needed to keep current under the Warehouse Lease, so such continued payments will not burden the estate. The Trustee has also negotiated with the secured lenders, subject to Court approval, for the estate to receive a portion of any net proceeds obtained upon the sale of the estate's interest in the Warehouse Lease.

Unfortunately, none of these averments rises above the level of wishful thinking. Specifically:

(a) All the indications are that, far from being "one of the most valuable remaining assets in the estate," the Debtor's leasehold interest under the Warehouse Lease is actually a significant liability. The Warehouse Lease was passed over by the buyer of the Debtor's operating assets, and all subsequent efforts to sell the leasehold have failed. The costs to cure the Debtor's defaults under the Lease and restore the property to a usable condition are huge. Moreover, the local economy is in a depressed condition. In short, there is simply no reason to believe that the Trustee could realize any value from the sale of the leasehold at any time in the foreseeable future.

(b) Nor, so far as El Paso has been able to determine, is there any agreement on the part of the secured lenders "to pay all amounts needed to keep current under the Warehouse Lease, so such contingent payments will not burden the estate." To the contrary, the secured creditors have made to such payments and, El Paso is informed and believes, have made no commitment to make any such payments in the future.

(c) Nor, so far as El Paso is aware, is there any agreement between the secured creditors and the Trustee that would allow the estate to "receive a portion of any net proceeds obtained upon the sale of the estate's interest in the Warehouse Lease."

32. The Trustee goes on to argue in paragraph 6 of her Motion that the relief she requests will not prejudice El Paso. She points out, correctly, that she "is obligated to pay the reserved rent for all post petition periods before rejection." However, she fails to mention that, at the current time, she has no funds with which to pay these obligations, and that, in violation of the statute, she has in fact paid nothing since she was appointed.

33. She also points out, correctly, that "§365(d)(3) grants the landlord's postpetition claims under the lease "automatic" administrative expense status, without the requirement of notice and a hearing." However, she fails to mention that the estate is administratively insolvent, so that "automatic" administrative expense status is cold comfort to El Paso.

Conclusion

The Trustee has a statutory duty under 11 U.S.C. § 365(d)(3) to "timely perform all the obligations of the Debtor ... arising from and after the order for relief under" the Warehouse Lease, "until such lease is assumed or rejected ...". "If the trustee ... can't or won't pay, the Court may, in its discretion, order immediate vacation of the premises. Failure to pay jeopardizes the ... trustee's right to assume the lease later." *In re Patella*, 102 B.R. 223, 225 (Bankr.D.N.M. 1989). In this case, the Trustee has paid none of the obligations accruing under the Warehouse Lease since the order for relief. Nor can she offer any reasonable assurance that she will ever be able to meet these obligations. Nevertheless, she seeks this Court's authorization for a gamble that, at some unspecified future date, she will be able to assume and

assign the Warehouse Lease on terms that will pass some value to the bankruptcy estate. All indications are that this prospect is entirely illusory. Moreover, if she loses the gamble, the brunt of the loss will be borne by El Paso, because the estate is administratively insolvent. It would be manifestly unfair, and manifestly contrary to the intent of Congress, to place any landlord in this position.

WHEREFORE, El Paso respectfully requests this Court to enter an order denying the Trustee's Motion and directing the Trustee to reject the Warehouse Lease and surrender the Warehouse to El Paso immediately.

Respectfully submitted,

KIRKPATRICK & LOCKHART LLP

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Attorneys for El Paso Properties, Inc.

February 7, 2002

The undersigned certifies that a copy of the foregoing "Response of El Paso Properties, Inc. in Opposition to Chapter 7 Trustee's Motion to Extend Time Within Which the Debtor May Assume or Reject the El Paso Warehouse Lease" was served on the following persons by facsimile transmittal and overnight courier on February 7, 2002:

Robert H. Jacobvitz, Esq.
David T. Thuma, Esq.
Jacobvitz Thumas & Walker
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Albuquerque, NM 87102

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January 18, 2002

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VIA FAX AND FEDERAL EXPRESS

David T. Thuma, Esquire
Jakovitz, Thuma & Walker, P.C.
500 Marquette N.W., Suite 650
Albuquerque, NM 87102

Re: March 1, 1973 Lease between El Paso Properties Corp. and Safeway Stores, Incorporated (the "Lease"), for Premises at 9820 Railroad Drive, El Paso, Texas (the "Property")

Dear Mr. Thuma:

This firm is counsel to El Paso Properties Corp. (the "Lessor") as lessor under the Lease. A copy of the Lease is enclosed with the materials being sent to you by overnight courier under cover of a copy of this letter. Your letter of January 10, 2002 has been referred to me for a response.

To recapitulate briefly: As set forth in your letter of January 10, we understand that the Chapter 11 reorganization case filed by the current lessee, Furr's Supermarkets, Inc. ("Furr's"), was converted to a liquidation case under Chapter 7 of the Bankruptcy Code on December 19, 2001, and that Yvette J. Gonzales (the "Trustee") is serving as Chapter 7 Trustee in the case. Your letter also states that the sublease between Furr's and Pinnacle Logistics, Inc. (which we understand to be an affiliate of the Fleming Companies) has been terminated, and that "Furr's therefore has reassumed possession of the leased premises." However, in view of the conversion of the case, we assume that it is in fact the Trustee who is in possession at the current time.

We are greatly concerned that the Trustee is not performing all her statutory obligations under 11 U.S.C. § 365(d)(3) and, moreover, that she may never be in a position to do so. As you know, section 365(d)(3) provides in relevant part:

> The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2) [relating to so called "ipso facto defaults"], arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period ...

Our specific concerns include the following:

1. The Trustee has not paid the quarterly rent for the period 10/1/01 through 12/31/01, in the amount of $66,000, that came due on December 31, 2001, as provided in Article Second and Schedule B of the Lease. The rent is payable to Janus Financial Corporation as required by the enclosed rent direction letter dated October 2, 1998. Our client has not received any notice that the Trustee received an extension of the time for performance of this payment obligation.

2. Under Article Third of the Lease, Furr's is responsible to pay, as additional rent, all real and personal property taxes that become due and payable at any time during the lease term in respect of the Property. We understand that real and personal property taxes, in an aggregate amount in excess of $300,000, have been assessed against the Property by the City and County of El Paso for the 2001 tax year, and are due and payable no later than January 31, 2002. We have no assurance that the Trustee intends to, or is indeed able to, pay these taxes.

3. Under Article Fifth of the Lease, the lessee is required to maintain public liability insurance in respect of the Property, and under Article Eleventh of the Lease, the lessee is required to maintain fire insurance with extended coverage on the Property. Now that the sublease has terminated, the subtenant cannot be counted on to provide this coverage. Please provide us with evidence that the Trustee has the required coverage in place, and that the Lessor is named as an additional insured and loss payee under the applicable policies.

4. Under Article Sixth of the Lease, Furr's is required to maintain the Property in good repair. Moreover, now that the Property is unoccupied, adequate security arrangements must be put in place. Please advise us as to what maintenance and security arrangements the Trustee has made for the Property.

