

00-445-CD
GREATER PHILIPSBURG ASSOCIATES, INC. et al. -vs- AMES PLAZA CVS,
INC.

CLARFIELD, PENNSYLVANIA 16830
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ATTORNEY AT LAW
JAMES A. NADDEO

Lap over margin

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GREATER PHILIPSBURG
ASSOCIATES, INC., in its capacity as
general partner of GREATER
PHILIPSBURG ASSOCIATES II, a
Pennsylvania Limited Partnership,

Plaintiff,

v.

AMES PLAZA CVS, INC.,

Defendant.

CIVIL ACTION

NO. 00-445-CO

COMPLAINT

Filed on Behalf of Plaintiff:
Greater Philipsburg Associates, Inc.

Counsel of Record for this Party:

James A. Naddeo
PA I.D. No. 06820

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GREATER PHILIPSBURG ASSOCIATES,)	CIVIL ACTION
INC., in its capacity as general partner of)	
GREATER PHILIPSBURG ASSOCIATES II,)	NO.
a Pennsylvania Limited Partnership,)	
)	
Plaintiff,)	
)	
v.)	
)	
AMES PLAZA CVS, INC.,)	
)	
Defendant.)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER
AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO
OR TELEPHONE THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET LEGAL HELP.**

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CLEARFIELD COUNTY COURT HOUSE
COURT ADMINISTRATOR'S OFFICE
230 E. MARKET STREET, SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641 X. 1300 OR X 1301

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

GREATER PHILIPSBURG ASSOCIATES,)	CIVIL ACTION
INC., in its capacity as general partner of)	
GREATER PHILIPSBURG ASSOCIATES II,)	NO.
a Pennsylvania Limited Partnership,)	
)	
Plaintiff,)	
)	
v.)	
)	
AMES PLAZA CVS, INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, Greater Philipsburg Associates, Inc., in its capacity as general partner of Greater Philipsburg Associates II, a Pennsylvania Limited Partnership, by and through its undersigned counsel, files the within Complaint to Quiet Title, averring as follows:

I. PARTIES AND PREMISES

1. Currently operating as a CVS pharmacy, the premises which comprises the subject of this lawsuit is an improved shopping center plot located on U.S. Route 322 and Township Road T-138 in the township of Decatur, County of Clearfield, Commonwealth of Pennsylvania (hereinafter designated as the "subject premises").

2. On or about May 24, 1989, Libby & Libby, a Pennsylvania general partnership, entered into a Lease Agreement with Fay's Drug Company, Inc. relative to Fay's occupancy and operation of the subject premises as a retail drug store. A copy of this May 24, 1989 Lease Agreement is attached hereto as Exhibit "A." A copy of the March 30, 1992 Memorandum of

Lease, the original having been duly recorded, is attached hereto as Exhibit "B". (Exhibits "A" and "B", collectively, are hereinafter designated as the "Lease").

3. Subsequent to the execution of the Lease, Libby & Libby assigned its rights as landlord under the Lease to the Plaintiff, Greater Philipsburg Associates II, a Pennsylvania Limited Partnership (hereinafter designated as "Philipsburg Associates"). Greater Philipsburg Associates, Inc., a corporation formed and existing under the laws of the Commonwealth of Pennsylvania, is the general partner of Philipsburg Associates.

4. On or about January 23, 1993, Defendant, Ames Plaza CVS, Inc., a wholly owned subsidiary of CVS Corporation (hereinafter designated as the "Defendant"), acquired Fay's Drug Company, Inc.'s tenant rights under the Lease by assignment. Copies of pertinent correspondence evidencing this assignment are attached hereto as Exhibits "C" and "D" respectively.

5. Currently, Philipsburg Associates owns the subject premises and acts as landlord pursuant to the Lease.

6. The Defendant currently possesses the subject premises as tenant, and operates same as a retail drug store.

II. FACTUAL BACKGROUND

7. The averments set forth at Paragraphs 1 through 7 hereof are incorporated by reference as though set forth at length.

8. The rent commencement date under the Lease was the 2nd day of May, 1990, and the 10-year Lease term terminates on the 31st day of May, 2000. See Exhibit "B" at p. 1, ¶1.

9. While the Lease afforded the Defendant the option to extend the Lease term on or before September 4, 1999, the Defendant failed to exercise its option in this regard. See Exhibit "A" at p. 3, ¶3; see also Exhibit "B" at p. 2, ¶6.

10. Indeed, on September 7, 1999, Philipsburg Associates expressly informed the Defendant that the Defendant's Lease renewal was due immediately, and that the Defendant's failure to exercise its option to extend the Lease term would result in the Defendant's Lease term expiring, and the subject premises being released to another tenant, as of June 1, 2000. A copy of Philipsburg Associates' correspondence in this regard is attached hereto as Exhibit "E".

11. Following the Defendant's failure to exercise its option to extend the Lease term, Philipsburg Associates expressly informed the Defendant that it was to vacate the subject premises no later than May 31, 2000. Correspondence evidencing Philipsburg Associates' notifications in this regard are attached hereto as Exhibits "F" and "G" respectively.

12. Given the Defendant's conscious failure to extend the applicable May 31, 2000 Lease expiration date, no holdover right exists pursuant to the Lease or otherwise.

13. Notwithstanding the rapidly-approaching May 31, 2000 Lease expiration date, and Philipsburg Associates' request that it do so (See Exhibit "G"), the Defendant has yet to contact Philipsburg Associates regarding its timely vacation of the subject premises; i.e. with respect to removal of signs, removal of inventory and trade fixtures, estimated move-out date, etc.

14. To the contrary, evidence of the Defendant's intention to improperly hold over beyond the Lease term exists by virtue of the Defendant having entered into an alternative leasing arrangement with another local developer, occupancy to commence approximately six months after the expiration of Defendant's current Lease with Philipsburg Associates.

15. Should the Defendant hold over beyond the Lease expiration date, however, Philipsburg Associates will suffer prejudice insofar as it has the opportunity to procure a replacement tenant for the subject premises; said tenant having the ability to commence occupancy as early as June 1, 2000.

16. The Defendant's failure to apprise Philipsburg Associates of the time and manner in which it will vacate the subject premises is further evidence that it intends to hold over beyond Lease expiration date, thereby prejudicing Philipsburg Associates in its negotiations with prospective tenants.

III. ACTION TO QUIET TITLE

17. The averments set forth at Paragraphs 1 through 17 hereof are incorporated by reference as though set forth in their entirety.

18. Pursuant to the Lease provisions as above-described, the Defendant will have no estate, title, right or possessory interest in the subject premises after May 31, 2000.

19. However, by its failure to acknowledge that no holdover right exists in this regard, and its failure to apprise or cooperate with Philipsburg Associates relative to a timely vacatin of the subject premises, the Defendant has effectively asserted an unwarranted interest in - and has effectuated a cloud on the title to - the subject premises beyond May 31, 2000.

20. Notwithstanding the Defendant's current and unequivocal intention to hold over beyond the applicable Lease term, an action for ejectment cannot be maintained by Philipsburg Associates prior to its May 31, 2000 right of occupancy.

21. Adjudication of this matter must not await a May 31, 2000 action for ejectment, however, insofar as the Defendant's conduct and omissions have severely prejudiced Philipsburg

Associates in negotiating a lease of the subject premises with a prospective tenant who desires immediate occupancy.

22. Upon information and belief, Philipsburg Associates would lose the opportunity to lease the subject premises to said prospective tenant were the Defendant to breach the Lease and hold over beyond the May 31, 2000 expiration date.

23. By necessity, therefore, this Action to Quiet Title seeks immediate judicial determination and enforcement of the parties' respective rights and interests in the subject premises as of May 31, 2000.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Philipsburg Associates, prays that this Court award the following relief:

- (i) That Defendant be required to set forth the nature of any and all alleged claims to the subject premises after May 31, 2000;
- (ii) For a decree of this Court determining the merit of the Defendant's claims to the subject premises after May 31, 2000;
- (iii) For said decree to declare that, based upon the express provisions of the applicable Lease, and the proximate conduct of the parties as above-described, Defendant has no right, title or possessory interest whatsoever in or to the subject premises, or any part thereof, after May 31, 2000;
- (iv) For said decree to permanently enjoin Defendant, and any and all persons or entities claiming under it, from asserting any estate, right, title or possessory interest in the subject premises after May 31, 2000 without the express consent of the Plaintiff;

- (v) For costs of this action to Quiet Title; and
- (vi) For such other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted,


James A. Naddeo, Esquire
Attorney for Plaintiff, Greater Philipsburg
Associates, Inc.

Sable, Pusateri, Rosen, Gordon & Adams, LLC


Mike Adams, Esquire
John D. Scozio, Esquire
Attorneys for Plaintiff, Greater Philipsburg
Associates, Inc.

LEASE AGREEMENT

By and Between

LIBBY & LIBBY,
Landlord

and

FAY'S DRUG COMPANY, INC.
Tenant

for

Fay's Drug Store
PHILLIPSBURG, PENNSYLVANIA

FINAL



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LEASE

Lease, made and entered into this _____ day of _____, 1989, by and between LIBBY & LIBBY, a Pennsylvania General Partnership having its principal offices at 15001 Perry Highway, Wexford, Pennsylvania 15090 (hereinafter referred to as the "Landlord"), and FAY'S DRUG COMPANY, INC., a New York Corporation having its principal offices at 7245 Henry Clay Boulevard, Liverpool, New York 13088 (hereinafter referred to as the "Tenant").

WITNESSETH:

WHEREAS, Landlord is the present owner in fee simple of certain lands located on U.S. Route 322 and Township Rd. T-138 in the City of Phillipsburg, County of Centre, Commonwealth of Pennsylvania, more particularly described in Exhibit 1 annexed hereto and made a part hereof;

WHEREAS, Landlord proposes to make and/or has made certain improvements on said lands, as more particularly shown on the Plot Plan, dated June 8, 1987, revised December 23, 1987, annexed hereto as Exhibit 2 and made a part hereof (which improved lands are hereinafter referred to as the "Shopping Center"); and

WHEREAS, Landlord desires to lease unto Tenant, and Tenant desires to lease from Landlord the premises labeled "Demised Premises" and shown cross hatched on Exhibit 2 consisting of approximately 11,840 square feet (but in all events no less than 11,000 square feet), and the improvements now or hereafter erected on said premises (said premises and improvements hereinafter referred to as the "Demised Premises") together with the use of the parking areas, sidewalks, landscaped areas, driveways, approaches, service areas, etc., shown on Exhibit 2 (hereinafter referred to as the "Common Area"); in the event that the actual Total Area of the Demised Premises when fully constructed shall be different from the Total Area set forth above, such "as built" Total Area, as accurately determined by Landlord's architect or

engineer, shall be the area of the demised premises for all purposes of the Lease but no less than 11,000 sq. ft., and the Fixed Minimum Rent and Percentage Rent Gross Sales Base shall for all purposes herein be those amounts which bear the same relationship to the Fixed Minimum Rent and Percentage Rent Gross Sales Base herein stated that the actual "as built" Total Area bears to the Total Area set forth above.

