

1989

West Valley City, a Municipal Corporation v. Majestic Investment Company, a Utah corporation : Brief of Respondent

Utah Court of Appeals

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110 IN THE COURT OF APPEALS OF THE STATE OF UTAH
DOCKET NO. 890379-C4

WEST VALLEY CITY, a Municipal Corporation,

Plaintiff and Appellant,

vs.

MAJESTIC INVESTMENT COMPANY,
a Utah corporation,

Defendant and Respondent.

• • • • •

Case No. 890379-CA

BRIEF OF RESPONDENT

On Appeal from the District Court of Salt Lake County
Honorable LEONARD H. RUSSON, District Judge

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FILED

LISTING OF ALL PARTIES TO THE PROCEEDINGS
IN THE DISTRICT COURT

Pursuant to Rule 24(a)(1) of the Utah Rules of Appellate Procedure, the parties to the action in the District Court captioned West Valley City v. Majestic Investment Company, et al., Civil No. C87-6899, in Salt Lake County are as follows:

Plaintiffs:

West Valley City, a Municipal Corporation of
the State of Utah

Defendants:

Majestic Investment Company

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
ADDENDA	v
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES	1
STATEMENT OF NATURE OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF MAJESTIC'S ARGUMENT	11
ARGUMENT	13
POINT I THE TRIAL COURT'S JUDGMENT SHOULD BE AFFIRMED BECAUSE WEST VALLEY'S BRIEF FAILS TO COMPLY WITH THE UTAH RULES OF APPELLATE PROCEDURE	13
POINT II THE APPROPRIATE STANDARD OF REVIEW IN THIS CASE WHERE PAROL EVIDENCE WAS ADMITTED IS THE CLEARLY ERRONEOUS STANDARD OF RULE 52(a)	16
POINT III THE TRIAL COURT PROPERLY INTERPRETED THE GROUND LEASE TO PERMIT MAJESTIC TO SHARE IN THE JUST COMPENSATION AWARD FOR THE TAKING OF THE LAND UNDER THE GROUND LEASE	18
A. <u>The Amount Awarded for</u> <u>Majestic's Interest in the Land</u> <u>in Parcels 1 and 2 Was</u> <u>Supported by Substantial</u> <u>Competent Evidence</u>	22
POINT IV THE TRIAL COURT PROPERLY INTERPRETED THE GROUND LEASE TO FIND A BONUS VALUE BETWEEN THE GROUND LEASE AND THE PRUDENTIAL AND LOCKHART LEASES	23
A. <u>The Finding of a Bonus Value in</u> <u>the Land was Based on</u> <u>Substantial, Competent</u> <u>Evidence</u>	24

B.	<u>The Finding of a Bonus Value in the Buildings and Improvements Was Based on Substantial, Competent Evidence . . . . .</u>	27
C.	<u>The Amount Awarded for Majestic's Interest in the Buildings and Improvements on Parcels 1 and 2 Was Supported by Substantial Competent Evidence . . . . .</u>	30
POINT V	THE TRIAL COURT PROPERLY VALUED EACH PARCEL AS A WHOLE, AND THEN DETERMINED THE VALUE OF EACH SEPARATE ESTATE OR INTEREST THEREIN	31
CONCLUSION	. . . . .	33

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Amica Mutual Ins. Co. v. Schettler</u> , 768 P.2d 950, 957 n.6 (Utah Ct. App. 1989)	14
<u>Bell v. Elder</u> , 782 P.2d 545, 547 (Utah Ct. App. 1989)	16, 30
<u>Dama v. Record Bar, Inc.</u> , 512 So. 2d 206, 208 (Fla. Dist. Ct. App.) 519 So.2d 988 (Fla. 1987)	25
<u>Demetropoulos v. Vreeken</u> , 754 P.2d 960, 961 (Utah Ct. App. <u>cert. denied</u> , 765 P.2d 1278 (Utah 1988)	14
<u>Dirks v. Cornwell</u> , 754 P.2d 946, 947 (Utah Ct. App. 1988)	13
<u>Garibaldi v. Oklahoma Industrial Finance Corp.</u> , 543 P.2d 555, 559 (Okla. 1975)	25
<u>Geary v. State</u> , 95 A.D.2d 965, 464 N.Y.S.2d 308, 311 (N.Y. App. Div. 1983), <u>app. denied</u> , 462 N.E.2d 156 (N.Y.	19
<u>Great Atlantic and Pacific Tea Company v. State of New York</u> , 22 N.Y.2d 75, 238 N.E.2d 705, 291 N.Y.S.2d 299, 305-07 (1968)	25
<u>Harline v. Campbell</u> , 728 P.2d 980, 982 (Utah 1986) . . .	15
<u>Jacobsen, Morrin & Robbins Construction Co. v. St. Joseph High School Board of Financial Trustees</u> , 137 Utah Adv. Rep. 34, 35 (Utah Ct. App. 1990)	12, 28
<u>Jensen v. Eddy</u> , 30 Utah 2d 154, 514 P.2d 1142, 1143 (1973)	28
<u>Kimball v. Campbell</u> , 699 P.2d 714, 716 (Utah 1985) . . .	16
<u>Kushner v. Winterthur Swiss Ins. Co.</u> , 620 F.2d 404, 407 (3rd Cir. 1980))	14
<u>Property Assistance Corp. v. Roberts</u> , 768 P.2d 976, 978 (Utah Ct. App. 1989)	16
<u>State Road Commission v. Brown</u> , 531 P.2d 1294, 1296 (Utah 1975)	18, 24, 31
<u>Trees v. Lewis</u> , 738 P.2d 612, 613 (Utah 1987)	28

	<u>Page</u>
<u>Urban Renewal Agency of City of Salem v. Wieder's, Inc.</u> , 53 Or. App. 751, 632 P.2d 1334, 1337 (Or. Ct. App.), rev. denied, 644 P.2d 1127 (Or. 1981)	19
<u>Weider's Inc.</u> , 632 P.2d at 1335	20, 21

RULES

Utah R. App. P. 24(a)(7)	3, 13, 14
Utah R. App. P. 24(b)	3
Utah R. Civ. P. 52(a)	12, 16
Utah R. Civ. P. 52(b)	17

STATUTES

Utah Code Ann. § 78-34-10(1)	22, 32
Utah Code Ann. § 78-2-2(4)	1
Utah Code Ann. § 78-2a-3(2)(j)	1

OTHER AUTHORITIES

Nichols, <u>The Law of Eminent Domain</u> , § 5.06[1] (1989) . .	18
Nichols, <u>The Law of Eminent Domain</u> , § 5.06[2] (1989) . .	19

ADDENDA

1. Ground Lease (Exhibit 1-D)
2. Agreement of Lease between Majestic and Prudential ("Prudential Lease") (Exhibit 3-D)
3. Agreement of Lease between Majestic and Lockhart ("Lockhart Lease") (Exhibit 2-D)
4. Memorandum Decision, dated January 23, 1989
5. Partial Satisfaction of Judgment
6. Letter of J. Richard Catten, dated November 3, 1989
7. Summary of Webber Appraisal -- Prudential Parcel (Exhibit 14-D)
8. Summary of Webber Appraisal -- Lockhart Parcel (Exhibit 13-D)

JURISDICTIONAL STATEMENT

Appellate jurisdiction over this case is rested in the Utah Court of Appeals pursuant to the Utah Code Ann. § 78-2a-3(2)(j) incident to the transfer of authority of the Utah Supreme Court under Utah Code Ann. § 78-2-2(4).

STATEMENT OF ISSUES

1. Should the trial court's judgment be affirmed for the substantial failure of West Valley's brief to comply with the Utah Rules of Appellate Procedure?

2. Where parol evidence is admitted to aid in the interpretation by parties to leases, is the clearly erroneous standard of review of the trial court's findings appropriate?

3. Where a leasehold agreement in underlying land does not expressly declare a forfeiture or abandonment of the leasehold interest upon condemnation for public use, and provides that it shall "cease and be adjusted" at the date of condemnation, is it proper for the trial court to award Just Compensation to a lessee for the taking of its underlying leasehold interest?

4. Did the trial court properly receive evidence as to the fair market value of the total properties as a part of valuing the separate estates and interests in the land and buildings?

5. Did West Valley City, by voluntary payment of the judgment of Just Compensation as to the buildings and

improvements and Majestic's acknowledgement of satisfaction of judgment, waive its entitlement to appeal the issues of the allocation of Just Compensation awarded by the lower court for the taking of the buildings and improvements?

a. If not, did the trial judge, in law, properly receive evidence and apply the contract formula in the Ground Lease in awarding Majestic its representative share of Just Compensation for the taking of the buildings and improvements?

STATEMENT OF NATURE OF THE CASE

This action was commenced by West Valley City in October, 1987, to condemn for public use the leasehold interest of Majestic Investment Company ("Majestic") in each of two separate but contiguous parcels of land located at approximately 3600 South and 2700 West in West Valley City, including the building and improvements contained on each parcel. Majestic leased both parcels from Henry S. and Barbara Pickrell ("Pickrells"), and in turn subleased each parcel and the building and improvements thereon to Prudential Federal Savings and Loan Association ("Prudential"), and The Lockhart Company ("Lockhart"), respectively.

Lockhart and Prudential were named as defendants initially, but were dismissed out by stipulation before trial. West Valley City also acquired the interest of the Pickrells outside of this action and subject to the compensable interest

of Majestic in both parcels. (R. 48) The City commenced this action by serving its summons upon Majestic on October 23, 1987. (R. 35) The case was tried to the court without a jury for six days on the issues of Just Compensation on December 14, 15, 16, and 20, 1988, and January 4, and 5, 1989, sitting in Salt Lake County. The court, Judge LEONARD H. RUSSON presiding, thereupon took the matter under advisement and issued its Memorandum Decision on January 23, 1989. Findings of Fact and Conclusions of Law and a Judgment of Just Compensation in favor of Majestic were entered on February 10, 1989, with stipulated clerical amendments on February 15, 1990. From the trial court judgment, West Valley City appeals on issues of fact and law.

STATEMENT OF FACTS

West Valley has failed in its brief to comply with the Rules of this Court in setting forth a "Statement of the Facts" of the matter, Appellate Rule 24(a)(7), as well as failing to reference a single record citation in the statement. Accordingly, Majestic sets out its own Statement of Facts pursuant to Appellate Rule 24(b) and will address West Valley's failure in the Argument:

1. On October 23, 1987, the date of taking in this action, Majestic owned a leasehold interest in two parcels of land located near 3600 South and 2700 West in West Valley City, by virtue of a Ground Lease agreement between Majestic,

as lessee, and Pickrells, as lessors, dated April 11, 1975 (the "Ground Lease"). The Ground Lease which was received in evidence as Exhibit 1-D at trial, sets forth the proper legal description of the parcels condemned and identifies them as Parcels 1 and 2. Ground Lease, pp. 1-2. (R. 373, p. 51) A copy of the Ground Lease is attached as Addendum 1 to this Brief.

2. Under the Ground Lease, Majestic was entitled to use the leased parcels to construct two buildings and improvements and make the same available to the general public for business offices and facilities, so long as the improvements had a value of at least \$140,000.00 and met zoning requirements. Ground Lease, ¶ 2. The Ground Lease had a term of thirty-five (35) years duration, beginning May 1, 1975, and extending through April 30, 2010. Ground Lease, p. 2. The base rental was \$375.00 per month for each of the two parcels or a total of \$750.00 per month, subject to a consumer price index ("CPI") adjustment at the 11th, 21st, and 31st lease years. Ground Lease, ¶ 1.

3. The Ground Lease also contained a condemnation clause which provided that if the land was taken by right of eminent domain, Majestic's obligations under the Ground Lease would cease "and be adjusted as of the time of such condemnation." Ground Lease, ¶ 18 (emphasis added).

4. As to the buildings and improvements, the clause went on to provide a specific formula for the allocation of

Majestic's share of the Just Compensation for their taking. According to that formula, Majestic's interest in the award is equal to the

proportion of the value of the buildings and improvements erected on the demised premises by LESSEE which the number of months from the date of such taking by condemnation to the date of expiration of this lease bears to the total number of months within the term herein demised, to-wit, 420 months.

Ground Lease, ¶ 18.

5. The trial court found the Ground Lease was a "triple net lease" which required Majestic to pay all taxes, insurance, and utilities and maintenance costs. (R. 314)

6. Pursuant to the terms of the Ground Lease, Majestic entered into a Lease Agreement with Prudential on Parcel 1 and with Lockhart on Parcel 2. (R. 373, pp. 51-52) Majestic's leases with Prudential (the "Prudential Lease") and Lockhart (the "Lockhart Lease") were admitted in evidence during trial as Exhibits 3-D and 2-D, respectively, (R. 373, pp. 51-52), are also part of the record on this appeal, and are attached as Addendum 2 and Addendum 3, respectively, to this Brief.

7. The Prudential Lease called for the construction of a building and certain improvements upon Parcel 1, Prudential Lease, ¶ 2, and the subsequent lease of the land and improvements for a term of twenty-five (25) years, to commence from the first day of the month following actual

occupancy. Prudential Lease, p. 2. The lease rental was to be (1) \$375.00 per month, plus (2) an additional rental amount calculated by amortizing the costs of construction and financing of the building and improvements over a twenty-five (25) year period at twelve percent (12%) per annum. These two rental amounts were subject to a CPI adjustment every ten (10) years. Prudential Lease, ¶ 1(a), (b). As of October 23, 1987, the monthly rental being paid to Majestic by Prudential was \$3,018.61. (R. 373, p. 143) The Prudential Lease was triple net to Majestic. (R. 373, p. 87)

8. The Lockhart Lease also called for the construction of a building and certain improvements on Parcel 2, Lockhart Lease, ¶ 2, and the subsequent lease of the land and improvements for a term of twenty-five (25) years, to commence on the first day of the month following actual occupancy. Lockhart Lease, p. 2. The lease rental was to be (1) \$375.00 per month, plus (2) an additional rental amount calculated by amortizing the costs of construction and financing of the building and improvements over a twenty-five (25) year period at twelve percent (12%) per annum. These two rental amounts were subject to a CPI adjustment every ten (10) years. Lockhart Lease, ¶ 1(a), (b). As of October 23, 1987, the monthly rental being paid to Majestic by Lockhart was \$2,712.28. (R. 373, p. 142) The Lockhart Lease was also triple net to Majestic. (R. 373, pp. 85-86)

9. At trial, Keith L. Knight, President of Majestic,

testified that the purpose of setting forth in paragraph 1(b) of the Lockhart Lease the approximate amount of construction and financing costs, together with an amortization period and capitalization rate, was simply to provide a formula for calculating that part of the initial rental amount under the Lockhart Lease. (R. 373, pp. 78-79) Knight testified that the provision for CPI escalation contained in the paragraph 1(b) of the Lockhart Lease would not have the effect of accelerating payment of the total rent, but that rent would be payable throughout the twenty-five (25) year term with increases due to applicable changes in the CPI. (R. 373, pp. 79-80) Knight further testified that also with regard to paragraph 1(a) of the Lockhart Lease, the CPI escalation provision would not accelerate the payment of the total rent. (R. 373, pp. 81-82) The purpose of the corresponding provisions in paragraphs 1(a) and 1(b) of the Prudential Lease was the same. (R. 373, pp. 82-83)

10. Charles R. Allcott, former Senior Vice President for Administration of Prudential Federal Savings and Loan Association, who negotiated and executed the Prudential Lease for Prudential, (R. 375, pp. 102-107), testified regarding paragraph 1(b) of the Prudential Lease that the purpose for including the construction and financing costs, the amortization period, and capitalization rate, was to establish a formula for determining the base rent to be paid at the beginning of the lease term. (R. 375, pp. 108-110)

It was Prudential's understanding that it would continue making rental payments through the full twenty-five (25) year term of the lease, regardless whether the CPI escalations increased the amount of rent due. (R. 375, pp. 110-111) The CPI escalation clause in paragraph 1(a) of the Prudential Lease was to be implemented in the same way as in paragraph 1(b). It would not cause an acceleration of the total rent required in paragraph 1(a), but would have increased the monthly rental payment. (R. 375, pp. 115-116)

11. W. Harold Dobson, the former Executive Vice President and Chief Operations Officer of the Lockhart Company, who negotiated for the Lockhart Lease with Majestic, testified in all respects that Lockhart's understanding of the Lockhart Lease was the same as testified to by Knight and Allcott regarding the Prudential Lease. (R. 373, pp. 150-157)

12. This parol evidence of Knight, Dobson, and Allcott on interpretation of the leases was received at trial without objection by counsel for West Valley City, (R. 373, pp. 78-83, 153-157); (R. 375, pp. 102-111), since a stranger to the documents has no standing to object.

13. Judge Russon, in his Memorandum Decision, a copy of which is attached as Addendum 4 to this Brief, found the fair market value of the property under the Prudential Lease to be \$271,342.00. Of that amount, the land value was found to be \$88,342.00, and the value of the building and improvements

was \$183,000.00. (R. 316) The trial court found the value of Majestic's leasehold interest in Parcel 1 was \$68,023.00, or 77% of the value of the land as part of the total property. The court valued Majestic's leasehold interest from October 23, 1987 through the end of the term of the Prudential Lease. The remaining ten (10) years of the Ground Lease respecting Parcel 1 were too speculative to be given consideration by Judge Russon in determining the value of Majestic's leasehold interest in Parcel 1. (R. 316-317) The value of Majestic's share of the building and improvements on Parcel 1, pursuant to the Prudential Lease, was found to be \$118,950.00. (R. 316-317) The total value of Majestic's compensable interest in land together with buildings and improvements on the Prudential Parcel was \$187,187.50. (R. 317)

14. Judge Russon found the fair market value of the total property under the Lockhart Lease to be \$267,277.00. Of that amount, the land value was found to be \$106,177.00, and the value of the building and improvements was \$161,100.00. (R. 317) The court found the value of Majestic's leasehold interest in Parcel 2 was \$72,200.36, or 68% of the value of the land as part of the total property. The court valued Majestic's leasehold interest from October 23, 1987 through the end of the term of the Lockhart Lease. The remaining ten (10) years of the Ground Lease respecting Parcel 2 were too speculative to be given consideration by

Judge Russon in determining the value of Majestic's leasehold interest in Parcel 2. (R. 316-317) The value of Majestic's share of the building and improvements on Parcel 2, pursuant to the Lockhart Lease, was found to be \$104,715.00. (R. 317) The total value of Majestic's compensable interest in the land, buildings, and improvements on the Lockhart Parcel was \$175,853.00. (R. 317)

15. The court awarded total Just Compensation to Majestic for the taking of Majestic's leasehold interests Parcel 1 and 2, including the building and improvements thereon, of \$364,888.36, less amounts previously paid to Majestic by West Valley City. (R. 360-361)

16. West Valley City filed its notice of appeal on March 6, 1989, challenging the trial court's award of Just Compensation to Majestic. (R. 363-364)

17. After the filing of this appeal but before lodging its brief, West Valley tendered partial payment of the Judgment to Majestic, and in return Majestic executed a Partial Satisfaction of Judgment in the amount of \$181,961.32. The Partial Satisfaction of Judgment, a copy of which is attached as Addendum 5 to this Brief, explains that the amount tendered by West Valley and accepted by Majestic represented payment of the \$118,950.00 award for buildings and improvements on the Prudential Parcel, and the corresponding award of \$104,715.00 for the building and improvements on the Lockhart Parcel, plus accrued interest.

Addendum 5, p. 3. A letter signed by J. Richard Catten, Esq. enclosing the check to Majestic explains the purpose of the payment as follows:

This check represents the value found by Judge Russon in the buildings and improvements on the Prudential and Lockhart properties, plus appropriate interest. It does not include that portion of the judgment which related to land values and is the subject of appeal.

Letter of J. Richard Catten, dated November 3, 1989. A copy of the letter is attached as Addendum 6 to this Brief.

SUMMARY OF MAJESTIC'S ARGUMENT

West Valley's appeal herein is fatally flawed.

First, it has treated this appeal as though the appeal before this Court were a trial de novo. It has ignored its obligation under the appellate rules to set out the factual evidence supported by the record citations. That alone is sufficient to affirm Judge Russon's judgment.

Second, West Valley has ignored the substantial and competent evidence as to the basis for Majestic's compensable interest in the buildings, improvements and the land. West Valley did not, and indeed could not, object to the admission of the parol evidence of Majestic, Prudential and Lockhart with regard to the interpretation of the Prudential and Lockhart Leases, as well as the underlying Ground Lease. That evidence taken together with the rights themselves, are the fundamental basis for the expert opinion testimony of

Majestic as to the fair market value of its leasehold interest in the land, buildings, and improvements as part of the total property. Not only are Judge Russon's findings as to Majestic's leasehold interests untouched by West Valley in its brief, the City has not even begun to show that the trial court's findings were "clearly erroneous" as required by Rule 52(a).