We are concerned that the Trustee may not have the money to perform her statutory obligations in respect to the Property, even if she wishes to. If she is not willing and able to perform these obligations, then it appears to us that the appropriate course of action would be for the Trustee to immediately reject the Lease pursuant to the provisions of section 365 and surrender possession of the premises to the Lessor. We need an immediate indication of the Trustee's intentions, so that we can take the steps necessary to protect our client's interests.

P. Douglas Freedle, the Lessor's president, accompanied by George Leugers, C.P.A., will be in El Paso beginning Friday, January 25, and they wish to make a physical inspection of the Property during their visit. Please advise us as to the person who should be contacted to make arrangements for this.

Please provide the payment and other assurances requested in this letter as soon as possible. Under cover of a copy of this letter, I am forwarding copies of the Lease and the rent direction letter directly to the Trustee for her convenient reference. Please do not hesitate to give me a call if you wish to discuss any aspect of this matter.

Yours truly,

George M. Cheever

GMC:dlb
Enclosure

cc: Thomas F. Nelson, Esq.
Richard A. Palmer, Esq.
P. Douglas Freedle

LEASE

From

EL PASO PROPERTIES CORP.,
Lessor

To

SAFEWAY STORES, INCORPORATED,
Lessee

Dated as of March 1, 1973

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THIS LEASE, made as of the 1st day of March, 1973, between EL PASO PROPERTIES CORP., a Delaware corporation, hereinafter referred to as Lessor, and SAFEWAY STORES, INCORPORATED, a Maryland corporation, hereinafter referred to as Lessee:

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

ARTICLE FIRST (Property Description): Lessor does hereby lease to Lessee the real property described in Schedule A hereto and the buildings and improvements thereon.

Said premises are leased subject to such defects in Lessor's title, encumbrances, covenants, conditions, restrictions, easements, reservations and rights of way, if any, as

facts an accurate survey might show, zoning rules, restrictions, regulations, resolutions and ordinances, and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authorities having jurisdiction.

TO HAVE AND TO HOLD the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging (herein called the Leased Premises), at the rental and upon the terms and conditions herein stated, for a preliminary term commencing with the 19th day of March, 1973, and extending to and including the last day of September, 1973,

ARTICLE SECOND (Rent): Lessee does hereby agree to pay without offset to Lessor, as the rent of the Leased Premises, the respective amounts set forth in Schedule B hereto on the dates set forth in Schedule B. Said payments shall be made by checks or drafts payable to The National Shawmut Bank of Boston, Trustee, and mailed to it at 40 Water Street, Boston, Massachusetts 02109, Attention J. J. Quigley, 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 quarterly period shall be prorated.

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, assessments (including assessments for benefits from public works or improvements, whether or not begun or completed prior to the commencement of the term of this Lease and whether or not to be completed within said term), personal property taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every instalment thereof, which shall or may during the term hereof be charged, laid, levied, assessed, imposed, become due and payable, or become liens upon, or arise in connection with the use, occupancy or possession of or grow due or payable out of, or for the Leased Premises during the lease term or any renewal thereof. Lessee further agrees to pay all taxes (including gross receipts or similar taxes) which may be levied, assessed or imposed by the State of Texas or by any political or taxing subdivision thereof, upon or measured by the rents and other sums payable hereunder or the income arising therefrom. Lessee shall not be required to pay any franchise, corporate, estate, inheritance, succession, transfer, income,

profits or revenue taxes of Lessor (other than all taxes, including gross receipts and similar taxes, imposed or levied upon, assessed against or measured by the rents and other sums payable hereunder or the income arising therefrom) unless any such tax is imposed or levied upon or assessed against Lessor in substitution for or in place of any other tax, assessment, charge or levy referred to in this Article Sixth. Taxes, water rents, rates and charges, sewer rents and other governmental impositions and charges assessed during the term, but payable in whole or in instalments 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. Lessee shall have the right to apply for the conversion of any special assessment for local improvements in order to cause the same to be payable in instalments, and upon such conversion Lessee shall be obligated to pay and discharge punctually only such of said instalments as shall become due and payable during the term.

At the written request of Lessor, Lessee shall within sixty (60) days after such request produce and exhibit to Lessor satisfactory evidence of the payment of any tax, assessment, or other charge constituting a lien on the Leased Premises which has become due and payable.

ARTICLE FOURTH (Installation and Signs, etc.; Removal of Fixtures; Painting): 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, provided that it shall first obtain any permits required by any governmental

authorities, having jurisdiction of the Leased Premises, to paint and erect or authorize signs in and over the Leased Premises and on the outside of the building improvements thereon, and upon the written request of Lessor will remove any such signs upon the expiration or the sooner termination of this Lease. 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 Leased Premises, but shall retain their status as personality and may be removed by Lessee at any time. Lessee may obliterate any signs or color effects installed by it. Any damage caused to the Leased Premises by the removal of such property or the obliteration of any signs or color effects shall be repaired by Lessee at its expense. Any trade fixtures or personal property not used in connection with the operation of the Leased Premises and belonging to Lessee or to any subtenant, if not removed within twenty (20) days after expiration or the sooner termination of this Lease, shall be deemed abandoned and shall become the property of Lessor without any payment or offset therefor.

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. Lessee further agrees to indemnify and save Lessor harmless from any and all liability arising from any failure by Lessee to perform any of the agreements, terms,

covenants or conditions of this Lease on Lessee's part to be performed. In addition, Lessee agrees to furnish Lessor with a certificate extending to Lessor the public liability insurance coverage maintained by Lessee.

ARTICLE SIXTH (Repairs, Alterations, and Improvements; State of Repair on Termination; Future Development and Lessee's Options with Respect Thereto): 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. Lessee shall, at all times during the lease term or any renewal thereof, and at its own cost and expense, put, keep, replace and maintain in thorough repair and good, safe and substantial order and condition, except for reasonable ordinary wear and tear under the circumstances, all buildings and improvements erected on the Leased Premises, or forming a part thereof (including all building equipment which is an integral part of the building structures), both inside and outside, structural and non-structural, extraordinary and ordinary. 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, to wit:

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 thereto, and/or

III. Construct additional new building or buildings on the Leased Premises;

provided that Lessee shall first obtain any building and alteration permits that may be required by any governmental authorities having jurisdiction. 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 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 Sixth. Lessee agrees that it will not permit any mechanics', 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, alter, remodel or add to the improvements or construct new improvements pursuant to the provisions of subparagraphs I, II and/or III of this Article Sixth, and provided the cost thereof is FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000), or more, Lessee may, on completion of said improvements, offer to accept payment from Lessor for the cost thereof up to a maximum amount not to exceed EIGHT MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS ($8,800,000) (Lessee's Offer). Should Lessor accept Lessee's Offer, which acceptance shall be made in writing within sixty (60) days of the date of such offer, Lessor and Lessee shall

