

05-1751-CD
Wal-Mart Stores vs B. Warehouse Co. al

05-1751-CD
Wal-mart Stores vs B Warehouse al

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Kimberly L. Russell, Esquire
Attorney I.D. No. 74057
350 Sentry Parkway, Building 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2541

Attorneys for Plaintiff

WAL-MART STORES EAST, L.P.
Plaintiff

COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PA

v.

NO. DS-1751-CJ

B WAREHOUSE COMPANY

and

S&T BANK

Defendants.

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff, Wal-Mart Stories East, L.P., in
the above-captioned matter.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By:

KIMBERLY L. RUSSELL, ESQUIRE
Attorneys for Plaintiff

Dated: November 8, 2005

FILED ^{cc}
01/11/2005 Atty Russell
NOV 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Kimberly L. Russell, Esquire
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350 Sentry Parkway, Building 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2541

Attorneys for Plaintiff

WAL-MART STORES EAST, L.P.	:	COURT OF COMMON PLEAS
Plaintiff,	:	CLEARFIELD COUNTY, PA
⋮	⋮	⋮
v.	:	NO.
⋮	⋮	⋮
B WAREHOUSE COMPANY	:	⋮
⋮	⋮	⋮
⋮	⋮	⋮
S&T BANK	:	⋮
Defendants.	:	⋮

CERTIFICATE OF SERVICE

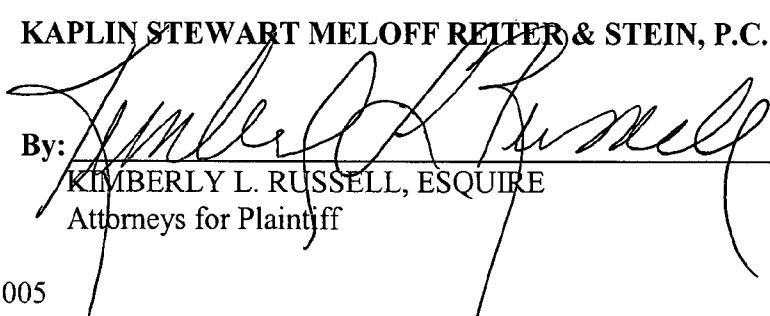
I hereby certify that a copy of the foregoing "Entry of Appearance" was caused to be sent in the manner indicated below by the undersigned on the date stated below to the addressees stated below and at the addresses stated below:

Timothy M. Slavish, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

John C. Dennison, II, Esquire
Dennison Dennison & Harper
293 Main Street
Brookville, PA 15825-1291

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By:


KIMBERLY L. RUSSELL, ESQUIRE
Attorneys for Plaintiff

Dated: November 8, 2005

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION - (LAW) (EQUITY)**

No: 05-1751-CD

Type of Case: Equity/Interpleader

WAL-MART STORES EAST, L.P.
Plaintiff

VS.

B WAREHOUSE COMPANY
and
S&T BANK
Defendants

Type of Pleading: Complaint

Filed on Behalf of:
Plaintiff
(Plaintiff/Defendant)

Counsel of Record for this Party:
Kimberly L. Russell, Esquire
(Name of Attorney)

Supreme Court No.: 74057

Kaplin Stewart Meloff Reiter & Stein, P.C.
(Firm Name, if any)

350 Sentry Parkway, Building 640
Blue Bell, PA 19422
(Address)

(610) 941-2541
(Phone)

Dated: November 8, 2005

FILED *Jce*
Att'y Russell
11/11/2005
NOV 09 2005 *Att'y pd.*
\$5.00
William A. Shaw
Prothonotary/Clerk of Courts

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Kimberly L. Russell, Esquire
Attorney I.D. No. 74057
350 Sentry Parkway, Building 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2541

Attorneys for Plaintiff

WAL-MART STORES EAST, L.P.

601 N. Walton Boulevard
Bentonville, AR 72716
Plaintiff,

COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PA

NO.

v.

B WAREHOUSE COMPANY

101 W. DuBois Avenue
DuBois, PA 15801

and

S&T BANK

256 Main Street
Brookville, PA 15825
Defendants.

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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51**

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Kimberly L. Russell, Esquire
Attorney I.D. No. 74057
350 Sentry Parkway, Building 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2541

Attorneys for Plaintiff

WAL-MART STORES EAST, L.P.

601 N. Walton Boulevard
Bentonville, AR 72716
Plaintiff,

COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PA

NO.

v.

