

See Amendment in deed Book 233  
Page 553

LEASE

THIS LEASE, made and entered into this 3rd day of August, 1964, by and between Alabaster Shopping Center, Inc., a Corporation, with principal offices at Alabaster, Alabama, hereinafter called Lessor, and Bargain Town U.S.A., Inc., of Birmingham, State of Alabama, hereinafter called Lessee,

WITNESSETH:

That Lessor for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the Lessee, demises and leases to the Lessee, and the Lessee does hereby take, accept and rent from the Lessor the premises hereinafter described for the period, at the rental and upon the terms and conditions hereinafter set forth.

Demised Premises

1. The premises demised and leased hereunder shall consist of a store unit outlined in red on the rental plan attached hereto as Exhibit A and hereby made a part hereof, said store unit to be constructed as set forth in Paragraph 14 hereof and Exhibit C hereto. The demised premises together with other buildings and improvements to be constructed by the Lessor shall constitute a shopping center to be known as Alabaster Shopping Center to be erected on the land described in Exhibit B hereto attached.

Term

2. The term of this lease shall commence on Occupancy date, as hereinafter defined, or the date upon which the Lessee shall open its store for business in the demised premises, ~~on~~ 19, ~~whichever date is the earlier~~, and shall continue for a period of 10 yrs. from Jan. 1, 1965 ~~years~~ unless sooner terminated as hereinafter provided.

*[Handwritten signatures and initials]*

Occupancy  
Date

3. The words "Occupancy Date" used in this lease shall be deemed to refer to a date thirty (30) days subsequent to the completion of the construction of the demised premises in accordance with the Plans and Specifications as prepared by LESSOR and approved by LESSEE as provided in Section #14 Elmore's, Cardwell, White Auto Stores have opened hereof, and when ~~at least fifty percent of the total building area shown on Exhibit "A" has been completed, leased to tenants, and ready for occupancy by such tenants, and scheduled date for formal opening by the tenants and agreed upon by them,~~ and when the parking area shown on Exhibit "A" has been completed. The LESSOR shall at least thirty days prior to occupancy date give notice to the LESSEE of such occupancy date.

Payment  
of Rent

4. Lessee hereby covenants and agrees to pay rent to Lessor which said rent shall be in the form of fixed minimum rent and percentage rent, all as hereinafter provided. Said rent shall be paid to Alabaster Shopping Center, Inc., Alabaster, Alabama, or at such other place as may be designated in writing from time to time by Lessor.

Fixed Mini-  
mum Rent

5. Lessee shall pay to Lessor for each and every lease year of the lease term a fixed minimum rent based on ~~minimum of \$xxxxxxx per ft of gross building area per~~ year of \$7,200.00 SEVENTY-TWO HUNDRED DOLLARS, payable in twelve (12) equal installments, one such installment in advance on the tenth day of each and every month during the term of this lease. Should the term of this lease commence on a day other than the first day of a month, the first monthly installment of fixed minimum rent shall be pro-rated and shall be paid on the date the term commences. The payment of said fixed minimum rent shall begin on the occupancy date; ~~provided, however, that if the lease shall open or~~ ~~if the lease shall open prior to such occupancy date, the payment of~~ ~~fixed minimum rent shall commence on the date on which the lease shall~~ ~~open or~~

Percentage  
Rent

6. In addition to the fixed minimum rent, the Lessee shall pay as percentage rent the amount, if any, by which THREE (3%) percent of gross sales in each lease year, as hereinafter defined, exceeds the fixed minimum rent for the same lease year.

Lease  
Year

7. The first/<sup>full</sup> lease year of the term of this lease shall be the consecutive twelve (12) month period commencing JANUARY 1, 1965 with/~~the first day of the calendar month following the "occupancy date," which is the beginning of the term of the lease year hereof.~~ The other lease years of the term hereof shall be the several successive consecutive twelve (12) months period of such term, ~~each such lease year commencing on the anniversary of the first day of the month following the "occupancy date."~~

Gross  
Sales

8. The term "gross sales" as used in this lease shall mean the total of: (a) all sales made in, or upon orders placed at, or completed by delivery in, through, or from the demised premises; (b) all charges made for services rendered in or from or upon orders placed at the demised premises; and (c) all sales and charges made in connection with business transacted in whole or in part in, upon or from the demised premises. Gross sales shall include sales and charges made for cash or upon credit, or partly for cash and partly for credit, without regard to whether or not collection is made of the amounts for which credit is given, and shall also include sales and charges, whether made by Lessee or any other occupant or occupants of the demised premises or some part or parts thereof. Each sale, charge or business transaction upon installment or contract therefor shall be treated as a gross sale for the full price or charge in the year during which such charge or contract is made.

Exclusions  
from Gross  
Sales

9. Gross sales shall exclude carrying charges paid by Lessee, delivery charges, refunds for merchandise returned; sales cancelled; allowances or adjustments granted to customers; transfers of merchandise from the demised premises to any other store or stores, warehouse or warehouses of the

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vending machines & coin operated devices  
Lessee; merchandise returned to vendors; sales, excise and  
any other taxes which are added to the selling price of mer-  
chandise and paid for by the customer; and discounts on sales  
made by the Lessee to its employees, and shall also exclude  
any redemption for coupons or stamps of the premium items of  
merchandise which Lessee offers to its customers as an incen-  
tive to the sale of its regular merchandise.

Records

10. Lessee shall keep full and complete records and  
books of account reflecting all sales or business transacted  
in, on or from the demised premises, in order to enable Les-  
sor to ascertain the percentage rental due it hereunder.  
Lessee shall install a cash register on which all sales, in,  
on or from the demised premises shall be recorded. The Les-  
sor, or its duly authorized representatives, shall have ac-  
cess thereto at all reasonable times for the purposes of ex-  
amining the same and, if Lessor elects, of auditing the same,  
in the manner hereinafter provided.