enter into good faith negotiations looking toward the execution and delivery of a written agreement of modification of this Lease, which agreement shall provide for (1) payment by Lessor to Lessee of such cost within forty-five (45) days after the date of Lessor's acceptance of such offer, (2) an increase in the annual extended term rentals provided for in Article Sixteenth by an amount equal to such cost multiplied by 3%, (3) an increase in the quarterly original term rentals provided for in Article Second in an amount sufficient to reimburse Lessor for such cost, together with interest at a rate sufficient to finance such cost, over a term of not less than 15 years nor more than 25 years, (4) an increase in the purchase prices set forth in Schedule C attached hereto and hereby made a part hereof which shall be sufficient, at any given time, to allow Lessor to recover the unamortized amount of such cost, together with accrued interest thereon at a rate sufficient to finance such cost, (5) an extension of the original term of this Lease to a date not earlier than the maturity date of the Improvement Notes as defined below and (6) such other changes and amendments of this Lease as may be necessary and appropriate in view of such payment by Lessor to Lessee. Since Lessor's most likely source of funds to make payment for such cost will be the issuance and sale of notes (herein called Improvement Notes) issued pursuant to the Indenture of Mortgage and Deed of Trust, dated as of March 1, 1973 (herein called the Indenture), from the Company to The National Shawmut Bank of Boston and W. B. Wadland, as trustees (herein called the Trustees), the parties agree that the obligation of Lessor to make such payment shall be conditioned upon the sale of Improvement Notes and that the changes and amendments to this Lease will be of such nature as will (a) permit Lessor to sell the Improvement Notes in accordance with the terms of the Indenture which will secure the Improvement Notes and the Note

Purchase Agre nt dated March 1, 1973 (herein lled the Note Agreement) between the Company and the Purchasers listed in Exhibit A thereto (herein called the Purchasers) pursuant to which the Improvement Notes will be sold, and (b) provide increases in the original term rents provided for in Article Second and the purchase prices set forth in Schedule C, so as to assure the purchasers of the Improvement Notes the payment of interest and principal due thereon during the original term of this Lease as such term may be extended. If (x) Lessee's Offer to accept payment for such new improvements should not be accepted by Lessor within said sixty (60) day period, or (y) Lessor and Lessee are unable to agree upon the terms of modification of this Lease, then at the option of Lessee (I) this Lease shall continue in full force and effect and Lessor shall incur no liability under this Lease by reason of its refusal or inability to pay Lessee for the costs of said improvements or (II) within 30 days after such 60 day period, Lessee shall have the right to make available to Lessor a commitment from the Purchasers or their registered assigns or a commitment from other Institutional Investors, as defined in the Indenture (together with a letter from the Purchasers and their registered assigns refusing such commitment), agreeing to purchase Improvement Notes of Lessor pursuant to Section 2.4 of the Indenture and Lessor shall take advantage of such commitment and issue its Improvement Notes pursuant to said Section 2.4, subject to the terms and conditions set forth in this Article Sixth and subject to the provisions of the Indenture and subject to the condition that the Improvement Notes shall actually be sold, within 120 days of the receipt of Lessee's Offer.

ARTICLE SEVENTH (Assigning and Subletting): Lessee shall have the right to assign this Lease or to sublet the whole or any part of the Leased Premises for a period not extending beyond the expiration of the original term of this Lease or of any renewal term then in effect. Should Lessee assign this Lease or sublet the whole or any part of the Leased Premises, it shall

nevertheless remain primarily liable to Lessor as a principal and not as a guarantor or a surety for full payment of the rent and the performance and observance of Lessee's other obligations under this Lease. Lessee agrees to notify Lessor in writing of any assignment or subletting, within thirty (30) days thereafter, and, on request of Lessor, to furnish Lessor with a conformed copy of any sublease which may be made. In the event of Lessee's default in any of the provisions hereof, after the Leased Premises have been sublet by Lessee, Lessor may collect rent from the sublessee but any collection of rent from an assignee or sublessee shall not be deemed a waiver of the primary liability of Lessee or as an acceptance by Lessor of the assignee or sublessee as lessee. Any such sublease shall be subject to termination by Lessor at its option on termination of this Lease except in the instance in which this Lease is terminated and the Leased Premises purchased by Lessee.

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 the Leased 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 only a month to month tenancy at the last quarterly rental (pro rated) and upon the terms (other than [illegible]

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

possession ther as against any adverse claim Lessor or any party claiming under Lessor, subject to all exceptions to the title in the title policy to the Leased Premises about to be issued to Lessor in connection with its acquisition of title to the Leased Premises.

ARTICLE TENTH (Lessee's Default): In case Lessee shall fail to pay any instalment of rent or any tax, assessment, water rent or sewer rent for five (5) days after written notice from Lessor, or the agent or attorney of Lessor, that the same is due and payable, or to pay any other additional rent or to comply with any of the other terms, covenants, conditions or oblitations of this Lease for thirty (30) days after written notice from Lessor or the agent or attorney of Lessor, then Lessor, at the option of Lessor, may cancel and terminate this Lease, as well as all of the right, title and interest of Lessee hereunder, by giving to Lessee not less than five (5) days' notice of such cancellation and termination, and upon the expiration of the time fixed in such notice this Lease and the term hereof, as well as all of the right, title and interest of Lessee hereunder, shall expire in the same manner and with the same force and effect, except as to Lessee's liability, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term originally demised; and Lessor 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 to terminate this Lease shall not be a bar to or prejudice in any way any other legal remedies available to Lessor.

In the event of any such failure by Lessee to pay or to comply as aforesaid, in which case each such failure shall be a default hereunder by Lessee and a breach of this Lease, Lessor shall immediately and ipso facto, notwithstanding any

other provisions of this Lease to the contrary and without any notice or other action by Lessor, becomes entitled to recover from Lessee, and Lessee shall pay to Lessor, as liquidated damages for such breach, all rent and other sums hereunder due and payable to the date of payment, together with a sum equal to the amount by which the rent and additional rent reserved hereunder from the date of such breach to the date of expiration of the term of this Lease exceeds the fair and reasonable rental value of the Leased Premises for the same period, both discounted to the date of such breach at the rate of five per cent (5%) per annum. Such accrued rent and damages shall become due and payable to Lessor immediately upon such breach and without regard to whether this Lease be terminated or not, and if this Lease be terminated, without regard to the manner in which it shall be terminated. In determining the fair and reasonable rental value of the Leased Premises, the rental realized by any reletting, if any reletting be accomplished by Lessor before presentation of proof of such liquidated damages shall be required, shall be deemed prima facie to be the fair and reasonable rental value of the Leased Premises or the portion thereof so relet, as the case may be. So long as the term of this Lease shall continue, the rent reserved herein for the unexpired term of this Lease after any such breach shall be reduced by the amount of such liquidated damages as may be paid to Lessor, such reduction being applied proportionately to each instalment of rent and additional rent thereafter becoming due. During the continuance of this Lease after such a breach and until such damages shall have been paid to Lessor, the whole amount of each instalment of rent and additional rent herein reserved shall be due and payable at the time herein specified, and if by reason of the subsequent payment of liquidated damages, and the resulting reduction in rental, Lessor shall have received a sum in excess of all instalments as so reduced, becoming due after the breach and before the collection of such damages, such excess shall be refunded to Lessee upon the receipt of such liquidated damages.