B WAREHOUSE COMPANY

101 W. DuBois Avenue
DuBois, PA 15801

and

S&T BANK

256 Main Street
Brookville, PA 15825
Defendants.

COMPLAINT IN EQUITY

Plaintiff Wal-Mart Stores East, L.P., by its counsel, files this Complaint in Equity seeking to interplead certain disputed funds into Court and exonerate Plaintiff from further liability for the interpleaded funds and in support thereof, avers as follows:

1. Plaintiff Wal-Mart Stores East, L.P. ("Wal-Mart") is a Delaware limited partnership with a business address at the above stated address.
2. Defendant B Warehouse Company ("B Warehouse") is, upon information and belief, a Pennsylvania corporation with a business address at the above stated address.

3. B Warehouse is the owner of a 135,000 square foot warehouse building located at RD #3, Box 144-B Shaffer Road, Sandy Township, Clearfield County, Pennsylvania.

4. Defendant S&T Bank ("Bank") is, upon information and belief, a financial institution licensed to conduct business in the Commonwealth of Pennsylvania with a business address at the above stated address.

5. The Bank is the paying agent authorized to accept payments from B Warehouse on account of certain bonds (the "Bonds") that were issued to finance the construction of the B Warehouse site in 1985.

6. On or about May 15, 2005, Wal-Mart as tenant and B Warehouse as landlord entered into a Lease Agreement (the "Lease") whereby Wal-Mart agreed to lease from B Warehouse 30,000 square feet of storage space (the "Premises") at the B Warehouse site. A true and correct copy of the Lease is attached hereto as **Exhibit "1."**

7. The term of the lease is for six months and after the initial term, Wal-Mart has the option to renew the Lease either for another six month term or in one month increments. See Lease, Paragraph 3.

8. Wal-Mart's monthly rental payment for its lease of the Premises is Seven Thousand, Five Hundred Dollars (\$7,500.00) per month, including Wal-Mart's share of the Common Area Maintenance expenses for the Premises.

9. In accordance with the Lease and B Warehouse's instructions to Wal-Mart, Wal-Mart remits its rental payments to B Warehouse through a rental agent, Coldwell Banker Commercial Developac Realty at 996 Beaver Drive, DuBois, PA 15801 ("Coldwell Banker").

10. In accordance with Paragraph 17 of the Lease, Wal-Mart is entitled to the quiet enjoyment of the Premises.

11. Wal-Mart has exercised its right to renew the Lease in one month increments and as such will remain in the Premises until at least December 31, 2005. A true and correct copy of Wal-Mart's notice of renewal to B Warehouse is attached hereto as **Exhibit "2."**

12. From May 2005 to September 2005, Wal-Mart remitted its rental payments in a timely manner and to the Coldwell Banker office directed by B Warehouse.

13. On or about September 12, 2005, Wal-Mart received a letter dated September 7, 2005 from John C. Dennison, II, Esquire, as counsel for the Bank, notifying Wal-Mart that (1) B Warehouse had not remitted payments to the Bank on the Bonds, (2) B Warehouse is in default under a Mortgage Loan Agreement for the B Warehouse site, and (3) pursuant to an Assignment of Rents from B Warehouse to the holders of the Bonds, Wal-Mart must remit all future rental payments to the Bank and not B Warehouse or Wal-Mart "will not receive credit for such payments and [Wal-Mart] will continue to be liable to the Bank for [those payments] until such payments are actually received by the Bank." A true and correct copy of Mr. Dennison's September 7, 2005 letter to Wal-Mart is attached hereto as **Exhibit "3."**

14. Before remitting the October rental payment for the Premises, Wal-Mart contacted agents for both the Bank and B Warehouse in an attempt to obtain a joint directive from the Bank and B Warehouse as to whom Wal-Mart should remit its rental payments.

15. Mr. Dennison, on behalf of the Bank, reiterated the Bank's position that B Warehouse is in default of the Mortgage Loan Agreement for the B Warehouse site, and that all payments must be made to the Bank in accordance with Mr. Dennison's September 7, 2005 letter.

16. Mr. Joseph Veracalo of Coldwell Banker and Timothy Slavish, Esquire, as counsel for B Warehouse, notified Wal-Mart that B Warehouse expects Wal-Mart to pay its rent to Coldwell Banker in accordance with the Lease, and stated that the Bank is not entitled to the payment of rents from Wal-Mart.

17. Wal-Mart is ready, willing, and able to make its monthly rental payment for October 2005 and for the remainder of the Lease term, but Wal-Mart is subject to contradictory payment directives from the Bank and B Warehouse.

18. The claims by B Warehouse and the Bank are inconsistent and may expose Wal-Mart to double liability.

19. If Wal-Mart makes payment to one of the claimants only, the remaining claimant may declare Wal-Mart to be in default of the Lease and may restrict Wal-Mart's access to the Premises and/or seek to evict Wal-Mart from the Premises.