NOW, THEREFORE, in consideration of the execution and delivery of said Lease and of One Dollar (\$1.00) in hand each paid to the other, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. Demise. Landlord does hereby lease and demise to Tenant and Tenant does hereby lease and take the Demised Premises located on U.S. Route 322 and Township Rd. T-138 in the City of Phillipsburg, County of Centre, Commonwealth of Pennsylvania, as more particularly shown on Exhibit 2 and the improvements now or hereafter erected on said Demised Premises, together with the benefit of all easements, appurtenances and privileges now or hereafter belonging thereto. Landlord hereby grants to Tenant the right and easement to use the Common Area in common with other permitted tenants of the Shopping Center.

2. Term.

(a) The term of this Lease shall commence on the date hereof and shall continue to and include the date which is Ten (10) years after the day before the Rent Commencement Date (as hereinafter defined) if the Rent Commencement Date is the first day of the month, or Ten (10) years after the last day of the month in which the Rent Commencement Date occurs if the Rent Commencement Date is not the first day of the month. The Rent Commencement Date shall be the date which is the earlier of (a) the date on which Tenant opens the Demised Premises to the public for business or (b) the date which is sixty (60) days after the date the Demised Premises is Ready for Occupancy (as defined in Paragraph 8).

(b) Landlord shall give Tenant notice in writing at least forty-five (45) days prior to the date on which the Demised Premises will be Ready for Occupancy. The date upon which

the Demised Premises shall be Ready for Occupancy shall not be earlier than October 15, 1989 nor later than June 1, 1990. If the Demised Premises are not Ready for Occupancy on or before June 1, 1990, Tenant may cancel this Lease by giving written notice to Landlord of such cancellation, whereupon the obligations of the parties hereunder shall terminate.

(c) Notwithstanding the foregoing, in the event Landlord makes delivery of the Demised Premises between October 30 and January 31 all rent shall abate until the earlier of the next March 1 or the date when Tenant shall open its store on the Demised Premises for business provided, however, in no event shall the Rent Commencement Date be the earlier of sixty (60) days from the date the Demised Premises is Ready for Occupancy or the date upon which Tenant opens its store for business. Notwithstanding the foregoing, the Tenant shall not have any obligation to accept the Demised Premises at any time prior to the opening of the Penn Traffic/Riverside Supermarket, and further, this Lease is contingent upon the opening of said Penn Traffic/Riverside Supermarket.

(d) Within ten (10) days after request of either party after the Rent Commencement Date has been determined, Landlord and Tenant shall execute, acknowledge and deliver to each other an agreement in the form of Exhibit 3 setting forth the Rent Commencement Date, the date of expiration of the initial term of this Lease, and the dates of commencement of the Renewal Periods.

3. Renewal Periods. Provided the Lease shall not have been terminated and Tenant is not in default under the terms hereof, Tenant shall have the right and option to extend the term of this Lease from the date upon which it would otherwise expire for four (4) separate consecutive renewal periods, three (3) renewal periods of five (5) years each and one (1) renewal period of four and one-half (4 1/2) years (each such period being hereinafter referred to as "Renewal Period") upon the same terms and conditions as are herein set forth. Tenant may exercise its options by giving Landlord written notice thereof in accordance with Paragraph 38 hereof at least two hundred seventy (270) days prior to the commencement of the Renewal

Period or Renewal Periods for which the term hereof is to be renewed by the exercise of such option or options.

4a. Annual Rent - Initial Term. Unless abated or diminished as hereinafter provided, commencing on the Rent Commencement Date, Tenant shall pay to Landlord rental without demand, set-off or deduction, except those, if any, as may be as set forth herein, for the Demised Premises as follows (hereinafter "Annual Rent"): During Years One (1) through Five (5) of the Initial Lease term at the rate of Ninety One Thousand Seven Hundred Sixty and No/100 (\$91,760.00) Dollars per year, payable in equal monthly installments of Seven Thousand Six Hundred Forty Six and 66/100 (\$7,646.66) Dollars. During years Six (6) through Ten (10) of the Initial Lease term at the rate of Ninety Four Thousand Seven Hundred Twenty and No/100 (\$94,720.00) Dollars per year, payable in equal monthly installments of Seven Thousand Eight Hundred Ninety Three and 33/100 (\$7,893.33) Dollars. Annual Rent shall be payable in advance on the first day of each month. Annual Rent for a part of a month shall be pro rated on a daily basis.

4b. Annual Rent - Renewal Periods. Unless abated or diminished as hereinafter provided, Tenant shall pay Landlord Annual Rent for the Demised Premises during the Renewal Periods for which Tenant has exercised its options to renew as follows:

During the 1st Renewal Period: \$100,640.00/yr.; \$8,386.66/mo.

During the 2nd Renewal Period: \$100,640.00/yr.; \$8,386.33/mo.

During the 3rd Renewal Period: \$103,600.00/yr.; \$8,633.33/mo.

During the 4th Renewal Period \$106,560.00/yr.; \$8,880.00/mo.

5. Percentage Rent.

(a) As additional rent during the years One (1) through Five (5) of the term herein, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales (as hereinafter defined) during the lease year and/or any partial lease year

- (i) 2% of all Gross Sales over \$4,588,000.00 and less than \$5,088,000;
- (ii) 1.5% of all Gross Sales \$5,088,000.00 and less than \$5,588,000.00
- (iii) 1% of all Gross Sales over \$5,588,000.00.

(b) As additional rent during the years Six (6) through Ten (10) of the term herein, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales (as hereinafter defined) during the lease year and/or any partial lease year

- (i) 2% of all Gross Sales over \$4,736,000.00 and less than \$5,236,000;
- (ii) 1.5% of all Gross Sales \$5,236,000.00 and less than \$5,736,000.00
- (iii) 1% of all Gross Sales over \$5,736,000.00.

(c) As additional rent during the First Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,032,000.00 and less than \$5,532,000;
- (ii) 1.5% of all Gross Sales \$5,532,000.00 and less than \$6,032,000.00
- (iii) 1% of all Gross Sales over \$6,032,000.00.

(d) As additional rent during the Second Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,032,000.00 and less than \$5,532,000;
- (ii) 1.5% of all Gross Sales \$5,532,000.00 and less than \$6,032,000.00
- (iii) 1% of all Gross Sales over \$6,032,000.00.

(e) As additional rent during the Third Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,180,000.00 and less than \$5,680,000;
- (ii) 1.5% of all Gross Sales \$5,680,000.00 and less than \$6,180,000.00

- (i) 2% of all Gross Sales over \$4,588,000.00 and less than \$5,088,000;
- (ii) 1.5% of all Gross Sales \$5,088,000.00 and less than \$5,588,000.00
- (iii) 1% of all Gross Sales over \$5,588,000.00.

(b) As additional rent during the years Six (6) through Ten (10) of the term herein, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales (as hereinafter defined) during the lease year and/or any partial lease year

- (i) 2% of all Gross Sales over \$4,736,000.00 and less than \$5,236,000;
- (ii) 1.5% of all Gross Sales \$5,236,000.00 and less than \$5,736,000.00
- (iii) 1% of all Gross Sales over \$5,736,000.00.

(c) As additional rent during the First Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,032,000.00 and less than \$5,532,000;
- (ii) 1.5% of all Gross Sales \$5,532,000.00 and less than \$6,032,000.00
- (iii) 1% of all Gross Sales over \$6,032,000.00.

(d) As additional rent during the Second Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,032,000.00 and less than \$5,532,000;
- (ii) 1.5% of all Gross Sales \$5,532,000.00 and less than \$6,032,000.00
- (iii) 1% of all Gross Sales over \$6,032,000.00.

(e) As additional rent during the Third Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

- (i) 2% of all Gross Sales over \$5,180,000.00 and less than \$5,680,000;
- (ii) 1.5% of all Gross Sales \$5,680,000.00 and less than \$6,180,000.00

(iii) 1% of all Gross Sales over \$6,180,000.00.

(f) As additional rent during the Fourth Renewal Period, Tenant agrees to pay to Landlord the following percentage rent based upon all Gross Sales during the lease year and/or any partial lease year:

(i) 2% of all Gross Sales over \$5,328,000.00 and less than \$5,828,000;

(ii) 1.5% of all Gross Sales \$5,828,000.00 and less than \$6,328,000.00

(iii) 1% of all Gross Sales over \$6,328,000.00.

(g) (i) If minimum rent during any Lease Year shall abate, be reduced or unpaid, then the sales base shall be reduced in the proportion that the minimum rent which shall have been abated reduced or unpaid bears to the annual rate of minimum rent. However, the foregoing shall not be construed as establishing a rent reduction or abatement.

(ii) If any lease year consists of less than three hundred sixty five (365) days then the sales base shall be reduced by a fraction. The numerator of the fraction shall be the difference between the three hundred sixty five (365) and the number of days in such lease year. The denominator shall be three hundred sixty five (365).

(h) For the purpose of this Paragraph, Gross Sales shall be defined as the total amount of all sales of merchandise, the rental of merchandise and/or its repair, and services made in, upon or from the Demised Premises during any lease year or partial lease year, whether the same shall be made by Tenant at wholesale or at retail, whether for cash or on credit, whether delivered from the Demised Premises or elsewhere, including but without limitation, telephone orders and mail orders, except that the following shall not be included in Gross Sales for any said lease year or partial lease year, or, if previously included in Gross Sales for any lease year, the same shall be deducted from Gross Sales for said lease year: (i) the amount of discounts, refunds, credits, allowances and adjustments made to customers; (ii) the amounts of all retail sales or excise taxes; and (iii) the amounts received from the sales of cigarettes, cigars, tobacco products, newspapers and magazines, beverages, doctor's purchases,

employee purchases, third party sales and sales to municipal and governmental entities or charities made at delivered cost; (iv) bulk sales (not in the ordinary course of business) of substantially all of Tenant's inventory contained on the Demised Premises; (v) sales of trade fixtures or store equipment; and (vi) deposits taken as security for return of bottles or cans. Sales on credit or layaway shall be included in Gross Sales when payment is received by Tenant.

(i) On or before May 1 of each lease year and/or within sixty (60) days following the termination of the Lease for any reason, Tenant shall furnish to the Landlord a statement that sets forth the Gross Sales, as defined above, for the immediately preceding year or portion thereof, and shall at such time pay to the Landlord as additional rent, any percentage rent which may be due in accordance with the terms hereof. Tenant agrees to keep adequate records of all sales from the Demised Premises for a period of two years and to permit the Landlord to inspect such records for the prior lease year once in each lease year at Tenant's principal place of business during regular business hours and upon ten (10) days prior written notice thereof to Tenant. If Landlord's inspection of Tenant's records discloses a deficiency in reported Gross Sales, Tenant shall pay the reasonable costs of same if the deficiency exceeds four percent (4%) of the Gross Sales in any lease year.