If Le r shall so re-enter, Lessor m epair and alter the Leased Premises in such manner as to Lessor may seem necessary or advisable, and/or let or relet the Leased Premises or any parts thereof for the whole or any part of the remainder of the term herein originally leased or for a longer period, in Lessee's name, or as the agent of Lessee, and out of any rent so collected or received Lessor shall: first, pay to itself the cost and expense of retaking, repossession, repairing and/or altering the Leased Premises, and the cost and expense of removing all persons and property therefrom; second, pay to itself the cost and expenses sustained in securing any new tenants, and if Lessor shall maintain and operate the Leased Premises the cost and expense of operating and maintaining the Leased Premises; and, third, pay to itself any balance remaining on account of the liability of Lessee to Lessor for the sum equal to all rent and additional rent reserved herein and unpaid by Lessee for the remainder of the term herein originally leased. Any entry or re-entry by Lessor, whether had or taken under summary proceedings or otherwise, shall not absolve or discharge Lessee from liability hereunder.

Should any rent so collected by Lessor after the aforementioned payments be insufficient fully to pay to Lessor a sum equal to all such rent and additional rent reserved herein, the balance or deficiency shall be paid by Lessee on the rent days herein specified, that is, upon each of such rent days Lessee shall pay to Lessor the amount of the deficiency then existing; and Lessee shall be and remain liable for any such deficiency, and the right of Lessor to recover from Lessee the amount thereof, or a sum equal to all such rent and additional rent reserved herein, if there shall be no reletting, shall survive the issuance of any dispossessory warrant or other cancellation or termination hereof; and Lessee hereby expressly waives any defense that might be predicated upon the issuance of such dispossessory warrant or other cancellation or termination hereof.

Suit c uits for the recovery of such ficiency or damages, or for a sum equal to any instalment or instalments of rent and additional rent hereunder, may be brought by Lessor, from time to time at Lessor's election, and nothing herein contained shall be deemed to require Lessor to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by Lessee or no such cancellation or termination.

Lessee hereby expressly waives service of any notice of intention to re-enter. Lessee hereby waives any and all rights to recover or regain possession of the Leased Premises or to reinstate or to redeem this Lease or other right of redemption as permitted or provided by or under any statute, law or decision now or hereafter in force and effect, in case Lessee shall be dispossessed by a judgment or by warrant of any court or judge.

In the event of a breach or a threatened breach by Lessee of any of the agreements, terms, covenants or conditions hereof, Lessor shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

In case Lessor shall default in the performance of any covenant or agreement herein contained, and such default shall continue for thirty (30) days after receipt by Lessor of written notice thereof given by Lessee, its agents or attorney, then Lessee, at its option, may (1) cease paying rent for such time as such default shall continue or (2) pay any sums necessary to perform any obligations of Lessor hereunder with respect to which Lessor shall be in default and deduct such sums from the rents thereafter to become due hereunder or (3) declare the term ended and vacate the Leased Premises and be relieved from all further obligations under this Lease. Except to the extent otherwise expressly provided in this Lease, this Lease shall not

terminate nor s 1 Lessee be entitled to any al ment of rent or reduction thereof, nor shall the respective obligations of Lessor and Lessee be otherwise affected, by reason of damage to or destruction of all or any part of the Leased Premises from whatever cause, the taking of the Leased Premises or any portion thereof by condemnation or otherwise, the limitation, restriction or lawful prohibition of Lessee's use of the Leased Premises, the interference with such use by any private person or corporation, or by reason of any eviction by paramount title, Lessee's acquisition or ownership of all or any part of the Leased Premises otherwise than pursuant to an express provision of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding.

ARTICLE ELEVENTH (Damage by Fire, etc.): Lessee agrees that it will, during the preliminary and original terms hereof and during any renewal terms, at its expense, take out and keep in effect upon the Leased Premises, fire insurance with extended coverage endorsement, written by a responsbile insurance company or insurance companies authorized to do an insurance business in the State of Texas in an amount sufficient to prevent Lessor and Lessee from becoming co-insurers under provisions of applicable policies of insurance but in any event, in an amount equal to not less than eighty per centum (80%) of the insurable value of the building improvements thereon; said policy or policies of insurance to 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. Lessee agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the preliminary or original terms or any renewal term, Lessee shall rebuild or repair said building improvements or construct a new building on the Leased Premises, in which event all insurance proceeds shall be paid by said insurance

company or companies to be retained by Lessee subject to the provisions of this Article Eleventh. In such event the building improvements as reconstructed by Lessee shall have a value not less than the value of the building improvements as of the date of the casualty and the building improvements, as reconstructed, shall immediately become part of the realty and the property of Lessor. Any building permit that may be required shall be obtained by Lessee. If the cost to Lessee of such rebuilding and repairing of said building improvements is less than the amount of insurance proceeds, Lessee shall retain such excess insurance proceeds if such excess is less than $20,000. If such excess is $20,000, or greater than $20,000, such excess shall be paid to Lessor on a date on which a rent payment is due pursuant to Schedule B; thereafter, (i) Lessor's Cost (set forth in Schedule C hereto) shall be reduced by the amount of such excess insurance proceeds received by Lessor, and (ii) the rentals due for the original and any renewal terms of this Lease, as set forth in Schedule B, shall be reduced in accordance with the provisions of Schedule B. If the cost to Lessee of such rebuilding and repairing of said building improvements is greater than the amount of insurance proceeds, Lessee shall pay such excess cost. Notwithstanding the payment of such excess cost by Lessee, this Lease shall continue in full effect without modification, abatement or reduction of the rents set forth in Schedule B, the purchase prices set forth in Schedule C or all additional rent or other sums payable hereunder. Notwithstanding any other provision of this Article Eleventh to the contrary, should such fire or other casualty occur at any time during the preliminary or the original term and should

the Leased Premises be so damaged or destroyed in any single casualty that they shall be economically unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business, as certified by a Vice President of Lessee, or if such casualty shall cause damage to the Leased Premises in excess of $3,000,000, then at Lessee's option, in lieu of rebuilding or repairing the Leased Premises, Lessee may, within ninety (90) days after such loss or damage, give written notice to Lessor of Lessee's intention to terminate this Lease as provided for in Article Fourteenth hereof, and as a part of said notice shall offer to purchase the Leased Premises upon the terms set out in said Article. If the damage to the Leased Premises is not in excess of $3,000,000, said notice shall be accompanied by a certificate of Lessee, signed by a vice president thereof, stating that the Leased Premises are economically unsuitable for Lessee's continued use and occupancy in Lessee's business by reason of such damage or destruction. If the damage to the Leased Premises is in excess of $3,000,000, said notice shall be accompanied by a certificate of Lessee, signed by a vice president thereof, stating the dollar amount of the damage. In the event said offer to purchase is accepted by Lessor and the Leased Premises purchased by Lessee, all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. However, should said offer to purchase not be accepted

be so paid to such mortgagee upon condition that said mortgagee shall agree to pay the said proceeds to Lessee upon the restoration of the Leased Premises as in this Article Eleventh provided or upon the purchase of the Leased Premises by Lessee as provided for in Article Fourteenth.