20. If Wal-Mart is denied access to the Premises or its access to the Premises is interrupted, Wal-Mart will suffer irreparable harm because its business operations will be disrupted and Wal-Mart will be unable to access the merchandise that Wal-Mart has stored in the Premises.

21. The instant dispute between B Warehouse and the Bank as claimants is not due to any action or inaction on the part of Wal-Mart. To the contrary, the instant dispute between the claimants relates solely to the structure of the financing for the B Warehouse facility, of which dispute Wal-Mart has no knowledge or interest.

22. Wal-Mart's rental payments for the months of October, November, and December 2005 total Twenty Two Thousand, Five Hundred Dollars (\$22,500.00) (the "Rent").

23. B Warehouse and the Bank are competing claimants for the Rent.

24. Wal-Mart claims no interest in the Rent in controversy and is ready, willing, and able to pay the Rent into court or to such person as the Court may direct.

25. Wal-Mart admits that it is liable to pay the Rent in order to remain in the Premises and seeks only protection from double liability for that Rent and nondisturbance of its operations at the Premises.

26. Despite its efforts to do so, Wal-Mart has been unable to obtain a unified payment directive from the Bank and B Warehouse.

27. Wal-Mart files this Complaint in good faith and not in collusion with either of the competing claimants to the Rent.

28. Wal-Mart seeks to interplead the Rent into Court and requests that this Court affirm and protect Wal-Mart's right to the quiet enjoyment of the Premises under the Lease.

29. Under Pennsylvania law relating to interpleader, Wal-Mart is entitled to recover its attorney's fees and costs incurred in this action from the interpleaded funds.

30. All conditions precedent have been performed or have occurred.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order:

1. directing that Wal-Mart interplead the Rent into Court;
2. prohibiting both B Warehouse and the Bank from disrupting Wal-Mart's use of and access to the Premises;
3. allowing Wal-Mart to deduct its attorney's fees and costs from the Rent to be interpleaded into Court;
4. exonerating Wal-Mart from further liability for the Rent once that Rent, minus attorney's fees and costs, are deposited into Court; and
5. granting such other and further relief as this Court deems just.

Respectfully submitted,

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By:

Kimberly L. Russell, Esquire
Attorneys for Plaintiff

Dated: 11/7/05

VERIFICATION

I, PATRICIA MAIDT BAGGETT, hereby verify that I am a Realty Manager of the Real Estate - Distribution Centers Department of Wal-Mart Stores, Inc., the managing entity of Wal-Mart Stores East, L.P., Plaintiff in the foregoing action, am therefore authorized to execute this Verification on Plaintiff's behalf, and that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I acknowledge that I am subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities.



Patricia Maidt Baggett
PATRICIA MAIDT BAGGETT

Dated: Nov. 7, 2005

EXHIBIT “1”

LEASE AGREEMENT

MADE THIS _____ day of May, 2005, by and between B WAREHOUSE COMPANY, with its principal office and place of business at 996 Beaver Drive, DuBois, Clearfield County, Pennsylvania 1501, party of the first part, hereinafter referred as Landlord or Lessor;

A N D

WAL-MART STORES EAST, LP., a Delaware limited partnership, with its principal place of business at 801 N. Walton Blvd., Bentonville, Arkansas 72716, party of the second part, hereinafter referred to as Tenant or Lessee;

WHEREAS, Lessor is a fee owner of a certain warehouse building and lot, which warehouse building contains 136,000 square feet and is situated on RD # 3 Box 144-B Shaffer Road, Sandy Township, Clearfield County, Pennsylvania (B WAREHOUSE); and

WHEREAS, Landlord has agreed to lease to Lessee and Lessee has agreed to lease from Landlord approximately 30,000 square feet of space in B WAREHOUSE under and subject to the terms and conditions hereinafter set forth.

1. Lease - Lessor in consideration of the covenants and agreements set forth herein hereby leases to Lessee and Lessee hereby takes from Lessor 30,000 square feet, more or less, of space at B WAREHOUSE located at RD 3, 144 B Shaffer Road, Sandy Township, Clearfield County, Pennsylvania. The leased premises are outlined in blue on the floorplan of B WAREHOUSE hereto attached and marked Exhibit "A". The legal description on the lot of which said warehouse is erected is attached hereto and marked Exhibit "B" (legal description), the combination of the square footage plus the lot equal the Demised Premises. Lessor shall deliver the Demised Premises to Lessee at the Commencement Date of this Lease as hereinafter defined in an "as is" condition, broom clean.
2. Term - This Lease is for a term of six (6) months beginning on the date when Tenant notifies Lessor that Tenant elects to occupy the premises or when this Lease Agreement has been fully executed by the parties, whichever event shall first occur (the "Commencement Date"). Lessor recognizes and agrees that Lessee may, at Lessee's sole discretion and at any time during the term of this Lease, cease the operation of its business in the Demised Premises; and Lessor hereby waives any legal action for damages or for equitable relief which might be available to Lessor because of such cessation of business activity by Lessee.