Statements  
by Lessee

11. Lessee shall prepare and deliver to Lessor within  
60 days after the end of each lease year during the lease  
term at the place where rent is then required to be paid  
hereunder, a written statement signed by Lessee or its duly  
authorized agent or employee showing in reasonable detail  
the elements and amount of gross sales during the preceding  
lease year or fraction thereof. At the time the yearly state-  
ment is submitted by the Lessee to the Lessor, the Lessee  
shall pay to the Lessor the amount of percentage rent, if  
any, due for such preceding lease year or fraction thereof.

Special  
Audit

12. In the event Lessor is not satisfied with any such  
statement of gross sales submitted by Lessee, Lessor shall  
have the right within one (1) year from the date of the de-  
livery of such statement to Lessor to have a public account-  
ant selected by Lessor commence a special audit of Lessee's  
books and records pertaining to gross sales. Lessee agrees  
to pay on demand any deficiency in percentage rent shown to  
be due by such audit. If the amount of gross sales for such  
period is determined by such audit to be in excess of One

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Hundred Five percent (105%) of the amount shown by such statement, Lessee shall pay for the cost of the audit; otherwise, the cost thereof shall be paid by the Lessor. Each statement of gross sales submitted by Lessee hereunder shall become conclusive and binding upon Lessor one year after delivery thereof to Lessor unless within such one year period, Lessor shall cause the aforesaid special audit to be commenced.

Failure to  
Furnish  
Statements

13. If Lessee shall fail to prepare and deliver within the time hereinabove specified any statement of gross sales required hereunder, Lessor may elect to treat Lessee's said failure as a breach of this lease, entitling Lessor to terminate this lease or Lessee's right to possession of the premises or both, but only after Lessor has given to the Lessee thirty (30) days' notice in writing to submit said statement. If Lessee fails to prepare and deliver said statement after receiving said thirty (30) days' notice, Lessor may also, or in the alternate, elect to make an audit of all books and records of Lessee, including Lessee's bank accounts, which in any way pertain to or show gross sales, and to prepare the statement or statements which Lessee has failed to prepare and deliver. Such audit shall be made and such statement or statements shall be prepared by a public accountant selected by Lessor. The statement or statements so prepared shall be conclusive on Lessee, and the Lessee shall pay on demand all expenses of such audit and of the preparation of any such statements and all sums as may be shown by such audit to be due as percentage rent.

Construct-  
ion of  
Demised  
Premises

14. Lessor shall construct at its own expense, upon the premises described in Exhibit B hereto attached, the store unit which constitutes the demised premises hereunder in accordance with:

- (a) the plans and specifications to be prepared by Lessor and approved by Lessee,
- (b) General construction outline attached hereto as Exhibit C, and

(c) in accordance with all applicable building codes and regulations governing the construction thereof. Any additional expense resulting from any changes that are requested by Lessee and made with the consent of both parties shall be paid to Lessor by Lessee.

Within ten (10) days after Lessee shall take possession of the demised premises in accordance with the terms of this lease, the Lessee shall execute and deliver to Lessor a statement substantially in the form hereto attached marked Exhibit D, indicating thereon any exceptions thereto as may exist at that time. Failure of Lessee to execute and deliver such statement shall constitute an acceptance of the demised premises and an acknowledgment by Lessee that the premises are in the condition required under this lease and that the statements included in Exhibit D hereto attached are true and correct without exception.

LESSOR guarantees all work performed in its construction of said store unit and parking lot areas against defective workmanship and material for a period of one (1) year from the date of completion of such store unit and parking lot areas and shall accordingly at its own expense repair or replace any such defective workmanship and material on written request of Lessee made to Lessor within such one (1) year period. Lessor agrees that it will, <sup>one year after occupancy and</sup> upon request of Lessee, assign to Lessee any manufacturers warranty of air conditioning system which is for a term in excess of ~~XXXX~~ <sup>ONE</sup> years.

LESSOR shall commence construction of the aforesaid store unit and the entire Shopping Center as shown on Exhibit A not later than JULY 1, 1964, 1964. Lessor shall complete such construction so that occupancy date for the Lessee herein, and for at least fifty percent (50%) of all tenants shown on Exhibit A, specifically including Cardwell Furniture Company, Elmore, and Super Market, shall occur on or before NOVEMBER 1, 196<sup>4</sup>8.

The grand opening for business for the tenants comprising at least fifty percent (50%) of the entire shopping center as shown on Exhibit A, and including those tenants

specifically named above shall be \_\_\_\_\_, 1965. In the event that the demised premises and said shopping center are not completed and ready for occupancy by MARCH 1, 1965, then Lessee may at its election by notice in writing within thirty (30) days thereafter cancel this lease.

~~It is understood, however, that the completion date of~~  
~~XXXXXXXXXXXXXXXXXXXX 1965 shall be extended~~  
~~XXXXXXXXXXXXXXXXXXXX the same shall be extended~~  
~~XXXXXXXXXXXXXXXXXXXX by Act of God, strikes, floods~~  
~~XXXXXXXXXXXXXXXXXXXX and the Lessee shall be~~  
~~XXXXXXXXXXXXXXXXXXXX liable for the same~~  
~~XXXXXXXXXXXXXXXXXXXX~~

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Installation of Fixtures

15. It is mutually agreed that in order to expedite the commencement of Lessee's business in the demised premises, Lessee may enter upon the demised premises for the purpose of installing trade fixtures and furnishings during the construction period; provided, however, that such activity on the part of the Lessee shall be done only in such manner as not to interfere with construction and that Lessor shall not be liable to Lessee for damage to or loss of such fixtures, equipment or furnishings.