Even though West Valley City has attempted to challenge in its brief the trial court's findings on the valuation methodology on the buildings and improvements, the fact is that West Valley has paid for and satisfied that portion of the judgment involving the buildings and improvements. Therefore, West Valley has waived any right to appeal that position of the judgment. Jacobsen, Morrin & Robbins Construction Co. v. St. Joseph High School Board of Financial Trustees, 137 Utah Adv. Rep. 34, 35 (Utah Ct. App. 1990).

The trial judge's findings are rock solid with regard to the compensable interests of Majestic in the underlying Ground Lease and in the methodology that was employed pursuant to paragraph 18 of the Ground Lease itself.

West Valley's argument that Majestic had no compensable interest, as a matter of law, in the Ground Lease is fatuous. In fact and law, the bonus value of Majestic's interest in the land was authorized in the Ground Lease and quantified under the expert testimony. There was competent evidence that the underlying land parcels increased in their rental

value vis-a-vis the contract rent as a consequence of the construction and development of the Prudential and Lockhart buildings and improvements.

The findings, conclusions and judgment of Judge Russon should be affirmed without exception in this appeal.

ARGUMENT

POINT I

THE TRIAL COURT'S JUDGMENT SHOULD BE AFFIRMED BECAUSE WEST VALLEY'S BRIEF FAILS TO COMPLY WITH THE UTAH RULES OF APPELLATE PROCEDURE

Rule 24(a)(7) of the Utah Rules of Appellate Procedure requires that an appellant's brief contain a statement of facts relevant to the issues raised on appeal, with supporting citations to the record. The Rule is honored only in its breach under West Valley City's brief. Its arguments are made wholly without evidentiary foundation or citations.

This Court has let it be known that if an appellant fails to adhere to this rule, "the court will assume the correctness of the judgment below." Dirks v. Cornwell, 754 P.2d 946, 947 (Utah Ct. App. 1988). In the same vein, this Court stated in another recent opinion as follows:

In a case such as this, where appellant has raised a number of procedural and substantive issues, it is imperative that counsel abide by the rules of appellate procedure. This Court, as well as the Utah Supreme Court, has stated on a number of occasions that failure to properly cite to the record or otherwise comply with the rules of appellate procedure provides an independent basis

for affirming the trial court's
determinations.

Amica Mutual Ins. Co. v. Schettler, 768 P.2d 950, 957 n.6 (Utah Ct. App. 1989) (emphasis added). This Court has further declared that "appellate courts are beginning to overcome their trepidation about dismissing appeals and imposing sanctions for failure to comply with these procedures." Demetropoulos v. Vreeken, 754 P.2d 960, 961 (Utah Ct. App. cert. denied, 765 P.2d 1278 (Utah 1988)). In Demetropoulos, the Court warned:

'[This Court] can no longer afford the effort and time to prepare counsels' case and to supply counsels' record deficiencies' . . . when this time can be 'better spent in considering the merits of cases that are presented to us in proper form' . . .

754 P.2d at 962 (quoting Kushner v. Winterthur Swiss Ins. Co., 620 F.2d 404, 407 (3rd Cir. 1980)).

West Valley's brief utterly fails to comply with Rule 24(a)(7) of the Utah Rules of Appellate Procedure. The brief contains only a short statement of facts with absolutely no citations to the record other than the identification of three exhibits which were admitted in evidence at trial. The brief completely fails to present this Court with the facts as found by the trial court which are relevant to the issues the City raises on this appeal.

Beyond that, the brief improperly fails to present evidence in the proper light. "Under familiar rules of

appellate review, the Court views the evidence in the light most favorable to the judgment of the trial court . . . ." Harline v. Campbell, 728 P.2d 980, 982 (Utah 1986). Wrote the Supreme Court in Harline:

It is incumbent upon the appellant to marshal all the evidence in support of the trial court's findings and then to demonstrate that even when viewed in the light most favorable to the factual determinations made by the trial court, that the evidence is insufficient to support its findings.

Id.

West Valley's failure to comply with this accepted rule of appellate procedure is inexcusable. It has presented to this Court no evidence whatsoever in support of the trial court's judgment, much less the evidence most favorable to that judgment. If this Court were forced to decide the issues based solely upon West Valley's brief, the Court would be entirely unable to determine whether or not there is any evidence to support Judge Russon's findings and judgment.

The insufficiency of West Valley's brief justifies affirming the trial court's judgment in this case on the independent basis that the City has failed to comply with the Utah Rules of Appellate Procedure in the preparation of its brief.

POINT II

THE APPROPRIATE STANDARD OF REVIEW IN THIS CASE WHERE PAROL EVIDENCE WAS ADMITTED IS THE CLEARLY ERRONEOUS STANDARD OF RULE 52(a)

The general rule is that where a trial court interprets a contract as a matter of law, the appellate court reviews its action under a correctness standard. Kimball v. Campbell, 699 P.2d 714, 716 (Utah 1985). However, if the contract is ambiguous and the trial court relies on parol evidence to interpret the contract, an appellate court will reverse that interpretation only if it is shown to be clearly erroneous. Utah R. Civ. P. 52(a); Bell v. Elder, 782 P.2d 545, 547 (Utah Ct. App. 1989). See also, Property Assistance Corp. v. Roberts, 768 P.2d 976, 978 (Utah Ct. App. 1989) (findings and judgment based on extrinsic evidence will not be disturbed unless clearly erroneous.)

The trial court ruled in its Memorandum Decision following trial that the Ground Lease entitles Majestic to Just Compensation for the taking of its leasehold interest in the land covered by the Ground Lease. (R. 309-10) Its ruling was based upon an interpretation of the Ground Lease as a matter of law. That determination should be reviewed on appeal under the correctness standard. The trial court also found that Majestic was entitled to Just Compensation for the taking of its leasehold interest in the building and improvements on both Parcels 1 and 2, based upon its

interpretation of the formula contained in paragraph 1(b) of the Prudential Lease and paragraph 1(b) of the Lockhart Lease.

In its interpretation of the two paragraphs 1(b), the trial court properly relied upon substantial parol evidence presented by three separate witnesses at trial, each of whom were intimately involved in negotiating the leases. Messrs. Keith L. Knight, W. Harold Dobson, and Charles R. Allcott, for Majestic, Lockhart and Prudential, respectively, testified as to the purpose for and meaning of the formula in paragraph 1(b). In each case, the witness testified that the purpose for the formula in the leases was simply to calculate an initial monthly rent agreeable to both parties. Those witnesses further testified that the CPI escalation provision in paragraphs 1(a) and 1(b) of both the Prudential Lease and the Lockhart Lease were designed to increase the monthly rental payments at specified times, but were not intended to accelerate payment of the total rent due during the life of the leases. Counsel for West Valley failed to object at trial to the introduction or admission of any of this parol evidence. (R. 373, pp. 78-84, 151-155); (R. 374, pp. 109-111, 115-116)

The trial judge's finding of the value of Majestic's leasehold interest in the buildings and improvements was made in reliance upon this parol evidence. That finding is plainly to be sustained under Rule 52(b).

POINT III

THE TRIAL COURT PROPERLY INTERPRETED THE GROUND LEASE TO PERMIT MAJESTIC TO SHARE IN THE JUST COMPENSATION AWARD FOR THE TAKING OF THE LAND UNDER THE GROUND LEASE

West Valley attempts to challenge on this appeal the trial court's award of Just Compensation to Majestic for the taking of its leasehold interest in both parcels of land taken. (App. Br., pp. 11-18.) The City argues that under paragraph 18 of the Ground Lease, Majestic forfeits its leasehold interest in the land in the event of condemnation.

Under well-settled principles of eminent domain law, the owner of a leasehold interest in land condemned for public use is as a general rule entitled to Just Compensation for the taking of that interest. Nichols, The Law of Eminent Domain, § 5.06[1] (1989). See also, State Road Commission v. Brown, 531 P.2d 1294, 1296 (Utah 1975) (awarding just compensation for taking of leasehold interest based upon bonus value in lease). West Valley does not quarrel with this fundamental proposition (App. Br., pp. 11-12), but argues that Majestic has by the condemnation clause in the Ground Lease forfeited its right in a 35-year land lease to share in the award.

The law looks with disfavor upon forfeiture of property rights in interpretation. A litigant claiming such a forfeiture, particularly as a litigant who is a stranger to

the contract, faces a strenuous burden of proof to establish by a preponderance of evidence that a forfeiture of a 35-year leasehold interest has occurred. As Nichols in his leading treatise on the law of eminent domain stated:

It has been held that the law does not look with favor on clauses causing forfeiture of the lessees interest on condemnation, hence, a lease covenant will be construed not to have that effect if its language and circumstances possibly permit.

Nichols, The Law of Eminent Domain, § 5.06[2] (1989). See also, Urban Renewal Agency of City of Salem v. Wieder's, Inc., 53 Or. App. 751, 632 P.2d 1334, 1337 (Or. Ct. App.), rev. denied, 644 P.2d 1127 (Or. 1981) ("Clauses attempting to terminate leasehold interests are construed in favor of the lessee.") Geary v. State, 95 A.D.2d 965, 464 N.Y.S.2d 308, 311 (N.Y. App. Div. 1983), app. denied, 462 N.E.2d 156 (N.Y. 1987) ("In order to justify denying the tenants any share of the award, the landlord must demonstrate that the parties unambiguously intended to have the totality of the award passed to the landlord.").

The provision of the Ground Lease which West Valley attempts to claim has worked a forfeiture of Majestic's interest for housing in paragraph 18, to wit:

If the whole or a substantial part of the demised premises, including any buildings and improvements thereon erected by LESSEE, shall be taken under any statute or by right of eminent domain or private purchase in lieu thereof, then when possession shall be taken thereunder of the demised premises, or their part

thereof so taken, the term herein demised and all rights and obligations of the LESSEE hereunder shall immediately cease and be adjusted as of the time of such condemnation.

Ground Lease, ¶ 18 (emphasis added). The trouble with West Valley's argument is that it is blind to both the literal language of the condemnation clause and to the rationale for its use. The paragraph was obviously intended to set out as between the Pickrells and Majestic their respective rights and obligations if the entire property were condemned and Majestic could no longer maintain possession of the premises and the Pickrells were unable to deliver free and quiet possession. Then all obligations under the lease terminated. However, with regard to the compensable interest in the condemned property the lease clearly provides that the rights "shall . . . be adjusted as of the time of such condemnation." There is not a stitch of language that allows West Valley to make even a colorable argument that Majestic forfeited its compensable rights in the real property as a consequence of the eminent domain acquisition.

Substantial precedent cited above has rejected West Valley's position under comparable facts. For example, in Wieder's, Inc., supra, the condemnation clause was similar to paragraph 18, providing in pertinent part:

If the whole of said premises or any part thereof which shall interfere with the use or enjoyment of said premises, shall be taken by eminent domain or other condemnation proceedings for public use, then this lease shall terminate from the

time when possession of the whole or any such part thereof shall be required for such public use, and the rent shall be apportioned for the time of actual occupancy.

Weider's Inc., 632 P.2d at 1335. The Oregon court held that the condemnation clause did not result in the forfeiture of the lessee's interest and that the lessee was entitled to participate in the Just Compensation award. Id. at 1337.

There is no reasonable interpretation of the condemnation clause in paragraph 18 of the Ground Lease which leads to the conclusion that Majestic unambiguously intended to forfeit its leasehold interest upon condemnation. The relevant language clearly indicates that the parties did not intend for Majestic to forfeit its interest in a compensation award. Indeed, the reverse proposition is true, that the parties to the Ground Lease recognized that Majestic would share in the compensable interest, the quantification of which to "be adjusted [or determined] as of the time of condemnation." Ground Lease, ¶ 18.

Judge Russon in his Memorandum Decision concluded that Majestic was entitled to share in the compensation award for the taking of the land, noting as follows:

There is no language in the lease that precludes or limits Majestic from sharing in the compensation award. To preclude such recovery, the preclusionary language must be clear and unequivocal. This lease merely states that in the event of condemnation, the rights and obligations of Majestic shall cease 'and be adjusted as of the term [sic] of such condemnation.' This is not sufficient to

terminate Majestic's right to its fair compensation. The fact that the lease further provided that Majestic would have a share in the buildings which Majestic constructed does not limit Majestic's rights to share in the compensation award as to its other interests.

(R. 309-310) The trial court correctly concluded under well established eminent domain precedent that Majestic had a compensable interest and should share in the award for the taking of land. This Court should affirm that judgment on this appeal.

A. The Amount Awarded for Majestic's Interest in the Land in Parcels 1 and 2 Was Supported by Substantial Competent Evidence.

Not only did Judge Russon correctly conclude that Just Compensation was due to Majestic for the taking of its interest in the underlying land, but the amounts of compensation awarded Majestic under the Prudential Lease and the Lockhart Lease were based upon competent evidence. The trial judge recognized under the eminent domain statute Utah Code Ann. § 78-34-10(1), that the court is to receive evidence and assess damages for:

The value of each parcel and of each estate of interest therein [to] be separately assessed.

The trial court awarded Majestic \$68,023.00 for the taking of its interest in the land under the Prudential Lease. Jerry R. Webber, Majestic's expert appraiser, testified that the interest of Majestic in the land under the Prudential Lease

had a fair market value of \$72,400.00. (Exhibit 14-D, p. 8)

As to the Lockhart parcel, the trial court awarded \$72,200.36 for Majestic's interest in the land. Webber valued the Majestic interest at \$83,100.00. (Exhibit 13-D, p. 8) Webber gave specific evidentiary reasons for his conclusions, which reasons were largely unassailed.

Thus, there was competent evidence to support a value substantially higher than the court's award. The trial court was well within the range of competent evidence in entering its Just Compensation award for the taking of Majestic's interest in the land.

POINT IV

THE TRIAL COURT PROPERLY INTERPRETED THE GROUND LEASE TO FIND A BONUS VALUE BETWEEN THE GROUND LEASE AND THE PRUDENTIAL AND LOCKHART LEASES

In its attempt to challenge the trial court's findings as to Majestic's leasehold interest, West Valley makes the strained argument that the award was improper because there is no bonus value in the Ground Lease. (App. Br., pp. 18-22.) The City's claim proceeds along the path that there is no bonus value as to the land because the rents payable in the Prudential and Lockhart Leases for the land are the same amount in total as the rent payable under the Ground Lease; and that because the CPI escalator clauses contained in the Ground Lease and in the Prudential and Lockhart Leases are the same, there is simply a pass-through of rent from

Majestic's lessees to its lessor. As to the bonus value in the buildings and improvements, the City makes the astonishing argument in the face of virtually all the evidence, that paragraph 1(b) of both the Prudential and Lockhart Leases could act as an "accelerator" instead of an "escalator," so that increased monthly rental payments actually shorten the time period in which Prudential and Lockhart were to make leasehold payments. According to West Valley's interpretation of the Prudential and Lockhart Leases, both the lessees would have occupied the premises during the last 6-7 years of the leases rent-free.

A. The Finding of a Bonus Value in the Land was Based on Substantial, Competent Evidence.

It is black letter law in this jurisdiction that a leasehold interest in real property is to be paid just compensation for its bonus value in the lease. A bonus value exists when the contract rent a lessee is obligated to pay is less than the fair rental value of the leased property in the market place. The lessee's Just Compensation is determined by calculating the present worth of that bonus value. The Utah Supreme Court in State Road Commission v. Brown, supra, has so defined the lessee's compensation:

The lessee would get his share of [Just Compensation] by receiving as his damage the present worth of the reasonable market value of his rental term less the present value of the payments required to be made pursuant to the contract.

531 P.2d at 1296-97. See also, Great Atlantic and Pacific Tea Company v. State of New York, 22 N.Y.2d 75, 238 N.E.2d 705, 291 N.Y.S.2d 299, 305-07 (1968)

The measure of compensation is similar in the case of a "sandwich lease," where the lessee has a valid sublease upon the property. The bonus value is determined by calculating the total rent required to be paid to the lessee under the sublease(s) and deducting therefrom the total rent required by the underlying lease. The present value of that difference is the lessee's Just Compensation. Dama v. Record Bar, Inc., 512 So. 2d 206, 208 (Fla. Dist. Ct. App.) 519 So.2d 988 (Fla. 1987); Garibaldi v. Oklahoma Industrial Finance Corp., 543 P.2d 555, 559 (Okla. 1975).

Judge Russon's findings as to the compensation to be awarded Majestic was based upon substantial, competent evidence as to the bonus value of Majestic's leasehold interest. Majestic's expert witness, Webber, testified extensively about his valuation of Majestic's leasehold interests, (R. 374, pp. 181-202), and specifically about his opinion that a bonus value existed as to the land. (R. 375, pp. 79-87) His conclusions are distilled in summary Exhibits 14-D and 13-D, received in evidence and attached as Addendum 7 and 8 to this Brief, respectively.

On page 7 of Exhibit 14-D are the calculations used to value Majestic's leasehold interest on the Prudential parcel. Item I shows the annual fair rental income to Majestic on

Parcel 1, which is the annual net income under the Prudential Lease. From that amount is subtracted the annual contract rental payable under the Ground Lease, as shown in item II. The difference between the two is shown in item III as the bonus value on an annual basis.

Item V contains the calculations of present worth of the annualized bonus value arrived at in item III. Item VI then shows the total value of Majestic's leasehold interest Parcel 1, assuming there was no condemnation clause to dictate a different allocation. Item VII contains the proportion expressed as a percentage which the value of Majestic's leasehold interest in Parcel 1 bears to the value of the total property of Parcel 1, which is 72.37%. (Exhibit 14-D, p. 7)

On page 8 of Exhibit 14-D, Webber applies that percentage to the total appraised value of the land of Parcel 1 as expressed on page 4 of the exhibit, to arrive at the value of Majestic's leasehold interest in the land of \$72,400.00. (Exhibit 14-D, p. 8)

Mr. Webber's appraisal of Parcel 2 covered by the Lockhart Lease is summarized in Exhibit 13-D, attached to Respondent's Brief as Addendum 8, using the identical format and methodology as Exhibit 14-D, with the numerical values being slightly different. (Exhibit 13-D, pp. 4, 7-8)

This appraisal evidence squares in all respects with the measure of compensation mandated by the Utah Supreme Court.

The methodology used by the court in its Memorandum Decision at pages 9-10 is also exactly the same, (although the court's specific findings of value are justifiably not as detailed as Webber's appraisal). (R. 316-317)

The principal flaw in West Valley's argument is that it assumes there can be no bonus value in Majestic's Ground Lease. It completely overlooks the proposition that under Webber's evidence, the fair rental value of the land was increased because the construction of the buildings and improvements elevated the land to its highest and best use, thereby increasing the value of the land in its previous, undeveloped condition. (R. 375, pp. 79-87) Paragraph 18 of the Ground Lease provided that the compensable interests of Majestic would be revised as of the date of condemnation. Ground Lease, ¶ 18. With respect to the Majestic interest in the underlying land, the trial judge properly followed Utah law in determining that Majestic's leasehold interests therein were \$68,023.00 for Parcel 1 and \$72,000.36 for Parcel 2. Those findings are based upon substantial, competent evidence and are not subject to attack under the clearly erroneous standard facing West Valley City.

B. The Finding of a Bonus Value in the Buildings and Improvements Was Based on Substantial, Competent Evidence.

The valuation of Majestic's leasehold interest in the buildings and improvements on Parcels 1 and 2 is somewhat

different than for its interest in the land.

Before reaching the merits of the City's appeal on this issue, the Court should affirm the judgment below based upon the independent ground that West Valley has acquiesced in a portion of the judgment, and thereby waived its right to appeal.

It is a well settled rule in Utah law that "one who acquiesces in a judgment cannot later attack it." Jacobsen, Morrin & Robbins Construction Co. v. St. Joseph High School Board of Financial Trustees, 137 Utah Adv. Rep. 34, 35 (Utah Ct. App. 1990) (quoting Trees v. Lewis, 738 P.2d 612, 613 (Utah 1987)). The Court further stated in Jacobsen, Morrin that one who so acquiesces in a judgment cannot challenge the judgment on appeal:

if a judgment is voluntarily paid, which is accepted, and a judgment satisfied, the controversy has become moot and the right to appeal is waived.

Id. (quoting Jensen v. Eddy, 30 Utah 2d 154, 514 P.2d 1142, 1143 (1973)).

West Valley has waived its right to appeal that portion of the trial court's judgment awarding compensation for the taking of buildings and improvements. West Valley tendered to Majestic payment in full for that part of the court's award, which tender was accepted by Majestic. In return, Majestic executed a Partial Satisfaction of Judgment, which is attached as Addendum 5 to this Brief. The Letter of J.

Richard Catten, dated November 3, 1989, enclosing the payment explained that the purpose for the payment was to satisfy that portion of the trial court's judgment of Just Compensation for the taking of the buildings and improvements, and to reserve for appeal the court's finding of Just Compensation as to the land. See Addendum 6.

West Valley has unequivocally waived its right to appeal this portion of the court's judgment, and the judgment should therefore be affirmed.