3. **Options to Renew** - Lessee shall have the right, at its option, to renew this Lease for an additional six (6) months or in one-month increments, upon the same terms and provisions as applicable to the original term (except for the option(s) granted by this paragraph). Lessee may exercise an option to renew by giving written notice to Lessor not less than thirty (30) days prior to expiration of the then existing term.

Before entering into a lease for all or any portion of the space adjacent to the leased premises, consisting of approximately 105,000 square feet, as more particularly shown on Exhibit A (the "Additional Space"), during the lease term or renewals, Lessor will notify Lessee in writing of the availability of the Additional Space. Within twenty (20) days after receipt of Lessor's notice, Lessee may elect in writing to lease a portion of or all of the Additional Space for a period of not less than six (6) months on all the same terms and conditions as this Lease, except that Lessee's share of Common Area Expenses and Real Estate Taxes will be adjusted based on the size of the Additional Space, and the Additional Space will be delivered in its then "as is" condition. If Lessee does not deliver its election to lease the Additional Space or portion of the Additional Space offered in Lessor's notice within the twenty (20) day period, then the right of first offer to lease the Additional Space or portion of the Additional Space will lapse and be of no further effect and Lessor will have the right to lease the Additional Space or such portion of the Additional Space to a third party. This right of first offer to lease the Additional Space is personal to Lessee and is not transferable. Time is of the essence of the provisions of this Option to Renew.

4. **Rent** - Beginning with the Commencement Date, Lessee agrees to pay and Lessor agrees to accept as rent for the premises the total sum of \$3.00 per square foot, per annum, payable in equal monthly installments in advance on or before the 1st of each calendar month during the term of this Lease. If the beginning date of this Lease provided in Paragraph 2 above is other than the 1st day of a calendar month, the rent for such partial calendar month shall be a prorata amount based upon the number of days this Lease will be in effect during that first partial calendar month, and shall be payable on or before the beginning date of the lease term. Lessor agrees to provide Lessee with a fully completed and properly signed US Department of Treasury form W-9. No rent shall be due or payable until Lessee receives the form W-9.
5. **Use** - Lessee may use the premises for the purpose of receiving, storing and removing merchandise brought to and/or taken from the premises by any form of vehicular conveyance, including but not limited to 18-wheel tractor/trailers, which Lessor represents and warrants may be lawfully done, or for any other lawful purpose.

6. **Driveways / Parking / Common Areas** - Lessee understands that

Lessor may lease the remaining space of B WAREHOUSE to others if Lessee elects not to exercise its right of first refusal as stated in Paragraph 3. The parking spaces adjacent to the Demised Premises in front of the loading docks shall not be used for parking by any other party and shall not be blocked or obstructed by any other party. However the remaining common areas, such as driveways, rights of way and parking areas, shall be used in common by Lessee and other tenants, if any, of B Warehouse. The Lessor's Lease with other tenants of the property shall include a covenant in said Lease to require such tenant or tenants to cooperate in the maintenance of the common areas by keeping such in good condition and repair, including keeping the common areas free and clear of snow and ice. Such obligation shall not, however, include the obligation to replace the paving. In the event such cooperation cannot be achieved, then Landlord shall perform such obligation and in such event, the tenant(s) of the remaining space shall be obligated to Landlord for its prorate share of the costs of performing such obligations.

7. **Prorata Share of Common Area Maintenance** - As used herein, Lessee's prorate share shall be the fraction whereby the numerator shall be 30,000 and the denominator shall be 135,000.
8. **Public Liability Insurance** - Lessee shall at all times maintain in full force and effect public liability insurance having a single limit of not less than Two Million Dollars (\$2,000,000) per occurrence. Upon request, Lessee shall furnish Lessor with a certificate evidencing the foregoing. Landlord shall be named as an additional insured on such public liability policy.
9. **Indemnities**. Lessee agrees to defend, indemnify and hold Lessor harmless from and against any and all loss and liability to the extent caused by the negligent acts or omissions of Lessee or any of its employees. Lessor agrees to defend, indemnify and hold Lessee harmless from and against any and all loss and liability to the extent caused by the negligent acts or omissions of Lessor or any of its employees or the condition of the Demised Premises.
10. **Property Insurance** - Lessor shall procure and maintain in full force and effect (I) liability and property damage insurance in amounts from time to time determined by it to be reasonable and prudent, but, as to liability insurance, in no event, less than \$2,000,000.00 per occurrence covering the Common Area, and (II) fire and extended coverage insurance, with an All Risk Endorsement and Replacement Cost Endorsement on the Demised Premises and the Warehouse for not less than ninety percent (90%) of the replacement cost, exclusive of foundations and excavations, in solvent and responsible companies licensed to do business in the Commonwealth of Pennsylvania. Lessor covenants that it shall not permit any occupant or occupants in the Warehouse adjoining the Demised Premises to use said adjoining premises for any purpose which would increase the fire insurance rate applicable to merchandise and trade

