

## SIXTH CHELTENHAM PROPERTIES, INC.

Assignment of Lease and Agreement

ASSIGNMENT OF LEASE AND AGREEMENT, made as of April 1, 1968 by and between SIXTH CHELTENHAM PROPERTIES, INC., a Delaware corporation, having an office at 100 West Tenth Street, Wilmington 99, Delaware (herein termed the Assignor), FIDELITY UNION TRUST COMPANY, a New Jersey banking corporation having its principal office and place of business at 765 Broad Street, Newark, New Jersey (herein termed the Trustee) and D. PATTERSON, as Trustees (herein termed the Trustees) under an Indenture of Mortgage and Deed of Trust dated as of the date hereof (herein together with any mortgages supplemental thereto, termed the Mortgage) from the Assignor, and ALBERTSON'S, INC., a Nevada corporation, having an office at 1610 State Street, Boise, Idaho (herein termed the Lessee).

## W I T N E S S E T H:

1. The Assignor, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in compliance with the covenants of the Mortgage and as security for the payment of the principal of (and premium, if any) and interest on its 6 1/8% Mortgage Notes (herein termed the Notes), issued under the Mortgage and the payment of all other indebtedness which the mortgage by its term secures, has assigned, transferred, conveyed and set over, and by these presents does assign, transfer, convey and set over to the Trustees all of the Assignor's estate, right, title and interest as lessor under that certain instrument of lease (herein termed the Lease) dated as of the date hereof, between the Assignor, as lessor, and the Lessee, as lessee, covering a leasehold interest in the premises more particularly described in Schedule A to the Lease, which Lease, or a short form thereof, is attached hereto together with all rights, powers, privileges, options and other benefits of the Assignor as lessor under the Lease, including but not by way of limitation the right to receive and collect all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards, moneys and security payable or receivable under the Lease or pursuant to any of the provisions thereof, whether as rents or as the purchase price of said premises or otherwise, and make all waivers and agreements, give all notes, consents and releases and do any and all other things whatsoever which the Assignor or any lessor is or may become entitled to do under the Lease.

2. The assignment made by this Agreement being executed only as collateral security, the execution and delivery hereof shall not in any way impair or diminish the obligations of the Assignor under the provisions of the Lease nor shall any of such



- 2 -

obligations be imposed upon the Trustees. Upon the payment of the principal of (and premium, if any) and all unpaid interest on the Notes and of all other sums payable under the Mortgage and the performance and observance of the provisions thereof, said assignment and all rights herein assigned to the Trustees shall cease and terminate and all the estate, right, title and interest of the Assignor in and to the above described assigned Lease shall revert to the Assignor; provided that the Lessee shall be fully protected in making payments and otherwise complying with the provisions of said assignment until it shall have received notice in writing from the Trustee that said assignment has ceased and terminated.

3. The Assignor hereby designates the Trustee to receive all notices, demands, documents, insurance policies or certificates evidencing such policies and other communications and all rental payments and other payments of every kind and nature whatsoever and all tenders and all security which Lessee is required or permitted to give, make, pay or deliver to or serve upon the Lessor under the Lease, and hereby directs the Lessee to remit or delivery directly to the Trustee, at its address set forth above or at such other address as the Trustee shall designate, all rents and other moneys and security now or hereafter due or receivable under the Lease and hereby releases the Lessee from all responsibility to see to the application of the rents and other moneys and security so remitted or delivered to the Trustee; and the Assignor hereby directs the Lessee to deliver to the Trustee, at its address set forth above or at such other address as the Trustee shall designate, all notices, demands, statements, documents and other communications given or made by the Lessee pursuant to the Lease. So long as Hartford Life Insurance Company is the holder of any Notes issued under the Mortgage, the Trustee shall deliver copies of all notices, demands, statements and other material received from Lessee pursuant to this Assignment to such Company at Hartford Plaza, Hartford, Connecticut.

4. The Lessee hereby consents to the foregoing provisions of this Agreement, and agrees to pay (without setoff, counterclaim, abatement or deduction for any reason, and regardless of any deprivation of, or limitation in, use of the premises, or for any other cause, including any act or failure to act on the part of the Assignor or any third party) and deliver to the Trustee, as hereinabove provided, all rentals and other moneys and security assigned to the Trustees, and all notices and other instruments whatsoever, or copies thereof which may be paid or delivered by it under the Lease.