Should the Court proceed to the merits of this issue, it should affirm the judgment of the trial court because it was based upon substantial competent evidence. As stated earlier, West Valley contends that the CPI escalation provision contained in paragraph 1(b) of both the Prudential and Lockhart Leases have the effect of "paying off" the rent obligations of Prudential and Lockhart before the end of the respective lease terms.

Not only is City's argument non-sensical, but it blindly ignores abundant parol evidence from three (3) separate witnesses at trial, each of whom testified that the formula in paragraph 1(b) of the Prudential Lease and the Lockhart Lease was simply a method of calculating part of the initial rental amount, and was not designed to accelerate payment of the stated total rent. Witnesses Keith L. Knight, Charles R. Allcott, and W. Harold Dobson each so testified and affirmatively stated, respectively, that the leases required

Prudential and Lockhart to make rental payments throughout the twenty-five (25) year terms of the leases. Knight so testified regarding both the Prudential Lease and the Lockhart Lease, whereas Allcott testified only as to the Prudential Lease and Dobson as to the Lockhart Lease. (R. 373, pp. 78-84, 151-155); (R. 375, pp. 109-111, 115-116)

The City's argument is clearly contrary to the findings and judgment of the trial court. It cites no evidence from the record outside of the bare language of the Prudential Lease and the Lockhart Lease, and makes not a single citation to the trial transcript. Its showing falls sadly short of the clear standard in Utah law which requires West Valley to marshall all evidence relevant to the challenged finding and thereby show it to be clearly erroneous. Bell v. Elder, 782 P.2d 545, 547 (Utah Ct. App. 1989). In this action, as in Bell, this Court must affirm the trial court's judgment because the City has "failed both to thoroughly marshall the evidence and to demonstrate that the trial court's fact-based interpretation of this term of the contract is clearly erroneous." Id.

C. The Amount Awarded for Majestic's Interest in the Buildings and Improvements on Parcels 1 and 2 Was Supported by Substantial Competent Evidence.

Not only did the court properly find that Majestic was entitled to compensation for the taking of its interest in

buildings and improvements, but the amount of compensation which the court thereupon determined is based upon substantial competent evidence. For Majestic's interest in the building and improvements under the Prudential Lease, the court awarded Just Compensation of \$118,950.00. Webber's testimony was \$176,000.00. (Exhibit 14-D, p. 8) For Majestic's interest in the building and improvements under the Lockhart Lease, the court awarded \$104,715.00. Webber valued the interest at \$139,500.00. (Exhibit 13-D, p.8) Thus, the trial court's findings were again well within the range of competent evidence.

POINT V

THE TRIAL COURT PROPERLY VALUED EACH PARCEL AS A WHOLE, AND THEN DETERMINED THE VALUE OF EACH SEPARATE ESTATE OR INTEREST THEREIN

The last issue which the City raises is vacuous and argues that the trial judge did not first determine the value of the property as an entire unit as a part of the process of valuing Majestic's leasehold interests therein.

There is nothing novel about the City's argument. The requirement that a leasehold interest be appraised as part of the unencumbered whole has been the settled law of Utah for decades, as demonstrated in the 1975 decision of Brown, supra. What is novel about the City's argument is its complete disregard for the competent evidence before Judge Russon. Both the appraisals of Webber and Knight

specifically focused upon Majestic's interest viewed in context and as a part of the fair market value of each entire parcel. Judge Russon's Memorandum Decision also specifically addressed the fair market value of the total parcels, including buildings and improvements, from which there was apportioned pursuant to the documents and the law of the case the allocable interest of Majestic in the buildings and in the land. (R. 316-317.)¹

The methodology to evaluate the leasehold interest in the buildings and improvements vis-a-vis the land is not only required by the lease documents in evidence, but it is statutorily sanctioned in the evaluation of a compensable leasehold interest in Utah law. Under Utah Code Ann. § 78-34-10(1), it is stated:

The court, jury or referee must hear such legal evidence as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

(1) the value of the property sought to be condemned and all improvements thereon appertaining to the realty, and of each and every separate estate or interest therein; and if it consists of different parcels, the value of each parcel and of each estate or interest therein shall be separately assessed.

* * *

(Emphasis added.)

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¹ The full text of Judge Russon's findings in this respect is contained in ¶¶ 10-12 of his Memorandum Decision. (R. 316-317)

There can be no question that Judge Russon's findings are consistent with the valuation methodology under the requisites of Utah law. West Valley's argument is flawed and is to be rejected.

CONCLUSION

For the reasons advanced above, the Findings of Fact, Conclusions of Law, and judgment of the trial court should be affirmed in all respects.

CAMPBELL, MAACK & SESSION


ROBERT S. CAMPBELL, JR.


MATTHEW C. BARNECK
Attorneys for Respondent
Majestic Investment Company

July 12, 1990

Tab 1

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4/11/00
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VHL

April

W I T N E S S E T H :

Said land is described as:

PARCEL 1.

Beginning at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian, and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: N 00°00'44" E 2.33 feet; thence N 89°56'20" E 27.00 feet; thence N 00°00'44" E 88.34 feet; thence N 89°56'20" E 129.22 feet to the point of beginning.

Contains: 0.270 acres

PARCEL 2.

Beginning at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N 00°00'44" E 90.67 feet; thence N 89°56'20" E 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1

West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.0 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning,

and

WHEREAS, LESSOR is willing to lease and let unto LESSEE and LESSEE is willing to take and lease the above described tract and parcels of land upon the covenants, conditions, stipulations and terms hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and agreements of the parties hereinafter set forth, and for and in consideration of the rents, covenants and agreements by LESSEE to be paid, kept and performed, LESSOR does by these presents grant, lease, demise and let unto LESSEE the above described tract and parcel of land.

TO HAVE AND TO HOLD the said premises, together with the appurtenances to LESSEE for a term of thirty-five (35) years, commencing on the 1st day of May, 1975, and ending on the 30th day of April, 2010.

THIS AGREEMENT OF LEASE is made strictly upon the covenants, promises, stipulations, terms and conditions hereinafter set forth, and to that end, it is agreed as follows:

1. LESSEE shall pay to LESSOR as rental for said premises the sum of THREE HUNDRED FIFTEEN THOUSAND and NO/100 DOLLARS (\$315,000.00), (subject to escalation as hereafter provided), payable initially in monthly installments of SEVEN HUNDRED FIFTY and NO/100 DOLLARS (\$750.00) on or before the first (1st) day of each month of said term. Such rental amount shall be subject to escalation commencing at the beginning of the 11th, 21st and 31st lease years. Such escalation in rental amount shall be equal to a percentage of said \$750.00 installment as shall be determined by the percentage of increase

in the Consumer Price Index for "All Items" as promulgated by the United States Department of Labor, 1967 Survey (or such successor series) during such ten year period next prior to the date of such escalation as determined by the calendar yearend Index at the beginning of the term hereof, which was 155.4, and ending calendar yearend Index of each such 10 year period. Notwithstanding the above, there shall be a minimum increase in such monthly rental amount equal to \$200.00 effective as of the time of each escalation.

It is agreed and understood that such amounts as shall have been received by LESSOR under the terms of that "Ground Lease Option Agreement" executed by LESSOR and Prudential Federal Savings and Loan Association on July 1, 1974, and as amended by an extension agreement dated December 31, 1974, shall be applied to and credited against the monthly rental amounts due and owing to LESSOR hereunder during the last months of the 20th year of the term of this agreement.

Until it receives other instructions in writing from LESSOR, LESSEE will pay all rentals payable under this Lease to Granger Shopping Center, c/o H. S. Pickrell, 3404 North Central Ave., P. O. Box 7400, Phoenix, Arizona 85011.

2. LESSEE will use and occupy said premises for the purpose of making available to the general public business offices and facilities associated therewith. In connection therewith, LESSEE shall have the unlimited right to place such improvements upon the premises as it may desire so long as the same shall be consistent with the zoning laws of Salt Lake County, and so long as such improvements shall equal at least \$140,000.00 in value.

3. The demised premises shall not be used contrary to the ordinances of Salt Lake County, State of Utah, to the laws of the State of Utah, or of the United States of America, or to the valid regulations of any duly constituted regulatory or administrative body. LESSEE shall keep and maintain the premises in adequate repair and in a clean and presentable condition and shall not commit any nuisance thereon nor permit any nuisance to be committed or to exist thereon.

4. LESSEE shall pay for all gas, heat, electricity and power furnished and used by LESSEE on the demised premises during the term of this agreement of lease, and any extension thereof, together with all janitorial services and all license fees and other government charges levied and assessed on the operation of any business on the demised premises. LESSOR shall make water available to the premises at a cost to LESSEE of \$6.00 per month, which cost may vary in accordance with any cost increases or decreases billed from time to time by

the Granger Water District.

5. All structures, buildings and other permanent improvements (excluding all trade equipment, furnishings and fixtures) erected on the demised premises shall, at the expiration of this agreement, become and remain the property of LESSOR. LESSEE shall pay all costs of erection, repair and maintenance of such structures, buildings or improvements during the term of this agreement of lease or any extension thereof, and shall repair, at its own expense, any damage done to such structures, buildings or improvements occasioned by the removal therefrom of any non-permanent improvements.

6. LESSEE, upon entering into possession of the demised premises, accepts the same in the condition that they are in at the time of delivery of said possession unto it by LESSOR. At the expiration of the term of this lease, or at the earlier termination thereof for any reason herein set forth, LESSOR shall have the right to take possession of said premises, or any structures, buildings and other permanent improvements erected thereon, and LESSEE shall surrender to LESSOR said premises with all such structures, buildings and permanent improvements erected thereon (excluding all trade equipment, furnishings and fixtures) in as good condition as when the same were completed, reasonable wear and tear excepted.

7. LESSEE, at its own cost and expense, may erect and construct a building or buildings, structure or structures, or other improvements on the demised premises, which buildings, structures, or other improvements shall conform with all the rules, regulations and ordinances of Salt Lake County, State of Utah. Such construction shall be substantial and shall meet reasonable standard architectural and fire underwriters' requirements. All alterations and improvements to the building or structure erected on the demised premises shall be made at the expense of LESSEE, and with the exception of all trade equipment, furnishings and fixtures, shall be and become the property of LESSOR at the expiration or termination of this agreement of lease or any extension thereof. The foregoing provisions shall apply to any assignee or sublessee of LESSEE.

8. LESSEE shall not permit any lien to be filed against the demised premises for any work performed for LESSEE or material furnished LESSEE to remain unreleased for a period exceeding sixty (60) days; provided, however, nothing herein contained shall prevent LESSEE in good faith from contesting in the courts the claim or claims of any person or persons, partnerships or corporations, growing out of the erection, alteration or modification of any building, structure or other improvements on the demised premises, and the postponement of payment of such claim or claims until such contest shall finally be decided by the courts shall not be a violation of this agreement of lease.

9. This is a "net" lease, it being the intention of the parties hereto that LESSOR shall have and enjoy the rent reserved to it without deduction or offset with respect to any taxes, special improvement assessments, license fees and other governmental charges attributable to the demised premises or to the improvements constructed on the demised premises by LESSEE or attributable to the business conducted on the demised premises during the term of the lease and any extension thereof. Accordingly, said taxes, special assessments, license fees and charges shall be paid by LESSEE prior to the date of the delinquency thereof so that no tax sale or special assessment sale shall occur; provided, however, nothing herein contained shall prevent LESSEE in good faith from contesting in the court the validity of any such tax, assessment, fee or charge and postponing the payment of the same until such contest shall finally be decided by the courts. It is specifically agreed that LESSEE shall not be liable for the payment of any income taxes, business taxes, estate or inheritance taxes levied and assessed upon LESSOR or its successors, grantees or assigns. Taxes for the year 1975 and special assessments falling due and payable for the year 1975 shall be paid by LESSOR. Taxes for the year 2010 and special assessments falling due and payable for the year 2010 (or, if this lease is renewed or extended, the final year of such extended or renewed term) shall be prorated between LESSEE and LESSOR as of the date of redelivery of possession of the demised premises by LESSEE to LESSOR, their successors, grantees or assigns. LESSOR

shall, at its option, have the right at all times during the term of this agreement of lease to pay any of said taxes, special assessments, charges, penalties or other impositions remaining unpaid after they shall have become due and payable, and to pay, cancel and clear off all tax liens, special assessment liens, charges and claims upon or against the demised premises or any part thereof and to redeem the demised premises from any tax or special assessment sale from time to time, and to do anything necessary to make good any default of LESSEE in the payment of said taxes, special assessments and charges, and the amount so paid by LESSOR, including expenses and attorneys' fees, shall be additional rent due from LESSEE at the next rent date after any such payment or payments, with interest thereon at the rate of six (6%) percent per annum from dates when said sum or sums shall have been paid by LESSOR up to the date of actual repayment thereof by LESSEE.

10. (a) LESSEE shall cause the maintenance of such public liability, property damage and care, custody and control insurance coverage as to adequately protect the parties to this agreement against any claim or loss arising hereunder. LESSEE shall further comply and require the compliance of any sublessee with any and all requirements pertaining to said area of any insurance organization or company necessary for the maintenance of such coverage, as well as any further coverage maintained by LESSOR.

(b) LESSEE promises and agrees that it will, during the term of this lease and any extension thereof, keep the building or structures erected upon the demised premises insured against loss by fire with solvent insurance companies authorized and licensed to issue policies of fire insurance in the State of Utah, and to maintain such insurance at all times during the term of this lease, or any extension thereof, in an amount not less than the insurable value of such buildings and structures, with at least 90% co-insurance and extended coverage. Each and every policy of insurance shall provide that the loss, if any, shall be paid to LESSEE, subject to the terms of this lease, and all such policies shall be deposited with said LESSEE.

(c) LESSEE further covenants and agrees that it will not do, nor permit to be done, in, to or upon said demised premises any act or thing which will invalidate any insurance upon or about, or in any manner pertaining to such buildings or structures which may hereafter be erected thereon; and, further, LESSEE will not permit any building or structure to be put, kept or maintained on said demised premises in such condition or so occupied that the same will not be insurable.

(d) LESSEE further covenants and agrees that if said building or buildings, structure or structures, shall at any time or times during the term of this lease, or extension thereof, be destroyed or damaged by fire, LESSEE may elect either to rebuild or repair such building or structure destroyed or damaged as aforesaid, or to replace such damaged or destroyed building or structure with new buildings of different type or structure, but of at least equal appraised value to such replaced buildings and will proceed forthwith with such building, rebuilding or repair work. If said insurance money is not sufficient to pay the costs and expenses of said building or repair work, LESSEE covenants and agrees to pay promptly the deficiency from its own funds. Said new, rebuilt or repaired building or structure shall, in all respects, comply with all rules, regulations and ordinances of Salt Lake County, State of Utah, shall be substantial, and shall meet reasonable standard architectural and fire underwriters' requirements. Any balance of the said insurance money remaining after payment of the costs of such building or repair work shall be paid over to LESSEE.

(e) LESSEE covenants and agrees that it will not permit any lien to be filed against the demised premises or improvements thereon for labor engaged in or materials supplied for the building or repairing of said building or buildings, structure or structures; provided, however, that nothing herein contained shall require LESSEE to pay or discharge any lien or liens so long as LESSEE shall, in good faith, contest the legality or validity thereof, and until such legality or validity has been established by the final judgment of a court or courts of competent jurisdiction.

(f) Premiums for insurance for the year 2010 (or, if this lease is extended, the final year of such extended term) shall be prorated as of the date of redelivery of the demised premises to LESSOR by LESSEE.

11. LESSEE may at any time assign this lease, or sublease the demised premises or any part thereof; provided, however, LESSEE shall, at all times, remain liable to LESSOR under the terms of this agreement of lease.

12. If the rent above reserved or any part thereof shall not be paid when due, upon twenty (20) days' written notice to LESSEE, it shall be lawful for LESSOR, without notice or legal process, to re-enter and take possession of said demised premises and every part thereof, or in lieu of the exercise of such remedy, LESSOR may, at its option, sue for and obtain judgment against LESSEE for rent becoming due from time to time thereafter. In the event LESSEE shall default in the performance of any of the covenants or agreements herein assumed by it, other than the payment of rent, LESSOR shall, in writing, give notice to LESSEE of such default, and LESSEE shall, within sixty (60) days after the receipt of said notice, cure said default and rectify the aforesaid breach or breaches of covenants specified in said notice. If LESSEE shall fail within said sixty day period to cure said default or rectify said violation, LESSOR, without notice or legal process, may, at its option, re-enter and take possession of the demised premises and every part thereof, or in the alternative, LESSOR may, at its option, sue for and recover judgment against LESSEE for damages resulting from such default.

13. LESSEE is hereby given the absolute right without LESSOR'S consent, but after having mailed prior notice to LESSOR, to grant a "Leasehold Mortgage" security interest in this Lease and to assign this Lease as collateral for such security interest, or execute such other security instruments as may from time to time be required by party to be

secured, without LESSOR'S prior consent, provided that no other security interest in this lease is outstanding at the time such security interest is granted. If LESSEE or any successor or assign shall grant a security interest in this leasehold, then so long as such security interest in this lease shall remain in effect, the following provisions will apply:

(a) There shall be no cancellation, surrender, acceptance of surrender nor modification of this lease without the prior consent in writing of the secured party.

(b) LESSOR shall, upon serving on LESSEE any notice of default or any other notice under this lease, simultaneously deliver a copy of such notice to the secured party by Certified U. S. Mail, and no notice of such default shall be deemed to have been duly given unless or until a copy thereof has been so delivered to such secured party. The secured party shall thereupon be allowed at the same time within which to remedy or cause to be remedied the default complained of as is allowed to LESSEE, and LESSOR shall accept such performance by or at the instigation of the secured party as if such performance had been accomplished by LESSEE.

(c) For the purpose of this security interest, no default on the part of LESSEE in the performance of work to be performed, or acts to be done, or conditions to be remedied which cannot reasonably be completed within the grace period shall be deemed to exist, if steps shall, in good faith, have been commenced promptly to rectify the same, and shall be prosecuted to completion with diligence and continuity.

(d) Anything herein contained notwithstanding, while such security interest remains in effect, if, before the expiration of twenty (20) days after the date of service of a notice to terminate this lease for any reason whatsoever, the secured party shall have paid to LESSOR all rent and additional rent and shall have complied, or shall engaged in the work of

complying with the requirements of this Lease by reason of which default such notice has been sent, then LESSOR shall not be entitled to terminate this Lease and any such notice of termination theretofore given shall be void and of no effect.

(e) If LESSOR elects to terminate this Lease by reason of any default of LESSEE, the secured party shall not only have and be subrogated to all rights of LESSEE with respect to curing such default but shall also have the right to postpone and extend the specific date for the termination of this Lease as fixed by LESSOR in his notice of termination for a period of not more than six (6) months, provided:

(1) The secured party shall cure any then existing default and meanwhile pay the rent and additional rent and perform all of the other requirements of this Lease required to be performed by LESSEE.

(2) No further default shall accrue hereunder during such extended period.

(3) The secured party forthwith takes steps to acquire LESSEE'S interest in this Lease by foreclosure of its security interest or otherwise.

(f) The name of the secured party may be added to the "loss payable endorsement" of any and all insurance policies required to be carried by LESSEE hereunder. Subject to the provisions of any security instrument, LESSEE shall take all insurance and condemnation proceeds to which LESSEE may be entitled hereunder for purposes of restoration of the leased property available jointly to LESSEE and to the secured party.

(g) LESSOR, within ten (10) days after a request in writing by LESSEE or the secured party, shall furnish a written statement duly acknowledging that this Lease is in full force and effect and that there is no default hereunder by the LESSEE; or if there is a default, such statement shall specify the default which LESSOR claims to exist.

14. LESSOR hereby covenants and agrees that LESSEE, by paying said rent in the manner aforesaid and by performing the other covenants, terms and conditions of this agreement of lease on the part of LESSEE to

be kept and performed, may and shall have the right at all times during the term of this agreement of lease to quietly and peacefully hold, possess, use, occupy and enjoy said demised land and premises and all improvements which may from time to time be placed thereon under and by virtue of this agreement of lease.

15. Any digression from the strict terms of this agreement of lease permitted by LESSOR shall in no way constitute a waiver, nor affect in any way the rights of LESSOR thereafter to demand strict compliance with all the terms, conditions and provisions of this agreement of lease.

16. In the event the demised premises are to be offered for rent or leasing by LESSOR, or its successors and assigns, at the expiration of the term of this agreement of lease, LESSEE shall have the right of first refusal upon terms and conditions as may be agreed upon by the parties, anything in this agreement notwithstanding. At least twelve (12) months prior to the expiration of the term of this lease, LESSOR shall give to LESSEE written notice of its intention or non-intention to offer the demised premises for rent or lease. If LESSOR gives notice to LESSEE of its intention to offer the demised premises for rent or lease, then LESSEE, within two (2) months from actual receipt of such notice by it shall give written notice to LESSOR that LESSEE desires to have the first refusal of a lease to be offered by lessor, its successors and assigns. The building or structure and other improvements, as well as the value of the land, shall be considered by LESSOR in determining the rental value for any period of extension or renewal of this agreement of lease. It is understood that LESSOR shall offer a lease to LESSEE on the same terms and conditions which LESSOR would be willing to lease to a third party.