fixtures in the Demised Premises. All loss of rent insurance proceeds shall be payable to Lessor to the extent Lessee is relieved of the obligation to pay rent under the terms of this Lease or otherwise fails to pay the same.

11. Property Taxes - The Lessor will pay all "real property taxes" (as hereinafter defined) which may be levied or assessed by any lawful authority against the land and improvements of B Warehouse, including the Demised Premises, during the Term of this Lease, or any renewal thereof. The term "real property taxes" means taxes and assessments assessed, imposed or levied upon B Warehouse and the land upon which it is located, including the Demised Premises, from time to time, including payments in lieu of taxes, and embraces taxes and assessments which are special, unforeseen or extraordinary, as well as those which are regular, foreseen or ordinary. If any governmental authority imposes, assesses or levies a tax on rent, or any other tax upon Lessor, as a supplement or substitute, in whole or in part, for real property taxes, the supplemental or substitute tax shall be deemed to be a real property tax and shall be deemed to have been levied upon the Warehouse, including the Demised Premises. Lessee shall reimburse Lessor its pro-rata share of said foregoing real estate taxes within thirty (30) days after billing thereof by Lessor to Lessee. Any taxes for any partial year shall be equitably pro-rated. Lessee shall be responsible for insuring and for the payment of all *ad valorem* or property taxes on the Lessee's personal property stored in the premises or used in connection with the premises. Lessee's pro-rata share shall be the fraction whereby the numerator shall be 30,000 and the denominator shall be 135,000.
12. Condition of Premises - Lessee has inspected the premises and accepts it in its present condition as reasonably suitable for Lessee's purposes, except for latent defects or conditions not reasonably discoverable by normal visual inspection of the premises. Lessee shall repair any damage caused by Lessee's use of the premises, except for normal wear and tear. Except for the foregoing, Lessor shall keep the premises (including without limitation the roof, exterior walls, foundation, floors, structural portions, sewer, plumbing, heating, wiring, air conditioning, windows and window glass, doors, driveways, sidewalks and parking areas) together with all other areas as to which Lessee has the exclusive or nonexclusive use, in good condition and repair at all times. It is understood that Lessee will use large vehicles, including but not limited to 18-wheel tractor/trailers, for the transportation of merchandise to and from the premises, and that Lessee will use heavy equipment, including but not limited to forklifts, to load and unload merchandise to and from such vehicles and to move merchandise in and about the premises. "Normal wear and tear" shall include the wear and tear which results from the normal use of such vehicles and equipment for such purposes.
13. Alterations / Fixtures / Equipment - Lessee shall make no structural

alterations to the premises, without the prior consent of Lessor. Lessee may make nonstructural alterations and may install and use fixtures and equipment in the premises, including without limitation security equipment, heating / ventilation / cooling equipment, portable toilets and forklifts or other merchandise handling equipment. Lessee may remove any such fixtures and equipment at any time and, at the expiration or earlier termination of this Lease, shall repair any damage to the premises caused by such installation, use or removal, except normal wear and tear. If the Lessor so elects at the end of the lease term, the Lessee shall remove all nonstructural alterations which Lessee may have made to the Demised Premises during the term of this Lease and shall repair any damage occasioned by such removal.