Parking and Common Areas

16. Lessor shall at its own expense construct and maintain at all times during the term of this lease a parking area on that portion of the premises on which the shopping center shall be erected, designated as "Parking Area" on the rental plan hereto attached marked Exhibit A. Said parking and common areas shall be for the joint use of all lessees of the Lessor in the shopping center and for the use of the customers, employees, visitors and invitees of said lessees for driveway, walkway or parking purposes. The parking and common areas shall be kept in good order and repair and reasonably free from obstruction by the Lessor.

The lighting equipment to be provided and maintained by the Lessor shall be adequate to provide for the entire parking area an average of at least one foot candle of intensity at ground level. The parking area shall be striped<sup>at all times</sup> and there shall be adequate directional markers indicating the entrances to and exits from the parking areas. Lessor shall keep parking area lit during Lessee's normal business hours but not after 9 P.M.

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Lessor shall designate an area in said parking area for the parking of employees' cars. Employees of the Lessee shall be permitted to park their cars only in the area designated for employee parking.

Lessee agrees that trailers and trucks shall deliver merchandise to the premises only through the access roads at the rear of the demised premises and trucks delivering merchandise to the Lessee will not be permitted to obstruct such access roads for unreasonable length of time.

Cost of  
Common  
Area Main-  
tenance

17. Tenant agrees to pay to Landlord, within fifteen (15) days after the end of each quarter, Tenant's prorata share of Landlord's actual expense for lighting and cleaning the parking area, and common areas, including the outside public restrooms thereon, if any, and the operation, maintenance and supervision (not including a police officer, night watchman or traffic controller) of the parking lot and its appurtenances and common areas, the replacement of light bulbs when necessary, the restriping of pavement markings, ordinary repairs to the parking area space and its appurtenances (excluding any replacement thereof) public liability and property damage insurance on the common areas. Tenant's prorata share shall be determined by multiplying said actual expense by a fraction, the numerator of which is the number of square feet of ground floor area contained in the building or buildings occupied by Tenant in said center and the denominator of which is the number of feet of ground floor area in all buildings or enclosures in said center. Tenant shall have the right to audit such expenses at reasonable times. Any other repairs to said parking area shall be at Landlord's sole expense. Nothing herein contained shall be construed to require Landlord to provide a police officer, night watchman or traffic controller for said shopping center or the parking or common areas thereof; it being understood and agreed that the prorata share shall not exceed \_\_\_\_\_¢ per square foot for the first ten (10) years of this lease and shall not exceed \_\_\_\_\_¢ per square foot for the next five (5) years, or any extended term thereafter.

Use of  
Premises

18. It is understood, and Lessor so agrees, that the demised premises, during the term hereof, shall be used and occupied by Lessee as a place of business for the conduct of a junior size discount department store.

Should at any time during the term of this lease this provision be violated, the Lessor shall have the immediate right to declare the lease in default and take such steps as may be permitted the Lessor in the event of default under the terms of this lease.

Lessee agrees that at all times during the term of this lease it shall:

1. Keep the demised premises and all show windows and signs and any loading dock and other area allocated for the sole use of Lessee in good, neat and clean condition.
2. Keep its display windows electrically lighted during such periods of time as may from time to time be required by Lessor of substantially all other retail businesses in the shopping center, but not after 10 P.M.
3. Furnish to Lessor from time to time upon written request the license numbers of the vehicles of Lessee and its officers and employees which are then being parked in said parking area.
4. Load and unload its merchandise, equipment and supplies and remove its rubbish only by way of the truck road or tunnel and dock and service doors designated for Lessee's use; rubbish shall be removed ~~by~~ ~~contractor approved by Lessor~~ or burned in an approved incinerator.
5. Permit no act or practice which may tend to injure the building or its equipment or be a nuisance to other tenants, nor keep merchandise on or obstruct the sidewalks or areas outside the demised premises, nor conduct or permit any ~~business~~ ~~business~~, auction or going out of business sales, nor burn any rubbish in or about demised premises other than in an approved incinerator, nor change the exterior color of the demised premises or the color, size or location of any sign approved by Lessor, nor install any exterior lighting, nor permit any advertising medium or loudspeakers, radio broadcasts, etc., to be heard outside the demised premises.
6. Comply with all further rules and regulations for the use and occupancy of the shopping center as Lessor from time to time promulgates for the best interests of the shopping center, provided that Lessor shall furnish to Lessee written notice of all rules and regulations proposed to be promulgated if Lessee disputes the reasonableness of any such rules and regulations, Lessee shall so notify Lessor within ten (10) days after the receipt of such notice of the promulgation thereof and the dispute shall be settled by arbitration by and in accordance with the rules then obtaining of the American Arbitration Association. Lessor shall have no liability for violation by any other lessee of any rules or regulations nor shall violation or the waiver thereof excuse Lessee from compliance.

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7. Lessee will keep the sidewalk and curb in front of ~~or adjacent to~~ the demised premises free of snow, ice, and debris, and Lessee shall save harmless the Lessor from all damages or claims for damages for failure to do so.

Lessor reserves the right to refuse admission outside ordinary business hours to the shopping center and the demised premises to any person not known or properly identified to any watchman in charge; to eject any person from the shopping center whose conduct may tend to be harmful to the safety and interests of the tenant and the property therein; to close any part of the shopping center during any riot or other commotion where person or property may be imperilled; all of the foregoing to be without liability to Lessee.

Lessee shall not maintain or display any sign, lettering or lights on the exterior of the demised premises unless approved by Lessor in writing. No rights are granted to Lessee to use the outer walls or the roof of the demised premises, without Lessor's written consent. Lessor agrees, however, that upon receipt of any such request from Lessee that it will reply thereto as promptly as is reasonably possible.