17. Service of all notices specified in this agreement of lease shall be sufficient if mailed by United States mail to LESSOR at 3404 North Central Avenue, P. O. Box 7400, Phoenix, Arizona 85011, and to LESSEE at 254 South 6th East, Salt Lake City, Utah 84102.

18. If the whole or a substantial part of the demised premises, including any buildings and improvements thereon erected by LESSEE, shall be taken under any statute or by right of eminent domain or private purchase in lieu thereof, then when possession shall be taken thereunder of the demised

premises, or the part thereof so taken, the term herein demised and all rights and obligations of the LESSEE hereunder shall immediately cease and be adjusted as of the time of such condemnation. LESSEE shall have the claim and right to share in and receive that amount of such award as represents that proportion of the value of the buildings and improvements erected on the demised premises by LESSEE which the number of months from the date of such taking by condemnation to the date of the expiration of this lease bears to the total number of months within the term herein demised, to-wit, 420 months. (As an example, if the property is so taken by condemnation twelve months after the date of this lease, then LESSEE would be entitled to 408/420ths of that amount of the award as represents the value of the buildings and improvements constructed on the demised premises.) It being understood and agreed, however, that LESSEE shall apply the amount so received by LESSEE to the payment of any Lessee mortgage or other Lessee lien owing on the above described property. In the event of a partial condemnation of a small and insubstantial portion of the demised premises, LESSOR and LESSEE shall share in such award as their interests may appear on the same basis as set forth above and this lease as to such portion of the premises so taken shall cease and terminate and the monthly rental payments payable to LESSOR by LESSEE shall be reduced by the percentage of land taken in relationship to the whole. If land only is condemned, with no effect upon the improvements or rentals, LESSOR and any secured party holding a Lessee mortgage on the above described premises that is affected by such condemnation shall share in such award as their interests may appear.

19. If either party to this agreement shall be adjudged by a court of competent jurisdiction to have violated the terms of this agreement of lease or to be at fault in the performance of the same, the party guilty of violation hereof or at fault shall pay the innocent party all costs and attorneys' fees and expenses incurred by said innocent party in enforcing any of the covenants of this lease or in seeking judicial protection or relief.

20. Upon the execution hereof, LESSEE shall have the right to file a LESSEE'S notice of interest with the Recorder's office of Salt Lake County, State of Utah, covering the demised premises.

21. The promises, covenants and conditions hereof respectively assumed by the parties hereto shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

22. It is understood and agreed that anything contained herein to the contrary notwithstanding, this agreement is conditional upon the obtaining of such permits and approvals by appropriate governmental bodies or agencies as will permit Prudential Federal Savings and Loan Association and the Lockhart Co. to proceed as separate sublessees on the demised premises and Lessee to construct those initial improvements indicated in said Exhibit "A". If such permits or approvals cannot be obtained by Lessee and both sublessees as provided above, within 6 months from the date hereof, this agreement shall become automatically terminated as of the date that such governmental body or agency indicates its unwillingness to grant such permit or approval and the parties shall have no further duty or obligation hereunder.

23. It is understood that there is presently a dispute between LESSOR and Utah Power and Light Company regarding the right of said power company to maintain presently existing overhead power lines and poles over the demised premises and the premises adjacent to the easterly boundary thereof. LESSOR hereby agrees that within six (6) months of the execution of this agreement or by the date of commencement of construction of the said improvements upon the premises by LESSEE, whichever is earlier, it will procure a commitment from said power company to remove the said overhead power lines and poles at LESSOR'S expense.

24. LESSOR covenants that it presently has and will during the term hereof maintain good title to the demised premises free of any defects or encumbrances and that LESSEE, on making the lease payments and on keeping, observing, and performing all the other terms, covenants, conditions and provisions herein required of it, shall, during the term hereby granted, peaceably and quietly have, hold, and enjoy the said premises for the full term of this lease.

IN WITNESS WHEREOF, the parties have caused this instrument to be
executed the day and year first above written.

GRANGER SHOPPING CENTER, a General
Partnership

ATTEST:

_____
Title:

By

Title:

Henry S. Pickrell
Partner

Henry S. Pickrell
Henry S. Pickrell, an individual

Barbara M. Pickrell
Barbara M. Pickrell, his wife

MAJESTIC INVESTMENT COMPANY, a Utah
Corporation:

ATTEST:

_____
Title:

By

Title:

Kurt L. Smith

LEASE MODIFICATION AGREEMENT

THIS LEASE MODIFICATION, made and entered into this 8th day of May 1975 by and between GRANGER SHOPPING CENTER, a General Partnership, HENRY S. PICKRELL and BARBARA M. PICKRELL, his wife, (hereinafter collectively referred to as "LESSOR"), Party of the First Part, and MAJESTIC INVESTMENT COMPANY, a Utah corporation, (hereinafter referred to as "LESSEE"), Party of the Second Part;

W I T N E S S E T H :

WHEREAS, the parties hereto on the 11th day of April 1975 entered into and executed a certain Ground Lease agreement covering certain premises as described therein, and

WHEREAS, the description of the premises as set forth in said Ground Lease agreement does not conform with the actual intent of the parties, and the parties are now desirous of modifying said description of the premises as set forth in said agreement to conform with such actual intent.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. That anything to the contrary notwithstanding, the description of the premises as set forth in the first preamble clause of said Ground Lease agreement dated April 11, 1975 (including Exhibit "A" attached thereto) shall include, and the same is hereby modified and amended to include, a provision for a right-of-way as set forth below, the same as though originally and completely set forth in said Ground Lease agreement. Said right of way provision reads as follows:

Together with an unlimited right-of-way over and across the following described property:

BEGINNING at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 33.0 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°0'44" West 181.34 feet along the West line of 2700 West Street; thence South 89°56'20" West 17 feet; thence North 0°0'44" East 181.34 feet; thence North 89°56'20" East 17 feet to the point of beginning.

2. Except as herein modified, said Ground Lease agreement dated the 11th day of April 1975, is hereby ratified, confirmed and unchanged and this modification agreement shall henceforth be considered a part of said Ground Lease agreement as though the same had originally been set forth therein and shall be governed and interpreted by and in accordance therewith. The covenants, promises and conditions herein set forth shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, and their respective corporate seals be hereunto affixed the day and year first above written.

GRANGER SHOPPING CENTER, a General Partnership

ATTEST:

By: Henry S. Pickrell
Title: Partner

Title:

Henry S. Pickrell
Henry S. Pickrell, an individual

Barbara M. Pickrell
Barbara M. Pickrell, his wife

MAJESTIC INVESTMENT COMPANY, a Utah corporation

ATTEST:

By: [Signature]
Title: President

Title:

ASSIGNMENT OF RENT FROM SUBLEASES

This Assignment, executed at Salt Lake City, Utah, this 18th day of April, 1975, by Majestic Investment Company, a Utah corporation ("Assignor") to Granger Shopping Center, a partnership, Henry S. Pickrell and Barbara M. Pickrell, his wife, all of Salt Lake City, Utah (collectively herein called "Assignee").

RECITALS:

A. Assignee, as Lessor, has leased to Assignor, as Lessee, the real property located in Salt Lake County, Utah, described on Exhibits A and B hereto, under that certain Ground Lease dated April 11, 1975, upon the condition that this Assignment be given by Assignor to Assignee to secure Assignor's obligations to Assignee; and

B. Assignee, as Lessor, has subleased the real property described on Exhibit A attached hereto to The Lockhart Co., a Utah corporation ("Lockhart"), as Lessee, under that certain Agreement of Lease between said parties dated April 11, 1975; and

C. Assignee, as Lessor, has subleased the real property described on Exhibit B attached hereto to Prudential Federal Savings & Loan Association, a corporation of the United States of America ("Prudential"), under that certain Agreement of Lease between said parties dated April 11, 1975;

NOW, THEREFORE, in consideration of Assignee's execution and deliver of said Ground Lease as aforesaid, it is

AGREED:

1. Subject to paragraph 2 hereof, Assignor does hereby assign to Assignee, to secure Assignor's obligations to Assignee under that said Ground Lease described in Recital A, so much of the rentals due Assignee from Lockhart and Prudential as will fully satisfy Assignor's obligations to Assignee under said Ground Lease as they mature and become due.

2. This Assignment shall be of no force and effect unless and until Assignor defaults under the terms and provisions of said Ground Lease and said default or defaults remain uncured for the number of days specified in paragraph 12 of said Ground Lease after Assignee has given written notice of said default or defaults under the provisions of paragraph 12 of said Ground Lease to Assignor, Lockhart and Prudential. Until such default remains uncured after such written notice is so given, Assignor may collect and receive all rentals due from Lockhart and Prudential, but thereafter, this Assignment shall be in full force and effect, and Assignee may demand of and receive directly from Lockhart and Prudential so much of the rentals as they become due from Lockhart and Prudential as will fully satisfy said noticed and uncured default or defaults and will satisfy all other obligations of Assignor to Assignee which have then accrued under said Ground Lease. Thereafter, this Assignment shall again be of no force and effect.

3. Assignee may exercise its rights under this Assignment consecutively and cumulatively.

4. This Assignment shall not limit the right of Assignee to proceed with any other default remedies provided in said Ground Lease.

5. This Assignment is and shall be subject and inferior to any "Leasehold Mortgage" or security interest which Assignor may grant in said Ground Lease or said sub-leases pursuant to the provisions of paragraph 13 of said Ground Lease.

6. This Assignment shall be binding upon and inure to the benefit of the assignees, successors and assigns of Assignor and Assignee.

EXECUTED at Salt Lake City, Utah, the day and year first set forth above.

MAJESTIC INVESTMENT COMPANY

ATTEST:

By

Its

K. Ronald Knight
Its Sec. Treas.

EXHIBIT A

The real property located in Salt Lake County,
Utah, leased to the Lockhart Co. is:

BEGINNING at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N 00°00'44" E 90.67 feet; thence N 89°56'20" E 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.00 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.00 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

EXHIBIT B

The real property located in Salt Lake County,
Utah, leased to Prudential Federal Savings and Loan Association
is:

BEGINNING at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 00°00'44" West 90.67 feet along the West line of 2700 West Street; thence South 89°56'20" West 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: North 00°00'44" East 2.33 feet; thence North 89°56'20" East 27.00 feet; thence North 00°00'44" East 88.34 feet; thence North 89°56'20" East 129.22 feet to the point of beginning.

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.0 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

NOTICE OF INTEREST AND MEMORANDUM OF LEASE

TO WHOM IT MAY CONCERN:

PLEASE TAKE NOTICE that MAJESTIC INVESTMENT COMPANY, a Utah corporation, with offices at 254 South Sixth East, Salt Lake City, Utah, is the holder of certain rights and interests in the fee title of certain real property by virtue of a Ground Lease agreement executed on the 11th day of April, 1975, by and between GRANTER SHOPPING CENTER, a General Partnership, HENRY S. PICKRELL and BARBARA M. PICKRELL, his wife, as Lessor, and MAJESTIC INVESTMENT COMPANY, as Lessee. Said real property is situated in Salt Lake County, State of Utah, and described as follows:

PARCEL 1.

Beginning at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian, and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: N 00°00'44" E 2.33 feet; thence N 89°56'20" E 27.00 feet; thence N 00°00'44" E 88.34 feet; thence N 89°56'20" E 129.22 feet to the point of beginning.

Contains: 0.270 acres

PARCEL 2.

Beginning at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N 00°00'44" E 90.67 feet; thence N 89°56'20" E 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian,

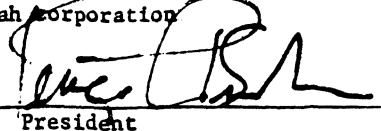
and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.0 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

ALSO TOGETHER with an unlimited right of way over and across the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 33.0 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°0'44" West 181.34 feet along the West line of 2700 West Street; thence South 89°56'20" West 17 feet; thence North 0°0'44" East 181.34 feet; thence North 89°56'20" East 17 feet to the point of beginning.

The term of said lease is for thirty-five (35) years, commencing on the 1st day of May, 1975, and ending on the 30th day of April, 2010, unless sooner terminated as therein provided. Lessee is given the absolute right under said lease to grant a "Leasehold Mortgage" security interest therein and to assign the lease as collateral for such security interest, provided that no other security interest therein is outstanding at the time such security interest is granted, all of which is set forth in said Ground Lease agreement.

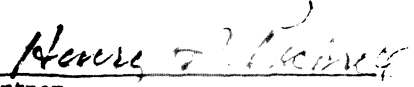
That all right, title and interest accruing to the Lessee under said Ground Lease agreement is hereby asserted against the said described property.

MAJESTIC INVESTMENT COMPANY, a
Utah Corporation

By 

President

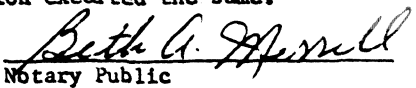
GRANGER SHOPPING CENTER, a General
Partnership

By 

Partner

STATE OF UTAH   )
) ss.
COUNTY OF SALT LAKE)

On the 8th day of May, 1975, personally appeared before me KEITH L. KNIGHT, known to me to be the President of the corporation that executed the within instrument, who being by me duly sworn, did say that he is said officer of the MAJESTIC INVESTMENT COMPANY, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and he acknowledged to me that said corporation executed the same.


Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:-

2-17-79

STATE OF UTAH   )
) ss.
COUNTY OF SALT LAKE)

On the 8th day of May, 1975, personally appeared before me HENRY S. PICKRELL, who, being by me duly sworn, did say that he is a Partner of GRANGER SHOPPING CENTER, and that said instrument was signed on behalf of said Granger Shopping Center by authority, and said Henry S. Pickrell acknowledged to me that he as such Partner executed the same.

Beth A. Merrill
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

2-17-79

Tab 2

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made and entered into this 11th day of April, 1975, by and between **MAJESTIC INVESTMENT COMPANY**, a Utah corporation, (hereinafter referred to as "LESSOR"), party of the first part and **PRUDENTIAL FEDERAL SAVINGS AND LOAN ASSOCIATION**, a corporation of the United States of America, (hereinafter referred to as "LESSEE"), party of the second part;

W I T N E S S E T H :

WHEREAS, LESSOR is entitled to lease a certain tract and parcel of land situated at approximately 3600 South and 2700 West in Salt Lake County State of Utah, described below and set forth on Exhibit "A" attached hereto and by reference made a part hereof. Said land is described as:

BEGINNING at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 00°00'44" West 90.67 feet along the West line of 2700 West Street; thence South 89°56'20" West 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: North 00°00'44" East 2.33 feet; thence North 89°56'20" East 27.00 feet; thence North 00°00'44" East 88.34 feet; thence North 89°56'20" East 129.22 feet to the point of beginning.

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.0 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning,

WHEREAS, LESSOR is willing to lease and let unto LESSEE and LESSEE is willing to take and lease the above described tract and parcel of land upon the covenants, conditions, stipulations, and terms hereinafter set forth.

NOW, THEREFORE, in consideration of the premises of the mutual promises and agreements of the parties hereinafter set forth, and for and in consideration of the rents, covenants and agreements by LESSEE to be paid, kept and performed, LESSOR does by these presents grant, lease, demise and let unto LESSEE the above described tract and parcel of land.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, for the term of twenty-five (25) years, commencing on the first day of the month next following the date of actual occupancy by LESSEE or the date that a certificate of substantial completion shall have been issued by John N. Clawson, Architect, with respect to the construction of those improvements provided for in Paragraph 2 below, whichever is earlier.

THIS AGREEMENT OF LEASE is made strictly upon the covenants, promises, stipulations, terms and conditions hereinafter set forth and to that end it is agreed as follows:

1. LESSEE shall pay to LESSOR as rental for said premises the sum of the following amounts:

(a) \$112,500.00 (subject to escalation as hereinafter provided) payable initially in monthly installments of \$375.00 on or before the first day of each month of said term. Such rental amount shall be subject to escalation commencing at the beginning of the eleventh and twenty-first lease years. Such escalation in rental amount shall be equal to a percentage of said \$375.00 installment as shall be determined by the percentage of increase in the Consumer Price Index for "All Items" as promulgated by the U. S. Department of Labor, 1967 Series, (or adjusted to any appropriate successor series) during such ten year period next prior to the date of such escalation as determined by the calendar year index next preceding the beginning of the term hereof, which was 155.4, and the ending calendar year index of each such ten year period. Notwithstanding the above, there shall be a minimum increase in such monthly rental amount equal to \$100.00 effective as of the time of such escalation.

(b) Approximately \$90,000.00, which represents LESSEE'S portion of the total cost of the construction of improvements provided for in Paragraph 2 below. Such apportioned amount includes all of the architectural, engineering and construction costs of the structural improvements to be made upon the demised premises, one-half the cost of all site improvements covering the demised premises and those premises described in Paragraph 10 below, including those rights of way described herein and all of the costs of surface improvements covering the 13 feet of ground next south and adjacent to the demised premises. Said \$90,000.00, together with the amount of \$6,000.00 which represents all of LESSOR'S interim costs of financing such improvements, shall be amortized and paid monthly over a period of twenty-five (25) years at a capitalization rate of twelve percent (12%) per annum; subject, however, to escalation at the beginning of the eleventh and twenty-first years. Such escalation of said amortized amounts shall be equal to a percentage of said amortized amount as shall be determined by the percentage of increase in the Consumer Price Index for "All Items" as promulgated by the U. S. Department of Labor, 196/ Series, (or adjusted to any appropriate successor series) during such ten year period next prior to the date of such escalation as determined by the calendar year index next preceding the beginning of the term hereof, which was 155.4, and the ending calendar year index of each such ten year period. Such monthly amount shall be payable concurrent with those monthly installments provided in (a) above. Said \$90,000.00 amount shall be adjusted at the commencement of said lease term in accordance with the actual cost of the construction as determined by the final successful bids submitted by contractors for such construction work and accepted by LESSOR and approved by LESSEE, and as modified by any authorized change orders and out-of-pocket expenses of LESSOR.

In addition to such rental provided above, LESSEE shall pay to LESSOR \$375.00 on the first day of each and every month during the interim period beginning May 1, 1975, and ending on the first day of the month next preceding the commencement of said monthly rental amounts provided in subparagraph (a) above.

It is agreed and understood that the amount of \$3,750.00 is presently owing by LESSOR to LESSEE in consideration of the assignment by LESSEE of that certain "Ground Lease Option Agreement" executed by Prudential Federal Savings and Loan Association and Granger Shopping Center and Henry S. Pickrell and Barbara M. Pickrell, his wife, on July 1, 1974, and as amended by an extension agreement dated December 31, 1974, and that such amount shall be applied to an credited against the monthly rental amounts due and owing to LESSOR hereunder during the last months of the 20th year of the term of this agreement.

Until it receives other instructions in writing from LESSOR, LESSEE will pay all rentals payable under this lease to Majestic Investment Company, c/o Keith L. Knight, 254 South 6th East Street, Salt Lake City, Utah.

2. Concurrent with the execution of this agreement, LESSOR shall cause the commencement of construction of certain improvements as indicated in said Exhibit "A". The final plans and specifications for the construction of those improvements to be made upon the demised premises shall be mutually agreed upon by the parties within a reasonable time of the execution of this agreement. The cost of such improvements shall be equal to the final successful bid, or bids, accepted by LESSOR and approved by LESSEE. All improvements shall be performed in a sufficient and workmanlike manner to the reasonable satisfaction of LESSEE. LESSOR shall pay all expenses and liabilities arising out of or in any way connected with such improvements, and shall keep the demised premises and structures thereon free and clear of all liens of mechanics or materialmen and all liens of a similar character arising out of the construction of such improvements; provided, however, that nothing herein contained shall prevent LESSOR, in good faith, from contesting in the courts the claim or claims of any person or persons associated with such lien or liens. All of such improvements shall, at the expiration of this lease, be and remain upon the premises and belong to LESSOR.

3. LESSEE will use and occupy said premises for the purpose of making available to the general public business offices and facilities

associated therewith. In connection therewith, LESSEE shall have the unlimited right to place additional improvements upon the premises as it may desire so long as the same shall be consistent with the initial improvements and with the zoning laws of Salt Lake County.

4. The demised premises shall not be used contrary to the ordinances of Salt Lake County, State of Utah, to the laws of the State of Utah, or of the United States of America, or to the valid regulations of any duly constituted regulatory or administrative body. LESSEE shall keep and maintain the premises in adequate repair and in a clean and presentable condition and shall not commit any nuisance thereon nor permit any nuisance to be committed or to exist thereon.

5. LESSEE shall pay for all gas, heat, electricity and power furnished and used by LESSEE on the demised premises during the term of this agreement of lease, and any extension thereof, together with all janitorial services and all license fees and other governmental charges levied and assessed on the operation of any business on the demised premises. LESSOR shall furnish water to the premises at a cost to LESSEE of \$3.00 per month, which cost may vary in accordance with any cost increases or decreases billed from time to time by the Granger Water District as determined under the provisions of said Exhibit "B".