14. Signs - Lessee may place, at its expense, signage of such size, nature and content and at such locations on the premises as Lessee may see fit, including but not limited to signs identifying the premises occupied by Lessee and signs restricting or prohibiting solicitation or other activities on the premises. At the expiration of the Lease, Lessee agrees to remove said signs and repair any damage occasioned by such removal. Further, during the term of this Lease until removed, Lessee shall maintain such signs in good order and repair.
15. Utilities - One electrical meter serves the entire B WAREHOUSE. Accordingly, Lessee agrees to pay its pro-rata share of the electrical charges as billed by the Lessor on a monthly basis. Lessee shall be responsible for all other utilities used by Lessee at the leased premises. Lessee's pro-rata share shall be the fraction whereby the numerator shall be 30,000 and the denominator shall be 135,000.
16. Trash and Rubbish - Lessee shall be responsible for the disposal of all trash and rubbish generated at the premises.
17. Quiet Enjoyment - Lessor assures Lessee of the quiet enjoyment of the premises and other areas of which Lessee has the exclusive or nonexclusive use.
18. Default - A party shall be in default under this Lease if such party shall fail to keep or perform any of the agreements or duties on its part contained in this Lease, and shall not cure any such failure within thirty (30) days after receipt of notice from the other party specifying the nature of such failure. Upon the occurrence of a default and for so long as such default shall continue to exist uncured, the non-defaulting party shall have the right at its option (a) to declare this Lease terminated and to retake or surrender possession of the premises, as the case may be, or (b) to cure the other party's default in which event the defaulting party shall reimburse the nondefaulting party upon demand One Hundred Ten Percent (110%) of the costs incurred by the non-defaulting party in effecting such cure. The foregoing are the sole and exclusive remedies of

both parties under this lease.

19. Untenantability - If the premises becomes untenantable for Lessee's purpose as the result of fire, storm, earthquake, flood, eminent domain or other cause not the fault of Lessee, in Lessee's sole and absolute discretion, Lessee shall have the right, at its option (a) to declare this Lease terminated as of the date of such untenantability or (b) to have a proportionate abatement of rent for the period of time reasonably required for Lessor to make the premises tenantable.
20. Surrender - Upon termination of this Lease, whether by expiration of the term or earlier termination in accordance with the provisions of this Lease, including article 12, Lessee shall immediately surrender possession of the premises in as good condition as when delivered to Lessee, subject to normal wear and tear and conditions which are the responsibility of Lessor to repair; in broom clean condition and free of any and all property placed in the premises by Lessee.
21. Lessor's Right to Enter - Upon reasonable advance notice to Lessee, Lessor shall have the right to enter upon the premises for the purpose of inspecting the same, making repairs thereto or any other reasonable purpose, provided the same does not unreasonably interfere with Lessee's use of the premises.
22. Videos of Premises - Both (a) at the time of the delivery of the premises to Lessee by Lessor upon commencement of this Lease, and (b) at the time of the surrender of the premises to Lessor by Lessee upon termination of this Lease, Lessor and Lessee shall jointly participate in a narrated, dated video of the premises, using equipment furnished by Lessee. A copy of the resulting videotape shall be furnished to Lessor without charge.
23. Governing Law - This Lease shall be governed by the law of the Commonwealth of Pennsylvania, the State in which the premises is located.
24. Security Fence - Lessee shall have the right to install at its own expense a security wall or fence between the leased premises and the portion of B WAREHOUSE subject to lease to others. At the termination of this Lease, Lessee shall remove said security fence or wall and repair any damages caused by such.
25. Notices - All notices required or permitted hereunder shall be in writing and shall be deemed given when delivered in person or by reputable overnight courier or, if mailed, on the third business day after sent by certified mail, return receipt requested, and in each of the foregoing events addressed as follows:

If to Lessor: B Warehouse Company
c/o Coldwell Banker Commercial Developac Realty
998 Beaver Drive
DuBois, PA 15801

If to Lessee: Wal-Mart Distribution Center #6027
ATTN: General Manager
100 Wal-Mart Drive
Woodland, PA 16881

With a copy to: Wal-Mart Logistics Legal Department
601 N. Walton Blvd
Bentonville, AR 72716

26. Short Form of Lease. - Upon the request of either party, Lessor and Lessee will execute and acknowledge a "short form" of this Lease appropriate for filing for the purpose of giving public notice of this Lease. The party requesting such filing shall pay any and all costs associated therewith.

27. MISCELLANEOUS:

A. One or more waivers of any covenant or condition of this Lease by Lessor or Lessee shall not be construed as a waiver of the further breach of the same covenant or condition, or of any other covenant or condition herein contained.

B. The covenants, conditions and agreements of this Lease shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto.

C. The captions, paragraph numbers and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this Lease nor in any way affect this Lease.

D. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

E. This Lease Agreement does not create any obligation or relationship such as a partnership, joint-venture or other legal relationship under the laws of any state or the federal government, other than that of Landlord-Tenant. Any correspondence or other references to partners or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as to a new, specifically defined legal relationship.

28. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT:** Lessee, upon request of Lessor, will subordinate this Lease to any first mortgage which now or hereafter affects the Demised Premises and to any renewals, modifications or extensions of such mortgage. At Lessor's written request, in which Lessor furnishes Lessee with the name and address of mortgagee, Lessee will execute and deliver a subordination, non-disturbance and attornment agreement, which will subordinate this Lease to any first mortgage and will name such mortgagee as an additional insured in any policies required by Paragraph 8 and deliver to such mortgagee copies of all notices required hereunder; provided, that such instrument shall be in a form acceptable to Lessee, and further provided that a duplicate original thereof, fully executed by such first mortgagee, shall forthwith be delivered to Lessee. Lessor agrees that the continued enforceability of the subordination agreement by Lessor or its mortgagee shall be conditioned upon Lessee being in possession of a valid non-disturbance agreement executed by all present and any future mortgagees in the form attached as Exhibit 1 regarding the Lease.

29. **Entire Agreement / Amendments:** This Lease contains the entire agreement of the parties and may be amended only in writing signed by both parties.

IN WITNESS WHEREOF, this Lease has been signed by the parties on the dates set forth beside their signatures, effective as of the later of such dates.

DATE: May 12, 2005

By: SB
Lessor: B) Warehouse Company
Title: Lease

DATE: 5/15/05

By: Patricia Patricia
Lessor: Wal-Mart Stores East, L.P.
Title: Office Manager Patricia Henry

EXHIBIT “2”



REAL ESTATE – DISTRIBUTION CENTERS DEPARTMENT

WAL-MART STORES, INC. * 2001 SE 10TH STREET * Dept. 9566 * BENTONVILLE, AR 72716-0550

• Phone: * 479-273-6847 * FAX: 479-273-1964 * Email Address: patricia.baggett@wal-mart.com

**Patricia Maidt Baggett
Realty Manager
Real Estate, Distribution Centers**

VIA OVERNIGHT MAIL

November 3, 2005

B Warehouse Company
Coldwell Banker Commercial Developac Realty
996 Beaver Drive
DuBois, PA 15801

Re: Notice of Intent to Renew

Dear Sir or Madam:

Pursuant to Paragraph 3 of the Lease Agreement between Wal-Mart Stores East, L.P. and B Warehouse Company dated May 15, 2005, Wal-Mart is notifying you of its intent to exercise its option to renew the Lease on a month-to-month basis beginning on the expiration of the current Lease under the same terms and conditions of the existing Lease Agreement.

If you have any questions, please don't hesitate to contact me directly.

Regards,

Patricia Maidt Baggett

Cc: George V. Cohen
Kim Russell
Diane Salbreiter
Craig Sharkey
Debbye Smith
Brad Rogers

Approved as to legal terms only
by
WAL-MART LEGAL DEPT.
Date: 11/3/2005

EXHIBIT “3”

PA - Sandy Township
2005
RECEIVED

DENNISON, DENNISON & HARPER
Attorneys at Law

Donald J. Dennison (1917-2002)
John C. Dennison, II
Troy J. Harper

293 Main Street
Brookville, PA 15825-1291
Telephone (814) 849-8316
Fax (814) 849-4656
E-Mail:ddhjohn@usachoice.net

September 7, 2005

Wal-Mart Stores, Inc.
702 SW 8th Street
Bentonville, AR 72716

RE: Collateral Assignment of the Lease dated April 15, 1985, of rents
by B Warehouse Company in favor of S&T Bank, formerly
The Savings & Trust Company of Pennsylvania

Dear Sir or Madam:

This firm represents S&T Bank as Bonds Paying Agent (the "Bank") pursuant to the terms of a Mortgage Loan Agreement dated as of April 15, 1985, hereinafter referred to as "Agreement" by and among the Clearfield County Industrial Development Authority (the "Authority"), B Warehouse Company and S&T Bank, formerly The Savings & Trust Company of Pennsylvania.

Pursuant to the Agreement and a Debt Resolution adopted by the Authority on April 18, 1985 (the "Debt Resolution"), the Authority issued Second Mortgage Revenue Bonds, Series 1985, hereinafter referred to as "Bonds," in the face amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00). The Bonds are secured by, among other things, (i) a certain Second Mortgage effective May 7, 1985 on the real property and improvements commonly known as B Warehouse, Sandy Township, Clearfield County, Pennsylvania (the "Property"), and (ii) a certain Collateral Assignment of the Lease (the "Assignment of Rents"), effective as of May 7, 1985, affecting leases and rents at the Property.

Under the terms of the Agreement, the Debt Resolution, and the Bonds, B Warehouse Company (as the Investor Developer) is required to remit to the Bank (as the Paying Agent) the funds necessary to pay the monthly interest due on the Bonds. B Warehouse Company has ceased making the required payments to the Bank and, as a result, the monthly interest payments due on the Bonds have not been made since October 1, 2004.