5. Lessee agrees to deliver to the Trustee, and to Hartford Life Insurance Company, Hartford Plaza, Hartford, Connecticut 06115, Attention: Investment Department, for as long as this Assignment is in effect, the following:



- 3 -

(a) as soon as practicable after the end of each fiscal year, and in any event within 120 days thereafter, a copy of its consolidated balance sheet as at the end of such year, and a copy of its consolidated profit and loss and surplus statements for such year all certified by independent public accountants of recognized standing; and

(b) as soon as practicable after the end of each quarter fiscal year, or in any event within 90 days thereafter a copy of its consolidated balance sheet as at the end of such quarter and a copy of its consolidated profit and loss and surplus statements for such quarter, all certified by the chief financial officer of the Company; and

(c) promptly upon their becoming available, copies of all financial statements, reports, notices, and proxy statements, if any, sent by Lessee to its stockholders, or filed with any securities exchange or the Securities and Exchange Commission or any other federal or state agency or commission; and

(d) as soon as practicable after the end of each fiscal year, an officer's certificate signed by the President or a Vice President stating that the Lease is in full force and effect; that there have been no modifications to the Lease or if modifications have been made, a statement setting forth such modifications; there are no defaults under the Lease, and a statement that the certificate can be relied upon by the Trustee or any assignee; and

(e) upon the occurrence of an event of default under the Lease, a notice of such occurrence.

6. Lessee represents and warrants that:

(a) the execution and delivery of and compliance with the Lease and this Agreement and the carrying out of the transactions contemplated thereby and hereby will not result in any violation of or be in conflict with any term of Lessee's certificate of incorporation or by-laws or of any agreement, indenture, deed of trust or other instrument, license, permit, judgment, decree, order, statute, law, ordinance or governmental rule



- 4 -

or regulation applicable to Lessee;

(b) there is no action, proceeding or investigation pending or, to the best knowledge of Lessee, threatened (or any basis therefor) which might materially adversely affect the business, prospects or condition of Lessee, or which questions the validity of the Lease or this Agreement or any action taken or to be taken pursuant hereto or thereto; and

(c) neither this Agreement nor any certificate, statement or document furnished by or on behalf of Lessee in connection with the transactions referred to herein contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein and herein not misleading.

7. The Assignor agrees that the designation and directions to the Lessee hereinabove set forth are irrevocable and that it will not, while the assignment made by this Agreement is in effect or thereafter until the Lessee has received from the Trustee notice of the termination thereof, make any other designation or direction inconsistent therewith, and that any designation or direction inconsistent therewith shall be void as against the Lessee.

8. The Assignor and the Lessee each agree that they will not enter into any agreement amending, modifying or terminating the Lease without the consent thereto in writing of the Trustees duly recorded in the public records, and that any attempted amendment, modification or termination without such consent shall be void as against the Trustees.

9. The Assignor and the Lessee agree that if pursuant to the Lease the Lessee shall be obligated to purchase the Premises described in the Lease, the Lessee will accept a deed to the Premises executed and delivered by the Trustees as being in compliance with the provisions of the Lease, provided that a title company designated by the Lessee will insure, or the Lessee receives an opinion of counsel designated by it, that the deed so executed by the Trustees conveys a good and marketable title subject to liens, encumbrances and defects permitted by the Lease. The Lessee agrees that, if it should become necessary for the Trustees to institute any foreclosure or other judicial proceeding in order to be able to convey title to said premises to the Lessee, the time within which delivery of the deed to such property may be made shall be extended to the extent necessary to permit the Trustees



- 5 -

to institute and conclude any such legal proceeding, provided, however, the Trustees agree that the Lessee shall have the right to institute and participate in any such proceedings at its sole cost and expense.

10. Notwithstanding anything to the contrary contained in the Lease, or any provision of law, so long as the assignment made by this Agreement shall remain in effect, if any of the following events shall occur:

(a) If Lessee shall file a voluntary petition in bankruptcy or for reorganization, or shall admit in writing its inability to pay its debts generally as they become due, or

(b) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the property of Lessee shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and such receiver, trustee or liquidator shall not be discharged within 60 days after such appointment, or if Lessee by the order or decree of a court shall be adjudicated a bankrupt or declared insolvent, or shall be dissolved, or

(c) if a petition or an answer proposing the liquidation or reorganization of Lessee pursuant to the Federal Bankruptcy Act or any similar law, federal or state, shall be filed against Lessee and such petition shall not be discharged or denied within 60 days after the date of which said petition or answer was filed, or

(d) if the interest of Lessee in the premises shall be sold under execution or other legal process,

(e) and if, contemporaneously with or after the occurrence of any of the above events, an event of default as set forth in subparagraphs (i) or (ii) or paragraph (a) of Article 11 of the Lease, or any other lease assigned to the Trustees as security for the Notes shall occur, then the Trustees (but not the Assignor) may in their sole discretion declare all of such leases in default, and take any and all action and exercise any and all rights, remedies and powers, permitted or granted to the Assignor under the terms of such leases in the event of any default thereunder.