Lessor shall not be liable for any damages caused by or growing out of any breakage, leakage, getting out of order or defective condition of the electric wiring, air conditioning pipes, closets or plumbing, heating equipment, or other facilities serving the demised premises subsequent to one year from occupancy date. Lessee will comply at all times and in all respects with all applicable laws and ordinances relating to nuisances in the use of the demised premises, and Lessee will not by any act or omission render the Lessor liable for any violation thereof or permit the same to be done and will take good care of said demised premises at all times. Lessor shall not be liable for any damages caused by, or growing out of, any defects in said building or any part thereof, or in said demised premises or any part thereof, or (except to the extent provided in Paragraph 34 hereof) caused by, or growing out of fire, rain, wind or other causes beyond Lessor's control.

Restrictions on Use

19. Lessee shall not use nor permit the demised premises to be used for any purpose other than that set forth in Paragraph 18 above, and further covenants and agrees to execute and comply promptly with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments regulating the use by Lessee of the demised premises. Lessee will not use, or permit the use of the premises, in any such manner that will tend to create a nuisance or tend to unnecessarily disturb other tenants or occupants of the shopping center or tend to injure the reputation of the shopping center. The restrictions set forth in this paragraph shall extend to all agents and employees of Lessee.

Alterations

20. Lessee shall not make any <sup>major</sup> alterations or additions to the demised premises nor make any contract therefor without first procuring Lessor's written consent which consent shall not be unreasonably withheld. All alterations, additions, and improvements made by Lessee to or upon the demised premises, except light fixtures, signs, electrical equipment, cases, counters or other removable trade fixtures, shall at once when made or installed be deemed to have attached to the freehold and to have become the property of Lessor; provided, however, if prior to termination of this lease, or within fifteen (15) days thereafter, Lessor so directs by written notice to Lessee, Lessee shall promptly remove the additions, improvements, fixtures, trade fixtures and installations which were placed in the demised premises by the Lessee and which are designated in said notice and shall repair any damage occasioned by such removal and in default thereof Lessor may effect said removals and repairs at Lessee's expense.

Repairs by Lessor

21. Lessor agrees to repair and maintain in good order and serviceable condition; (a) the roof, roof drains, outside walls, foundations, and structural portions (both interior and exterior) of the demised premises; and (b) such of the pipes, wires, conduits, sewers and drains in, about

or in the vicinity of the demised premises as are or may be installed by or are under the control of Lessor and which serve not only the demised premises but also other portions of the shopping center and all such located outside the demised premises which serve the demised premises only. There is excepted from this covenant, however:

- (a) Repair or replacement of broken plate or window glass;
- (b) Repair of damage caused by the negligence of Lessee, its employees, agents, contractors, customers, invitees, and licensees;
- (c) Interior repainting and redecoration; and
- (d) Repairs which are the responsibility of Lessee in accordance with Paragraph 22 hereof.

Repairs by Lessee

22. Lessee agrees to repair and maintain in good order and condition the non-structural interior portions of the demised premises, including the store fronts, show windows, doors, windows, plate and window glass, elevators, escalators, and floor coverings, and the plumbing, heating, air-conditioning, electric, and sewerage systems, facilities and appliances, located in and serving the demised premises only.

Lessee shall comply with the requirements of all laws, orders, ordinances and regulations of all governmental authorities, and shall not use the premises in violation thereof. Nothing herein contained, however, shall obligate Lessee to make any structural changes, alterations, installations or improvements required by such authorities (unless required as a result of alterations made by Lessee or as a result of any use made of the demised premises by Lessee which is more hazardous than the use for which the demised premises are let) and such changes, alterations, installations and improvements shall, if not within the purview of the immediately preceding parenthetical exception, be made by and at the expense of Lessor.

If repairs are required to be made by Lessee pursuant to the terms hereof, Lessor may demand (but shall not be required so to do) that Lessee make the same forthwith, and if Lessee refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Lessor may make or cause such repairs to be made and

shall not be responsible to Lessee for any loss or damage that may accrue to its stock or business by reason thereof, and if Lessor makes or causes such repairs to be made, Lessee agrees that it will forthwith, on demand, pay to Lessor the cost thereof with interest at six (6%) percent per annum, and if it shall default in such payment, Lessor shall have the remedies provided in Paragraph 36 hereof. Likewise, if repairs are required under the terms hereof to be made by Lessor and it fails or refuses, after demand by Lessee to make such repairs, then Lessee shall have the right, at its option, to make such required repairs and deduct the cost thereof from the rent next accruing.

Waiver of  
Claim

23. Neither Lessor nor Lessor's agent, nor servants, shall be liable for any loss of, or damage to, any property of Lessee or others from or upon said demised premises, other than the loss or damage resulting from the negligent act or omission of Lessor or its agents, servants or employees, while acting within the line and scope of their employment as such, subsequent to the acceptance of possession of the demised premises by Lessee.

Lessor's  
Right to  
Inspect

24. Lessor and its agents shall have free access to the demised premises during all reasonable hours for the purpose of examining the same and to ascertain if they are in good repair, to make reasonable repairs which the Lessor may be required to make hereunder and to exhibit the same to prospective purchasers or tenants.

Cleanliness  
and Waste

25. Lessee shall keep the demised premises and the front walks adjacent thereto at all times in a neat, clean and sanitary condition, free from snow, ice, waste and debris, and shall neither commit nor permit any waste or nuisance thereon.

Insurance  
by Lessee

26. Lessee agrees that, at its own cost and expense, it shall procure and continue in force, in the names of the Lessor and Lessee, general liability insurance against any and all claims for injuries to persons occurring in, or upon the demised premises, including all damage from signs, glass, awnings, fixtures, or other appurtenances, now, or hereafter erected upon the demised premises, during the term of this

lease, such insurance, at all times, to be an amount not less than \$200,000.00

Dollars for injuries to persons in one accident, and not less than \$100,000.00 Dollars

for injury to any one (1) person. Such insurance shall be written in a company, or companies, authorized to engage in the business of general liability insurance in the state in which the demised premises are located, and there shall be delivered to the Lessor customary certificates evidencing such paid up insurance, which certificates are to be issued by the insurance companies.