6. LESSEE, upon entering into possession of the demised premises at the commencement of said term, accepts the same in the condition that they are in at the time of delivery of said possession unto it by LESSOR. At the expiration of the term of this agreement of lease, or at the earlier termination thereof for any reason herein set forth, LESSOR shall have the right to take possession of said premises, or any structures, buildings and other permanent improvements erected thereon, and LESSEE shall surrender to LESSOR said premises with all such structures, buildings, permanent improvements erected thereon (excluding all trade equipment, furnishings and fixtures) in as good condition as when the same were completed, reasonable wear and tear excepted. From the date of possession, LESSEE shall assume all obligations, maintenance and repair of interior and exterior of all improvements, subject to any guarantees of LESSOR'S contractors and suppliers.

7. LESSEE shall pay all taxes, special improvement assessments, license fees and all other governmental charges exclusively attributable to the improvements constructed on the demised premises by LESSEE or attributable to the business conducted by LESSEE on the demised premises during the term of the agreement of lease and any extension thereof. Said taxes, special assessments, license fees and charges shall be paid prior to the date of the delinquency thereof so that no tax sale or special assessment sale shall occur; provided, however, nothing herein contained shall prevent LESSEE, in good faith, from contesting in court the validity of any such tax, assessment, fee or charge and postponing the payment of the same until such contest shall finally be decided by the courts. Any such tax, assessment, fee or charge that is not exclusively attributable to the improvements on the demised premises, but which is in part attributable to such improvements, shall be allocated between such improvements and any other improvements to which such tax, assessment, fee or charge is also attributable. The amount of such allocation attributable to the improvements on the demised premises shall be the percentage that the assessed value of the improvements on the demised premises (as determined by the Salt Lake County Assessor's office) bears to the total assessed value of all the improvements to which such tax, assessment, fee or charge is attributable. It is specifically agreed that LESSEE shall not be liable for the payment of any income taxes, corporate excise taxes, estate or inheritance taxes levied and assessed upon LESSOR or its successors, grantees, or assigns. Taxes and any special assessments falling due and payable for the first year hereof shall be paid by LESSOR. Taxes and any special assessments falling due and payable for the final year hereof (or, if this lease is renewed or extended, the final year of such extended or renewed term) shall be prorated as of the date of redelivery of possession of the demised premises by LESSEE to LESSOR, their successors, grantees or assigns. LESSOR shall, at its option, have the right at all times during the term of this agreement of lease to pay any of said taxes, special assessments, charges, penalties or other impositions remaining unpaid after they shall have

become due and payable, and to pay, cancel and clear off all tax liens, special assessment liens, charges and claims upon or against the demised premises or any part thereof and to redeem the demised premises from any tax or special assessment sale from time to time, and to do anything necessary to make good any default of LESSEE in the payment of said taxes, special assessments and charges, and the amount so paid by LESSOR, including expenses and attorneys' fees, shall be additional rent due from LESSEE at the next rent date after any such payment or payments, with interest thereon at the rate of six percent (6%) per annum from dates when said sum or sums shall have been paid by LESSOR up to the date of actual repayment thereof by LESSEE.

8. (a) LESSEE shall maintain, at its sole cost and expense, such public liability, property damage and care, custody and control insurance coverage as to adequately protect the parties to this agreement of lease against any claim or loss arising hereunder. LESSEE shall further comply with any and all requirements pertaining to said area of any insurance organization or company necessary for the maintenance of such coverage, as well as any further coverage maintained by LESSOR.

(b) LESSEE promises and agrees that it will, during the term of this agreement of lease and any extension thereof, keep the buildings or structures erected upon the demised premises insured against loss by fire with solvent insurance companies authorized and licensed to issue policies of fire insurance in the State of Utah, and to maintain such insurance at all times during the term of this lease, or any extension thereof, in any amount not less than the insurable value of such buildings and structures, with at least 90% co-insurance and extended coverage. Each and every policy of insurance shall provide that the loss, if any, shall be paid to LESSEE as trustee in trust for LESSEE and LESSOR as their respective interests may appear and subject to the terms of this agreement of lease, and all such policies shall be deposited with said trustee.

(c) LESSEE further covenants and agrees that it will not do, nor permit to be done, in, to or upon said demised premises any act or

thing which will invalidate any insurance upon or about, or in any manner pertaining to such buildings or structures which may hereafter be erected thereon; and further, LESSEE will not permit any building or structure to be put, kept or maintained on said demised premises in such condition or so occupied that the same will not be insurable.

(d) LESSEE further covenants and agrees that if said building or buildings, structure or structures, shall at any time or times during the term of this lease, or extension thereof, be destroyed or damaged by fire, LESSEE may elect either to rebuild or repair such building or structure destroyed or damaged as aforesaid, or to replace such damaged or destroyed building or structure with new buildings of different type or structure, but of at least equal appraised value to such replaced buildings and will proceed forthwith with such building, rebuilding or repair work. If said insurance money is not sufficient to pay the costs and expenses of said building or repair work, LESSEE covenants and agrees to pay promptly the deficiency from its own funds. Said new, rebuilt or repaired building or structure shall, in all respects, comply with all rules, regulations and ordinances of Salt Lake County, State of Utah, shall be substantial, and shall meet reasonable standard architectural and fire underwriters' requirements. Any balance of the said insurance money remaining after payment of the costs of such building or repair work shall be paid over to LESSEE.

(e) LESSOR covenants and agrees that it will not permit any lien to be filed against the demised premises or improvements thereon for labor engaged in or materials supplied for the building or repairing of said building or buildings, structure or structures; provided, however, that nothing herein contained shall require LESSOR to pay or discharge any lien or liens so long as LESSOR shall, in good faith, contest the legality or validity thereof, and until such legality or validity has been established by the final judgment of a court or courts of competent jurisdiction.

(f) Premiums for insurance for the final year of the lease term, or if extended, of such extended term, shall be prorated as of the date of redelivery of the demised premises to LESSOR by LESSEE.

9. LESSEE may at any time assign this lease or sublease the demised premises or any part thereof; provided, however, LESSEE shall, at all times, remain liable to LESSOR under the terms of this agreement of lease.

10. It is understood that concurrent herewith, LESSOR is executing

Said adjacent premises are described as:

BEGINNING at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N. E. corner of the N. W. 1/4 of Section 33, T. 1S., R. 1 W., Salt Lake Base and Meridian and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N 00°00'44" E 90.67 feet; thence N 89°56'20" E 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.00 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.00 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

It is the desire of the parties to this agreement and the parties to said other agreement of lease that the Lessees under both agreements shall, for their mutual benefit, share certain amenities and have certain rights pertaining to the demised premises covered by both leases. Accordingly, in consideration of LESSEE'S granting to said Lockhart Co. certain amenities and rights in the premises covered by this lease agreement, LESSOR does hereby grant and guarantee to LESSEE similar amenities and rights with regard to the above described adjacent premises which are covered by said other lease agreement. Such amenities and rights are described as:

(a) Joint use of and access to the parking, walkway, and driveway areas situated upon both premises by either party, its customers and other business invitees.

(b) Joint benefit from and access to sewer and utility lines placed upon either of the premises and serving the other.

(c) Joint maintenance and repair services pertaining to those improvements which are of mutual interest to LESSEE and said LOCKHART CO. under this agreement and said other lease agreement, including but not being limited to those amenities described under (a) and (b) above. Such services shall include asphalt striping and repair, garbage and trash removal, snow removal and landscape care, together with any other similar services that may be mutually agreed to by the parties from time to time. The cost of such services shall be borne by the Lessees equally. For the purpose of implementing this subparagraph (c), it is agreed that during the term of this agreement, LESSEE shall act as agent on behalf of itself and said Lockhart Co. or its successors, assigns, or sublessees, and in such capacity shall be responsible for determining the extent, frequency and cost of such services and effectuating and supervising the same, all of which shall be done on a reasonable basis and in conference with said Lockhart Co., or its successor, assigns or sublessees.

In the absence of any clear understanding or agreement between LESSEE and said Lockhart Co., or its assigns or successors with respect to any rights and obligations of the parties covered by this paragraph, LESSOR may, on a temporary basis until such understanding or agreement is reached, issue such rules as, in its sole discretion, may be necessary to accomplish the mutual purposes hereof and in addition, pay any expense associated with the joint services to which such rules apply, allocating the same to both Lessees equally. In the event such understanding or agreement between the parties cannot be reached on a permanent basis as determined by LESSOR, the parties shall be left to their own courses of action without impairing LESSOR'S rights under either lease agreement.

LESSOR further agrees that any lease agreement entered into with respect to the above described premises, whether The Lockhart Co. or other party as lessee, shall contain such provisions as shall be consistent with and implementing the provisions set forth in this paragraph for the benefit of LESSEE under this agreement.

11. If the rent above reserved or any part thereof shall not be paid when due, upon twenty (20) days' written notice to LESSEE, it shall be lawful for LESSOR, without notice or legal process, to re-enter and take possession of said demised premises and every part thereof, or in lieu of the exercise of such remedy, LESSOR may, at its option, sue for and obtain judgment against LESSEE for rent becoming due from time to time thereafter. In the event LESSEE shall default in the performance of any of the covenants or agreements herein assumed by it, other than the payment of rent, LESSOR shall, in writing, give notice to LESSEE of such default, and LESSEE shall, within sixty (60) days after the receipt of said notice, cure said default and rectify the aforesaid breach or breaches of covenants specified in said notice. If LESSEE shall fail with said sixty day period to cure said default or rectify said violation, then LESSOR, without notice or legal process, may, at its option, re-enter and take possession of the demised premises and every part thereof, or in the alternative, LESSOR may, at its option, sue for and recover judgment against LESSEE for damages resulting from such default.

12. LESSOR hereby covenants and agrees that LESSEE, by paying said rent in the manner aforesaid and by performing the other covenants, terms and conditions of this agreement of lease on the part of LESSEE to be kept and performed, may and shall have the right at all times during the term of this agreement of lease to quietly and peacefully hold, possess, use, occupy and enjoy said demised land and premises and all improvements which may from time to time be placed thereon under and by virtue of this agreement of lease.

13. Any digression from the strict terms of this agreement of lease permitted by LESSOR shall in no way constitute a waiver, nor affect in any way the rights of LESSOR thereafter to demand strict compliance with all the terms, conditions and provisions of this agreement of lease.

14. In the event the demised premises are to be offered for rent or leasing by LESSOR, or its successors and assigns, at the expiration of the term of this agreement of lease, LESSEE shall have the right of first refusal upon terms and conditions as may be agreed upon by the parties,

anything in this agreement notwithstanding. At least twelve (12) months prior to the expiration of the term of this lease, LESSOR shall give to LESSEE written notice of its intention or non-intention to offer the demised premises for rent or lease. If LESSOR gives notice to LESSEE of its intention to offer the demised premises for rent or lease, then LESSEE, within two (2) months from actual receipt of such notice by it, shall give written notice to LESSOR that LESSEE desires to have the first refusal of a lease to be offered by LESSOR, its successors and assigns. The building or structure and other improvements, as well as the value of the land, shall be considered by LESSOR in determining the rental value for any period of extension or renewal of this agreement of lease. It is understood that LESSOR shall offer a lease to LESSEE on the same terms and conditions which LESSOR would be willing to lease to a third party.

1245
10 yrs
LAND
LEASE

15. Service of all notices specified in this agreement of lease shall be sufficient if mailed by the United States mail to LESSOR at LESSOR'S then current address in Salt Lake City, Utah, and to LESSEE at the then current principal address of LESSEE in Salt Lake City, Utah.

16. If the whole or a substantial part of the demised premises, including any buildings and improvements thereon at any time after the commencement of the term hereof, erected and paid for by LESSEE, shall be taken under any statute or by right of eminent domain or private purchase, in lieu thereof, then when possession shall be taken thereunder of such demised premises, or the part thereof so taken, the term herein demised and all rights and obligations of LESSEE hereunder shall immediately cease and be adjusted as of the time of such condemnation. LESSEE shall have the claim and right to share in and receive that amount of such award as represents that proportion of the value of the LESSEE erected buildings and improvements on the demised premises which the number of months from the date of such taking by condemnation to the date of the expiration of this lease bears to the total number of months from the date of such erection to the expiration of this lease.

In the event of a partial condemnation of a small and insubstantial portion of the demised premises, LESSEE erected or otherwise, LESSOR and LESSEE shall share in such award as their interests may appear

on the same basis as set forth above and this lease as to such portion of the premises so taken shall cease and terminate and the monthly rental payments payable to LESSOR by LESSEE shall be reduced by the percentage of land taken in relationship to the whole. If land only is condemned with no effect upon the improvements or rentals, or in the event of the condemnation of the demised premises excluding LESSEE erected improvements, if any, then as between LESSOR and LESSEE, LESSOR shall receive the entire amount paid therefor.

17. If either party to this agreement shall be adjudged by a court of competent jurisdiction to have violated the terms of this agreement of lease or to be at fault in the performance of the same, the party guilty of violation hereof or at fault shall pay the innocent party all costs and attorneys' fees and expenses incurred by said innocent party in enforcing any of the covenants of this lease or in seeking judicial protection or relief.

18. LESSEE will keep the demised premises covered by this agreement of lease and the sidewalks adjacent thereto, and the parking lot area free from snow, ice, paper, boxes, litter and other debris.

19. The promises, covenants and conditions hereof respectively assumed by the parties hereto shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

20. LESSEE and LESSOR agree that the terms of this lease are subject to all the terms and conditions of that certain Ground Lease Agreement covering said premises between Granger Shopping Center, Henry S. Pickrell and Barbara M. Pickrell, his wife, as Lessor, and Majestic Investment Company as Lessee, dated April 11, 1975^{lra}, a copy of which is attached hereto as Exhibit "B" and by reference made a part hereof.

21. It is understood and agreed that anything contained herein to the contrary notwithstanding, this agreement is conditional upon the obtaining of such permits and approvals by appropriate governmental bodies or agencies as will permit LESSOR to construct those improvements indicated upon said Exhibit "A". If such permits or approvals cannot be obtained as provided above, or in the event of the early termination of said Exhibit "B"

by reason of the provisions of Paragraph 22 contained therein, this agreement shall become automatically terminated as of the date that such governmental body or agency indicates its unwillingness to grant such permit or approval, or as of the date of such termination of said Exhibit "B", and the parties shall have no further duty or obligation hereunder.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused these presents to be executed by their officers thereto duly authorized, and their respective corporate seals to be hereto affixed the day and year first above written.

ATTEST:

_____
Title:

MAJESTIC INVESTMENT COMPANY

By *K. C. Butler*

Title:

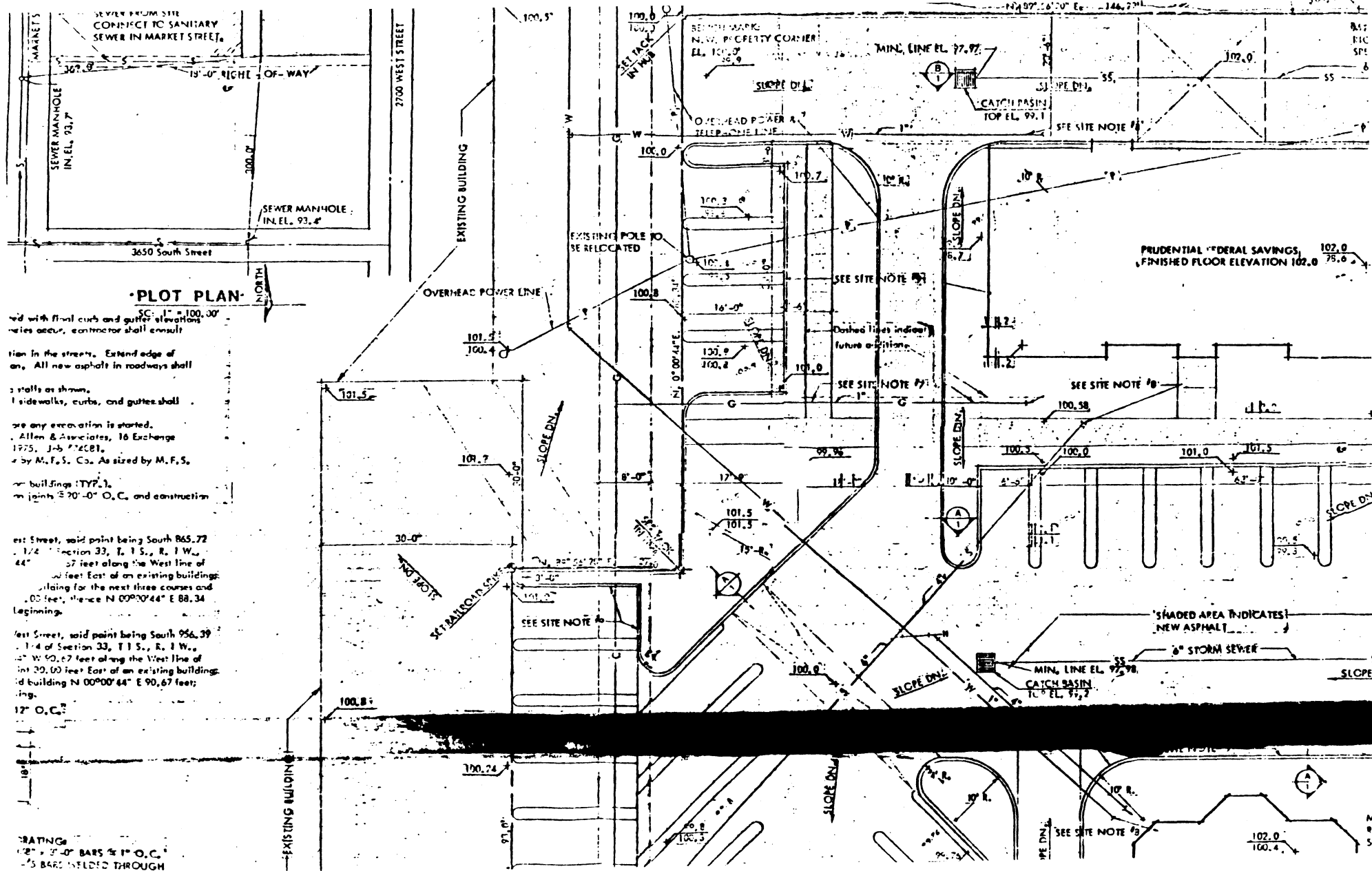
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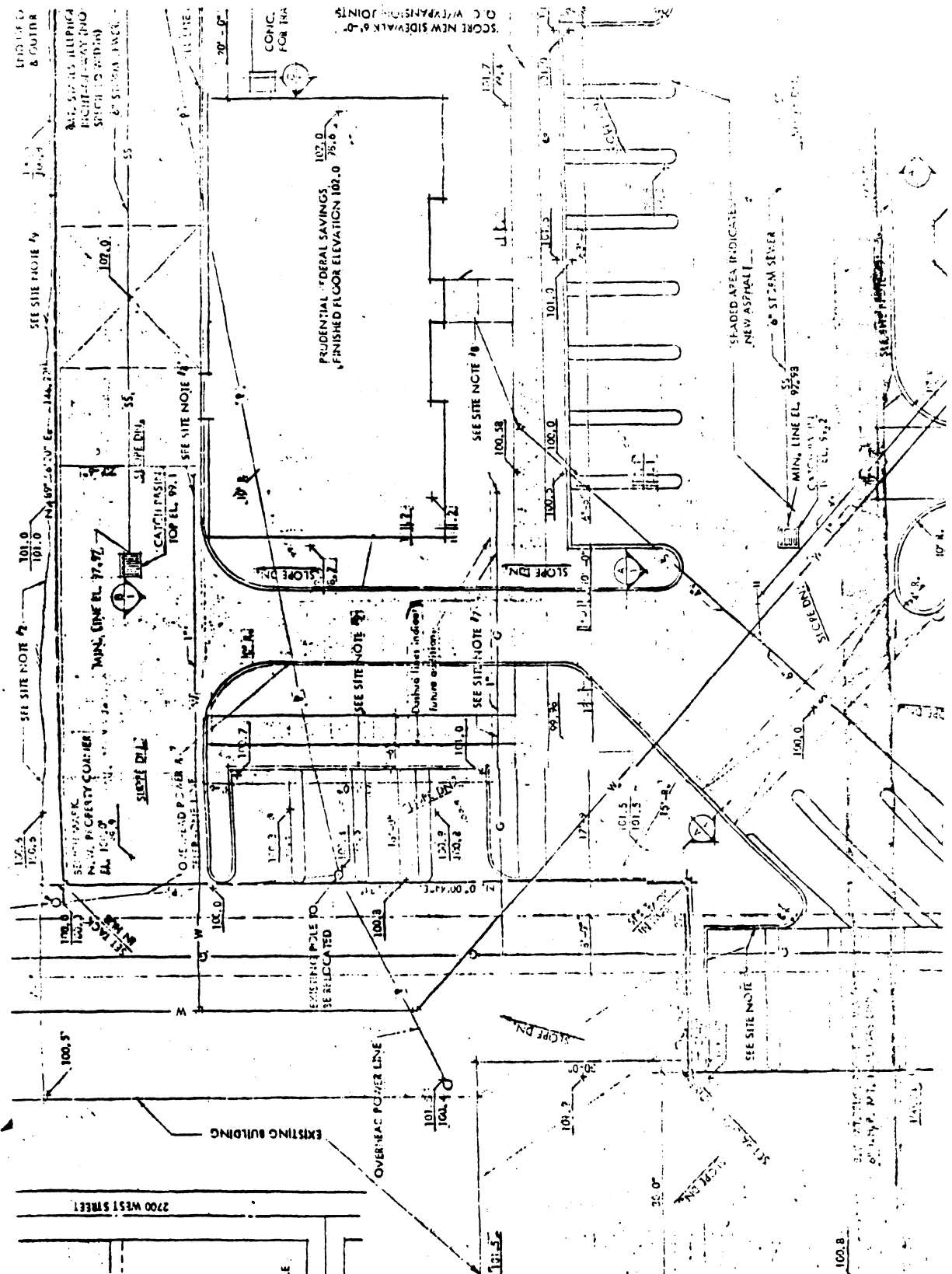
John B. Anderson
Title:

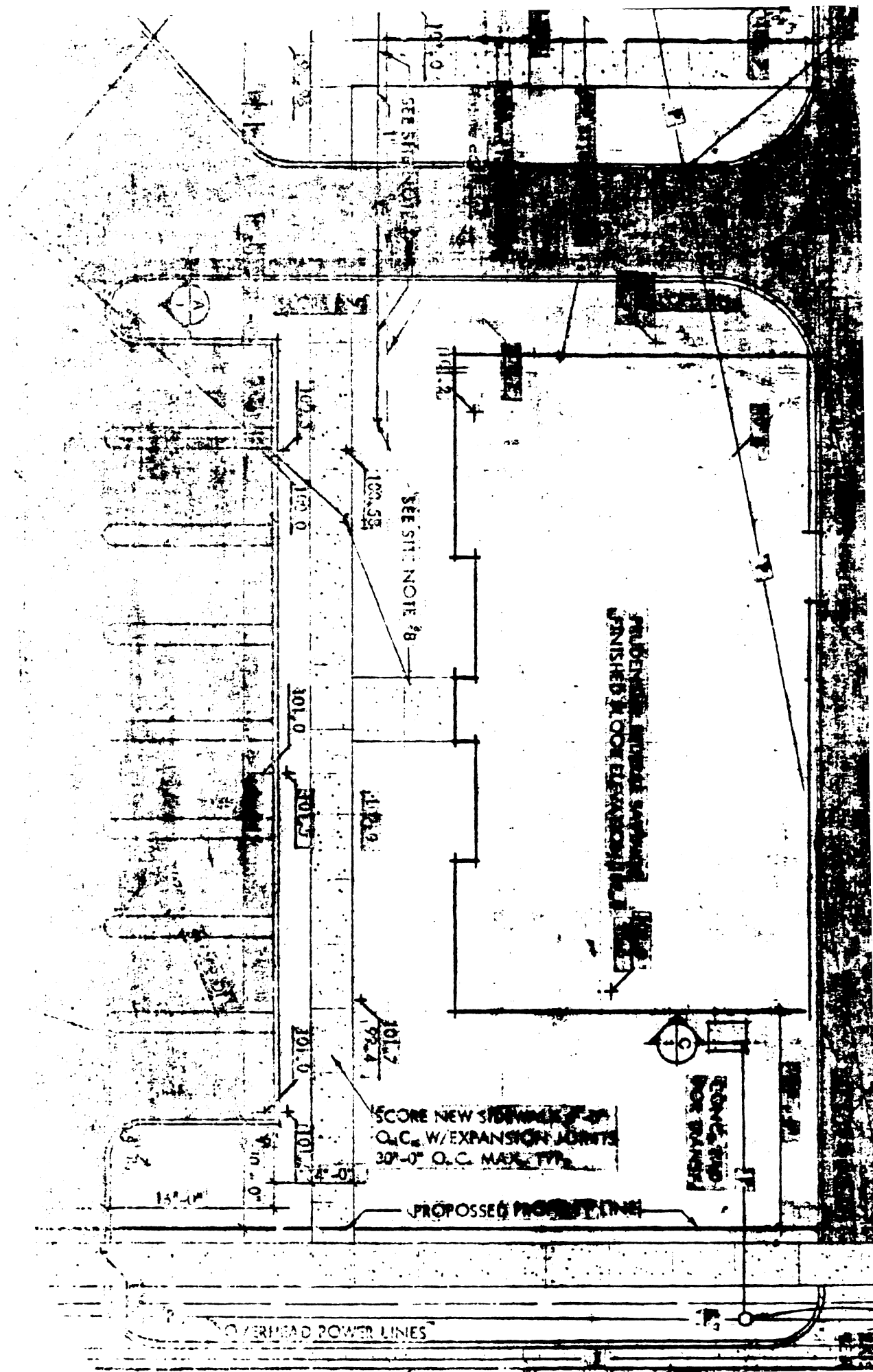
PRUDENTIAL FEDERAL SAVINGS AND LOAN
ASSOCIATION

By *Marshall R. Abbott*

Title: *Senior Vice President*







ADDENDUM

To Lease dated April 11, 1975, between MAJESTIC INVESTMENT COMPANY a Utah corporation ("Lessor"), and PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION, a corporation chartered under the laws of the United States of America, with principal offices at Salt Lake City, Utah ("Lessee").

The Improvements Rental sum to be amortized pursuant to Paragraph 2 is \$111,196.31, or, before escalation, \$1,112.00 per month.

The date of commencement of said Improvement Rental obligation is January 1, 1976.

The lease term provided in paragraph 1 shall expire December 31, 2001.

DATE:

April 9, 1976.

PRUDENTIAL FEDERAL SAVINGS
& LOAN ASSOCIATION

By Walter R. Peltz
Its President

LESSEE

MAJESTIC INVESTMENT COMPANY

By Rich G. Knight
Its President

LESSOR

Tab 3

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made and entered into this 11th day of April, 1975, by and between MAJESTIC INVESTMENT COMPANY, a Utah corporation, (hereinafter referred to as "LESSOR"), party of the first part, and THE LOCKHART CO., a Utah corporation, (hereinafter referred to as "LESSEE"), party of the second part;

W I T N E S S E T H

WHEREAS, LESSOR is entitled to lease a certain tract and parcel of land situated at approximately 3600 South and 2700 West in Salt Lake County, State of Utah, described below and set forth on Exhibit "A" attached hereto and by reference made a part hereof. Said land is described as:

BEGINNING at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S, R. 1 W, Salt Lake Base and Meridian and running thence: S 00°00'44" W 90.67 feet along the West line of 2700 West Street; thence S 89°56'20" W 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N 00°00'44" E 90.67 feet; thence N 89°56'20" E 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the west line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.00 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.00 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

WHEREAS, LESSOR is willing to lease and let unto LESSEE and LESSEE is willing to take and lease the above described tract and parcel of land upon the covenants, conditions, stipulations, and terms hereinafter set forth.

NOW, THEREFORE, in consideration of the premises of the mutual promises and agreements of the parties hereinafter set forth, and for and in consideration of the rents, covenants and agreements by LESSEE to be paid, kept and performed, LESSOR does by these presents grant, lease, demise and let unto LESSEE the above described tract and parcel of land.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, for the term of twenty-five (25) years, commencing on the first day of the month next following the date of actual occupancy by LESSEE or the date that a certificate of substantial completion shall have been issued by W. Stanley Johnson, Architect, with respect to the construction of those improvements provided for in Paragraph 2 below, whichever is earlier.

Providing that there is no default in payment of rent and/or breach of any LESSEE obligation or covenant, LESSEE is hereby granted and may exercise its option to renew for additional terms provided for herein by giving a written notice of its intention to renew to LESSOR not later than ninety (90) days prior to the end of the then current term. Subject to the conditions as set forth above, LESSEE shall have the right to renew or extend the terms of this lease for two (2) successive five (5) year terms. The terms and conditions for any renewal shall be the same as those set forth herein.

THIS AGREEMENT OF LEASE is made strictly upon the covenants, promises, stipulations, terms and conditions hereinafter set forth and to that end it is agreed as follows:

1. LESSEE shall pay to LESSOR as rental for said premises the sum of the following amounts:

(a) \$112,500 (subject to escalation as hereinafter provided) payable initially in monthly installments of \$375.00 on or before the first day of each month of said term. Such rental amount shall be subject to escalation commencing at the beginning of the 11th year, 21st year and 31st year. Such escalation in rental amount shall be equal to a percentage of said \$375.00 installment as shall be determined by the percentage of increase in the Consumer Price Index for "All Items" as promulgated by the U.S. Department of Labor, 1967 Series, (or adjusted to any appropriate successor series) during such ten year period next prior to the date of such escalation as determined by the calendar year index next preceding the

beginning of the term hereof, which was 155.4, and the ending calendar year index of each such ten year period. Notwithstanding the above, there shall be a minimum increase in such monthly rental amount equal to \$100.00 effective as of the time of such escalation.

(b) Approximately \$85,000, which represents LESSEE'S portion of the total cost of the construction of improvements provided for in Paragraph 2 below. Such apportioned amount includes all of the architectural, engineering and construction costs of the structural improvements to be made upon the demised premises; one-half the cost of all site improvements covering the demised premises and those premises described in Paragraph 10 below, including those rights of way described herein. Said \$85,000 together with the ~~cost~~ amount of \$6,000 which represents all of LESSOR'S interim costs financing such improvements, shall be amortized and paid monthly over a period of twenty-five (25) years at a capitalization rate of twelve percent (12%) per annum; subject, however, to escalation at the beginning of the 11th year, 21st year and 31st year. Such escalation of said amortized amounts shall be equal to a percentage of said amortized amount as shall be determined by the percentage of increase in the Consumer Price Index for "All Items" as promulgated by the U.S. Department of Labor, 1967 Series, (or adjusted to any appropriate successor series) during such ten year period next prior to the date of such escalation as determined by the calendar year index next preceding the beginning of the term hereof, which was 155.4, and the ending calendar year index of each such ten year period. Such monthly amount shall be payable concurrent with those monthly installments provided in (a) above. Said \$85,000 amount shall be adjusted at the commencement of said lease term in accordance with the actual cost of the construction as determined by the final successful bids submitted by contractors for such construction work and accepted by LESSOR and approved by LESSEE, and as modified by an authorized change orders and out-of-pocket expenses of LESSOR.

In addition to such rental provided above, LESSEE shall pay to LESSOR \$375.00 on the first day of each and every month during the interim period beginning

May 1, 1975 and ending on the first day of the month next preceding the commencement of said monthly rental amounts provided in subparagraph (a) above.

Until it receives other instructions in writing from LESSOR, LESSEE will pay all rentals payable under this lease to Majestic Investment Company, c/o Keith L. Knight, 254 South 6 East Street, Salt Lake City, Utah.

2. Concurrent with the execution of this agreement, LESSOR shall cause the commencement of construction of certain improvements as indicated in said Exhibit "A". The final plans and specifications for the construction of those improvements to be made upon the demised premises shall be mutually agreed upon by the parties within a reasonable time of the execution of this agreement. The cost of such improvements shall be equal to the final successful bid, or bids, accepted by LESSOR and approved by LESSEE. All improvements shall be performed in a sufficient and workmanlike manner to the reasonable satisfaction of LESSEE. LESSOR shall pay all expenses and liabilities arising out of or in any way connected with such improvements, and shall keep the demised premises and structures thereon free and clear of all liens of mechanics or materialmen and all liens of a similar character arising out of the construction of such improvements; provided, however, that nothing herein contained shall prevent LESSOR, in good faith, from contesting in the courts the claim or claims of any person or persons associated with such lien or liens. All of such improvements shall, at the expiration of this lease, be and remain upon the premises and belong to LESSOR.

3. LESSEE will use and occupy said premises for the purpose of making available to the general public business offices and facilities associated therewith. In connection therewith, LESSEE shall have the unlimited right to place additional improvements upon the premises as it may desire so long as the same shall be consistent with the initial improvements and with the zoning laws of Salt Lake County.

4. The demised premises shall not be used contrary to the ordinances of Salt Lake County, State of Utah, to the laws of the State of Utah, or of the United States of America, or to the valid regulations of any duly constituted regulatory or administrative body. LESSEE shall keep and maintain the premises in adequate repair and in a clean and presentable condition and shall not commit any nuisance thereon nor permit any nuisance to be committed or to exist thereon.

5. LESSEE shall pay for all gas, heat, electricity and power furnished and used by LESSEE on the demised premises during the term of this agreement of lease, and any extension thereof, together with all janitorial services and all license fees and other governmental charges levied and assessed on the operation of any business on the demised premises. LESSOR shall furnish water to the premises at a cost to LESSEE of \$3.00 per month, which cost may vary in accordance with any cost increases or decreases billed from time to time by the Granger Water District as determined under the provisions of said Exhibit "B".

6. LESSEE, upon entering into possession of the demised premises at the commencement of said term, accepts the same in the condition that they are in at the time of delivery of said possession unto it by LESSOR. At the expiration of the term or renewal term of this agreement of lease, or at the earlier termination thereof for any reason herein set forth, LESSOR shall have the right to take possession said premises, or any structures, buildings and other permanent improvements erected thereon, and LESSEE shall surrender to LESSOR said premises with all such structures, buildings, permanent improvements erected thereon (excluding all trade equipment, furnishings and fixtures) in as good condition as when the same were completed, reasonable wear and tear excepted. From the date of possession, LESSEE shall assume all obligations, maintenance and repair of interior and exterior of all improvements, subject to any guarantees of LESSOR'S contractors and suppliers.

7. LESSEE shall pay all taxes, special improvement assessments, license fees and all other governmental charges exclusively attributable to the improvements constructed on the demised premises by LESSEE or attributable to the business conducted by LESSEE on the demised premises during the term of the agreement of lease and any extension thereof. Said taxes, special assessments, license fees and charges shall be paid prior to the date of the delinquency thereof so that no tax sale or special assessment sale shall occur; provided, however, nothing herein contained shall prevent LESSEE, in good faith, from contesting in court the validity of any such tax, assessment, fee or charge and postponing the payment of the same until such contest shall finally be decided by the courts. Any such tax, assessment, fee or charge that is not exclusively attributable to the improvements on the demised premises, but which is in part attributable to such improvements, shall be allocated between such improvements and any other improvements to which such tax, assessment, fee or charge is also attributable. The amount of such allocation

that the assessed value of the improvements on the demised premises (as determined by the Salt Lake County Assessor's office) bears to the total assessed value of all the improvements to which such tax, assessment, fee or charge is attributable. It is specifically agreed that LESSEE shall not be liable for the payment of any income taxes, corporate excise taxes, estate or inheritance taxes levied and assessed upon LESSOR or its successors, grantees, or assigns. Taxes and any special assessments falling due and payable for the first year hereof shall be paid by LESSOR. Taxes and any special assessments falling due and payable for the final year hereof (or, if this lease is renewed or extended, the final year of such extended or renewed term) shall be prorated as of the date of redelivery of possession of the demised premises by LESSEE to LESSOR, their successors, grantees or assigns. LESSOR shall, at its option, have the right at all times during the term of this agreement of lease to pay any of said taxes, special assessments, charges, penalties or other impositions remaining unpaid after they shall have become due and payable, and to pay, cancel and clear off all tax liens, special assessment liens, charges and claims upon or against the demised premises or any part thereof and to redeem the demised premises from any tax or special assessment sale from time to time, and to do anything necessary to make good any default of LESSEE in the payment of said taxes, special assessments and charges, and the amount so paid by LESSOR, including expenses and attorneys' fees, shall be additional rent due from LESSEE at the next rent date after any such payment or payments, with interest thereon at the rate of six percent (6%) per annum from dates when said sum or sums shall have been paid by LESSOR up to the date of actual repayment thereof of LESSEE.

8. (a) LESSEE shall maintain, at its sole cost and expense, such public liability, property damage and care, custody and control insurance coverage as to adequately protect the parties to this agreement of lease against any claim or loss arising hereunder. LESSEE shall further comply with any and all requirements pertaining to said area of any insurance organization or company necessary for the maintenance of such coverage, as well as any further coverage maintained by LESSOR.

(b) LESSEE promises and agrees that it will, during the term of this agreement of lease and any extension thereof, keep the buildings or structures erected upon the demised premises insured against loss by fire with solvent insurance company

authorized and licensed to issue policies of fire insurance in the State of Utah, and to maintain such insurance at all times during the term of this lease, or any extension thereof, in any amount not less than the insurable value of such buildings and structures, with at least 90% co-insurance and extended coverage. Each and every policy of insurance shall provide that the loss, if any, shall be paid to LESSEE as trustee in trust for LESSEE and LESSOR as their respective interests may appear and subject to the terms of this agreement of lease, and all such policies shall be deposited with said trustee.

(c) LESSEE further covenants and agrees that it will not do, nor permit to be done, in, to or upon said demised premises any act or thing which will invalidate any insurance upon or about, or in any manner pertaining to such buildings or structures which may hereafter be erected thereon; and further, LESSEE will not permit any building or structure to be put, kept or maintained on said demised premises in such condition or so occupied that the same will not be insurable.

(d) LESSEE further covenants and agrees that if said building or buildings, structure or structures, shall at any time or times during the term of this lease, or extension thereof, be destroyed or damaged by fire, LESSEE may elect either to rebuild or repair such building or structure destroyed or damaged as aforesaid, or to replace such damaged or destroyed building or structure with new buildings of different type or structure, but of at least equal appraised value to such replaced buildings and will proceed forthwith with such building, rebuilding or repair work. If said insurance money is not sufficient to pay the costs and expenses of said building or repair work, LESSEE covenants and agrees to pay promptly the deficiency from its own funds. Said new, rebuilt or repaired building or structure shall, in all respects, comply with all rules, regulations and ordinances of Salt Lake County, State of Utah, shall be substantial, and shall meet reasonable standard architectural and fire underwriters' requirements. Any balance of the said insurance money remaining after payment of the costs of such building or repair work shall be paid over to LESSEE.

(e) LESSOR covenants and agrees that it will not permit any lien

to be filed against the demised premises or improvements thereon for labor engaged in or materials supplied for the building or repairing of said building or buildings, structure or structures; provided, however, that nothing herein contained shall require LESSOR to pay or discharge any lien or liens so long as LESSOR shall, in good faith, contest the legality or validity thereof, and until such legality or validity has been established by the final judgment of a court or courts of competent jurisdiction.

(f) Premiums for insurance for the final year of the lease term, or if extended, of such extended term, shall be prorated as of the date of redelivery of the demised premises to LESSOR by LESSEE.

9. LESSEE may at any time assign this lease or sublease the demised premises or any part thereof; provided, however, LESSEE shall, at all times, remain liable to LESSOR under the terms of this agreement of lease.

10. It is understood that concurrent herewith, LESSOR is executing a similar agreement of lease with PRUDENTIAL FEDERAL SAVINGS AND LOAN ASSOCIATION as LESSEE covering premises described below situated adjacent to those covered by this agreement. Said adjacent premises are described as:

BEGINNING at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 00°00'44" West 90.67 feet along the West line of 2700 West Street; thence South 89°56'20" West 156.22 feet to a point 30.00 feet east of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: North 00°00'44" East 2.33 feet; thence North 89°56'20" East 27.00 feet; thence North 00°00'44" East 88.34 feet; thence North 89°56'20" East 129.22 feet to the point of beginning.

TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1

South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and distances: South 00°00'44" West 58.34 feet; thence South 89°56'20" West 27.0 feet; thence South 00°00'44" West 123.0 feet; thence North 89°56'20" East 30.0 feet; thence North 00°00'44" East 93.0 feet; thence North 89°56'20" East 27.0 feet; thence North 00°00'44" East 88.34 feet to the point of beginning.

It is the desire of the parties to this agreement and the parties to said other agreement of lease that the LESSEE'S under both agreements shall, for their mutual benefit, share certain amenities and have certain rights pertaining to the demised premises covered by both leases. Accordingly, in consideration of LESSEE'S granting to said Prudential Federal Savings and Loan Association certain amenities and rights in the premises covered by this lease agreement, LESSOR does hereby grant and guarantee to LESSEE similar amenities and rights with regard to the above described adjacent premises which are covered by said other lease agreement. Such amenities and rights are described as:

(a) Joint use of and access to the parking, walkway, and driveway areas situated upon both premises by either party, its customers and other business invitees.

(b) Joint benefit from and access to sewer and utility lines placed upon either of the premises and serving the other.