(h) The term "lease year" shall mean the twelve month period commencing February 1 and ending January 31. The term "partial lease year" shall mean that period between the Rent Commencement Date and January 31 next following and any period from February 1 to a termination date hereunder prior to January 31 next following.

6. Use. The Demised Premises, while in the sole possession of Tenant, shall be occupied and used as a full and complete modern drug store and health and beauty aids operation and, in Tenant's sole discretion, for an optical department, in-store (ATM) banking service and for the sale of beer and/or wine for off-premises consumption, if permitted by law. Landlord represents and warrants that the Demised Premises are usable for the aforesaid uses and that, upon delivery of possession to Tenant, it will be in compliance with all governmental

laws, rules, regulations, codes and/or directives, etc., then in force and pertaining thereto. Tenant covenants and agrees that Tenant shall have the obligation and responsibility to comply with all governmental laws, rules, regulations and/or directives, etc., which affect the Demised Premises after delivery of possession thereof to Tenant.

7. Construction. It shall be the responsibility of Landlord to ensure that the Demised Premises, when completed, are complete and ready for the installation of all Tenant's fixtures and equipment.

(a) Landlord, at its own cost, agrees to prepare the described land and construct thereon the Shopping Center as shown on Exhibit 2, including the Demised Premises. Tenant's store shall be constructed (i) pursuant to drawings prepared in accordance with Tenant's Plans and Specifications-Prototype dated _____ annexed hereto as Exhibits 4 and 5; and (ii) in compliance with all federal, state and local building, health, fire and other codes pertaining thereto. The quality and/or fitness of any material or devise used shall be in conformity with Tenant's plans and specifications and shall be exclusively the Landlord's responsibility.

(b) Upon delivery of the Demised Premises to Tenant, Tenant shall within thirty (30) days following delivery of said possession, submit to Landlord a written list of the matters which Tenant claims are yet to be fulfilled by Landlord and Landlord shall have ninety (90) days thereafter to complete such matters. If Landlord fails to complete such matters within the aforesaid period, the sole remedy of Tenant shall be to complete such matters at Landlord's cost and expense and Tenant shall have the right to withhold rents due to Landlord not to exceed two (2) months base rent in order to reimburse Tenant for the cost and expense of completing such matters, provided, however, that if Landlord's failure to complete such matters results in a delay of Tenant's opening for business or curtails the amount of usable space, there shall be a total or pro rata, as the case may be, abatement of rent until such delay or curtailment ends.

(c) The Demised Premises and Common Area shall be deemed substantially completed upon the date that: (1) Landlord's architect or professional engineer has certified to Tenant that Tenant's store building on the Demised Premises is completed (except for minor details which will not unreasonably interfere with Tenant's use or occupancy of the Demised Premises) in accordance with Exhibits 4 and 5; and (2) a temporary or permanent certificate of occupancy, or its equivalent, has been issued and a copy thereof has been given to Tenant in the manner herein specified for the giving of notices.

8. Ready for Occupancy. The Demised Premises shall be delivered to Tenant as Ready for Occupancy within the period set forth in Paragraph 2 herein. The term "Ready for Occupancy" shall mean that:

(a) The Demised Premises is substantially completed in accordance with Paragraph 7(c), and the Common Area is substantially completed to the extent that there is adequate access and egress to the Demised Premises and the Parking Area immediately contiguous to and serving the Demised Premises has been reasonably completed.

(b) All tools, scaffolding, surplus building materials, waste, debris, and rubbish of every sort in or about the Demised Premises have been removed; exclusive possession of the Demised Premises has been delivered to Tenant; the Common Area is fit and suitable for use; and a supermarket occupying at least 35,000 square feet of space in the Shopping Center shall be occupied and open for business.

9. Remainder of Shopping Center.

(a) Landlord represents and warrants that the Shopping Center (i) does or will contain an aggregate of approximately 145,000 square feet of building floor area, and (ii) is, or will be, well built in a good, workmanlike manner, properly constructed, structurally safe and sound, and suitable and fit and that during the term hereof, and Landlord will so maintain them.

(b) The entire tract of land on which Landlord is to construct or has constructed said Shopping Center is as shown on Exhibit 2. Such Exhibit 2 designates the location and size

of all buildings constructed or to be constructed; store sizes and the parking area. All that portion of the tract of land not covered by buildings is to be Common Area for the non-exclusive use of Tenant's customers, invitees, and employees. No part of the Common Area known and described as the "no building area" per paragraph 9D) herein except that area designated and identified as "future development area" as shown on Exhibit 2 attached hereto may be improved with additional buildings or kiosks, nor may the parking lot layout, including parking spaces, aisles, driveways, and walkways, be altered or removed without the prior written consent of Tenant, such consent not to be unreasonably be withheld.

(c) Landlord shall not permit the use of the Common Area by any person, firm or corporation other than the Landlord and those occupying space in the Shopping Center, their agents, employees, invitees and customers.

(d) Landlord shall at all times during the term of this Lease and any Renewal Periods, provide a surfaced parking area of sufficient area to provide a minimum ratio of 5.0 automobile parking spaces for each 1,000 square feet of leasable building area in the Shopping Center. In the event the parking area furnished should at any time be substantially less so as to affect Tenant's business, and such deficiency of parking spaces continues for thirty (30) days after written notice thereof, Tenant at its option shall have the right to terminate this Lease. In no event shall Landlord make any building improvements or in any manner whatsoever interfere with the area immediately in front of its store, as shown on the site plan (Exhibit 2) outlined in red and designated as a "no building area".

(e) Landlord agrees, at its sole cost and expense to keep and maintain the Common Area in good condition and repair, including but not limited to: restriping, repairing and repaving the parking area; keeping the Common Area clean and free of snow, ice, water, rubbish and obstruction; keeping the Common Area policed and adequately lighted when Tenant's store is open for business; maintaining signs, markers and other means and methods of pedestrian and vehicular traffic control; and maintaining any planted or landscaped area.

10. Signs. Tenant shall have the right to maintain on the Demised Premises a sign or other advertising devices, electrical or non-electrical, at or on the front or back thereof, and Tenant shall also have the right to maintain an illuminated sign on the pylon at the location shown therefore on Exhibit 2 hereto advertising the business to be conducted on the Demised Premises. All such signs and advertising devices shall be furnished and installed by Tenant at its expense. Tenant agrees to comply with any applicable laws and ordinances in erecting any such signs not shown on Tenant's preliminary plans and specifications which may be installed by it under the provisions of this paragraph. The size of all such signage referenced in this Paragraph is subject to Landlord's prior review and approval which is not to be unreasonably withheld or delayed.

11. Repairs by Landlord.

(a) Landlord shall, at its sole cost and expense, maintain and repair the exterior roof, foundation, walls, sidewalks, exterior paint and all subfloors of the Demised Premises. In addition, Landlord shall maintain, repair and/or replace all utility pipes and lines to the point of entry into Tenant's store building on the Demised Premises.

(b) Landlord agrees to maintain the structure of Tenant's store building at all times.

12. Repairs by Tenant. Tenant shall, at its own cost and expense, maintain and repair the interior and entrance and exit doors of Tenant's store building on the Demised Premises. At the end or other expiration of the term or lawful extensions hereof, Tenant shall deliver the Demised Premises to Landlord broom clean and in good order and condition, excepting, however, reasonable wear and tear and damage by fire and other perils. It shall be Tenant's responsibility and obligation to maintain, repair and/or replace all utility and service pipes and lines inside the point of entry into Tenant's store building on the Demised Premises. Tenant shall replace any plate glass broken or damaged upon the Demised Premises.

13. HVAC. Landlord agrees to provide an adequate and functioning HVAC system for the Demised Premises in conformity with the requirements set forth in Exhibits 4 and 5. Landlord shall assign any HVAC warranties to Tenant.

14. Alterations.

(a) Tenant, at its sole cost and expense, may make any and all interior, nonstructural alterations or improvements to the Demised Premises; provided, however, that any such alterations shall be made in good, workmanlike manner and shall not weaken the structure thereof. In addition, Tenant shall take all necessary steps to comply with all lawful requirements, including, but not limited to, procuring any and all required governmental permits. Tenant shall not have the right to make any structural or exterior alterations, additions, or improvements to the Demised Premises without first obtaining, in each instance, the prior written consent of Landlord, such consent not to be unreasonably withheld or delayed, and, if required, any mortgagee to whom this Lease has been subordinated, which consents shall not be unreasonably withheld or delayed. Tenant shall not permit any mechanics or other lien notice or claim for lien or notice in respect thereto to be filed against the Demised Premises. If any such lien or claim be made or filed, Tenant shall, within thirty (30) days after receipt of notice of the making or filing thereof, cause said lien, notice or claim for lien to be effectively removed and discharged of record; provided, however, that Tenant shall have the right to contest the amount or validity, in whole or in part, of any such lien, notice or claim by appropriate proceedings; but in any event, Tenant shall promptly bond such lien, notice, or claim. If Tenant fails to discharge or bond such lien, Landlord may, at its election, remove or discharge such lien, notice or claim by paying the full amount thereof, or otherwise, and without any investigation or contest of the validity thereof, and Tenant shall pay to Landlord upon demand, as additional rent, the amount paid by Landlord including Landlord's cost, expenses and reasonable counsel fees.

(b) During the term of this Lease or any Renewal Period, Tenant may, without payment of additional rent, construct, alter, modify or otherwise change, at Tenant's sole cost and expense, a loading dock or platform, trash compactor and pad, and/or other service facilities intended to benefit the business of Tenant carried on in the Demised Premises or in compliance with any federal, state or local law, regulation, rule, code or ordinance provided, however, that such construction, alteration, modification or other change shall not unduly interfere with the business of other tenants in the Shopping Center. In no event shall such loading dock, platform, trash compactor or pad be considered as a part of the building floor area on the Demised Premises when calculating any charges due from Tenant to Landlord under this Lease.

15. Personal Property. All fixtures and equipment, of whatsoever nature, placed or installed upon the Demised Premises by Tenant shall remain the property of Tenant, and Tenant shall have the right to remove the same at any time, provided, however, that upon the removal of such fixtures or equipment, Tenant shall repair, at its own cost and expense, all damage to the Demised Premises caused by such removal.

16. Common Area Charges.

(a) Tenant agrees to pay to Landlord each lease year during the term hereof on a monthly basis, as additional rent, Tenant's pro rata share of the following costs incurred in the maintenance of the Common Area including but not limited to: striping, lighting, policing, cleaning, maintaining and repairing the parking area and walks and ways; removal of snow and ice, Common Area rubbish and obstruction from the Common Area; maintaining planted and landscaped areas and the Shopping Center pylon sign(s), sanitary and storm drainage, fire protection, traffic control and five percent (5%) administrative fee for the management of the Shopping Center. Tenant agrees to pay to Landlord Tenant's pro rata share of certain liability insurance premiums as set forth in Paragraphs 20(a) and 20(b) of this Lease. Notwithstanding anything herein contained to the contrary, Tenant shall not pay Landlord management fees for

the cost of any taxes and insurance paid or for any capital expenditures. Expenditures made for Common Area capital improvements shall be amortized over a period of no less than three (3) years and billed to Tenant accordingly. Statements of actual costs incurred by Landlord for Common Area maintenance shall be rendered by Landlord once a month. Copies of invoices identifying, with particularity, the work or service performed shall be provided upon request of Tenant. Tenant agrees to pay its pro rata share of such Common Area maintenance charges, promptly upon receipt of such statement. Tenant shall have the right once per year to examine Landlord's books and records for the prior year only with respect to the aforesaid Common Area maintenance charges at a reasonable time and upon ten (10) days written notice.