The policies of insurance provided herein are to be provided by the Lessee, and shall be for a period of not less than one (1) year, it being understood and agreed that fifteen (15) days prior to the expiration of any policy of insurance the Lessee will deliver to the Lessor a certificate evidencing renewal or new policy to take the place of the policy expiring with further understanding that, should the Lessee fail to furnish such certificate as is provided in this lease, and at the times herein provided, the Lessor may obtain such insurance and the premiums on such insurance shall be deemed additional rental to be paid by the Lessee unto the Lessor upon demand.

Indemnity  
for Acci-  
dents

27. Lessee covenants and agrees that it will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damage or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee, and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all claims, loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about the demised premises, causing injury to any person or property whomsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions of this lease.

Insurance

28. Lessor shall procure and maintain at its own expense during the term of this lease, fire, windstorm and extended coverage insurance on the demised premises and all other buildings in the shopping center to the full extent of the insurable value.

Lessor shall make no claim for recovery against Lessee and expressly waives any right of recovery against Lessee for damage to or loss of the leased premises or improvements thereon which damage or loss may arise by fire or any other peril covered by any policy of insurance containing a waiver of subrogation right against the Lessee in which said policy the Lessor is or may be the assured and when said loss is caused by or results from any acts of carelessness or negligence of the Lessee, its officers, agents, employees or other persons under its control. Lessor further covenants and agrees to apply to its insurers for waiver of subrogation against Lessee, its agents and employees and to obtain same if Lessor's insurers will issue such waiver without cost; provided, however, that if Lessor's insurers will not issue such waiver without cost but will issue same for a charge and the Lessee shall elect to pay such charges, Lessor will obtain such waiver and charge the additional cost thereof to Lessee.

It is understood and agreed that Lessee assumes all risk for loss or damage to its own property whether the same be lost or damaged by fire, theft or other casualty or otherwise.

Title and Possession

29. (a) Lessor covenants and warrants that it has full right and authority to enter into this lease for the full term hereof and that it will deliver the demised premises free and clear of all tenancies or occupancies. Lessor further covenants that Lessee, upon paying the fixed minimum and percentage rent provided for herein and upon performing the covenants and agreements of this lease to be performed by said Lessee, will have, hold and enjoy quiet possession of the demised premises.

~~(b) Lessor covenants with Lessee that they will not operate nor lease any space in the Shopping Center, in~~

including any extension of said Center, to another variety store or what is commonly called a "five and ten cents store", during the term of this contract, or any extension herein granted; and Lessor shall refuse to allow any of their tenants to sublease a part or all of any space, for the operation of a variety store.

Surrender  
of Premises

30. Lessee shall, upon termination of this lease whether by lapse of time or otherwise, surrender to Lessor the demised premises, together with all replacements there- to in good order, condition and repair, except for ordinary wear and tear and loss by fire or other casualty.

Mortgages  
by Lessor

31. Lessee agrees that, except as hereinafter provided with respect to Lessee's right to possession of the premises, Lessee's rights under this lease are and shall always be subordinate to the lien of any mortgage or mortgages or trust deed now or hereafter placed from time to time upon the land and building of which the premises are a part, and to all advances hereafter made from time to time upon the security thereof. Lessee shall, upon written demand from Lessor, execute such other and further instruments or assur- ances subordinating this lease to the lien or liens of any such mortgage or mortgages or trust deeds except as herein- after limited with respect to Lessee's right to possession. Lessee's possession and right of use under this lease in and to the demised premises shall not be disturbed by any mort- gages, trustee under a trust deed, owner or holder of a note secured by a mortgage or trust deed hereafter placed on the shopping center or any part thereof, unless and until Lessee shall breach any of the provisions of this lease and the lease term or Lessee's right to possession shall have been lawfully terminated in accordance with the provisions of this lease. If any mortgagee or trustee under a trust deed elects to have Lessee's interest in this lease superior to any such interest by notice to Lessee, then this lease shall be deemed superior to any such mortgage or trust deed wheth- er this lease was executed before or after such mortgage or trust deed.

Sublease

32. Lessee shall not sublease, sublet or assign or any part thereof the demised premises except by written permission and consent of Lessor, reference elsewhere herein to assignees notwithstanding; and Lessor shall not unreasonably withhold such consent or permission but may, as a condition thereto, require the undertaking or guarantee of such assignee or sublessee not to engage in business activities in conflict with specifically enumerated "non-competitive" or "exclusive" provisions in the lease of other lessees of Lessor conducting business in the shopping center of which the demised premises are a part. Any such subleasing or assignment, even with the approval of the Lessor, shall not relieve the Lessee from liability for payment of the rental herein provided or from the obligations to keep and be bound by the terms, conditions and covenants of this lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this lease or a consent to the assignment or subletting of the demised premises.

Notwithstanding the provisions of this Paragraph, in the event that Lessee shall be reorganized, or shall be merged or consolidated with, or shall sell all or substantially all of its assets to any other corporation, the resulting, surviving, or successor corporation which shall, as the result of such reorganization, merger, consolidation or sale, succeed to substantially all of the assets of the business of Lessee, and which shall in writing undertake and assume all of the liabilities and obligations of Lessee under this lease, and which shall have a net worth at least equivalent to that of the Lessee, shall automatically and without the necessity of further assignment become and be the Lessee under this lease in accordance with and subject to all of the terms, provisions and conditions hereof. Whereupon, the original Lessee, if it shall not be the corporation surviving such reorganization, merger, or consolidation shall be relieved and released from all obligations hereof.

Signs

33. Lessee shall not erect or install any sign or signs on the exterior of the demised premises without first obtaining the written consent of Lessor, which consent the Lessor shall not unreasonably withhold. Lessee specifically agrees not to install any exterior signs having exposed neon tubing.