(c) Joint maintenance and repair services pertaining to those improvements which are of mutual interest to LESSEE and said Prudential Federal Savings and Loan Association under this agreement and said other lease agreement, including but not being limited to those amenities described under (a) and (b) above. Such services shall include asphalt striping and repair, gargage and trash removal, snow removal and landscape care, together with any other similar services that may be mutually agreed to by the parties from time to time. The cost of such services shall be borne by the LESSEE'S equally. For the purpose of implementing this subparagraph (c), it is agreed that during the term of the agreement, Prudential Federal Savings and Loan Association shall ~~act as agent on behalf of itself and LESSEE~~ ^{LESSEE} ~~or its successors, assigns, or sublessees, and in such capacity shall be~~ responsible for determining the extent, frequency and cost of such services and effectuating and supervising the same, all of which shall be done on a reasonable basis and in conference with said ~~Prudential Federal Savings and Loan Association~~ LESSEE ~~Association~~ or its successor,

assigns, or sublessees.

In the absence of any clear understanding or agreement between LESSEE and said Prudential Federal Savings and Loan Association or its assigns or successors with respect to any rights and obligations of the parties covered by this paragraph, LESSOR may, on a temporary basis until such understanding or agreement is reached, issue such rules as, in its sole discretion, may be necessary to accomplish the mutual purposes hereof and in addition, pay any expense associated with the joint services to which such rules apply, allocating the same to both LESSEE'S equally. In the event such understanding or agreement between the parties cannot be reached on a permanent basis as determined by LESSOR, the parties shall be left to their own courses of action without impairing LESSOR'S rights under either lease agreement.

LESSOR further agrees that any lease agreement entered into with respect to the above described premises, whether Prudential Federal Savings and Loan Association or other party as Lessee, shall contain such provisions as shall be consistent with and implementing the provisions set further in this paragraph for the benefit of LESSEE under this agreement.

11. If the rent above reserved or any part thereof shall not be paid when due, upon twenty (20) days' written notice to LESSEE, it shall be lawful for LESSOR, without notice or legal process, to re-enter and take possession of said demised premises and every part thereof, or in lieu of the exercise of such remedy, LESSOR may, at its option, sue for and obtain judgment against LESSEE for rent becoming due from time to time thereafter. In the event LESSEE shall default in the performance of any of the covenants or agreements herein assumed by it, other than the payment of rent, LESSOR shall, in writing, give notice to LESSEE of such default, and LESSEE shall, within sixty (60) days after the receipt of said notice, cure said default and rectify the aforesaid breach or breaches of covenants specified in said notice. If LESSEE shall fail with said sixty day period to cure said default or rectify said violation, then LESSOR, without notice or legal process, may, at its option, re-enter and take possession of the demised premises and every part thereof, or in the alternative, LESSOR may, at its option, sue for and recover judgment against LESSEE for damages resulting from such default.

12. LESSOR hereby covenants and agrees that LESSEE, by paying said rent in the manner aforesaid and by performing the other covenants, terms and conditions of this agreement of lease on the part of LESSEE to be kept and performed, may and shall have the right at all times during the term of this agreement of lease to quietly and peacefully hold, possess, use, occupy and enjoy said demised land and premises and all improvements which may from time to time be placed thereon under and by virtue of this agreement of lease.

13. Any digression from the strict terms of this agreement of lease permitted by LESSOR shall in no way constitute a waiver, nor affect in any way the rights of LESSOR thereafter to demand strict compliance with all the terms, conditions and provisions of this agreement of lease.

14. Service of all notices specified in this agreement of lease shall be sufficient if mailed by the United States mail to LESSOR at LESSOR'S then current address in Salt Lake City, Utah, and to LESSEE at the then current principal address of LESSEE in Salt Lake City, Utah.

15. If the above or substantial part of the demised premises including any buildings and improvements thereon, at any time after the commencement of the term hereof, erected and paid for by LESSEE, shall be taken under any statute or by right of eminent domain or private purchase, in lieu thereof, then, when possession shall be taken thereunder of such demised premises, or the part thereof so taken, the term herein demised and all rights and obligations of LESSEE hereunder shall immediately cease and be adjusted as of the time of such condemnation. LESSEE shall have the claim and right to share in and receive that amount of such award as represents that proportion of the value of the LESSEE erected buildings and improvements on the demised premises which the number of months from the date of such taking by condemnation to the date of the expiration of this lease bears to the total number of months from the date of such erection to the date of expiration of the lease.

In the event of a partial condemnation of a small and insubstantial portion of the demised premises, LESSEE erected or otherwise, LESSOR and LESSEE shall share in such award as their interests may appear on the same basis as set forth above and this lease as to such portion of the premises so taken shall cease and terminate and the monthly rental payments payable to LESSOR by LESSEE shall be reduced by the percentage of land taken in relationship to the whole. If land only

is condemned with no effect upon the improvements or rentals, or in the event of the condemnation of the demised premises excluding LESSEE erected improvements, if any, then as between LESSEE and LESSOR, LESSOR shall receive the entire amount paid therefore.

16. If either party to this agreement shall be adjudged by a court of competent jurisdiction to have violated the terms of this agreement of lease or to be at fault in the performance of the same, the party guilty of violation hereof or at fault shall pay the innocent party all costs and attorneys' fees and expenses incurred by said innocent party in enforcing any of the covenants of this lease or in seeking judicial protection or relief.

17. LESSEE will keep the demised premises covered by this agreement of lease and the sidewalks adjacent thereto, and the parking lot area, free from snow, ice, paper, boxes, litter and other debris.

18. The promises, covenants and conditions hereof respectively assumed by the parties hereto shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

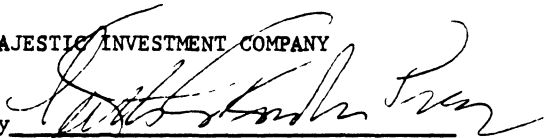
19. LESSEE and LESSOR agree that the terms of this lease are subject to all the terms and conditions of that certain Ground Lease Agreement covering said premises between Granger Shopping Center, Henry S. Pickrell and Barbara M. Pickrell, his wife, as LESSOR, and Majestic Investment Company as LESSEE, dated April 11, 1975, a copy of which is attached hereto as Exhibit "B" and by reference made a part hereof.

20. It is understood and agreed that anything contained herein to the contrary notwithstanding, this agreement is conditional upon the obtaining of such permits and approvals by appropriate governmental bodies or agencies as will permit LESSOR to construct those improvements indicated upon said Exhibit "A". If such permits or approvals cannot be obtained as provided above, or in the event of the early termination of said Exhibit "B" by reason of the provisions of Paragraph 22 contained therein, this agreement shall become automatically terminated as of the date that such governmental body or agency indicates its unwillingness to grant such permit or approval, or as of the date of such termination of said Exhibit "B", and the parties shall have no further duty or obligation hereunder.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused these presents to be executed by their officers thereto duly authorized, and their respective corporate seals to be hereto affixed the day and year first above written.

ATTEST:

MAJESTIC INVESTMENT COMPANY

By 

Title:

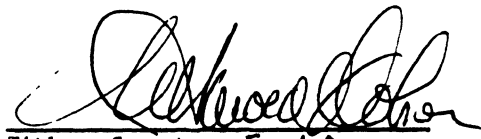
_____
Title:

THE LOCKHART CO.

ATTEST:

By 

Title: President


Title: Secretary Ex V.P.

ADDENDUM

To Lease dated April 11, 1975, between MAJESTIC INVESTMENT COMPANY, a Utah corporation ("Lessor"), and THE LOCKHART CO., a corporation chartered under the laws of the United States of America, with principal offices at Salt Lake City, Utah ("Lessee").

The Improvements Rental sum to be paid pursuant to Page 2, Paragraph 2, is \$961.10, or, before escalation, \$961.10 per month.

The date of commencement of said Improvement Rental obligation is December 1, 1975. ✓

The lease term provided in Paragraph 1 shall expire November 30, 2000.

DATE: 1-14-76

THE LOCKHART CO.

By [Signature]
Its [Signature] LESSEE

MAJESTIC INVESTMENT COMPANY

By [Signature]
Its Keith L. Knight
President LESSOR

LEASE MODIFICATION AGREEMENT

THIS LEASE MODIFICATION, made and entered into this 9th day of May 1975 by and between MAJESTIC INVESTMENT COMPANY, a Utah corporation, (hereinafter referred to as "LESSOR"), Party of the First Part, and THE LOCKHART CO., a Utah corporation, (hereinafter referred to as "LESSEE"), Party of the Second Part;

W I T N E S S E T H :

WHEREAS, the parties hereto on the 11th day of April 1975 entered into and executed a certain Agreement of Lease covering certain premises as described therein, and

WHEREAS, the description of the premises as set forth in said Agreement of Lease does not conform with the actual intent of the parties, and the parties are now desirous of modifying said description of the premises as set forth in said agreement to conform with such actual intent.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. That anything to the contrary notwithstanding the description of the premises as set forth in the first preamble clause of said Agreement of Lease dated 11th day of April 1975 (including Exhibit "A" attached thereto) shall include, and the same is hereby modified and amended to include a provision for a right of way as set forth below, the same as though originally and completely set forth in said Agreement of Lease. Said right of way provision reads as follows:

Together with an unlimited right of way over and across the following described property: -

BEGINNING at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 33.0 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°0'44" West 181.34 feet along the West line of 2700 West Street; thence South 89°56'20" West 17 feet; thence North 0°0'44" East 181.34 feet; thence North 89°56'20" East 17 feet to the point of beginning.

². Except as herein modified, said Agreement of Lease dated the 11th day of April 1975 is hereby ratified, confirmed and unchanged and this modification agreement shall henceforth be considered a part of said Agreement of Lease as though the same had originally been set forth therein and shall be governed and interpreted by and in accordance therewith. The covenants, promises and conditions herein set forth shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, and their respective corporate seals be hereunto affixed the day and year first above written.

MAJESTIC INVESTMENT COMPANY

By

Title:

ATTEST:

Title:

THE LOCKHART CO.--

By

Title:

ATTEST:

Title:

Tab 4

JAN 24 1989

SALT LAKE COUNTY
By A. B. Binkley
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY, a Municipal Corporation,	:	MEMORANDUM DECISION
	:	
Plaintiff,	:	CIVIL NO. C-87-6899
	:	
vs.	:	
	:	
MAJESTIC INVESTMENT COMPANY,	:	
a Utah Corporation; and	:	
DOES 1 through 10,	:	
	:	
Defendants.	:	

This matter was tried on December 14, 15, 16, 20 of 1988, and January 4 and 5, 1989, at which time the matter was taken under advisement. The Court has now reviewed the evidence, the applicable law, and rules as follows:

This is a condemnation proceeding wherein West Valley City seeks to condemn the interests of Majestic Investment Company, lessee of the property in question. West Valley City previously settled with the owner of the property; Majestic did not participate in that settlement.

The land in question, consisting of vacant and unimproved land and rights of way, was leased by the owner to Majestic. The lease was for 35 years, commencing April of 1975, and permitted the lessee to construct office buildings. Majestic constructed

two separate office buildings, and leased one to Prudential for 25 years, and the other to Lockhart for 25 years.

The only issue for trial is the amount of compensation due Majestic for its leasehold interests in the property. To determine such interest, the fair market value of the property as a whole must be determined. In determining the fair market value, it becomes necessary to take into consideration the value of the land, the buildings, the improvements, and the leases, including subleases. Once the fair market value of the property has been determined, there must be an apportionment as to Majestic's interest.

This Court previously ruled that the condemnation clause in the owner/Majestic lease does not preclude Majestic from recovering its fair share of the award for its leasehold interest. There is no language in the lease that precludes or limits Majestic from sharing in the compensation award. To preclude such recovery, the preclusionary language must be clear and unequivocal. This lease merely states that in the event of condemnation, the rights and obligations of Majestic shall cease "and be adjusted as of the term of such condemnation." This is not sufficient to terminate Majestic's rights to its fair compensation. The fact that the lease further provided that Majestic would have a share in the buildings which Majestic

constructed does not limit Majestic's rights to share in the compensation award as to its other interests.

17 ALR4th 337, entitled "Eminent Domain: Measure and Elements of Lessee's Compensation for Condemnor's Taking or Damaging of Leasehold" collects federal and state cases addressing the issue in question. The annotation recognizes that the cases concerning the condemnation of leasehold interests reveals considerable confusion respecting the measure of such damages. However, the annotation points out quite clearly that regardless of the methodology utilized, a lessee is entitled to appropriate compensation for the loss of the leasehold. The annotator stated:

Generally, the courts, especially in older opinions, have summarily declared the market value of the leasehold taken to be the measure of damages for the taking. One frequent definition of market value is that price which would be agreed upon at a voluntary sale between an owner willing to sell and a purchaser willing to buy. However, the courts have frequently refined this broad standard by seeking to set out with more precision what the concept of "market value" entails. Thus, either as a definition of market value or without reference to that term, some courts have expressed the measure of a lessee's damages for a leasehold as the economic rent or fair rental value of the leasehold, less the rent reserved under the terms of the lease. Still another form which the market value standard has taken in the reported cases describes the measure of damages as the market value of the unexpired term of the lease, over and above the rent stipulated to be paid. Since courts, even within the same jurisdiction,

often seem to use a variety of market value concept definitions, sometimes without apparently distinguishable results, it remains unclear to what extent these different expressions are reflections of real differences.

The annotator went on to distinguish those leases having no market value from those that do. The annotator stated:

There are, of course, properties which are found to have no market value, and for which resort must be had to other data to ascertain their value. This may be especially true for leasehold interests, it being frequently stated that leases are not ordinarily sold, are often not assignable without the consent of the landlord, and very significantly in the length of the term, rent and other particulars, including the nature and use of the property demised. Under these circumstances, some courts have used actual value, intrinsic value, or the value to the owner as the best available measure of damages to a lessee. Similarly, some courts have awarded compensation to lessees on the basis of the actual damages to the lessees, or the amounts actually expended by the lessees which, because of the condemnation would not be redeemable by them, as well as resorting to a variety of other measures the employment of which the courts have evidently felt would effect a more equitable result from the circumstances.

Nichols on Eminent Domain, Vol. 7A, Section 11.03, states:

From the lessee's point of view, there must be compensation for loss of bonus rent. This figure is determined by finding the fair rental value and subtracting the contract rent from this figure. This yields the bonus value of the lease. This figure must be multiplied by the remaining term of the lease to determine the total bonus factor. In

calculating the remainder of the lease term, renewal clauses should be viewed as extending the term. Once again, this is a future right to payment, and must be reduced by an actuarial coefficient to determine the present value. . . .

Section 78-34-10, Utah Code Ann., requires this Court to ascertain and assess the value of the property sought to be condemned "and all improvements thereon appertaining to the realty, and of each and every separate estate or interest therein. . . . "

The Utah Supreme Court has taken the position that a landowner in condemnation cases is not entitled to loss of profits of a business or large rentals. In State Road Commission v. Brown, 531 P.2d 1294 (Utah 1975), the court cited 69 ALR 1263 with approval as follows:

Where there are several interests or estates in a parcel of real estate taken by eminent domain, a proper method of fixing the value of, or damage to, each interest or estate, is to determine the value of, or damage to, the property as a whole, and then to apportion the same among the several owners according to their respective interests or estates, rather than to take each interest or estate as a unit and fix the value thereof or damage thereto separately... the total of all interests cannot exceed the value of the property as a whole.

The court further stated:

The landowner would no more be entitled to the benefits of large rentals which have been condemned than he would be entitled to

huge profits which he might otherwise expect to earn from the realty if he operated a business instead of leasing it to another.

The most appropriate rule, and that accepted in most jurisdictions, is for a separate determination to be made of the fair market value of the leasehold itself in determining the compensable interest of the leaseholder. Utah, however, appears to have adopted a different rule. It apparently requires a determination of the value of the property as a whole, and from that value to apportion the separate interests. To do so, however, it is necessary to take into consideration all separate leasehold interests in determining the fair market value of the property, and from that amount to determine to what portion the leaseholder is entitled.

In this case, Majestic's land lease is for a sum certain rental, for 35 years, and provided for Majestic to construct commercial buildings on the said property. Majestic was not restricted in assigning its lease interest. Such lease must be taken into consideration in determining the fair market value of the property and Majestic is entitled to the value of its leasehold therefrom.

Based upon the evidence, the Court finds as follows:

1. In 1975, the owner of the land in question leased the same to Majestic for 35 years, at a sum certain monthly rent,

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with a provision for periodic increases in the rental based upon the CPI index.

2. The said lease provided that Majestic would use and occupy the premises for the purpose of constructing buildings and making the same available to the general public for business offices and facilities associated therewith. In this regard, Majestic was given "unlimited right to place such improvements upon the premises as it may desire" so long as such had a value of at least \$140,000.00, and met zoning requirements.

3. The said lease was a triple net lease, that is, Majestic was required to pay all insurance, gas, heat, electricity, power, janitorial services, licensing fees, taxes, and other governmental charges levied or assessed.

4. The said land lease gave Majestic the "absolute right" without the owner's consent to grant leasehold mortgage security interests in the lease, and to assign the same as collateral, or make other similar security arrangements.

5. The said land lease did not restrict Majestic's right to assign the lease, in fact, it recognized such right by reasonable inference of the language of the lease.

6. The said land lease provided that in the event the premises were taken by eminent domain, the rights and obligations of the Majestic would cease "and be adjusted as of the time of the condemnation." Furthermore, Majestic was to have the right

to a proportionate share of the buildings and improvements made in accordance with a formula stated in the lease.

7. Majestic constructed two commercial buildings upon the land, made improvements in regards thereto, and entered into long-term leases in regards to each of the buildings and improvements, with Prudential Federal Savings and Loan Association and with the Lockhart Company. Both leases were long-term leases for 25 years, with rent certain, and with periodic increases in such rent based upon the CPI index. Such leases did not provide for acceleration, but were for rent certain, with increases over the 25 years life of the said leases.

8. Both Prudential and Lockhart are old line companies in the Salt Lake area, as well as other areas, and have triple-A reputations, and represent sublessees of such a substantial quality as to represent little or no risk of defaulting on their leases with Majestic.

9. Because of the nature of the lease between the lessor and Majestic with the long life of the lease of 35 years, the rent certain, the anticipation that Majestic would construct substantial buildings on the property for commercial purposes to the general public, and because of the nature of the buildings constructed, and the leases between Majestic and Prudential, and Majestic and Lockhart, all such leases must be taken into

consideration in determining the fair market value of the property in question. However, the Lockhart and Prudential leases are for 25 years, while the Majestic lease with the lessor is for 35 years. The remaining 10 years of the land lease are too speculative to be given value considered in determining the value of the leasehold. As stated in Nichols on Eminent Domain, Section 11.02:

Although most lessees are entitled to this compensation, there is a group of lessees which is not so entitled. This group includes those tenants whose leases are renewed by custom, where there is no provision in the lease which is binding upon the landlord. Also included are tenants from year to year, because of mutual satisfaction with the lease, there is the expectation that the lease will be renewed, that the lessor is not bound to renew. Tenants by sufferance and tenants under a lease which is void on public policy grounds are also within the group excluded from sharing in the compensation award.

10. In regards to the Prudential parcel, the Court finds the fair market value of the total property to be \$271,342.00. Of this amount, the value of the land is \$88,342.00, and the value of the buildings and improvements is \$183,000.00.

The present value of the leasehold (October 1987 to December 2000) is \$210,735.00. This represents 77% of the total value of the property, without the land lease allocation as to improvements.

Majestic's leasehold share of the land is \$68,023.00.

Majestic's share of the buildings and improvements per the land lease allocation is \$118,950.00.

The fair market value of Majestic's leasehold interest \$187,187.50.

11. In regards to the Lockhart parcel, the fair market value of the total property is \$267,277.00. Of this, the land value is \$106,177.00, and the buildings and improvements have a value of \$161,100.00.

The present value of the leasehold (October 1987 to December 2000) is \$180,914.00. This represents 68% of the total property, without the land lease allocation.

Majestic's interest in the land value is \$72,200.36.

Majestic's share in the buildings and improvements pursuant to the land lease allocation is \$104,715.00.

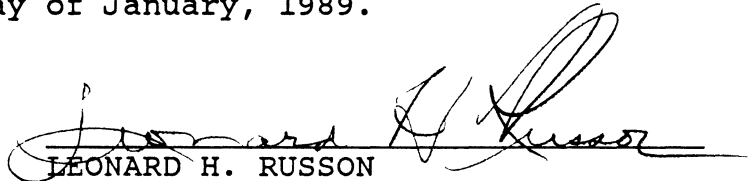
The fair market value of Majestic's leasehold is \$175,853.00.

12. Majestic is entitled to compensation for the value of its leasehold interests in the total property in the amount of \$363,040.00.

There may be additional facts established by the evidence supporting the decision of the Court, and the prevailing party in preparing the Findings of Fact, Conclusions and Judgment should take into consideration all facts established by the evidence.

The Findings of Fact, Conclusions of Law, and Judgment are to be prepared by defendant's counsel and be submitted to plaintiff's counsel for approval as to form before submitting to the Court for final signature and filing.

Dated this 23rd day of January, 1989.


