

57-1112

NOTICE OF LEASE MODIFICATION

THIS NOTICE OF LEASE MODIFICATION, made as of this 27th day of April, 1984, by and between SOUTHROADS MALL LIMITED PARTNERSHIP, a Nebraska Limited Partnership, having a place of business at c/o Alan C. Winick, 41 East 60th Street, New York, New York 10022, herein referred to as Landlord, and F. W. WOOLWORTH CO., a corporation organized and existing under the laws of the State of New York and having its Executive Office at 233 Broadway, New York, New York 10279, herein referred to as Tenant.

WITNESSETH:

WHEREAS, Landlord's predecessor in interest has leased to Tenant those certain premises known as Building 17 - Southroads Shopping Center at U. S. Highways 73-75 and Brewster Road and Childs Road, County of Sarpy, Bellevue, Nebraska, and more particularly described in that certain lease dated January 12, 1966, a Short Form of which was recorded on February 24, 1966, in the Office of the Register of Deeds for Sarpy County, Nebraska, in Book 36 on Page 300 (which lease and all prior modifications now in effect, the latest being dated July 29, 1981, are hereinafter referred to as "said lease"); and

WHEREAS, Landlord desires to make certain changes in the grade and alignment of the West Parking Area on the Entire Premises described in said lease and to erect an additional retail store building on a portion of that Parking Area and to make and do certain other changes and refurbishments in and to the Entire Premises; and

WHEREAS, Landlord has requested the redelivery of a certain portion of Tenant's demised premises; and

WHEREAS, Tenant is willing to accede to the Landlord's request on the terms and conditions and in the manner hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Tenant, the receipt of which is hereby acknowledged by Landlord, Landlord and Tenant have entered into a certain LEASE MODIFICATION AGREEMENT, of even date herewith (hereinafter referred to as the "Agreement"), in which the parties mutually agree for themselves, their successors, and assigns to certain terms, conditions, limitations, and modifications of said lease, all of which terms, conditions, limitations and modifications are hereby incorporated herein by reference and made a part hereof as if fully set forth herein. The Agreement, among other provisions, contains the following:

FIRST: The Tenant shall at the Tenant's expense remove all Tenant's fixtures and equipment from and vacate that portion of the demised premises presently occupied by the Tenant comprising 6,177 square feet of gross floor area as outlined in red on the drawing attached hereto as Exhibit "B" and made a part hereof (herein referred to as "Relinquished Premises"), so as to deliver possession of said Relinquished Premises to the Landlord on or before September 10, 1984. Upon such delivery, Landlord agrees, at Landlord's cost, to forthwith take such steps as are necessary to separate all utility services for the Relinquished Premises from Tenant's remaining premises and to place such services on separate metering devices.

From and after the date of delivery said Relinquished Premises shall be excluded from the demised premises.

SECOND: The Landlord agrees at Landlord's expense to cause to be prepared and furnished to Tenant plans and specifications for the construction in Tenant's remaining demised premises which shall include but not be limited to, a work and material description of:

- (a) Erection of a fire wall (as required by state and local building codes and regulations) to separate the Relinquished Premises from the remainder of the demised premises;

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- (b) Separating, relocating and re-connecting all electrical fixtures, outlets and service which will be affected by such dividing wall;
 - (c) Separating the sprinkler system near the location of the new wall to the extent reasonably required so that the sprinkler system will be inoperative for only a minimum of time and will be a complete separate system with its own independent controls serving only Tenant's demised premises;
 - (d) Relocating and/or separating to the extent reasonably required any plumbing lines and all other utility lines and services;
 - (e) Such painting and finishing of the newly constructed wall and such repair and/or replacement of ceiling and floor tile as will provide a reasonably uniform appearance with the remaining walls, ceiling and floor of the demised premises;
 - (f) Establishment of necessary exits to comply with state and local building codes and regulations, including a customer entrance from the lower level Parking Area;
 - (g) Elimination of Tenant's upper level customer entrance from the Parking Area which formerly serviced the upper level, including interior finishing as set forth in (e) above;
 - (h) Elimination of the show window in the South wall of the upper level demised premises, including interior finishing as set forth in (e) above.

All work necessary to alter the grade of the parking area, to do the other refurbishment and changes, and said addition of the retail store building, shall be in accordance with the plans dated March 21, 1984, by Pegram Associates and initialed by Landlord and Tenant herewith and the segregation of the demised premises from the Relinquished Premises shall be made in accordance with the plans and specifications submitted by Landlord to Tenant and bearing written approval of the Construction Manager of Tenant's Regional Office which approval shall not be unreasonably withheld. Landlord shall have the option but shall not be obligated to do said refurbishment and changes and to add said retail store building indicated as Phase 2.

Such work shall be prosecuted with due diligence and in a first-class, workmanlike manner so as to interfere as little as possible with the operation of the Tenant's store in the demised premises. The Tenant agrees that such work may be done during normal business hours. Specifically, in connection with such work the Landlord shall commence within ten (10) days following delivery of the Relinquished Premises to Landlord, and prior to any construction on the Relinquished Premises, to prosecute with diligence, the construction of a temporary security barrier so as to cause the remainder of Tenant's space and Tenant's merchandise to be secure and free and clear of dirt and debris during the course of construction to be performed by Landlord hereunder. Tenant agrees that such security barrier may be erected up to ten (10) feet into Tenant's remaining demised premises so that sufficient working space is allowed to perform the construction contemplated herein. Immediately following completion of such work, the security barrier shall be removed. Said work insofar as it affects Tenant's demised premises as described in (a) through (h) above shall be completed so that the premises will be an architecturally functioning unit ready for fixturing on or before November 1, 1984, (hereinafter referred to as the "completion date")....