(b) For the purposes of this paragraph, Tenant's pro rata share of Common Area maintenance charges shall be the product of total Common Area maintenance charges payable for the entire Shopping Center divided by the total number of square feet of building floor area comprising the Shopping Center (including office and storage as well as retail floor area), times the number of square feet of building floor area comprising the Demised Premises.

(c) During any part of the term hereof which shall be less than a full year, Tenant's share of the Common Area maintenance charges shall be pro rated on a daily basis between the parties and, to that end, Tenant shall only pay the Common Area maintenance charges attributable to the fractional part of the year occurring within the term of this Lease.

17. Real Estate Taxes.

(a) Tenant hereby covenants and agrees that following the Rent Commencement Date it shall pay its pro rata share of real estate taxes which shall be imposed or assessed upon the land and buildings comprising the Shopping Center within thirty (30) days after receipt of an itemized statement therefor (including copies of the tax bills upon which Tenant's pro rata share is calculated) as additional rent (hereinafter "Real Estate Taxes"). For the purposes of this paragraph, Tenant's pro rata share of Real Estate Taxes shall be the product of the total real estate taxes assessed upon the land and gross leaseable area comprising the Shopping

Center divided by the total number of square feet of gross leaseable building floor area in the Shopping Center times the number of square feet of building floor area on the Demised Premises. Real Estate Taxes for less than a lease year shall be pro rated and apportioned. Notwithstanding the foregoing, Tenant shall be responsible for an increase in Real Estate Taxes for the Shopping Center directly resulting from the construction or improvements made by Landlord or Tenant at the Demised Premises provided that Landlord gives Tenant written proof that such increase was caused by Tenant's improvements, provided further, however, that Tenant shall not be responsible for any increase in Real Estate Taxes directly resulting from improvements to the store premises of other tenants in the Shopping Center provided, further that Tenant can provide written proof that such increase was caused by another tenant's improvements.

(b) Appropriate credit shall be given Tenant for any refund obtained by reason of a reduction in the assessed valuation by the Assessors or the Tax Commission or the courts. The original computations, as well as payments of additional rent, if any, or allowances, if any, under the provisions of this Paragraph shall be based on the original assessed valuations with adjustments to be made at a later date when the tax refund, if any, shall be paid to Landlord by the taxing authorities.

(c) Whenever Tenant shall be entitled to an allowance pursuant to the provisions of this Paragraph and Landlord shall fail to pay to Tenant within thirty (30) days after receipt of same the amount of such allowance within the aforesaid time limit, Tenant shall be entitled to deduct the same from any installments of additional rent thereafter becoming due under this Lease.

(d) Before computing the amount of any refund to be made to Tenant pursuant to this Paragraph, there shall be deducted from the gross amount of real estate taxes refunded to Landlord all reasonable expenses paid by Landlord in connection with obtaining the refund, and the refund to Tenant shall be determined by the net amount of the refund received by Landlord

multiplied by the percentage of real estate taxes imposed or assessed upon the land and building comprising the Shopping Center applicable to the Demised Premises in respect of the tax year or tax years, or parts thereof, covered by the real estate tax in respect of which Landlord shall have received the refund.

(e) Landlord agrees that Tenant may, in its own name or in the name of Landlord, or in the name of both, file such applications or protests for the correction or reduction of tentative assessed valuations and bring such actions or proceedings as Tenant may deem advisable, and Landlord agrees to sign, at the request of Tenant, such applications, protests and other instruments as may be necessary for a review by the Tax Commission or by any court of such assessed valuation. In connection with any such proceedings Landlord agrees to make available to Tenant, for a presentation before the Tax Commission of any such court, such books, records, and other evidence as in the opinion of counsel for both Landlord and Tenant may be reasonably necessary or advisable for the proper prosecution of any such action or proceeding. In case Landlord shall fail to comply with its obligations as set forth in this Paragraph, Landlord shall not be entitled to receive any additional rent by reason of real estate taxes levied or assessed on the basis of the assessed valuation which Tenant, at the time, shall be or desire protesting or contesting.

18. Utilities. Tenant shall pay for water, gas, electricity and fuel used by it on the Demised Premises. Landlord shall provide separate utility meters to measure Tenant's actual consumption of such utilities as are used by Tenant on the Demised Premises.

19. Obstructions. Landlord shall not permit anything to be done in the shopping center which (i) obstructs the free passage of vehicles or pedestrians on the Common Area from being able to reach the Demised Premises, (ii) obstructs the entrance doors to Tenant's store building on the Demised Premises, or (iii) obstructs or changes the exits or entrances of the shopping center, except as may be duly required by governmental authority.

20. Insurance. Except as otherwise provided herein, Landlord shall not be liable for any damage to fixtures or merchandise of Tenant caused by fire or other hazards normally covered by fire and extended coverage, regardless of the cause thereof, and Tenant does hereby expressly release Landlord of and from all liability for such damages. Tenant shall not be liable for any damages to the Demised Premises, or any part thereof, caused by fire or other hazards, regardless of the cause thereof and Landlord does hereby expressly release Tenant of and from any liability for such damages. The parties shall obtain and keep in effect insurance covering the Demised Premises as follows:

(a) Landlord shall provide reasonable fire and extended coverage insurance to be written by a reputable insurance company or companies, based upon full replacement cost of the Demised Premises during each year of the term and any Renewal Periods.

(b) Landlord shall maintain for the mutual benefit of Landlord and Tenant, personal injury and property damage liability insurance against claims for bodily injury, death or property damage or loss occurring on or about the Shopping Center premises, including, but not limited to the roof, parking areas, sidewalks, curbs and all other parts of the Common Area, during the term of the Lease any any Renewal Periods. The limits of such insurance shall not be less than \$300,000.00 with respect to personal injury or death to any one person and not less than \$500,000.00 with respect to personal injury or death to more than one person in any one accident and not less than \$50,000.00 per occurence for property damage or loss.

(c) Tenant shall maintain, for the mutual benefit of Landlord and Tenant, personal injury and property damage liability insurance against claims for bodily injury, death or property damage or loss occurring on the Demised Premises during the term of the Lease and any Renewal Periods. The limits of such insurance shall not be less than \$500,000 single limit with respect to personal injury, death, property damage or loss.

(d) The insurance required under subparagraphs (a), (b), and (c) of this Paragraph, shall be written by reputable insurance companies; shall each contain an endorsement whereby

such insurance companies shall give Landlord or Tenant, as the case may be, thirty (30) days advance written notice of any cancellation or reduction of insurance under any such policy; shall provide that copies of all endorsements issued after the date of such policy be forwarded to Landlord or Tenant, as the case may be; and, except for the insurance required in subparagraph (a) above, with a Certificate of Insurance naming Landlord, Tenant or mortgagee as an additional insured under such policy.

(e) The parties hereto hereby waive, to the extent permitted by law, on behalf of the insurers of each party's property, any and all claim or right of subrogation of such insurer against the other parties hereto for loss or damage to the property so insured other than loss or damage resulting from the unlawful act of such other party, and each party hereby agrees to maintain insurance as required by the Lease and as required to make the provision reciprocal and to effectuate this mutual waiver of subrogation. If either party cannot obtain any endorsement required to be obtained by it pursuant to the provisions of this subparagraph (e) without an increase in premium due only to such endorsement, then it shall notify the other party thereof and the other party shall either waive such requirement or pay the increase in premium resulting only from such endorsement.

21. Damage or Destruction.

(a) In the event of any damage or destruction by fire, casualty or other causes to all or any part of the Demised Premises or Shopping Center (hereinafter called "Destruction") including but not limited to the Common Area, Landlord shall commence promptly to restore same to substantially the same condition as existed immediately preceding the Destruction. If the Destruction is partial, Landlord shall complete restoration within one hundred eighty (180) days after the Destruction. If the Destruction is total, Landlord shall complete the restoration within three hundred sixty five (365) days after the Destruction. The foregoing notwithstanding, within ninety (90) days of destruction Landlord shall give notice to Tenant as to whether construction can be completed within one hundred eighty (180) days (if partial) or

three hundred sixty five (365) days (if total). If Tenant is so notified that construction cannot be so completed, Tenant thereafter shall have thirty (30) days to elect to terminate this lease.

(b) If, as a result of any Destruction, fifty (50%) percent or more of the total floor area of the Tenant's store building is damaged, destroyed or, in Tenant's reasonable opinion, rendered untenantable when less than three (3) years remain under the term of this Lease (and if said term shall have been ended, then this provision shall apply only to the last three (3) years of the then existing Renewal Period) Landlord or Tenant may elect to terminate this Lease by giving notice to the other of such election on or before the date which is sixty (60) days after the Destruction, stating the date of termination, which shall not be more than thirty (30) days after the date on which such notice of termination shall have been given and (1) upon the date specified in such notice this Lease and the term hereof shall cease and expire and (2) any Annual Rent and all additional rents and other charges paid for a period after the date of the Destruction shall be apportioned as of said date and refunded promptly to Tenant. Landlord's notice of termination hereunder shall be null and void if Tenant, within thirty (30) days after receipt of such notice from Landlord, shall give notice of the exercise of an option to extend the term for the next succeeding Renewal Period.

(c) If, as a result of any Destruction, Tenant loses the use of the whole or any part of the Demised Premises, or the whole or any part of the Common Area, Annual Rent shall abate equitably to the extent Tenant is deprived of such use. If by reason of any Destruction, Tenant, in its reasonable opinion, determines that to remain open for business is not practicable and Tenant closes the Demised Premises for business, Annual Rent and Real Estate Taxes shall be abated in full until the condition which caused Tenant to so close shall have been remedied.

(d) In the event damage or destruction is to Tenant's premises, and the Shopping Center is not encumbered by an institutional mortgagor, insurance proceeds shall be deposited in trust with a bank or trust company acceptable to Tenant and under the control of Landlord and Tenant, as trustees, or, if the holder of the first mortgage on the Shopping center shall be a

bank, trust company or insurance company, such proceeds shall be deposited in trust with such holder, as trustee, and shall be held and disbursed for restoration as provided in the Lease.