Regardless of the cost of rebuilding or repairing said building improvements, should the fire or other casualty occur during a renewal option term, Lessee shall have the right to elect to rebuild or repair said building improvements, in which event all insurance proceeds shall be paid to Lessee as hereinabove set forth. Should Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage, give to Lessor thirty (30) days' notice in writing, cancelling and terminating the renewal term then in effect. On expiration of said thirty (30) days' notice, the renewal term shall cease and terminate and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

Lessee shall procure policies for such insurance for a period of not less than one year and shall deliver to Lessor such policies and shall procure renewals thereof from time to time at least twenty (20) days before the expiration thereof.

No abatement, diminution or reduction of rent, charges or other compensation shall be claimed by or allowed to Lessee, or any persons claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to any buildings now on or which may hereafter be erected on the Leased Premises, by virtue of or arising from, and during the restoration of the Leased Premises after the destruction or damage thereof by fire or other cause.

ARTICLE TWELFTH (Easements; Dedication; Annexation; Condemnation): Lessor agrees, from time to time during the preliminary and the original terms of this Lease and during any renewal terms: (a) to grant easements affecting the Leased Premises; (b) to dedicate or convey, as required, portions of the Leased Premises for road, highway and other public purposes; and (c) to execute petitions to have the Leased Premises or a portion or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. If any monetary consideration is received as a result of the granting of any such easement or the dedication or conveyance of any portion of the Leased Premises as hereinabove provided, such consideration shall be paid to Lessee. Notwithstanding the granting of any such easement or such dedication or conveyance, the rents set forth in Schedule B and the purchase prices set forth in Schedule C shall continue in effect without any modification. Lessor agrees to cooperate fully with Lessee to execute any instrument necessary or desirable under the laws of the State of Texas and to cooperate with Lessee in any other way in order for said actions to be effectively exercised. As a condition precedent to the exercise by Lessor of any of the actions stated in this Article Twelfth, Lessee shall inform Lessor in writing of the action to be taken and shall certify to Lessor, in a certificate executed by a vice president of Lessee, that in Lessee's opinion, such action will not adversely affect either the market value of the Leased Premises or the use of the Leased Premises as a distribution warehouse.

In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the preliminary or the original term hereof condemn and acquire title to any portion of the Leased Premises, or to any easement therein,

special or otherwise, which condemnation shall make the Leased Premises economically unsuitable for use as a distribution warehouse, Lessee may elect within thirty (30) 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 provided for in Article Fourteenth hereof, and as a part of said notice shall furnish a certification, executed by a vice president of Lessee to the effect that such condemnation has made the Leased Premises economically unsuitable for use as a distribution warehouse, and shall offer to purchase the Leased Premises from Lessor upon the terms set out in Article Fourteenth hereof. In the event such offer to purchase is accepted by Lessor within the time and in the manner in Article Fourteenth provided, and the Leased Premises are purchased by Lessee, Lessee shall be entitled to and shall receive any and all awards or payments made in said condemnation proceedings, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment as may be made. Should said offer to purchase not be accepted by Lessor and this Lease be terminated as provided for in Article Fourteenth, any and all award or payment made in such condemnation proceedings in respect only of the Leased Premises shall

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, or in event of any condemnation of any portion of the Leased Premises, or any easement therein, which shall not entitle Lessee to give notice of its intention to terminate this Lease as hereinabove provided, Lessee shall be entitled to and shall receive, subject to the provisions of this Article Twelfth, any and all awards or payments 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 pay all appraisal fees, attorney's fees and other expense connected with said condemnation proceedings and shall make all repairs or alterations (if any) to the Leased Premises made necessary by such condemnation; should such expense and the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall keep the remaining balance of such award or payment (such remaining balance being hereinafter referred to as net surplus award) if the net surplus award is less than $20,000. If the net surplus award is $20,000 or greater than $20,000, the net surplus award shall be paid to Lessor on a date on which a rent payment is due pursuant to Schedule B; thereafter, (i) Lessor's Cost (set forth in Schedule C hereto) shall be reduced by the amount of the net surplus award received by Lessor, and (ii) the rentals due for the original and any renewal terms of this Lease, as set forth in Schedule B, shall be reduced in accordance with the provisions of Schedule B. Should such expense and the cost of such repairs or alterations be in excess of the award or payment so assigned to Lessee, Lessee shall pay any such excess cost. Notwithstanding

this payment of such excess cost by Lessee, this Lease shall continue in full effect without modification, abatement or reduction of the rents set forth in Schedule B, the purchase prices set forth in Schedule C or the additional rent or other sums payable hereunder.

Should the entire Leased Premises be condemned at any time during the preliminary or the original term of this Lease, the Lessee shall give written notice to Lessor of Lessee's intention to terminate this Lease as provided for in Article Fourteenth hereof, and as a part of said notice shall offer to purchase the entire condemnation award minus any expenses incurred by Lessor in connection therewith upon the terms set out in Article Fourteenth. In the event said offer to purchase is not accepted by Lessor this Lease shall terminate as provided in Article Fourteenth and Lessee does hereby relinquish all rights to the condemnation award and the entire award shall be payable to Lessor.

Should the use or occupancy of the Leased Premises or any portion thereof be temporarily requisitioned by any governmental authority, civil or military at any time during the preliminary, original or any renewal term of this Lease, then this Lease shall, notwithstanding such temporary requisition, continue in full effect without abatement, modification or reduction of the rents set forth in Schedule B, the purchase prices set forth in Schedule C or the additional rent or other sums payable by Lessee hereunder, and Lessee shall, at its expense, rebuild, replace or repair any damage caused by such temporary requisition, so that, after the completion of such work, the building improvements have a value not less than the value of the building improvements as of the date of such temporary requisition, except for ordinary wear and tear. In the event of any such temporary requisition, Lessee shall be entitled to receive the

portion of any award or payment payable for the period such temporary requisition occurs during a term of this Lease.

Should the entire Leased Premises be condemned during an optional renewal term, Lessee shall, within thirty (30) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair and alter the Leased Premises to the extent made necessary by such condemnation. If Lessee elects to terminate the renewal term, Lessee shall give to Lessor thirty (30) days' notice, in writing, cancelling and terminating such renewal term. On expiration of said thirty (30) days' notice, the renewal term shall cease and terminate. In such event, 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 and all awards or payments 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 pay all appraisal fees, attorneys' fees and other expenses connected with said condemnation proceedings and shall make all repairs or alterations (if any) to the Leased Premises made necessary by such condemnation to the extent of the proceeds of the

award or payment remaining after the payment of such expenses; should such expenses and the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to the Lessor the remaining balance of such award or payment without any modification, abatement or reduction of the rent set forth in Schedule B, additional rent or other sums due hereunder.

In the event any mortgagee requires that all awards and payments made in such condemnation or requisition proceedings be made payable to it, then, and in such event, such awards and payments shall be so paid to such mortgagee upon condition that said mortgagee shall agree to pay such awards and payments to Lessee upon the restoration of the Leased Premises as in this Article Twelfth provided or upon the purchase of the Leased Premises as provided for in Article Fourteenth.

ARTICLE THIRTEENTH (Notices): Any notice provided for herein shall be given by registered United States mail, postage prepaid, addressed, if to Lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to Lessee, to it at Oakland, California 94660. The person and the place to which notices are to be mailed may be changed from time to time by either party by written notice given to the other party.