LEONARD H. RUSSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 24 day of January, 1989:

Robert S. Campbell, Jr.
H. Dickson Burton
Attorneys for Majestic Investment Co.
310 S. Main, Suite 1200
Salt Lake City, Utah 84101

Harold A. Hintze
3319 N. University Ave., Suite 200
Provo, Utah 84604

Paul T. Morris
J. Richard Catten
2470 S. Redwood Road
West Valley City, Utah 84119

Joseph J. Palmer
Wayne G. Getty
15 East 100 South, Suite 600
Salt Lake City, Utah 84111-1915

R. F. Zundberg

Tab 5

Harold A. Hintze, P.C. A-1400
OLSEN, HINTZE, NIELSON & HILL
3319 No. University Ave., Suite 200
Provo, Utah 84604
Telephone: (801) 375-6600
Attorney for Plaintiff

Paul T. Morris, #3738
West Valley City Attorney
J. Richard Catten, #4291
Assistant City Attorney
2470 South Redwood Road
West Valley City, Utah 84119
Telephone: (801) 974-5501

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY, a Municipal Corporation,	:	
	:	
Plaintiff,	:	PARTIAL SATISFACTION
	:	OF JUDGMENT
vs.	:	
	:	
MAJESTIC INVESTMENT COMPANY,	:	Civil No. C87-6899
a Utah Corporation; and DOES	:	
1 THROUGH 10,	:	Judge Leonard H. Russon
	:	
Defendants.	:	

I, Robert S. Campbell, Jr., Attorney for Majestic Investment Company, in this action, acknowledge a parcel satisfaction of a judgment rendered against Plaintiff in the Third District Court, Salt Lake County, Utah, in an eminent domain action.

Judgment was entered by the Court on February 15, 1989, on the following parcel of property:

PARCEL 1.

Beginning at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian, and running thence: S 00°00'44" W. 90.67 feet along the

West line of 2700 West Street; thence S. 89°56'20" W. 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: N. 00°00'44" E. 2.33 feet; thence N. 00°00'44" E. 88.34 feet; thence N. 89°56'20" E. 129.22 feet to the point of beginning.

Contains: 0.270 acres

Parcel 2.

Beginning at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian and running thence: S. 00°00'44" W. 90.67 feet along the West line of 2700 West Street; thence S. 89°56'20" W. 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N. 00°00'44" E. 90.67 feet; thence N. 89°56'20" E. 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and

distances: South 00°00'44" West 58.34 feet;
thence South 89°56'20" West 27.0 feet; thence
South 00°00'44" West 123.0 feet; thence North
89°56'20" East 30.0 feet; thence North
00°00'44" East 93.0 feet; thence North
89°56'20" East 27.0 feet; thence North
00°00'44" East 88.34 feet to the point of
beginning.

BEGINNING at a point on the West side of 2700
West Street, said point being South 865.72
feet and West 33.0 feet from the Northeast
corner of the Northwest quarter of Section 33
Township 1 South, Range 1 West, Salt Lake Base
and Meridian, and running thence South 0°0'44"
West 181.34 feet along the West line of 2700
West Street; thence South 89°56'20" West 17
feet; thence North 0°0'44" East 181.34 feet;
thence North 89°56'20" East 17 feet to the
point of beginning.

This Partial Satisfaction of Judgment acknowledges that judgment was entered in favor of Majestic Investment Company on the 15th day of February, 1989 for the sum of \$364,888.36, less the sum of \$69,198.00 tendered incident to the order of immediate occupancy, or a net deficiency judgment of \$295,690.36, together with interest at the rate of 8% per annum from the date of occupancy to the date of judgment in the sum of \$31,108.80. Accordingly, there was a net deficiency judgment, inclusive of interest through February 15, 1989 in the sum of \$326,799.16, together with taxable costs, as the Just Compensation payable to Majestic Investment Company.

This Partial Satisfaction of Judgment further acknowledges that as of the 3rd day of November, 1989 there was due and owing as the Just Compensation, inclusive of post-judgment interest at 12% per annum, the sum of \$356,130.28. As of said date, West Valley City paid to Majestic Investment Company and its counsel the sum of \$181,961.32 by City warrant No. 40368, leaving a net and

outstanding judgment due and owing to Majestic Investment Company of \$174,168.96, which judgment will continue to bear interest at the rate of 12% per annum on the net principal judgment, which calculates to \$47.62 per day from November 3, 1989, until full satisfaction is paid by West Valley City in the matter.

It is further acknowledged that this Partial Satisfaction of Judgment shall have no effect on the rights, standing or obligations of the parties with respect to the appeal filed in this case with the Utah Court of Appeals, as Case No. 890379-CA.

DATED this 11th day of December, 1989.


ROBERT S. CAMPBELL, JR.
Attorney for Majestic Investment
Company

STATE OF UTAH   )
                                      :   ss.
COUNTY OF SALT LAKE   )

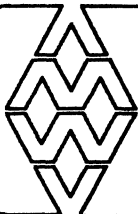
On this 11th day of December, 1989, personally appeared before me Robert S. Campbell, Jr., signer of the foregoing instrument, who duly acknowledged to me that he executed the same.


NOTARY PUBLIC
Residing in Salt Lake County, Utah

My Commission Expires:

MY COMMISSION EXPIRES
12-21-93

Tab 6



West Valley City

OFFICE OF CITY ATTORNEY

November 3, 1989

Robert S. Campbell, Jr., Esq.
310 South Main Street
Suite 1200
Salt Lake City, UT 84101

HAND DELIVERED

RE: West Valley City v. Majestic Investment Company, Civil
No. C-87-6899

Dear Mr. Campbell:

Enclosed please find a check in the amount of \$181,961.32. This represents a partial settlement of that judgment which was rendered in the above referenced case on February 15, 1989. This check represents the value found by Judge Russon in the buildings and improvements on the Prudential and Lockhart properties, plus appropriate interest. It does not include that portion of the judgment which related to land values and is the subject of appeal.

Also enclosed, you will find a Partial Satisfaction of Judgment. Please execute this document and return it to my office prior to negotiation of the enclosed check.

If you have any questions regarding this matter please feel free to call me.

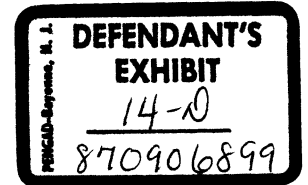
Sincerely,

J. RICHARD CATTEN
ASSISTANT CITY ATTORNEY

cc: Paul T. Morris, City Attorney
Harold A. Hintze

JRC:BH:CAMPBELL
110389:F:PA89-2

Tab 7



MARKET VALUE OF TOTAL PROPERTY
Income Approach

I.	(1)	Estimated Monthly Gross Income	<u>\$ 3,019.00</u>	
	(2)	x 12 = Yearly Gross	<u>36,228.00</u>	
	(3)	Less: Vacancy & Credit Loss (3%)	<u>(1,087.00)</u>	
	(4)	Effective Annual Income		<u>\$35,141.00</u>
II.		Less Expenses Attributable to Property		
	(1)	Taxes	<u>-0-</u>	
	(2)	Insurance	<u>-0-</u>	
	(3)	Repairs	<u>-0-</u>	
	(4)	Management (2.5%)	<u>\$879.00</u>	
III.		Net Annual Income		<u>34,262.00</u>
IV.		Capitalization Rate	<u>9.25%</u>	
V.		Total Property Market Value by Income Approach (rounded)		<u>\$370,400.00</u> =====

COMPARABLE CAPITALIZATION RATE TRANSACTIONS

#	Seller - Buyer	Date of Sale	Size	Location	Gross and Net Income	Sales Price	Overall Cap Rate
1	Pingree 5th Street Properties	7/85	6,000 Sq. ft.	44 So. 500 East	\$57,600 34,544	\$375,000	9.21%
2	First Security Bank Joe Kester	8/86	18,176	301 West 5400 South	122,000 65,800	\$680,000	9.68%
3	Bailey Reber	4/86	3,550	2155 South Main	16,800 10,630	\$152,850	6.95%
4	Larrabee Woo, et al.	3/87	8,683	1501 South Main	20,500 15,830	\$171,700	9.22%
5	Intermountain Holding Robert Luce	5/87	8,604	2330 South Main	57,000 23,008	\$250,000	9.20%
6	Temple Eck	8/87	1,000	370 East 900 South	6,000 4,420	\$51,400	8.60%
7	First Interstate Bank Sabola Bros.	3/88	19,260	231 West 800 South	144,450 76,308	\$800,000	9.538

MARKET VALUE OF TOTAL PROPERTY
Cost Approach

Majestic/Prudential

I.	1.	Cost to Construct Bldg. 1956 s/f at 143.50 s/f	<u>280,686.00</u>
	2.	Less: Depreciation	(<u>28,069.00</u>)
	3.	Depreciated Building Value	<u>252,617.00</u>
	4.	On-site Improvements to Prop.+	<u>24,500.00</u>
	5.	Depreciated Improvement Value	<u>277,117.00</u>
II.		Land Value 11,779 s/f at \$8.50 p/ft	<u>100,100.00</u>
III.		Market Value of Total Property by Cost Approach (rounded)	<u>\$377,200.00</u> -----

LAND VALUE - MARKET DATA APPROACH

#	Seller Buyer	Date Sale	Size	Zoning	Location/Description	Sales Price	Adjust- ment	Pri p/s,
1	Southland PDB Inv. Co.	3-82	.52 Ac	C-2	NW corner of 3100 South and Redwood Road	\$150,000	0	\$6.62 \$
2	Dave Early Interstate Trans.	12-82	.50 Ac	C-2	2830 West 3500 South	130,500	0	\$5.95 \$
3	DeMarco Brubaker	Summer 1984	1.72 Ac	C-2	South of the corner at 3500 South Redwood	337,000	+40%	\$4.50 \$
4	Andrus BBB Investment	10-84	.42 Ac	C-2	3545 West 3500 South	130,000	0	\$6.91 \$
5	Rees Southland	9-85	.52 Ac	C-2	NE corner of 4700 South and 4000 West	150,000	0	\$6.67 \$
6	Kay & Renart Dave Dunn	Fall 1987	1.50 Ac	Residential changed to Commercial	NE corner of 2700 West and 3500 South. Two adjoining parcels.	367,000	+40%	\$5.62 \$
7	Lee Hixson Circle K	10-87	.48 Ac	C-2	NE corner of 3500 South and Redwood Road	365,000	0	\$17.1 \$

FINAL CORRELATION OF MARKET VALUE ON
TOTAL PROPERTY

I.	Fair Market Value of Property Under Cost Approach (page 4)	\$ <u>377,200.00</u>
II.	Fair Market Value of Property Under Income Approach (page 1)	\$ <u>370,400.00</u>
III.	Final Correlation of Market Value of Total Property	\$ <u>371,000.00</u>

EVALUATION OF MAJESTIC LEASEHOLD ON
MAJESTIC/PRUDENTIAL PROPERTY

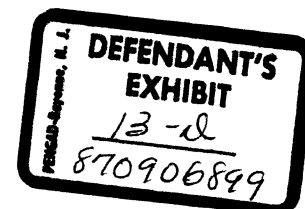
I.	Annual Fair Rental Income to Majestic	<u>\$ 34,262.00</u>
II.	Annual Contract Rental Paid to Lessor by Majestic	<u>9,135.00</u>
III.	Annual Net Income to Majestic ("Bonus Value")	<u>25,127.00</u>
IV.	Net Monthly Bonus Leasehold to Majestic	<u>2,093.92</u>
V.	Present Value of Leasehold Bonus	
	(1) Remaining Rent 10/23/87-12/31/95 \$2093.92 to yield 9.25% (69.13280) =	<u>144,759.00</u>
	(2) Remaining rent 4% CPI 1/1/96- 12/31/2000 \$2,901.31 to yield 9.25% (22.740038) =	<u>65,976.00</u>
	(3) Less Remodeling Costs 72,802 to yield 9.25% (.297231)	<u>(21,639.00)</u>
	(4) Remaining Rental 112 months commencing 158 months hence 1/1/2001- 4/30/2010 \$3,542.49 to yield 9.25% (22.414505)	<u>79,403.00</u>
VI.	Fair Market Value of Majestic Leasehold without condemnation clause allocation	268,499.00
	rounded	<u>268,500.00</u>
V{/	Leasehold Interest as Percentage of Total Property without condemnation clause allocation --- \$268,500/371,000	72.37%

EVALUATION OF MAJESTIC LEASEHOLD
ON MAJESTIC/PRUDENTIAL PROPERTY
UNDER APPLICABLE LEASE TERMS

I.	Final Value Estimate of Total Property (p. 6)		<u>\$371,000.00</u>
II.	Allocation of Leasehold Value in Land		
	1. Land Value (p. 4)	<u>\$100,100.00</u>	
	2. Allocated Interest to Majestic (p. 7) 72.37% of Paragraph 1	<u>72,400.00</u>	<u>72,400.00</u>
	3. Allocated Lessor's Interest	27,700.00	
III.	Allocation of Leasehold Interest in Bldgs. and Improvements under contract.		
	1. Total Property Value (p. 6)	371,000.00	
	2. Deduct Land Value (p. 4)	<u>100,100.00</u>	
	3. Value of Bldgs. & Improvements	\$270,900.00	
	4. Contract allocation		
	65% to Majestic	176,100.00	
	35% to Lessor	93,900.00	
	5. Majestic's Allocated Interest (L.4 above)		<u>\$176,100.00</u>
IV.	Fair Market Value of Majestic Leasehold as of October 23, 1987 Under Applicable Lease Terms		\$248,500.00

Tab 8

MARKET VALUE OF TOTAL PROPERTY
Income Approach



I.	(1)	Estimated Monthly Gross Income	<u>\$ 2,712.00</u>	
	(2)	x 12 = Yearly Gross	<u>32,544.00</u>	
	(3)	Less: Vacancy & Credit Loss (3%)	<u>(976.00)</u>	
	(4)	Effective Annual Income		<u>\$31,568.00</u>
II.		Less Expenses Attributable to Property		
	(1)	Taxes	<u>-0-</u>	
	(2)	Insurance	<u>-0-</u>	
	(3)	Repairs	<u>-0-</u>	
	(4)	Management (2.5%)	<u>\$789.00</u>	
III.		Net Annual Income		<u>30,779.00</u>
IV.		Capitalization Rate	<u>9.25%</u>	
V.		Total Property Market Value by Income Approach (rounded)		<u>\$332,750.00</u> =====

COMPARABLE BUILDING LEASE TRANSACTIONS

Lease #	Lessor Lessee	Date of Lease	Size	Zoning	Location-Description	Monthly Rental	Rental P/S/F
1	Gaddis 1st Interstate Bank	1986	1000	Comm.	Branch Bank with drive-in facilities at 280 East 200 South	\$2500	\$30.00
2	Gaddis 1st Interstate Bank	1987	1320	Comm.	Branch Bank with drive-in facilities at 31 West 2100 South	\$2750	\$25.00
3	Smiths Zions 1st National	1987	800	Comm.	Branch Bank facilities located inside 8 Smith's Food King stores.	\$2000	\$27.00

COMPARABLE CAPITALIZATION RATE TRANSACTIONS

#	Seller - Buyer	Date of Sale	Size	Location	Gross and Net Income	Sales Price	Overall Cap Rate
1	Pingree 5th Street Properties	7/85	6,000 Sq. ft.	44 So. 500 East	\$57,600 34,544	\$375,000	9.21%
2	First Security Bank Joe Kester	8/86	18,176	301 West 5400 South	122,000 65,800	\$680,000	9.68%
3	Bailey Reber	4/86	3,550	2155 South Main	16,800 10,630	\$152,850	6.95%
4	Larrabee Woo, et al.	3/87	8,683	1501 South Main	20,500 15,830	\$171,700	9.22%
5	Intermountain Holding Robert Luce	5/87	8,604	2330 South Main	57,000 23,008	\$250,000	9.20%
6	Temple Eck	8/87	1,000	370 East 900 South	6,000 4,420	\$51,400	8.60%
7	First Interstate Bank Sabola Bros.	3/88	19,260	231 West 800 South	144,450 76,308	\$800,000	9.53%

MARKET VALUE OF TOTAL PROPERTY
Cost Approach

Majestic/Lockhart

I.	1.	Cost to Construct Bldg. 1634 s/f at 156.50 s/f	<u>255,721.00</u>
	2.	Less: Depreciation	(<u>48,587.00</u>)
	3.	Depreciated Building Value	<u>207,134.00</u>
	4.	On-site Improvements to Prop.+	<u>32,500.00</u>
	5.	Depreciated Improvement Value	<u>239,634.00</u>
II.		Land Value 14,164 s/f at \$8.50 p/ft	<u>120,400.00</u>
III.		Market Value of Total Property by Cost Approach (rounded)	<u>\$360,000.00</u> *****

LAND VALUE - MARKET DATA APPROACH

#	Seller Buyer	Date Sale	Size	Zoning	Location/Description	Sales Price	Adjust- ment	Price p/s/
1	Southland PDB Inv. Co.	3-82	.52 Ac	C-2	NW corner of 3100 South and Redwood Road	\$150,000	0	~~\$6.62~~ \$6
2	Dave Early Interstate Trans.	12-82	.50 Ac	C-2	2830 West 3500 South	130,500	0	~~\$5.99~~ \$5
3	DeMarco Brubaker	Summer 1984	1.72 Ac	C-2	South of the corner at 3500 South Redwood	337,000	+40%	~~\$4.50~~ \$6
4	Andrus BBB Investment	10-84	.42 Ac	C-2	3545 West 3500 South	130,000	0	~~\$6.91~~ \$6
5	Rees Southland	9-85	.52 Ac	C-2	NE corner of 4700 South and 4000 West	150,000	0	~~\$6.67~~ \$6
6	Kay & Renart Dave Dunn	Fall 1987	1.50 Ac	Residential changed to Commercial	NE corner of 2700 West and 3500 South. Two adjoining parcels.	367,000	+40%	~~\$5.62~~ \$7
7	Lee Hixson Circle K	10-87	.48 Ac	C-2	NE corner of 3500 South and Redwood Road	365,000	0	~~\$17.41~~ \$1

FINAL CORRELATION OF MARKET VALUE ON
TOTAL PROPERTY

I.	Fair Market Value of Property Under Cost Approach (page 4)	\$ <u>360,000.00</u>
II.	Fair Market Value of Property Under Income Approach (page 1)	\$ <u>332,750.00</u>
III.	Final Correlation of Market Value of Total Property	\$ <u>335,000.00</u>

EVALUATION OF MAJESTIC LEASEHOLD ON
MAJESTIC/LOCKHART PROPERTY

I.	Annual Fair Rental Income to Majestic	\$ <u>30,779.00</u>
II.	Annual Contract Rental Paid to Lessor by Majestic	<u>9,135.00</u>
III.	Annual Net Income to Majestic ("Bonus Value")	<u>21,644.00</u>
IV.	Net Monthly Bonus Leasehold to Majestic	<u>1,803.67</u>
V.	Present Value of Leasehold Bonus	
	(1) Remaining Rent 10/23/87-12/1/95 \$1803.67 to yield 9.25% (68.6579) =	<u>123,836.00</u>
	(2) Remaining rent 4% CPI 12/1/95- 11/30/2000 \$2,490.84 to yield 9.25% (22.915)=	<u>57,078.00</u>
	(3) Less Remodeling Costs 60,605 to yield 9.25% (.2995)	<u>(18,153.00)</u>
	(4) Remaining Rental 113 months commencing 157 months hence 12/1/2000- 4/30/2010 \$3,041.00 to yield 9.25% (22.7140)	<u>69,080.00</u>
VI.	Fair Market Value of Majestic Leasehold without condemnation clause allocation	231,841.00
	rounded	<u>231,800.00</u>
V//	Leasehold Interest as Percentage of Total Property without condemnation clause allocation --- \$231,800/335,000	69%

EVALUATION OF MAJESTIC LEASEHOLD
ON MAJESTIC/LOCKHART PROPERTY
UNDER APPLICABLE LEASE TERMS

I.	Final Value Estimate of Total Property (p. 6)			<u>\$335,000.00</u>
II.	Allocation of Leasehold Value in Land			
	1. Land Value (p. 4)	<u>\$120,400.00</u>		
	2. Allocated Interest to Majestic (p. 7)			
	~~72.37%~~ 69% of Paragraph 1	<u>83,100.00</u>	→	<u>83,100.00</u>
	3. Allocated Lessor's Interest	37,300.00		
III.	Allocation of Leasehold Interest in Bldgs. and Improvements under contract.			
	1. Total Property Value (p. 6)	335,000.00		
	2. Deduct Land Value (p. 4)	<u>120,400.00</u>		
	3. Value of Bldgs. & Improvements	\$214,600.00		
	4. Contract allocation			
	65% to Majestic		139,500.00	
	35% to Lessor		75,100.00	
	5. Majestic's Allocated Interest (L.4 above)			<u>\$139,500.00</u>
IV.	Fair Market Value of Majestic Leasehold as of October 23, 1987 Under Applicable Lease Terms			<u>\$222,600.00</u> =====