22. Condemnation.

(a) In the event the whole of the Demised Premises shall be taken for public or quasi-public use or condemnation under eminent domain, or purchase in lieu thereof, this Lease and the term hereof shall expire on the date the Tenant is required to yield possession hereof to the condemning authority. All unearned rent and all other charges paid in advance shall be refunded to Tenant. The Tenant shall have the right to claim such compensation as may be separately awarded or allocated by reason of the cost or loss to which the Tenant might be put in removing the Tenant's merchandise, fixtures, leasehold improvements and equipment and for the value of the same.

(b) In the event that a portion of, but not all, of the Demised Premises shall be taken for public or quasi-public use or condemnation under eminent domain, or purchase in lieu thereof, and, as a result, the remaining ground floor area of the Demised Premises or the remaining Common Area after the taking is less than eighty-five (85%) percent of the ground floor area of the Demised Premises or Common Area prior to the taking or such taking results in a denial of adequate access to the Shopping Center, then, in such event Tenant shall have the right to terminate this Lease. Tenant shall not have the right to terminate this Lease if Landlord provides alternate access that is reasonably acceptable to Tenant. In order to terminate this Lease as aforesaid, Tenant shall give notice to Landlord of Tenant's intention to cancel this Lease within sixty (60) days after receipt by Tenant of notice of such taking. Upon giving said notice, Tenant shall be liable only for the rent and additional rent up to the time of such taking or the date when Tenant shall vacate the Demised Premises, whichever date is later. Tenant shall be entitled to a refund of any advance rental paid by it for the period subsequent to the latter of such dates.

(c) In the event the Lease is not terminated as aforesaid, then: (i) the award or payment for the taking shall be paid to and used by Landlord for restoration as hereinafter set forth and Landlord shall promptly commence and with due diligence continue to restore the portion of the Common Area and the Demised Premises remaining after the taking to substantially the same condition and tenantability as existed immediately preceding the taking; (ii) in the event of a taking of any part of the Demised Premises, then, commencing upon the date of vesting of title or transfer of possession, whichever occurs earlier, Annual Rent (except as same shall be abated as hereinafter provided) shall be the product of the Annual Rent immediately preceding the taking and a fraction, the numerator of which shall be the total floor area of the Demised Premises remaining after the taking and the denominator of which shall be the total floor area of the Demised Premises immediately preceding the taking; (iii) Annual Rent shall also be justly and equitably reduced to reflect a denial of adequate access to all or any part of the Common Area unless comparable space or access is provided. During the period of any restoration, the Annual Rent shall be abated justly and equitably.

(d) The proceeds of any award or payment belonging to Landlord shall be paid and disbursed in the same manner that the proceeds of fire insurance are required to be paid and disbursed pursuant to Paragraph 21(d) of this Lease.

23. Representations and Warranties. Landlord represents and warrants to Tenant that (i) the Shopping Center will contain at least the following other tenants with store sizes and terms set opposite their names under leases which are non-cancellable by the Landlord for other than default in the payment of rent or the performance of the obligations under such leases during such time, to wit:

<u>Name</u>	<u>Minimum Term</u>	<u>Approximate Floor Area</u>
Penn Traffic/Riverside Supermarket	20 Years	

Landlord agrees, to furnish evidence reasonably satisfactory to Tenant prior to the Rent Commencement Date that Landlord has entered into such leases; (ii) as an inducement for Tenant to enter into this Lease and upon completion of the buildings, improvements and the Common Area facilities, the Shopping Center shall remain substantially as shown on Exhibit 2 hereto during the term of this Lease, and any renewals hereof, subject, however, to the right of Landlord to expand any existing building or erect a new building within the area(s), if any, shown on Exhibit 2 as being reserved for the expansion or construction of buildings; (iii) the Shopping Center shall be used solely for the sale or providing of consumer goods and services during the term of this Lease, or any Renewal Periods; (iv) the entrances and exits to and from the Shopping Center shown on Exhibit 2 shall not be altered or changed by Landlord without the prior written consent of Tenant; (v) there does not now exist and Landlord will not enter into, any agreement with any other tenant in the Shopping Center which would restrict or otherwise impair Tenant's ability to conduct its business as a full and complete modern drug store with a health and beauty aids operation; (vi) Landlord has lawful title and right to enter into the Lease for the term aforesaid and will provide Tenant with evidence thereof prior to the time at which Tenant takes possession of the Demised Premises, and will put Tenant into complete and exclusive possession of the Demised Premises, including joint use of the Common Area, free from all orders, restrictions and notices of any public or quasi-public authority; (vii) that if at any time during the term hereof the title of the Landlord shall fail or be discovered not to enable Landlord to grant the term hereby demised the Tenant shall have the option, at Landlord's expense, to correct any default or annul and void the Lease; (viii) the Demised Premises and the entire Shopping Center are owned by Landlord in fee simple title and are free and clear of any and all encumbrances excepting real estate taxes and assessments for the current year and thereafter which are assumed and will be paid by Landlord as they become due and payable, and except as follows:

(ix) neither Landlord nor any person or entity controlled or under common control with Landlord, shall lease any other premises of the Shopping Center as a complete modern drug store except for existing Moshannon Valley Health Services whose lease expires 4/30/91 or rent or otherwise permit occupancy in any other premises of the Shopping Center to any store in which items requiring the presence or service of a registered pharmacist are filled or sold. (x) the foundation and earthwork construction underneath the Demised Premises can and will adequately and safely support the Tenant's store building on the Demised Premises for the entire term of this Lease including any and all Renewal Periods subject to normal settlement which shall not damage or adversely affect the structure or integrity of the said building; (xi) all taxes, assessments, and charges on the Shopping Center and obligations secured by mortgage or other lien upon the Shopping Center shall be paid by Landlord when due.

This Lease has been entered into by Tenant in reliance upon the foregoing representations and warranties of Landlord.

24. Subordination. This Lease shall be subject and subordinated to any first mortgage, and all renewals, modifications, consolidations, replacements and extensions thereof, which may hereafter affect the Shopping Center, or any part thereof, provided, however, that any such mortgage shall be made in connection with a loan from an insurance company, savings bank, trust company, commercial bank or any other reputable lender, and provided further, however, that as a condition of such subordination such mortgage shall contain a covenant binding upon the holder thereof to the effect that as long as Tenant shall not be in default under this Lease, or if Tenant is in such default, as long as Tenant's time to cure such default shall not have expired, (i) the term of this Lease shall not be terminated or modified in any way whatsoever nor any right of Tenant hereunder or its occupancy of the Demised Premises be affected in any way should such mortgage be foreclosed or any other action be instituted in connection with such mortgage, and that Tenant shall not be named as a defendant in any foreclosure action or other proceeding which may be instituted by the holder of such mortgage and (ii) that in the

event that the holder shall succeed to the interest of the Landlord under the Lease, the holder agrees to be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall from and after such event, have the same remedies against the holder for the breach of an agreement contained in the Lease that the Tenant might have had under the Lease against the Landlord if the holder had not succeeded to the interest of the Landlord; provided, however, that the holder shall not be (a) liable for any act or omission of any prior landlord; or (b) subject to any offsets or defenses which the Tenant might have against any prior landlord; or (c) bound by any rent or additional rent which the Tenant might have paid for more than the current month to any prior landlord.

25. Assignment and Subletting. Consent Required. Tenant will not voluntarily assign, mortgage, pledge, hypothecate, or sublet this Lease in whole or in part, nor license, or sublet all or any part of the Leased Premises, without the prior written consent of Landlord in each instance. Such consent of the Landlord shall not be unreasonably withheld. No prior written consent of Landlord shall be required for a sublease to a division of Tenant provided that Tenant delivers to Landlord a writing in which Tenant specifically indicates its understanding that despite such sublease to the division it is still primarily liable on the Lease to Landlord. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning, mortgaging, pledging, hypothecating, licensing, or subletting shall be construed to include a prohibition against any such act by operation of law, legal process, receivership, bankruptcy, or otherwise. Tenant shall pay all costs, expenses and attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section. If this Lease be assigned, or if the Leased Premises be underlet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, under-tenant, or occupant and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be

deemed a waiver of this covenant, or the acceptance by Landlord of the assignee, under-tenant, or occupant as tenant, or a release of Tenant from further performance by Tenant of covenants on the part of Tenant herein contained. Landlord's consent to any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Anything herein to the contrary notwithstanding, this Lease may be assigned and transferred by Tenant without the consent of Landlord to any corporation or entity into which or with which Tenant or its successor may be merged, converted or consolidated or which may otherwise succeed to substantially all of Tenant's assets, or to any other chain drug company having five (5) or more stores.

26. Force Majeur. If either party to this Lease shall be delayed or prevented from the performance of any obligation through no fault of their own by reason of inability to procure materials, failure of utility service, environmental impact, labor disputes, riots, insurrection, war, Acts of God, natural disaster, or similar causes beyond the control of such party, the performance of such obligation shall be excused for the period of the delay except for the payment of rent.

27. Quiet Enjoyment. If the Tenant shall pay the rent and perform all the covenants and provisions to be performed by Tenant hereunder, the Tenant shall during the term demised, freely, peaceably and quietly occupy and enjoy the full possession of the Demised Premises, including the joint use of the Common Area, and the tenements, hereditaments and appurtenances thereunder belonging and the rights and privileges herein granted without molestation or hindrance, lawful or otherwise.

28. Default. If Tenant shall (a) default in the payment of rent and such default continues for a period of ten (10) days after receipt of written notice thereof from Landlord; or (b) default under any other provision of this Lease and such default shall continue for more than thirty (30) days after notice to Tenant of such default, then Landlord may, by giving notice to Tenant at any time thereafter during the continuance of such default, either (a) terminate this

Lease, or (b) re-enter the Demised Premises by summary proceedings, and pursuant to such proceedings expel Tenant and remove all property therefrom, relet the Demised Premises at the best possible rent readily obtainable (making reasonable efforts therefor), and receive the rent therefrom; provided, however, Tenant shall remain liable for the equivalent of the amount of all rent reserved herein less the avails of reletting, if any. Any and all monthly deficiencies so payable by Tenant shall be paid monthly on the date provided for the payment of Annual Rent. If any default by Tenant (except nonpayment of rent) cannot reasonably be remedied within thirty (30) days after notice of default, then Tenant shall have such additional time as shall be reasonably necessary to remedy such default before this Lease can be terminated or other remedy enforced by Landlord. Except for the legal remedy of damages provided for herein (provided Landlord shall, in all instances, be required to mitigate damages) and the equitable remedy of an injunction, the remedies of Landlord herein shall be exclusive of any other remedies. Rights shall be cumulative in addition to any other that Landlord may have in law or equity. Exercise of one shall not impair Landlord's right to exercise any other right or remedy.