ARTICLE FOURTEENTH (Lessee's Right of Termination); Lessor agrees that if Lessee has discontinued or determines to discontinue its use of the leased premises as a distribution wharehouse, Lessee shall have the right, subject to the following conditions, at its option, to terminate this Lease. Except where the right accrues pursuant to the provisions of Article Eleventh or Article Twelfth, such option to terminate shall

not be exercised prior to the expiration of the tenth year of the original term. In the event Lessee desires to exercise this option and to terminate this Lease, it shall give written notice to Lessor of its intention to terminate this Lease and, as a part of such notice, Lessee shall furnish Lessor a certification and agreement, executed by a vice president of Lessee, stating that Lessee has discontinued its use of the Leased Premises as a distribution warehouse, or will discontinue its use of the Leased Premises as a distribution warehouse within ninety (90) days after purchase of the Leased Premises as hereinafter provided, and shall offer to purchase the Leased Premises (or if Lessee exercises its option to terminate this Lease pursuant to Article Twelfth upon the occurrence of a total taking of the Leased Premises, Lessee shall receive the award or payment made in consideration of such taking minus any expenses incurred by Lessor in connection therewith, herein called the Net Award) from Lessor for the applicable price computed in accordance with the Schedule C (herein referred to as the Purchase Price).

In the event Lessor elects to accept said offer to purchase, Lessor shall, within sixty (60) days after the date of Lessee's notice to Lessor, deliver to Lessee written notice of such acceptance, and shall open or cause an escrow to be opened with a title insurance company, approved by The National Shawmut Bank of Boston, doing business in the area in which the Leased Premises are located and shall deposit in said escrow a properly executed grant or warranty deed, and such other instruments and authorizations as may be necessary to convey to, and vest in, Lessee (i) if Lessee is purchasing the Leased Premises, such title to the Leased Premises as will enable, upon the escrow completion, to obtain from a title insurance company satisfactory to Lessee, an owner's policy of title insurance in the amount of the purchase

price paid by L ssee, insuring Lessee, or if ti insurance is not available, a title opinion written by an attorney designated by Lessee substantiating that it is the unencumbered fee title owner of the Leased Premises, free and clear of any mortgages or deeds of trust (which shall be released or reconveyed of record by Lessor in the escrow settlement) and free and clear of any other liens, charges, encumbrances or exceptions, except such as may have been in existence at the time of Lessor's acquisition of title to the Leased Premises, provided, however, and Lessee agrees, that Lessee will take title to the Leased Premises subject also to any other liens, encumbrances and exceptions not caused or created by any lessor, and to all zoning rules and restrictions, regulations and ordinances that are applicable to the Leased Premises on the date of conveyance thereof to Lessee and subject to any violations of building codes, fire laws and other laws and regulations that are in existence as of said date; or (ii) if Lessee is purchasing the Net Award, such title to the Net Award will enable Lessee to receive the Net Award. Lessor shall notify Lessee of the opening of the escrow and of its deposit therein of the deed and other instruments and authorizations, if any, necessary to convey to Lessee title to the Leased Premises or the Net Award, as the case may be, as hereinabove provided, and Lessee shall, at or prior to the expiration of one hundred twenty (120) days from the date of Lessee's notice to Lessor, deliver to the escrow holder the Purchase Price, with its instructions for the completion of the escrow in accordance with the terms hereof. If Lessee purchases the Leased Premises as herein provided Lessee shall pay rent to the date of its purchase of the Leased Premises or the Net Award, as the case may be, and the charges covering the escrow fee, recording fee, premium for an owner's policy of title insurance, if applicable, and the cost of any applicable documentary stamps and any applicable state and local stamp taxes and other like costs and charges.

Should written notice of the acceptance of Lessee's offer to purchase not be given to Lessee within sixty (60) days after the date of Lessee's notice to Lessor, or should Lessor, after having accepted Lessee's offer to purchase fail, or be unable within one hundred twenty (120) days after said date of Lessee's notice to Lessor, to deposit with said escrow holder such deed, instruments and authorizations as may be necessary to vest such title in Lessee as is hereinabove provided for, then this Lease shall terminate at the expiration of such one hundred twenty (120) day period. In the event of such termination, all parties hereto shall be discharged from their liability by reason of this Lease and the provisions with respect to the purchase of the Leased Premises and the Net Award herein contained, and this Lease shall be of no further force or effect. Lessee shall pay rent to the date of termination and shall vacate and remove its property from the Leased Premises by such date of termination, and as of such date proper adjustment shall be made in respect of taxes and unexpired insurance premiums.

Notwithstanding any provision of this Lease, during the preliminary or the original term of this Lease, this Lease shall terminate, and the purchase date for the Leased Premises shall be, only on a date on which a rent payment is due pursuant to Schedule B.

ARTICLE FIFTEENTH (Bankruptcy): If (i) Lessee should make an assignment for the benefit of creditors or file any petition or institute any proceedings under the Bankruptcy Act, either 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 or reorganization, or for any other similar relief, or if a receiver, trustee or liquidator for all or a substantial part

of the business or Lessee should be appointed by any court upon the petition of Lessee, or (ii) if any such petition or proceedings of the same or similar kind or character be filed or taken against Lessee, or if any receiver, trustee or liquidator for all or a substantial part of the business of Lessee should be appointed by any court in any proceeding brought against Lessee and such petition or proceedings should not be set aside or dismissed or the appointment of said receiver, trustee or liquidator revoked within ninety (90) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this Lease on the giving to Lessee of not less than five (5) days' notice in writing and upon the expiration of the time fixed in such notice this Lease and the term hereof, as well as all of the right, title and interest of Lessee hereunder, shall expire in the same manner and with the same force and effect, except as to Lessee's liability, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term herein originally leased.

In any such event, each of which shall be a default hereunder by Lessee and a breach of this Lease and in the event of any other default hereunder or breach hereof, Lessor shall immediately and ipso facto, notwithstanding any other provisions of this Lease to the contrary and without any notice or other action by Lessor, become entitled to recover from Lessee, and Lessee shall pay to Lessor, as liquidated damages for such breach, all rent and other sums payable hereunder due and payable to the date of payment, together with a sum equal to the amount by which the rent and additional rent reserved hereunder from the date of such breach to the date of expiration of the term of this Lease exceeds the fair and reasonable rental value of the Leased Premises for the same period, both

discounted to the date of such breach at the rate of five per cent (5%) per annum. Such accrued rent and damages shall become due and payable to Lessor immediately upon such breach

and without regard to whether this Lease be terminated or not, and if this Lease be terminated, without regard to the manner in which it shall be terminated. In determining the fair and reasonable rental value of the Leased Premises, the rental realized by any reletting, if any reletting be accomplished by Lessor before presentation of proof of such liquidated damages shall be required, shall be deemed prima facie to be the fair and reasonable rental value of the Leased Premises or the portion thereof so relet, as the case may be. If and so long as the term of this Lease shall continue, the rent reserved herein for the unexpired term of this Lease after any such breach shall be reduced by the amount of such liquidated damages as may be paid to Lessor, such reduction being applied proportionately to each instalment of rent and additional rent thereafter becoming due. During the continuance of this Lease after such a breach and until such damages shall have been paid to Lessor, the whole amount of each instalment of rent and additional rent herein reserved shall be due and payable at the time herein specified, and if by reason of the subsequent payment of liquidated damages and the resulting reduction in

proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to in the preceding paragraph. The termination of this Lease pursuant to this Article Fifteenth shall not be construed as a waiver by Lessor of any right to any such damages that may be proved on the rejection or termination of this Lease through such bankruptcy, insolvency, receivership or dissolution proceedings on the part of Lessee or its representatives in interest, the receiver, custodian, trustee or other parties in interest, through the court having jurisdiction in the proceeding.