11. The Trustees agree to give the Lessee prompt notice

76



3255

- 6 -

of the termination of the assignment made by this Agreement.

12. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed, the corporate parties by their respective officers thereunto duly authorized, as of the date above set forth.

SIXTH CHELTENHAM PROPERTIES, INC.

By

*Mark W. McNeil*  
President

ATTEST:

*James P. Cooke*  
Secretary

*Julius Martin*  
Witness

FIDELITY UNION TRUST COMPANY,  
as Trustee

By

*I. Roger Stevens Jr.*  
I. ROGER STEVENS JR.

Vice President

ATTEST:

*S. L. Mac Kerchar*  
S. L. Mac Kerchar Asst. Secretary

*Robert E. Mitchell*  
Witness

77



3256

- 7 -

D. PATTERSON

By [Signature] (L.S.)  
Individual Trustee

[Signature]  
Witness

[Signature]  
Witness

ALBERTSON'S INC.

By [Signature]  
Vice President

ATTEST:

[Signature]  
Attesting Secretary

[Signature]  
Witness

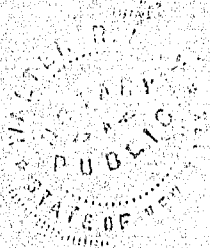


3257

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

On this 10<sup>th</sup> day of April in the year 1968  
before me WALTER R. MAY, a notary public of the State of  
New York, duly commissioned and sworn, personally appeared  
Charles F. MacGill and James P. Cookson, known to me to be  
President and Secretary, respectively, of Sixth Cheltenham  
Properties, Inc., one of the corporations that executed the  
within instrument, and also known to me to be the persons  
who executed the within instrument on behalf of the corporation  
therein named, and they acknowledged to me that such  
corporation executed the within instrument pursuant to its  
by-laws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my official seal in the county and state afore-  
said the day and year in this certificate first above written.



*Walter R. May*  
NOTARY PUBLIC  
State of New York

WALTER R. MAY  
Notary Public, State of New York  
No. 24-7775050  
Qualified in Kings County  
Cert. Filed in New York County  
Commission Expires March 30, 1970



3258

STATE OF NEW JERSEY )  
 ) SS.:  
 COUNTY OF ESSEX )

On this 11<sup>th</sup> day of April in the year 1968,  
 before me, Elizabeth Ashby a Notary Public of the State  
 of New Jersey, duly commissioned and sworn, personally  
 appeared I. ROGER STEVENS, JR. and S. L. Mac Kerchar  
 known to me to be a Vice President and an Assistant Secretary  
 of FIDELITY UNION TRUST COMPANY, one of the corporations  
 that executed the within instruments and also known to me to  
 be the persons who executed the within instruments on behalf  
 of the corporation therein named, and they acknowledged to  
 me that such corporation executed the within instrument  
 pursuant to its by-laws or a resolution of its Board of  
 Directors.

IN WITNESS WHEREOF, I have hereunto set my hand  
 and affixed my official seal in the County and State afore-  
 said the day and year in this certificate first above written.

[NOTARIAL SEAL]

STATE OF NEW JERSEY )  
 ) SS.:  
 COUNTY OF ESSEX )

*Elizabeth Ashby*  
 ELIZABETH ASHBY  
 NOTARY PUBLIC OF NEW JERSEY  
 My Commission Expires Aug. 10, 1969

On this 11<sup>th</sup> day of April in the year 1968,  
 before me, a Notary Public, personally appeared D. PATTERSON  
 known to me to be the person whose name is subscribed to  
 the within instrument and acknowledged to me that he executed  
 the same for the purposes therein mentioned.

[NOTARIAL SEAL]

*Elizabeth Ashby*  
 ELIZABETH ASHBY  
 NOTARY PUBLIC OF NEW JERSEY  
 My Commission Expires Aug. 10, 1969



3259

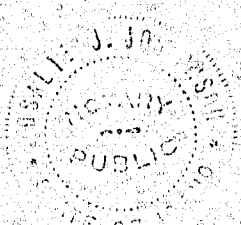
STATE OF IDAHO )  
COUNTY OF ADA )

ss.:

On this 20<sup>th</sup> day of April, in the year 1968,  
before me, *Roscoe J. Josephson*, a notary public of  
the State of Idaho, duly commissioned and sworn, personally  
appeared Paul W. Mauser and ~~Theodore~~ E. Munson, known to  
me to be a Vice-President and Secretary, respectively, of  
Albertson's, Inc., one of the corporations that executed the  
within instrument, and also known to me to be the persons who  
executed the within instrument on behalf of the corporation  
therein named, and they acknowledged to me that such  
corporation executed the within instrument pursuant to its  
by-laws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my official seal in the county and state aforesaid  
the day and year in this certificate first above written.