29. Landlord Failure of Performance. If Landlord shall fail to perform any of the terms, provisions, covenants and conditions to be performed or complied with by Landlord pursuant to this Lease, or if Landlord should fail to make any repair or payment which Landlord agrees to make, and any such failure shall, if it relates to a matter which is not of an emergency nature, remain uncured for a period of thirty (30) days after Tenant shall have served upon Landlord and Landlord's mortgagee ^{written} notice of such failure, or if any default by Landlord cannot reasonably be remedied within thirty (30) days after notice of default (except in matters that are emergency in nature), or if Landlord is diligently pursuing remedies of the default, then Landlord shall have such additional time as shall be reasonably necessary to remedy such default before rent may be reduced or other remedy enforced by Tenant, or ~~for a period of 48 hours after service of such notice if in Tenant's judgment reasonably exercised such~~

~~failure relates to a matter which is of an emergency nature~~, then Tenant may at Tenant's option perform any such term, provision or condition or make any such repair or payment, and the full amount of the cost and expense entailed, or the payment so made, together with damages sustained shall immediately be owing by Landlord to Tenant. Tenant shall initially have the right to deduct such amount up to two (2) months minimum rent ~~in any given year with interest at the maximum legal rate thereon~~ from the date of payment from rents or charges then due or thereafter coming due hereunder, and irrespective of who may own or have an interest in the Demised Premises at the time such deductions are made. Any such deduction shall not constitute a default in the payment of rent unless Tenant shall fail to pay the amount of such deduction to Landlord within thirty (30) days after final adjudication that such amount is owing to Landlord. The option given in this Paragraph is for the sole protection of Tenant, and its existence shall not release Landlord from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any default by Landlord. Notwithstanding the above, if Tenant's damages exceed the amount of offset allowed herein, Tenant shall not be precluded from initiating an action at law to collect same from Landlord.

7

30. Cessation of Business. Tenant may at any time upon thirty (30) days prior notice to Landlord cease operation of its business on the Demised Premises and Tenant's sole and exclusive liability hereunder shall be limited to the Annual Rent, Common Area maintenance charges and Real Estate Taxes. In the event Tenant ceases operation of its business for a continuous period of one hundred eighty (180) days, Landlord shall have the right to terminate this Lease upon written notice to Tenant, in which event Tenant shall be relieved of any further obligation hereunder.

31. Liability.

(a) Tenant shall defend, indemnify and hold Landlord harmless from any and all damages, costs, expenses and liability which either (i) arise from or are in connection with the

use, occupancy or repair by Tenant of the Demised Premises and Common Areas, (ii) arise from or are in connection with any act or omission of Tenant, Tenant's agents, employees or invitees; or (iii) result from the negligence of Tenant, its agents, employees or invitees, or failure on Tenant's part to comply with any of the covenants, terms or conditions of this Lease.

(b) Landlord shall defend, indemnify and hold Tenant harmless from any and all damages, costs, expenses and liability which either (i) arise from or in connection with the use, control or repair by Landlord of the Common Area; (ii) arise from or are in connection with any act or omission by Landlord, Landlord's agents or employees in connection with the Common Area; or (iii) result from the negligence of Landlord's agents or employees or failure on Landlord's part to comply with any of the covenants, terms or conditions of this Lease.

32. Targeted Marketing Plan. The Tenant agrees to contribute annually to Landlord's Targeted Marketing Plan, its pro rata costs not to exceed Five Hundred (\$500.00) Dollars, so long as the Plan is in existence.

33. Lease Contingencies. This Lease shall not become effective unless and until the following contingencies have been met by Landlord: (1) Landlord shall have completed all necessary renovations and improvements (as set forth in Exhibit 6 attached hereto) to the Shopping Center; (2) Fay's shall not be obligated to accept the Demised Premises or open for business until a supermarket occupying at least 35,000 square feet of space in the Shopping Center opens for business to the general public.

34. Hold Over Tenant. In the event Tenant shall remain in possession of the Demised Premises after termination of this Lease or of any Renewal Period of which Tenant shall have availed itself or after any earlier termination provided or permitted herein or by the Lease it shall be a tenant from month to month on the same conditions, except as to term, as herein provided.

35. Landlord's Estate. In the event that the interest or estate of Landlord in the Demised Premises shall terminate by operation of law or a bona fide sale or by execution of

foreclosure sale or for any other reason, or if for any reason Landlord ceases to be entitled to the rentals hereunder, then in any such event Landlord and Landlord's agents shall be released and relieved from all liability and responsibility hereunder. Landlord and its agents shall remain liable for those matters accruing up to said termination of Landlord's interest or estate herein and, Tenant shall attorn to the successor to Landlord's interest or estate and recognize such successor as Landlord under this Lease; and in such event the successor, by accepting the rent from Tenant hereunder, shall become liable to perform all the obligations of the Landlord under this Lease. Notwithstanding the foregoing, Landlord named herein shall not, in any event, be relieved of its obligations to complete construction of the Demised Premises and the Shopping Center in accordance with the terms hereof.

36. Landlord's Liability. The Landlord and any successor in interest shall not be subject to personal liability in respect to any of the covenants or conditions of the Lease. The Tenant shall look solely to the equity of the Landlord in the Shopping Center for the satisfaction of the remedies of the Tenant in the event of breach by Landlord. Tenant hereby agrees that it will not bring or maintain any action or suit for a judgment against the assets of the Landlord other than its equity in the Shopping Center or against the successors or assigns of Landlord or any of them, the right to bring or maintain any such action or suit for personal judgment against the other assets of the Landlord or against the other assets of the successors or assigns, or any of them is hereby expressly waived.

37. Notices. All notices required under this Lease shall be deemed to be properly served if delivered in writing personally or sent by certified mail, return receipt requested, to Landlord at the last address where rent was paid, or to Tenant at its offices at 7245 Henry Clay Boulevard, Liverpool, New York 13088, or to any subsequent address which either may designate for such purpose. Date of service of a notice served by mail shall be the date on which such notice is deposited in a post office of the United States Post Office Department, except that a notice of change of address shall not be effective until received.

38. Divisibility of Lease. If any term or provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. Unless the circumstances are covered elsewhere in this Lease, this clause shall not apply to Tenant's inability through no fault of its own to use the Demised Premises as a full and complete modern drug store and health and beauty aid operation.

39. Captions, Etc. The captions, legends and index appearing on this Lease are inserted only for convenient reference or identification of the particular paragraphs. They are not intended to describe, interpret, define or limit the scope, extent or intent of this Lease, or any paragraph or provision thereof.

40. Construction of Lease. This Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and shall be binding upon the parties hereto and their respective legal representatives, successors and assigns except as expressly provided otherwise.

41. Amendment. This Lease may be modified or amended only by an instrument in writing duly executed by the Landlord and Tenant.

42. Broker. Landlord and Tenant each represent to the other that they have not dealt with a broker in connection with the consummation of this Lease and in the event a brokerage claim is presented, each party agrees to defend same and indemnify and hold the other party harmless from any such claim.

43. Gender. The use of the neuter singular pronoun to refer to Tenant and Landlord shall be deemed a proper reference to either of them whether they be an individual, a corporation, a partnership or any form of joint venture.

44. Waiver. No waiver of any condition or covenant hereof by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant hereof. No obligation not stated herein shall be imposed on either party hereto.

45. Entire Agreement. This Lease contains the entire understanding of the parties hereto. There are no other agreements, representations, warranties or conditions not set forth herein.

46. Payment of Rent. Rent checks shall be made payable to Landlord and shall be mailed to the address indicated at the beginning of this Lease.

47. Memorandum of Lease. The parties agree to execute and deliver, upon the request of any party hereto, a Memorandum of Lease suitable for recording containing such matters as they may deem appropriate.

IN WITNESS WHEREOF, this Lease Agreement has been duly executed as of the day and year first above written.

LANDLORD:

LIBBY & LIBBY

By: Leslie H. Libby
Partner

TENANT:

FAY'S DRUG COMPANY, INC.

(Corporate Seal)

By: Warren A. Wagner
Senior Vice President

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF _____)

On the ____ day of _____, 1989, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that deponent resides at _____, Pennsylvania, that deponent is a partner of LIBBY & LIBBY, the Pennsylvania general partnership described in and which executed the foregoing instrument; and deponent has been authorized to sign deponent's name on behalf of said partnership.

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF ONONDAGA)

On the 24th day of May, 1989, before me personally came Warren D. Wolfson, to me known, who, being by me duly sworn, did depose and say that deponent resides in Baldwinsville, New York, that deponent is the Senior Vice President of FAY'S DRUG COMPANY, INC., the corporation described in and which executed the foregoing instrument; deponent knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of said corporation; deponent signed deponent's name thereto by like order.

Roberta J. Walters
Notary Public

ROBERTA J. WALTERS
Notary Public, State of New York
No. 4528234
Qualified in Onondaga County
Commission Expires July 30 1990

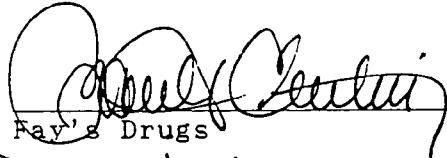
EXHIBIT 1 - LEGAL DESCRIPTION

CONSTRUCTION ADDENDUM
PHILIPSBURG LEASE

Landlord shall construct a Fay's Drug Store according to the Prototype Plans 11840. However, the following changes have been agreed to by the parties and shall be incorporated into said plans and specifications for:

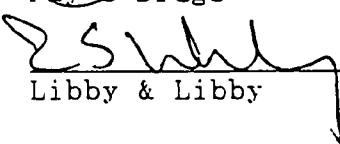
- 1) Spread footers shall be designed to handle 1.5 tons per square foot.
- 2) Roof shall be sloped from front to back with a standard height of eighteen (18) feet, with no internal roof drains.
- 3) The roof drain system for the back of the roof shall either be scuppers or gutters.
- 4) Isoboard R-20, Base Glaze Sheet, Tarmac or Brie Adheared Membrane, or comparable.