In the event of any default hereunder or breach hereof by Lessee, Lessor shall, in addition to the rights set forth above in this Article Fifteenth, have the right to require that Lessee purchase the Leased Premises at a price determined in accordance with Schedule C hereto on the date on which the next rent payment is due pursuant to Schedule B following written notice of such requirement from Lessor to Lessee. Lessor shall transfer and convey the Leased Premises to Lessee on such date upon the terms and provisions set forth in Article Fourteenth hereof as if Lessor had accepted an offer by Lessee to purchase the Leased Premises; except, however, that (A) the time periods referred to in Article Fourteenth shall be adjusted to effectuate said purchase on the date determined pursuant to this Article Fifteenth and (B) this Lease shall in no event terminate until the Leased Premises shall have been conveyed and the purchase price thereof and all other sums due under this Lease shall have been paid.

ARTICLE SIXTEENTH (Lessee's Option Privileges): Lessor hereby grants to Lessee, the right, at Lessee's option, to extend the term of this lease for six (6) separate and additional periods of five (5) years each after the expiration of the original term hereof at an annual rental which shall be

payable in the amounts and on the dates specified in Schedule B and upon the terms (other than length of term and quarterly rental) herein specified. These options shall be exercised

by written notice given to Lessor or delivered or mailed to Lessor, at the address at which the rent is then payable, at least one hundred twenty (120) days before the expiration of the original term hereof, or, in the event Lessee has previously exercised one or more options herein given, such notice shall be given at least one hundred twenty (120) days before the expiration of the option term then in effect. The parties hereto agree that a new lease need not be executed upon the exercise of any of these options, but that this Lease will remain in full force and effect, changed only as to the matters specified in this Article, except that there shall be no option of further renewal following the expiration of the sixth renewal term, and except that Lessee may, on the giving to Lessor of a six (6) months' written notice, cancel any option term then in effect.

ARTICLE SEVENTEENTH (Compliance with Laws): Lessee agrees throughout the preliminary or 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 including, without limitation, those requiring structural changes. 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. Upon the written request of Lessor at any time or from time to time, Lessee will furnish to Lessor copies of all certificates of occupancy and building permits which it shall have obtained with respect to the Leased Premises, and an opinion of its counsel to the effect that all applicable zoning

ordinances and regulations and requirements applicable to the Leased Premises have been complied with.

ARTICLE EIGHTEENTH (Remedies Cumulative): No remedy herein conferred upon or reserved to Lessor or 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 NINETEENTH (Additional Rent): This is a net lease, it being the intention of the parties hereto that Lessee shall pay as additional rent, without offset, all costs of maintenance, taxes and other charges that are assessed or levied against said premises, including without limitation the costs, taxes and charges set forth in this Lease. All taxes, charges, costs and expenses which Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, all other damages, costs and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Lessee on Lessee's part to comply with the covenants, agreements, terms and conditions of this Lease on Lessee's part to be performed, and each or any of the, shall be deemed to be additional rent and in the event of non-payment Lessor shall have all the rights and remedies herein provided in the case of of rent.

ARTICLE TWENTIETH (No Waiver): The failure of Lessor or Lessee to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that Lessor or Lessee

may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

ARTICLE TWENTY-FIRST (Definitions): The term "Improvement Notes" has the meaning specified in Article Sixth.

The term "Indenture" has the meaning specified in Article Sixth.

The term "Leased Premises" has the meaning specified in Article First.

The term "Lessor" as used herein shall mean only the owner or the mortgagee in possession for the time being of the Leased Premises, so that in the event of any sale or sales of the Leased Premises the preceding Lessor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of lessor hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser at any such sale that such purchaser has assumed and agreed to carry out any and all agreements, covenants and obligations of lessor hereunder.

The term "insurable value" shall mean, with respect to the building improvements located on the Leased Premises, the replacement value less depreciation of such building improvements at the time of loss thereof or damage thereto by fire or other casualty.

ARTICLE TWENTY-SECOND (Table of Contents; Article Headings): The table of contents and the article headings herein contained 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.

ARTICLE TWENTY-THIRD (Separability): If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

ARTICLE TWENTY-FOURTH (Binding Effect): Each and all of the covenants, terms, agreements and obligations of this Lease shall extend to and bind and inure to the benefit of the successors and/or assigns of said parties hereto; herein the singular number includes the plural and the masculine gender includes the feminine and the neuter. This Lease may not be changed or modified except by a writing signed by Lessor and Lessee.

ARTICLE TWENTY-FIFTH (Schedules): The following are Schedules A, B and C referred to in this Lease and hereby made a part hereof.

SCHEDULE A

El Paso, El Paso County, Texas

PARCEL A

A parcel of land lying within and being a portion of Tract 3E in Section 43, Township 1, Block 80, of the Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING AT A POINT lying in the intersection of the centerline of Pompano Avenue and the Westerly Right of Way Line of Railroad Drive, said point being marked by a City of El Paso Monument;

THENCE North 28° 24' 45" East across Pompano Avenue and along the Easterly Line of Block 11 of Dolphin Terrace Subdivision, Unit 3, a distance of 342.03 feet to a point;

THENCE South 61° 35' 14" East across Railroad Drive a distance of 120.00 feet, to the POINT OF BEGINNING of the parcel of land being described, and said point being the Northwesterly corner of Zimet Subdivision;

THENCE from said POINT OF BEGINNING North 28° 24' 45" East along the Easterly Right of Way Line of Railroad Drive a distance of 2374.70 feet to a point;

THENCE South 61° 35' 15" East a distance of 1100.60 feet to a point lying in the Northwest corner of Tract 5B2;

THENCE South 28° 24' 45" West along the Westerly line of said Tract 5B2 a distance of 2374.70 feet to a three-quarter inch iron pin marking the most Southerly corner of Tract 3E;

THENCE North 61° 35' 14" West along the Northerly Lines of Tract 3D of Section 43 and Zimet Subdivision a distance of 1100.60 feet to the POINT OF BEGINNING and containing 60.00 acres of land more or less.

SCHEDULE A (continued)

El Paso, El Paso County, Texas

PARCEL B

An easement for railroad spur track over a parcel of land lying within and being a portion of Tract 5B2, Section 43, Township 1, Block 80, of the Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING AT A POINT in the Northwesterly Line of said Tract 5B2, Section 43, Township 1, Block 80, of the Texas and Pacific Railway Company Surveys, El Paso County, Texas, said point being North 28° 24' 45" East along said Northwesterly Line of Tract 5B2 a distance of 2188.66 feet from the three quarter inch iron pin marking the most Southerly corner of Tract 3E, Section 43, Township 1, Block 80 of the Texas and Pacific Railway Company Surveys, El Paso County, Texas.