*My Commission  
expires 7-25-71*



*Roscoe J. Josephson  
Notary Public for Idaho  
Residing at Boise, Idaho*



3260

SCHEDULE A

All that certain real property situate in the City of Klamath Falls, County of Klamath, State of Oregon, bounded and described as follows:

A tract of land situated in the SW1/4NW1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, more particularly described as follows:

Beginning at the West one-quarter corner of said Section 2, said point being marked by a brass plug in a capped monument which is 1.60 feet North of the centerline of State Highway 66 (South Sixth Street); thence

North  $89^{\circ} 44' 52''$  East along the East-West centerline of said Section 2 (this is the bearing to the center one-fourth corner of said Section 2 which is monumented by a bolt in the pavement that is 1.20 feet North of the centerline of said highway) a distance of 517.06 feet; thence

North  $0^{\circ} 20' 15''$  East a distance of 37.91 feet to a one-half inch iron pin on the true point of beginning, of this description, said point being on the Northerly line of State Highway 66 as relocated a distance of 40.00 feet at right angles to the centerline of said highway, said point also being on the Westerly line of the Bennington property as described in Deed Volume 331 at page 402, Klamath County Deed Records; thence

North  $89^{\circ} 43' 30''$  East along the Northerly line of Highway 66 as relocated a distance of 40.00 feet at right angles to the centerline of said highway a distance of 166.30 feet to a 5/8 inch iron pin on the Easterly line of said Bennington property and the Westerly line of the Peace Memorial Presbyterian Church property as described in Deed Volume 317 at page 491, Klamath County Deed Records; thence

North  $0^{\circ} 20' 15''$  East along the last described line a distance of 196.70 feet to a 5/8 inch iron pin; thence

North  $05^{\circ} 06' 40''$  East a distance of 34.24 feet; thence

82



3261

- 2 -

North  $00^{\circ} 15' 00''$  East a distance of 205.91 feet; thence

South  $89^{\circ} 43' 30''$  West a distance of 155.57 feet; thence

South  $00^{\circ} 14' 10''$  East a distance of 205.89 feet; thence

South  $17^{\circ} 20' 35''$  West a distance of 46.27 feet; thence

South  $00^{\circ} 20' 15''$  West a distance of 186.70 feet to the true point of beginning.

Subject to covenants, restrictions, easements, rights of way, agreements, reservations and conditions of record, if any.

Said property contains approximately 1.611 acres.

83



Together with a non-exclusive easement which is hereby created by Grantor for ingress, egress and traveling by vehicular or pedestrian travel over and across the herein mentioned described easement area and for utility and service line over, under and across that said certain easement area situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, more particularly described as follows:

Commencing at the West one-quarter corner of said Section 2; thence

North 89° 44' 52" East, 517.06 feet; thence

North 00° 20' 15" East, 224.61 feet; thence

North 17° 20' 35" East, 46.27 feet to the Southwest corner of an existing building; thence along the Westerly face of said building North 00° 14' 10" West 123.96 feet to the Northwest corner of said building; thence

Continuing North 00° 14' 10" West 30.00 feet to the true point of beginning; thence

South 89° 43' 30" West 148.30 feet to the Easterly boundary line of Etna Street; thence

North 00° 20' 15" East 20.00 feet; thence

Leaving the Easterly boundary line of Etna Street North 89° 43' 30" East 148.10 feet; thence

South 00° 14' 10" East 20.00 feet to the true point of beginning. Situate in Klamath County, Oregon.

Said Easement is not only for the benefit of the real property herein conveyed and its owners, but is also for the benefit of the real property hereinafter mentioned in paragraph number 13, as the easterly adjoining property and its owners, and may be used in conjunction with and for the benefit of the easement, its purposes, areas and uses mentioned in paragraph 12. Said Easement is subject to any matters of record and title.

STATE OF OREGON, } ss  
County of Klamath }

Filed for record at request of

Transamerica Title Ins. Co.  
on this 24 day of April A. D. 19 68  
at 8:33 o'clock A.M. and duly  
recorded in Vol. M68 of Deeds  
Page 3250-3262.

DOROTHY ROGERS, County Clerk

By [Signature] Deputy

Fee 1.50

84