RECEIVED
SEP 12 2005
Legal Intake By: _____

September 7, 2005

Page 2

Pursuant to the Agreement and the other project finance documents described above, the Bank has provided written notice to B Warehouse Company of its failure to remit the required payments and, as a result, its failure to make the monthly interest payments on the Bonds. Despite the Bank's request that it make the required payments, B Warehouse Company has refused to do so. B Warehouse Company's failure to make these payments is an "Event of Default" under the Agreement, which remains uncured to date.

Pursuant to the Assignment of Rents, and as more fully described in that document, B Warehouse assigned all of its interest in present and future leases and rents and income from the Property to the Bank. B Warehouse was permitted to collect the rents and other sums due under the leases affecting the Property until the occurrence of an uncured Default by B Warehouse under the Agreement or other project finance documents.

Be advised that certain Events of Default have occurred and continue under the Agreement and other project finance documents. On account of such Events of Default, and in accordance with the terms of the Agreement and the Assignment of Rents, the right of B Warehouse to collect rents and income from the Property has been revoked, and the Bank is entitled to receive all monthly rentals and other income payable under all leases affecting the Property.

This letter is written to you because you have been identified as a tenant of the Property and to advise you of the rights of the Bank, as Paying Agent under the Agreement and as "Assignee" under the Assignment of Rents. Copies of the Agreement and Assignment of Rents are enclosed for your reference.

Accordingly, you are hereby instructed to pay directly to the Bank, as Assignee under Assignment of Rents and Paying Agent on the Bonds, all rents and other moneys due or hereafter payable under your lease for the Property.

Payments should be made payable to:

B Warehouse Bond Fund Account
c/o S&T Bank, Trust Department
256 Main Street
Brookville, Pennsylvania 15825.

Following the date of this notice, if you fail to make any payments to the Bank in accordance with these instructions, you will not receive credit for such payments and you will continue to be liable to the Bank for the same until such payments are actually received by the Bank.

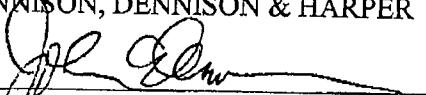
September 7, 2005

Page 3

Please be advised that the Bank, as Bonds Paying Agent, Assignee under the Assignment of Rents, or as Noteholder on the Second Mortgage, has not exercised its rights to take possession of the Property and has not assumed, nor is it responsible for, any of the obligations of B Warehouse Company under your lease or relating to the maintenance, repair, and operation of the Property.

If you have any questions or concerns regarding this letter or the instructions contained herein, please do not hesitate to contact the undersigned. Thank you for your prompt attention to this matter.

DENNISON, DENNISON & HARPER

By 

John C. Dennison, II

cc: B Warehouse Company

F. CORTEZ BELL, III, ESQUIRE
DISTRICT COURT ADMINISTRATOR

SHARON S. WHIPPLE
DEPUTY COURT ADMINISTRATOR

PHONE: 814-765-2641 x 5010
FAX: 814-765-7649
EMAIL: fbell@clearfieldco.org



HON. FREDRIC J. AMMERMAN
PRESIDENT JUDGE

HON. PAUL E. CHERRY
JUDGE

OFFICE OF THE COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830-2448

March 15, 2013

RE: 2005 – 1751- CD

Wal-Mart Stores East, L.P.
vs.
B Warehouse Company
S & T Bank

To All Parties and Counsel:

Please be advised that the Court intends to terminate the above-captioned case without notice, because the Court records show that no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement to Proceed must be filed on or before May 14, 2013.

If you fail to file the required Statement of Intention to Proceed within the required time period, the case will be terminated.

Sincerely,

A handwritten signature in black ink that reads "F. Cortez Bell III".

F. Cortez Bell, III, Esquire
Court Administrator

FILED
S MAR 15 2013

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 15 2013

William A. Shaw
Prothonotary/Clerk of Courts

Kimberly Russell, Esq.
Bldg. 640
350 Sentry Parkway
Blu Bell, PA 19422

No letters for defendant, they were not served.

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

WAL-MART STORES EAST, L.P.

NO. 2005-1751-CD

Plaintiff

*

vs.

*

B WAREHOUSE COMPANY

*

S & T BANK

*

Defendants

*

ORDER

NOW, this 20th day of June, 2013, upon the Court's review of the record, with the Court noting from the docket there has been no activity in the case since November 9, 2005 and that a Notice of Proposed Termination of Court Case had been mailed to the parties March 15, 2013 with no response having been received, pursuant to the provisions of Rule of Judicial Administration 1901 the case is hereby DISMISSED for inactivity. The Prothonotary shall code the case in Full Court as Z-1901A.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

No. 2005-1751-CD
2 01919cm
5 JUN 27 2013 64
William A. Shaw
Prothonotary/Clerk of Courts