Destruct-  
ion by Fire  
or Cas-  
ualty

34. If at any time during the term of this lease the demised premises leased to Lessee hereunder or the buildings then comprising the shopping center (whether or not the demised premises are damaged), be so extensively damaged by fire or other casualty that more than fifty percent (50%) of the rental space in said demised premises or buildings is rendered untenable, then in such event, the Lessor shall have no obligation to but may elect to restore said demised premises or said shopping center buildings, as the case may be, to substantially the same condition as existed before said fire or other casualty occurred, or Lessor may elect to cancel this lease. Lessor shall give written notice of such election to Lessee within sixty (60) days after said fire or other casualty occurred. In the event Lessor elects to restore said demised premises or said shopping center buildings, as the case may be, as aforesaid, and gives written notice of said election to the Lessee within said time, then and in those events, the Lessor will so restore said demised premises and/or shopping center buildings, as the case may be, as soon thereafter as the Lessor can do so by the exercise of reasonable diligence, and the fixed minimum rental shall be abated or reduced proportionately during any period in which, by reason of such damage or destruction, there is substantial interference with the operation of the business of Lessee in the demised premises, having regard to the extent to which Lessee may be required to discontinue or limit its business in the demised premises, and such abatement or reduction shall continue for a period commencing with such destruction or damage and ending with the completion by Lessor of the necessary work of restoring the demised prem-

ises or buildings so damaged or destroyed. In the event Lessor elects to cancel this lease under the aforesaid terms and provisions of this article, and gives written notice of said election to the Lessee within said time, then, and in those events, this lease shall cease and determine without further notice, upon the expiration of thirty (30) days from the date said notice is given to the Lessee. In the event Lessor fails, within said period of sixty (60) days, to elect to so restore said demised premises and/or said shopping center buildings so damaged or destroyed, and fails within said time, to elect to cancel this lease, then and in those events, the Lessee may, within thirty (30) days thereafter terminate this lease on account of such damage to or destruction of said demised premises and/or said shopping center buildings as aforesaid, upon written notice of such election to the Lessor. In the event the Lessee, having the right so to do, fails within said said thirty (30) days to terminate this lease, then and in that event this lease shall be and remain in full force and effect, but Lessee shall not be obligated for any rental after the date of destruction; however

If within three years after the date of destruction Lessor shall rebuild the demised premises and/or the shopping center buildings, after same has been totally destroyed, and such rebuilding shall occur before July 1, 1976, then Lessee shall elect whether or not it will resume the use, occupancy, and possession of the demised premises, and if it does, then this lease-contract shall revive and shall be the same with the only changes being that the period of the term of this revived lease-contract shall commence on the day the restoration is completed and continue for the period of ten (10) years.

In the event said demised premises and/or said shopping center buildings, as the case may be, are so damaged to the extent of fifty per cent (50%) or less, then and in that event, the Lessor will restore said demised premises and/or said shopping center buildings, as the case may be, to substantially the same condition that existed before said fire or other casualty occurred, as soon thereafter as Lessor

can do by the exercise of reasonable diligence; and the fixed minimum rental shall be abated or reduced proportionately during any period in which, by reason of such damage, there is substantial interference with the operation of the business of Lessee in the demised premises, having regard to the extent to which Lessee may be required to discontinue or limit its business in the demised premises, and such abatement or reduction shall continue for the period commencing with such damage and ending with the completion by Lessor of the necessary work of restoring the demised premises or buildings so damaged. Nothing contained in this section shall be construed to abate or reduce or affect in any way the percentage rental payable by Lessee under the terms and provisions of this lease. There shall be such abatement or proration of the service charge for maintenance and repair of the parking area mentioned in Paragraph 17 entitled "Cost of Common Area Maintenance" of this lease as may be fair and equitable having due regard for any lessened use of the parking areas on consequence of such damage or destruction.

Eminent Domain

35. If the demised premises, or such portion thereof as renders the balance unsuitable for the purposes of Lessee, shall be taken by condemnation or right of eminent domain, either party, upon written notice to the other, shall be entitled to terminate this lease, provided that such notice is given within thirty (30) days after Lessee has been deprived of possession by such taking.

Out of any award for any taking of the demised premises, in condemnation proceedings, or by right of eminent domain, Lessor shall be entitled to receive and retain the amounts awarded for such demised premises, except that Lessee shall be entitled to receive and retain only any amounts which may be specifically awarded to it in any such condemnation proceedings because of the taking of its trade furniture or fixtures and its leasehold improvements which have not become part of the realty, but not otherwise. It is understood in the event of the termination of the lease

as aforesaid, Lessee shall have no claim against Lessor for the value of any unexpired term of its lease and no right or claim to any part of the award on account thereof.

In the event this lease is not terminated in accordance with the provisions of the first paragraph of this Paragraph 35 and Lessor undertakes the restoration of the demised premises and in the event, while said restoration work is being done, there is substantial interference with the operation of Lessee's business on the demised premises resulting from such work, the minimum rental shall be abated or reduced proportionately and to the extent that is fair and equitable having regard to the extent to which Lessee may be required to discontinue or limit its business in the demised premises on account of such restoration work, and such abatement or reduction shall continue for the period commencing with the date Lessee is so deprived of possession by such taking and ending with the completion by Lessor of such restoration work. Otherwise there shall be no abatement or reduction in the payment of fixed minimum rent, percentage rental, or other rent which may be due under the terms and provisions hereof, and after said restoration work has been completed, Lessee shall resume full payment of all rents as provided for under the terms and provisions of this lease. Nothing herein contained shall be construed to abate or reduce or effect in any way the percentage rental payable by the Lessee under the terms and provisions of this lease. There shall be such abatement or proration of the charge for maintenance and repair of the parking and common areas mentioned in Paragraph 17 entitled "Cost of Common Area Maintenance" of this lease as may be fair and equitable having due regard for any lessened use of the parking and common areas, if affected, in consequence of such taking by condemnation or eminent domain. In event of reduction in size of building then minimum rent will be reduced proportionately.