ACCEPTED:

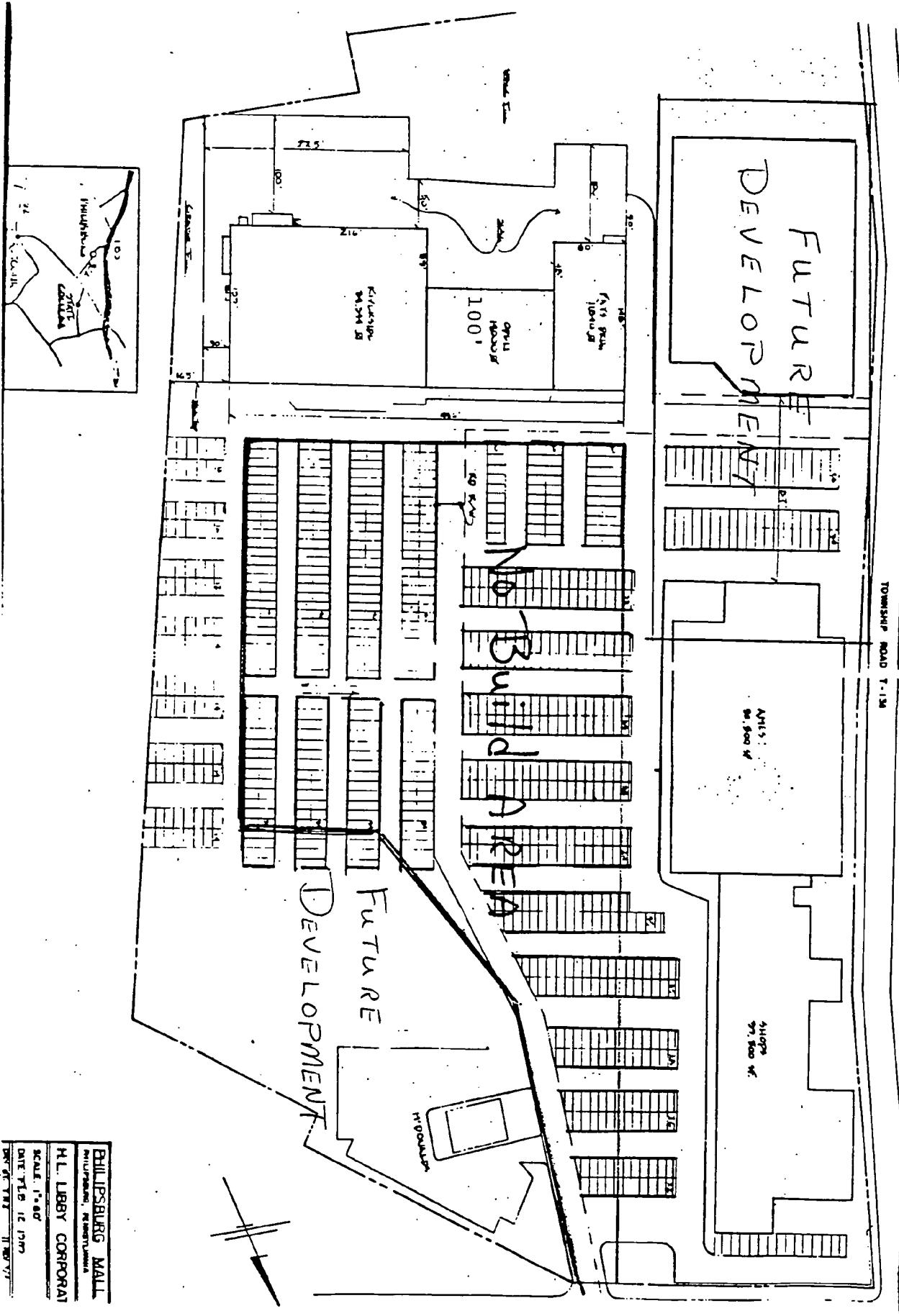


Fay's Drugs

ACCEPTED:



Libby & Libby



MEMORANDUM OF LEASE

AGREEMENT, made as of this 30th day of March, 1992, by and between LIBBY & LIBBY, a Pennsylvania General Partnership, having its principal offices at 15001 Perry Highway, Wexford, PA, 15090, (hereinafter referred to as "Landlord") and FAY'S INCORPORATED, a New York corporation having its principal offices at 7245 Henry Clay Boulevard, Liverpool, New York 13088, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Lease dated the 24th day of May, 1989, relating to the premises located in Decatur Township, Clearfield County, Pennsylvania, fully described in said Lease and attached as Exhibit 1 hereto; and .

WHEREAS, Landlord and Tenant now desire to stipulate and agree to the Rent Commencement Date, the date of expiration of the initial term of said Lease and the dates of commencement of the Renewal Periods.

NOW, THEREFORE, it is mutually stipulated and agreed by the parties hereto that:

1. The Rent Commencement Date under the aforesaid Lease is the 2nd day of May, 1990, and that the initial term terminates on the 31st day of May, 2000.
2. The first Renewal Period shall commence on the 1st day of June, 2000, and shall terminate on the 31st day of May, 2005.
3. The second Renewal Period shall commence on the 1st day of June, 2005, and shall terminate on the 31st day of May, 2010.
4. The third Renewal Period shall commence on the 1st day of June, 2010, and shall terminate on the 31st day of May, 2015.

EXHIBIT

B

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5. The fourth Renewal Period shall commence on the 1st day of June, 2015, and shall terminate on the 30th day of November, 2019.

6. Tenant shall exercise its option to extend the Term of the subject Lease by giving Landlord written notice thereof at least 270 days prior to the commencement of the above mentioned Renewal Period(s).

7. In the event the contents of this document are in conflict with the terms of the aforesaid Lease, it is the intention of the parties hereto that the provisions of the Lease shall control.

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

LANDLORD:

LIBBY & LIBBY

By: John Libby

TENANT:

FAY'S INCORPORATED

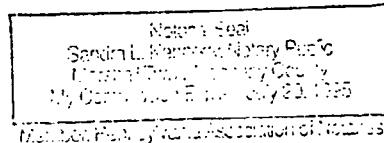
(Corporate Seal)

By: _____

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

On this 23rd day of September, 1992, before me personally appeared Robert S. Libby to me known, who by me being duly sworn, did depose and say that deponent resides at Wexford, Pa; that deponent is a partner of LIBBY & LIBBY, the Pennsylvania general partnership described in and which executed the foregoing instrument; and deponent has been authorized to sign deponent's name on behalf of said partnership.

Sandra L. Kennedy
Notary Public



STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS:

On this _____ day of _____, 1992, before me personally appeared _____, to me known, who, by me being duly sworn, did depose and say that deponent resides at _____; that deponent is the _____ of FAY'S INCORPORATED, the New York corporation described in and which executed the foregoing Memorandum of Lease, that deponent knows the seal of said corporation, that the seal affixed to the Memorandum of Lease is the corporate seal of said corporation and that it was affixed by order of the Board of Directors of the corporation; and that deponent signed deponent's name thereto by like order.

Notary Public

Fay's Incorporated

WARREN D. WOLFSON

Senior Vice President,
General Counsel and Secretary

PATRICIA M. SNYDER

Assistant General Counsel and
Assistant Secretary

RAND D. ALLGAIER

Associate Counsel

December 28, 1992

Libby & Libby
15001 Perry Highway
Wexford, PA 15090

Re: Fay's Drug Store #177
Ames Plaza, Route 322, Phillipsburg, Pennsylvania

Dear Sir or Madam:

With regard to a lease dated May 24, 1989, by and between Libby & Libby and Fay's Incorporated for the lease of the above-referenced premises (the "Lease"), please be advised that pursuant to Paragraph 25 of said Lease, we are requesting your consent to the assignment of the Lease, in its entirety, to a wholly owned subsidiary of the CVS Division of Melville Corporation, One CVS Drive, Woonsocket, Rhode Island 02895. The tenant's obligations under the Lease, upon assignment, will be guaranteed by Melville Realty Corporation. The purpose of this letter is to advise you of the pending assignment. The CVS Division of Melville Corporation is a chain drug company having five (5) or more stores.

In order to expedite this transaction, please execute and return the enclosed copy of this letter, thereby acknowledging receipt of this notice. A self-addressed, stamped envelope is enclosed for your convenience.

Very truly yours,

FAY'S INCORPORATED

Warren D. Wolfson

Warren D. Wolfson
Senior Vice President and
General Counsel

Acknowledged and consented to:
LIBBY & LIBBY

By: _____

Title: _____

Date: _____

EXHIBIT

C

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H. I. Lihhv Corporation

OPERATORS OF CVS/PHARMACY AND PEOPLES DRUG
Division of Melville Corporation

RENT COMMENCEMENT - LEASE TERM

January 27, 1993

Mr. Robert Libby
Libby & Libby
15001 Perry Highway
Wexford, Pennsylvania 15090

Re: Ames Plaza CVS, Inc. (CVS #1919,
Philipsburg, Pennsylvania

Dear Mr. Libby:

In accordance with the provisions of the Lease Agreement dated May 24, 1989, this is to confirm the following:

1. CVS acquired the above-referenced premises on January 23, 1993.
2. Minimum rent and other charges due under the Lease commenced May 2, 1990. Minimum rent will automatically escalate on May 2, 1995.
3. The Lease term commenced on May 2, 1990, and shall expire on May 31, 2000, with three (3) option periods of five (5) years each and one (1) option period of four and one half (4 1/2) years. The first option, if elected, shall be exercised by September 4, 1999, and effective June 1, 2000.

If the above accurately reflects your understanding, please sign and date below, retain one copy for your records, and return one copy to my attention.

Sincerely,

Lorraine Allard

Lorraine Allard
Lease Administrator

LA/ds

CONSENT AND APPROVAL

cc: Susanne Harrod
S/L #1919

Agreed to this _____ day

CERTIFIED MAIL RRR P 652 102 609

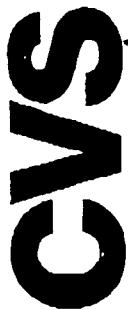
of _____, 1993

Authorized Landlord

ONE CVS DRIVE • WOONSOCKET, RHODE ISLAND 02895 • (401)766-1500

EXHIBIT

D
ALL-STATE® INTERNATIONAL



OPERATORS OF CVS/PHARMACY AND PEOPLES DRUG
Division of Melville Corporation

RENT COMMENCEMENT - LEASE TERM

January 27, 1993

Mr. Robert Libby
Libby & Libby
15001 Perry Highway
Waxford, Pennsylvania 15090

Re: Ames Plaza CVS, Inc. (CVS #1919)
Philipsburg, Pennsylvania

Dear Mr. Libby:

In accordance with the provisions of the Lease Agreement dated May 24, 1989, this is to confirm the following:

1. CVS acquired the above-referenced premises on January 23, 1993.
2. Minimum rent and other charges due under the Lease commenced May 2, 1990. Minimum rent will automatically escalate on May 2, 1995.
3. The Lease term commenced on May 2, 1990, and shall expire on May 31, 2000, with three (3) option periods of five (5) years each and one (1) option period of four and one half (4 1/2) years. The first option, if elected, shall be exercised by September 4, 1999, and effective June 1, 2000.

If the above accurately reflects your understanding, please sign and date below, retain one copy for your records, and return one copy to my attention.

Sincerely,

Lorraine Allard
Lorraine Allard
Lease Administrator

LA/ds

CONSENT AND APPROVAL

cc: Susanne Harrod
S/L #1919

Agreed to this _____ day

CERTIFIED MAIL RRR P 652 102 609

of _____, 1993

Authorized Landlord

ONE CVS DRIVE • WOONSOCKET, RHODE ISLAND 02895 • (401)765-1500



H. L. Libby Corporation

Developers, Managers, Investors

2559 BRANDT SCHOOL ROAD
WEXFORD, PA 15090

724/935-3433
FAX: 724/935-3462

Via Fax: 609-265-7832
and Certified Mail

September 7, 1999

Mr. Mike Buckless
CVS
One Berry Drive
P.O. Box 560
Lumberton, NJ 08048

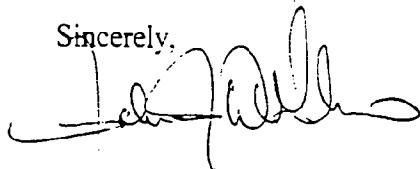
Dear Mr. Buckless:

After reviewing your file, it has been noted that your option to extend your lease is due at this time. To verify our address and fax number, please use the following:

Associates of Philipsburg
c/o H.L. Libby Corporation
2559 Brandt School Road
Wexford, PA 15090
Fax: 724-935-3462

Your letter for extension is due immediately. If not received, we will be evicting at the end of the lease term and releasing the space. Any questions, please do not hesitate to contact me.