THENCE from said POINT OF BEGINNING North 28° 24' 45" East along said Northwesterly Line of said Tract 5B2 a distance of 64.03 feet;

THENCE North 56° 08' 14" East a distance of 56.29 feet to the P.C. of a curve to the left;

THENCE along said curve to the left an arc distance of 60.90 feet, said curve having a central angle of 9° 21' 10", a radius of 373.07 feet, and a long chord bearing North 51° 27' 39" East a distance of 60.83 feet, to a point lying in the Northwesterly Right of Way Line of the Southern Pacific Railroad;

THENCE South 28° 24' 45" West along said Northwesterly Right of Way Line of the Southern Pacific Railroad a distance of 53.65 feet;

THENCE South 56° 08' 14" West a distance of 41.22 feet to the P.C. of a curve to the left;

SCHEDULE A (continued)

El Paso, El Paso County, Texas

THENCE along said curve to the left an arc distance of 85.64 feet, said curve having a central angle of 13° 09' 09", a radius of 373.07 feet, and a long chord bearing South 49°33' 40" West a distance of 85.45 feet to the POINT OF BEGINNING, and containing 0.055 acres of land more or less.

SCHEDULE B

A. Rent Payments

1. The rent payable for the Leased Premises during the preliminary term from March 19, 1973 to September 30, 1973 is $337,920 of which $179,520 is payable on June 30, 1973 and $158,400 is payable on September 30, 1973.

2. Each installment of rent payable for the Leased Premises during the original term from October 1, 1973 to September 30, 1998 is $190,376.91 and said instalments are payable in arrears on December 31, 1973 and on the last day of each March, June, September and December thereafter to and including September 30, 1998.

3. Each Installment of rent payable for the Leased Premises during the renewal term is $66,000 said installments are payable in arrears on December 31, 1998 and on the last day of each March, June, September and December occurring thereafter during any such renewal term.

B. Reduction of Rent Payments

If Lessor's Cost, as set forth in Schedule C, is reduced pursuant to any provision of this Lease, then each rent payment set forth in paragraphs 2 and 3 of part A of this Schedule B shall be reduced by an amount equal to such rent payment multiplied by a fraction, the numerator of such fraction shall be the amount by which Lessor's Cost was reduced and the denominator of such fraction shall be Lessor's Cost. The reduced rent payments for paragraphs 2 and 3 of part A of this Schedule B shall not be effective until the rent payment date occurring three months or more following the reduction of Lessor's Cost.

SCHEDULE C

Lessor's Cost is $8,800,000

Upon the purchase of the Leased Premises (or the Net Award) pursuant to Article Eleventh, Twelfth, Fourteenth and Fifteenth of this Lease, the purchase price payable shall be an amount equal to the applicable amount set forth in column 2 below opposite the date on which such purchase occurs (date number 1 is December 31, 1973 and each succeeding date being the last day of the following three-month period of the original term of this Lease):

Column 1 Date on Which Purchase Occurs	Column 2 Applicable Amount
March 19, 1973 to September 30, 1973	$8,800,000
1	8768,023.09
2	8735,470.60
3	8702,332.16
4	8668,597.23
5	8634,255.07
6	8599,294.75
7	8563,705.15
8	8527,474.93
9	8490,592.57
10	8453,046.33
11	8414,824.25
12	8375,914.18
13	8336,303.73
14	8295,980.29
15	8254,931.03
16	8213,142.88
17	8170,602.54
18	8127,296.48
19	8083,210.91
20	8038,331.80
21	7992,644.86
22	7946,135.56
23	7898,789.09
24	7850,590.38
25	7801,524.10
26	7751,574.62
27	7700,726.05
28	7648,962.21
29	7596,266.62
30	7542,622.51
31	7488,012.81
32	7432,420.13
33	7375,826.78
34	7318,214.75
35	7259,565.71
36	7199,860.98

Column 1 Date on Which Purchase Occurs	Column 2 Applicable Amount
37	7139,081.57
38	7077,208.13
39	7014,220.97
40	6950,100.04
41	6884,824.93
42	6818,374.87
43	6750,728.71
44	6681,864.92
45	6611,761.58
46	6540,396.38
47	6467,746.60
48	6393,789.13
49	6318,500.42
50	6241,856.52
51	6163,833.03
52	6084,405.11
53	6003,547.49
54	5921,234.43
55	5837,439.74
56	5752,136.75
57	5665,298.30
58	5576,896.76
59	5486,903.99
60	5395,291.35
61	5302,029.68
62	5207,089.30
63	5110,440.00
64	5012,051.01
65	4911,891.02
66	4809,928.15
67	4706,129.95
68	4600,463.38
69	4492,894.81
70	4383,390.01
71	4271,914.12
72	4158,431.66
73	4042,906.52
74	3925,301.93
75	3805,580.45
76	3683,703.99
77	3559,633.75
78	3433,330.25
79	3304,753.28
80	3173,861.93
81	3040,614.53
82	2904,968.68
83	2766,881.21
84	2626,308.16
85	2483,204.80
86	2337,525.58
87	2189,224.13
88	2038,253.25
89	1884,564.90
90	1728,110.16
91	1568,839.23
92	1406,701.43
93	1241,645.15
94	1073,617.85
95	902,566.06
96	728,435.34
97	551,170.27
98	370,714.42
99	187,010.37
100	0.00

The Applicable Amount set forth in Column 2 shall be adjusted if Lessor's Cost is reduced prior to the purchase date. The purchase price shall be the Applicable Amount multiplied by a fraction, the numerator of such fraction shall be Lessor's Cost on the purchase date and the denominator of such fraction shall be $8,800,000.

IN WITNESS WHEREOF, each of the parties hereto has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized.

EL PASO PROPERTIES CORP.
(a Delaware corporation)

By _____
Vice President

(Corporate Seal)

By _____
Assistant Secretary

(Lessor)

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By _____
Assistant Vice President

(Corporate Seal)

By _____
Assistant Secretary

(Lessee)

THE STATE OF New York)
COUNTY OF New York)) ss.:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Charles R. Kocos and P. Douglas Trudle known to me to be the persons and officers whose names are subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said El Paso Properties Corp., a corporation, and that they executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12th day of March, 1973.

Henriette M. Schriber
Notary Public in and for said
County and State

HENRIETTE M. SCHRIBER
Notary Public, State of New York
No. 30-3533660 Qualified in Nassau Co.
Certificate Filed in New York County
Commission Expires March 30, 1973

THE STATE OF CALIFORNIA)
) ss.:
COUNTY OF ALAMEDA)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Patrick S. Totman and Richard H. Costello, known to me to be the persons and officers whose names are subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Safeway Stores, Incorporated a corporation, and that they executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 13th day of March, 1973.

Phyllis G. Lane
Notary Public in and for said
County and State
PHYLLIS G. LANE
My commission expires Oct. 5, 1975.

OFFICIAL SEAL
PHYLLIS G. LANE
NOTARY PUBLIC CALIFORNIA
ALAMEDA COUNTY
My Commission Expires Oct. 5, 1975