36. Lessee shall pay promptly all charges for heat, light, gas, water, sewer service charges and power used in or upon the demised premises; shall pay promptly for garbage and sewage removal and waste removal, if any, and shall pay

Utilities  
and  
Liens

promptly all bills for materials furnished or labor performed for Lessee, or at Lessee's instance and request in connection with any repairs, alterations, improvements, decorating, installation of fixtures and equipment on the demised premises and to keep said demised premises free from all claims for liens for work, labor or materials, or account thereof.

Solicitation of Business

37. Lessee and Lessees' employees and agents shall not solicit business in the parking or other common areas, nor shall Lessee distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

Default

38. All rights and remedies of Lessor herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. It is agreed that in the event:

(a) That the Lessee shall fail, neglect or refuse to pay any installment of fixed minimum rent or percentage rent at the time and in the amount as herein provided, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due and payable under the terms hereof, and if any such default should continue for a period of more than thirty days (30) after notice thereof in writing given to the Lessee by the Lessor;

(b) That any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act shall be filed by or against Lessee, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare Lessee insolvent or unable to pay Lessee's debts, and the same shall not be dismissed or discharged within thirty (30) days after notice thereof in writing given to the Lessee by Lessor;

(c) That the Lessee shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations, or agreements herein contained and covenanted and agreed to be kept and performed by it, and in the event any such default shall continue for a period of more than thirty (30) days after notice thereof in writing given to the Lessee by the Lessor; provided, however, that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than the period of such notice, the Lessee shall be deemed to have complied with such notice so long as it has commenced to comply with said notice within the period set forth in the notice and is diligently prosecuting compliance with said notice, or has taken proper steps or proceedings, under the circumstances to prevent the seizure, destruction, alteration, or other interference with said demised premises by reason of noncompliance with the requirements of any law or ordinance or with the rules, regulations or directions of any governmental authority as the case may be;

(d) That the Lessee makes any assignment of its property for the benefit of creditors or should the demised premises be taken under a levy of execution or attachment in an action against the Lessee and such levy, attachment or assignment is not dismissed, and discharged within thirty (30) days after written notice thereof to Lessee by Lessor,

the Lessee does hereby authorize and fully empower said Lessor or Lessor's agent to cancel or annul this lease at once and to re-enter and take possession of said demised premises immediately and by force if necessary, without any previous notice of intention to re-enter, and remove all persons and their property therefrom, and to use such force and assistance in effecting and perfecting such removal as said Lessor may deem necessary and advisable to recover at once full and exclusive possession of all said demised premises whether in possession of said Lessee or of third persons or otherwise.

The Lessor may, however, at its option, at any time after such default or violation of condition or covenant, re-enter and take possession of said demised premises without such re-entering working a forfeiture of the rents to be paid and the covenants, agreements and conditions to be kept and performed by said Lessee for the full term of this lease. In such event the Lessor shall have the right, but not the obligation, to divide or subdivide the demised premises in any manner the Lessor may determine and to lease or let the same or portions thereof for such periods of time and at such rentals and for such use and upon such covenants and conditions as Lessor may elect, applying the net rentals from such letting first to the payment of Lessor's expenses incurred in dispossessing the Lessee and the costs and expenses of making such improvements in the demised premises as may be necessary in order to enable the Lessor to relet the same, and to the payment of any brokerage commissions or other necessary expenses of the Lessor in connection with such reletting. The balance, if any, shall be applied by the Lessor from time to time, but in any event, no less than once each month, on account of the payments due or payable by the Lessee hereunder, with the right reserved to

Lessor to bring such actions or proceedings for the recovery of any deficits remaining unpaid as it may deem advisable from time to time, without being obligated to wait the end of the term hereof for a final determination of the Lessee's account and the commencement or maintenance of one or more actions shall not bar the Lessor from bringing other or subsequent actions for further accruals pursuant to the provisions of this paragraph.

Any balance remaining, however, after full payment and liquidation of Lessor's account as aforesaid, shall be paid to the Lessee from time to time with the right reserved to the Lessor at any time to give notice in writing to the Lessee of Lessor's election to cancel and terminate this lease and all Lessee's obligations hereunder and upon the giving of such notice and the simultaneous payment by Lessor to Lessee of any credit balance in Lessee's favor that may at the time be owing to Lessee shall constitute a final and effective cancellation and termination of this lease and the obligations thereunder on the part of either party to the other.

In computing damages or rental due under this lease the value of percentage rent for any period subsequent to the termination of this lease or the termination of Lessee's right of possession shall be an amount per year equal to one-third of the total percentage rent paid by Lessee for the last six full lease years immediately preceding such termination and if less than six full years shall have elapsed such value shall be an amount per year equal to the average yearly percentage rent therefore paid by the Lessee.

Increased  
Taxes

~~39. Lessor will pay in the first instance all real property taxes which may be levied or assessed by any lawful authority against the land and improvements in the Shopping Center. If the amount of the real property taxes levied or assessed against the land and building of which the leased premises form a part shall in any lease year exceed the amount of such taxes during the third full tax year, the Lessee shall pay as additional rent Seventy Percent (70%) of~~

*me*  
*MB*  
*[Signature]*

*WFS*  
*[Signature]*  
*me*

~~that portion of such excess as the demised premises bear to the total gross rental area of the entire Shopping Center. The term "Third full tax year" shall mean the third lease year in which the building of which the leased premises form a part shall have been assessed as a completed building. The tax year of any lawful authority commencing during any lease year shall be deemed to correspond to such lease year. The additonal rent provided for in this Paragraph 39 shall be paid within twenty (20) days after demand therefor by Lessor. A tax bill submitted by Lessor to Lessee shall be sufficient evidence of the amount of taxes assessed or levied against the parcel or real property to which such bill relates.~~

Default  
by  
Lessor

40. Lessor shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within a reasonable time after notice by Lessee to Lessor properly specifying wherein Lessor has failed to perform any such obligation.