Sincerely,



John J. DiGirolamo
Real Estate Representative

JJD/jlb

EXHIBIT



ALL-STATE[®] INTERNATIONAL

H. L. Libby Corporation

Developers. Managers. Investors

2559 BRANDT SCHOOL ROAD
WEXFORD, PA 15090

724/935-3433
FAX: 724/935-3462

Via Express Mail

Pete Pecoraio
Vice President Real Estate
CVS/Pharmacy
One Berry Drive
Lumberton, NJ 08048

Dear Mr. Pecoraio:

This is to confirm our conversation this past Monday. CVS' Lease in Philipsburg ends May 31, 2000. CVS must vacate the premises before that date as there is no holdover right.

Although CVS is using a preferred developer to build a new store across the street from our plaza, the developer has not yet closed on the property. Keep in mind our company could build CVS a new store at the front of the plaza with a red light at the corner. This possibility has been presented previously. However, CVS has no right to operate beyond May 31, 2000 in its current premises.

Sincerely,



Robert S. Libby
Vice President

RSL/jlb



SABLE PUSATERI
ROSEN GORDON
& ADAMS

ATTORNEYS AT LAW

March 20, 2000

Peter Pecoraio, Vice President - Real Estate
CVS Pharmacy
1 Berry Drive
Lumberton, New Jersey 08048

Re: *CVS Store located at Ames Plaza Shopping Center, Phillipsburg, PA*

Dear Mr. Pecoraio:

This law firm has been retained by Associates of Phillipsburg, the owner of the above-referenced shopping center. As you are aware, pursuant to the terms of the Lease dated May 24, 1989 for the above-referenced premises, the time period for the Tenant's option to extend the Term of the Lease has long since expired and the Tenant did not exercise its option. As you are also aware, and as is expressly set forth in the Memorandum of Lease dated March 30, 1992, the expiration date of the Lease Term is May 31, 2000.

Although not required to do so under the terms of the Lease, our client has given repeated written notices to CVS reminding it of the May 31, 2000 expiration date, and further advising CVS that it must timely vacate and return the premises to the Landlord at the expiration of the Lease Term. To date, CVS has not contacted our client regarding any matters (such as removal of signs, inventory and trade fixtures, estimated move-out date, etc.) relating to its timely vacation of the Premises by no later than May 31, 2000. Please have your store manager or other operations personnel contact John DiGirolamo at 724/935-3433 to coordinate these matters as soon as possible. It is very important that the Tenant move-out be handled in a timely manner, as our client has another tenant ready for immediate occupancy of the Premises.

The Lease does not permit CVS to retain possession of this premises after May 31, 2000, and the Landlord does not consent to any holdover by the Tenant. We trust that CVS will fully comply with its obligation to vacate the above-referenced premises by no later than May 31, 2000 at the expiration of the Lease Term. The Landlord hereby reserves all rights and remedies under the Lease, at law and in equity.

Very truly yours,

*Sable Pusateri Rosen
Gordon & Adams, LLC*

Alan B. Gordon

ABG/dls

cc: Associates of Phillipsburg

SABLE PUSATERI ROSEN
GORDON & ADAMS, LLC

SEVENTH FLOOR, FRICK BUILDING
PITTSBURGH, PA 15219-6003

PHONE: 412-471-4996
FAX: 412-281-2858/3871

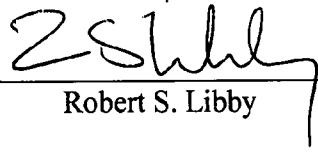
EXHIBIT

G

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VERIFICATION

I, Robert S. Libby, verify that I am the Vice President of Greater Phillipsburg Associates II, LP; that the attached document is based upon facts of which I have personal knowledge or information furnished to me by counsel; that the language of the document is that of counsel and not my own; that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief; and that I am authorized to execute this Verification on behalf of Greater Phillipsburg Associates II, LP. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Robert S. Libby

CLERAFILED, PENNSYLVANIA 16830
P.O. BOX 552
211 1/2 EAST LOCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

— Lap over margin —

FILED

MAY 10 2000
10:10 AM
William A. Shaw
Prothonotary
No c/c

Cert. Due to
City/State
Copy to CA
EAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

111
GREATER PHILIPSBURG
ASSOCIATES, INC., in its
Capacity as general partner
Of GREATER PHILIPSBURG
ASSOCIATES II, a
Pennsylvania Limited
Partnership,
Plaintiff,

112
V:
V:

AMES PLAZA CVS, INC.,
AMES PLAZA
Defendant
Defendant

No. 00-445-CD
No. 00-445-CD

PRAECIPE TO SETTLE AND DISCONTINUE Type of Pleading:

TO THE PROTHONOTARY:

* Praecipe to Settle and
* Discontinue

Please mark the above-captioned case settled and
discontinued with prejudice.

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
this party: James A. Naddeo

* Attorney for Plaintiff
James A. Naddeo, Esq.
Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

I hereby certify this to be a true
and accurate copy of the original
statement filed in this case.

FILED

MAY 10 2000

William A. Shaw
Prothonotary

MAY 10 2000

Attest:

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GREATER PHILIPSBURG
ASSOCIATES, INC., in its
Capacity as general partner
Of GREATER PHILIPBSURG
ASSOCIATES II, a
Pennsylvania Limited
Partnership,
| Plaintiff,

12 v.
AMES PLAZA CVS, INC.,
Defendant.

No. 00-445-CD

Type of Pleading:

Praeipe to Settle and
Discontinue

* Filed on behalf of:
* Plaintiff
*

Counsel of Record for
this party:

* James A. Naddeo, Esq.

* Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

MAY 10 2000

William A. Shaw
Prothonotary

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 10 2000

Attest:

William H. Thompson
Prothonotary

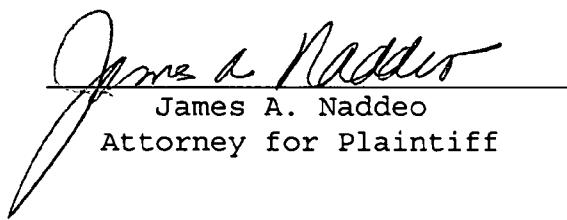
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GREATER PHILIPSBURG *
ASSOCIATES, INC., in its *
Capacity as general partner *
Of GREATER PHILIPBSURG *
ASSOCIATES II, a *
Pennsylvania Limited *
Partnership, *
Plaintiff, *
*
v. * No. 00-445-CD
*
AMES PLAZA CVS, INC., *
Defendant. *

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and
discontinued with prejudice.



James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

COPY

GREATER PHILIPSBURG ASSOCIATES, INC
in its capacity as general partner of
GREATER PHILIPSBURG ASSOCIATES, II, a
Pennsylvania Limited Partnership,

Plaintiff(s)

vs.

No. 00-445-CD

AMES PLAZA CVS, INC.,

Defendant(s)

CERTIFICATE OF DISCONTINUANCE

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, WILLIAM A. SHAW, Prothonotary of the Court of Common Pleas in and
for the County and Commonwealth aforesaid do hereby certify that the above
case was this day, the 10th of May 2000, marked:

SETTLED AND DISCONTINUED WITH PREJUDICE.

Record costs in the sum of \$90.00 have been paid in full by

James A. Naddeo, Esquire

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this
Court at Clearfield, Clearfield County, Pennsylvania this 10th day of
May 2000.

Prothonotary

JAMES A. NADDEO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GREATER PHILIPSBURG ASSOCIATES
VS
AMES PLAZA CVS, INC.

00-445-CD

COMPLAINT

SHERIFF RETURNS

NOW APRIL 18, 2000 JOHN GREEN, SHERIFF OF PHILADELPHIA WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON AMES PLAZA CVS, INC. DEFENDANT.

NOW APRIL 27, 2000 SERVED THE WITHIN COMPLAINT ON AMES PLAZA CVS, INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF PHILADELPHIA. THE RETURN OF SHERIFF GREEN IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED SANDRA SOLOMON, AGENT FOR DEFENDANT.

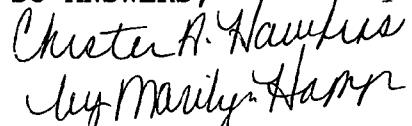
27.88 SHFF. HAWKINS PAID BY: ATTY.
116.00 SHFF. GREEN PAID BY: ATTY.
10.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

DAY OF April 27 2000


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,


Chester A. Hawkins
by Marilynn Harr

CHESTER A. HAWKINS
SHERIFF

FILED

~~APR 18 2000~~

03:58
William A. Shaw
Prothonotary

GREATER PHILLIPS ASSOC

COMMON PLEAS NO.
COUNTY COURT

VERSUS

TERM, 2000

AMES PLAZA CVS INC. NO. 445

C/O CT CORP SYSTEM

 Defendant

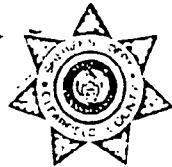
SERVED AND MADE KNOWN TO ABOVE NAMED Defendant Company
 by handing a true and attested copy of the within Summons/Complaint, issued in the above captioned matter
 on APRIL 27, 2000, at 10:00 o'clock, A M., E.S.T./~~DST~~
 at 1635 MARKET ST., in the County of Philadelphia,
 State of Pennsylvania, to SANDRA SOLOMON

- (1) the aforesaid defendant, personally;
- (2) an adult member of the family of said defendant, with whom said defendant resides, who stated that his/her relationship to said defendant is that of _____;
- (3) an adult person in charge of defendant's residence; the said adult person having refused, upon request, to give his/her name and relationship to said defendant;
- (4) the manager/clerk of the place of lodging in which said defendant resides;
- (5) agent or person for the time being in charge of defendant's office or usual place of business.
- (6) the _____ and officer of said defendant Company;

So Answers,

JOHN D. GREEN, Sheriff

By: John D. Talamini
 Deputy Sheriff



Sheriff's Office
Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX
(814) 765-6089

CHESTER A. HAWKINS
SHERIFF

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY
MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GREATER PHILIPSBURG ASSOCIATES NO. 00-445-CD

VS ACTION: COMPLAINT

AMES PLAZA CVS, INC.

SERVE BY: 5-14-00

or

HEARING DATE:

AMES PLAZA C.V.S., INC.

ADDRESS: CT Corporation Inc., 1635 Market St., Philadelphia, Pa. 19103

Know all men by these presents, that I, CHESTER A. HAWKINS,
HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby
deputize the SHERIFF of PHILADELPHIA County to execute this writ.

This deputation being made at the request and risk of the plaintiff
this 18th day of APRIL 2000.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO: JAMES A. NADDEO, Attorney