Notices

41. Whenever under this Lease a provision is made for any demand, notice or declaration of any kind or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other, it shall be in writing sent by registered or certified mail with postage prepaid, if to Lessee, addressed to Lessee at 2516 Sixth Ave., So. B'ham, Alabama, and if to Lessor, addressed to Lessor at Alabaster, Alabama,, and either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or given for all purposes hereunder at the time they shall be mailed by United States registered or certified mail as aforesaid.

Waiver

42. One or more waivers of the breach of any covenant, term or condition of this lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent

or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Understanding

43. Both parties hereto agree that this document embodies the entire understanding existing between them, and that in the future no agreements made shall be binding on either party unless such agreements are immediately incorporated into proper legal form, and properly executed by the duly authorized officers of both parties.

Relationship of Parties

44. Nothing contained in this lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

Laws of Alabama

45. The laws of the State of Alabama shall govern the validity, performance and enforcement of this lease.

Saving Clause

46. The invalidity or unenforceability of any provision of this lease shall not affect or impair the validity of any other provision.

47. So long as Lessee is not in default hereunder, Lessor agrees not to lease space in the shopping center during the term of this lease or any extension or renewal thereof to another store operated or known to the general public as a junior size discount department store.

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48. If Lessee be not then in default hereunder, Lessee shall have and is hereby given the option to extend the term of this lease for <sup>three</sup> ~~one~~ additional successive term of FIVE (5) <sup>each</sup> years/by giving Lessor written notice of its election so to do at lease six (6) months in advance of the expiration of the primary term of this lease.

49. The percentage of gross sales as defined in Paragraph 6 heretofore shall be \_\_\_\_\_ percent up to and including \_\_\_\_\_ Dollars; then \_\_\_\_\_ percent of gross sales from \_\_\_\_\_ Dollars to and including \_\_\_\_\_ Dollars; then \_\_\_\_\_ percent of gross sales in excess of \_\_\_\_\_ Dollars.

50. The paragraph titles herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

51. It is agreed that the provisions, covenants and conditions of this lease shall bind and inure to the benefit of the legal representatives, successors and assigns of the respective parties hereto.

Additional  
Terms of  
Lease

52. The following provisions shall apply irrespective of any other provisions hereof to the contrary notwithstanding:

1. Lessee shall not be liable for payment of any rent in excess of minimum rent provided for in Paragraph 5 from occupancy date to December 31, 1964.

2. If subject premises are not ready for occupancy by October 15, 1964 then Lessee shall have option not to occupy until March 1, 1965.  
and 21

3. Provisions of paragraph 22/above shall not apply to any repairs during the first 12 months of this lease which repairs are the responsibility of the general contractor who constructed the premises under his general warranty contract.

4. Lessor covenants that neither it nor Henry G. Cardwell nor any corporation controlled by either of them, directly or indirectly, will operate or lease any space within a 4,000 foot radius of the Shopping Center as a junior size discount department store. Lessor covenants that it will not operate nor lease any space in the Shopping Center, including any extension of said Center, to a general clothing store or a discount store, or a department store, it being understood that the foregoing shall not prevent Lessor from leasing any space for a specialty store such as a ladies shop, a children's shop, or a men's and/or boy's shop, during the term of this contract, or any extension herein granted; and Lessor shall refuse to allow any of its tenants to sublease a part or all of any space, for the operation of any such business.

5. Upon request by Lessee at any time during the term of this lease or any extension thereof by exercise of option to renew, Lessor agrees to construct at its expense an addition to the rear of the subject premises 50 feet deep and of the same height and width as subject premises. Simultaneous with such request by Lessee this lease for the subject premises and the said addition thereto shall automatically be extended for a period of seven years at the same rental hereinabove mentioned plus an additional rental of one dollar (\$1.00) per square foot of floor space for the said addition. Plans and specifications for said addition are to be prepared by Harry D. Hester or some other architect selected by Lessor. It is understood and agreed that said addition shall not be constructed for warehouse or stock area only, but shall compliment entire building area by the moving if necessary of rear partition, plumbing, air conditioning, etc., or whatever may be necessary.

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

In Presence of:

\_\_\_\_\_

ALABASTER SHOPPING CENTER, INC.,

By: \_\_\_\_\_

President

(Lessor)

In Presence of:

\_\_\_\_\_

BARGAIN TOWN U.S.A., INC.

By: \_\_\_\_\_

SECRETARY  
President

PRESIDENT

(Lessee)

STATE OF ALABAMA )  
COUNTY OF SHELBY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that HENRY G. CARDWELL, whose name as President of Alabaster Shopping Center, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 4th day  
of AUGUST, 1964.

Walter S. Miner  
Notary Public

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, \_\_\_\_\_, the undersigned \_\_\_\_\_, a Notary Public in \_\_\_\_\_  
and for said County in said State, hereby certify that \_\_\_\_\_  
\_\_\_\_\_, whose names as Secretary and President of  
BARGAIN TOWN U.S.A., INC. \_\_\_\_\_, a corporation,  
are signed to the foregoing instrument, and who are known to me,  
acknowledged before me on this day that, being informed of the  
contents of the instrument, they as such officers and with full  
authority, executed the same voluntarily for and as the act of  
said corporation.

Given under my hand and official seal, this 4 day of  
AUGUST, 1964.

Juanita E. Carter  
Notary Public

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS INSTRUMENT  
WAS FILED ON 8 AM  
12/30 1964  
RECORDED & S. ✓ TAX  
& 53700 TAX 11 DOLLARS  
PD. ON THIS INSTRUMENT.

Comd. M. S. S. S.  
JUDGE OF PROBATE