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FOURTH: Upon delivery of the Relinquished Premises by Tenant to Landlord, that part of Schedule "A" of said lease ("Property Description") designated "Demised Premises" shall be amended by deleting from line 4, the figure "23,068" and substituting in lieu thereof the figure "17,067".

FIFTH: Effective on the date of delivery of the Relinquished Premises:

- (a) The Tenant shall be released from all liability and all obligations under the terms of said lease with respect to the Relinquished Premises accruing on or after the aforesaid date....

SEVENTH: The Landlord hereby grants to the Tenant such easements as may be required in and through the Relinquished Premises for the purpose of making repairs to pipe and ducts which serve the demised premises and are located above the ceiling of the Relinquished Premises. Landlord agrees that the Tenant shall have the unmolested use of and access to these areas for the aforesaid purposes.

NINTH: The Tenant hereby consents to:

- (a) alterations to the grade of the West Parking Area so that it is relatively on grade with both the lower level floor elevation of the buildings on the Entire Premises and U. S. Highway No. 73-75 on the West of the Entire Premises, including all necessary traffic control measures, paving, lighting and landscaping, and
- (b) changes to the West exposure of the upper level of the buildings and the facing of the lower level of said buildings so that a servicable and attractive exterior of such buildings including a new lower level mall entrance is created, and
- (c) the construction of an additional retail store building or buildings containing approximately 16,500 square feet of floor area on each level at the approximate location shown on the sketch attached hereto as Exhibit B and made a part hereof for illustrative purposes only, for the use and occupancy of stores offering merchandise or services at retail, and
- (d) such other changes and refurbishments as are shown on said plans dated March 21, 1984 by Pegram Associates.

The Landlord agrees that such additional building area shall be subject to the provisions of said lease and this Agreement, including but not being limited to Articles 17, 18, 20, 36 and 37 of said lease.

TENTH: The term of said lease is hereby extended to January 31, 1997 and the parties agree that this Agreement constitutes:

- (a) the exercise of the second and third options contained in Article 28 of said lease, and
- (b) the modification of said lease as hereby extended as provided elsewhere in this Agreement.

ELEVENTH: The number "4" on the first line of said Article 28 and the number "4th" on line 5 thereof are hereby deleted and the numbers "6" and "6th" respectively are substituted in place thereof.

TWELFTH: Except as herein expressly amended, said lease, as heretofore amended and modified, shall continue in full force and effect, being further by this instrument ratified and confirmed by the parties hereto.

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THIRTEENTH: The provisions of this Agreement shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

FOURTEENTH: The Landlord by the execution hereof acknowledges full performance to the date of this Agreement of all covenants in said lease required to be performed by the Tenant.

FIFTEENTH: The Landlord covenants that it has good and marketable leasehold title to the premises described in said lease as Entire Premises and the Owner has good and marketable title thereto in fee simple absolute and Landlord has full authority to make this Agreement.

SEVENTEENTH: In all respects, said lease as herein modified is hereby ratified and confirmed.

NINETEENTH: Landlord acknowledges that the performance and completion of Landlord's obligations in relation to the changes, construction, alterations, refurbishments and related work specified in this Lease Modification Agreement are guaranteed to Tenant by The Shopco Company and by Realty Investors Development Corp. Landlord warrants and represents that The Shopco Company has a contractual obligation to Landlord, under separate agreements, to complete such Landlord obligations. Landlord hereby agrees that if at any time Landlord is unable or unwilling to complete such Landlord obligations, the Landlord will promptly take all necessary and advisable steps, including but not limited to the assignment of any rights and the execution of any documents evidencing proper authority or agency or attorney-in-fact status, to enable The Shopco Company or Realty Investors Development Corp., or both, to perform under their guaranty to Tenant of the performance and completion of such Landlord obligations.

RECORDING AND NOTICE: This NOTICE OF LEASE MODIFICATION is made for the purpose of recording notice of the Agreement and is not intended to and shall not modify or amend any of the terms, covenants, conditions, limitations, or modifications contained in the Agreement and incorporated herein by reference.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed and affixed their respective seals to this Agreement as of the day and year first above written.

IN THE PRESENCE OF:

Walter D. Hughes
Jedidiah

SOUTHROADS MAIL LIMITED PARTNERSHIP

By: Alan C. Winick
ALAN C. WINICK, GENERAL PARTNER

LANDLORD

Debra A. Henderson

F. W. WOOLWORTH CO.

By: E. V. Manning
Vice President of United
States General Merchandise Group

ATTEST:

By: C. K. Schuch
Assistant Secretary

TENANT

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ACKNOWLEDGEMENTS

LANDLORD

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

On this 1st day of November, 1984, before me appeared Alan C. Winick, to me personally known, who being by me duly sworn, did say that he is the General Partner of SOUTHROADS MALL LIMITED PARTNERSHIP and that the foregoing instrument was signed in behalf of said limited partnership and he acknowledged said instrument to be the free act and deed of said limited partnership.

WITNESS my hand and official seal the date aforesaid.

MY COMMISSION EXPIRES:

Bertha L. Jones
NOTARY PUBLIC

BERTHA L. JONES
Notary Public, State of New York
No. 41-464528
Qualified in Queens County
Commission Expires March 30, 1985

TENANT

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

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, F. W. MANNING and G. K. Schubert, to me known and known to me to be the Vice President of United States General Merchandise Group of F. W. WOOLWORTH CO. and Assistant Secretary of F. W. WOOLWORTH CO., respectively, the corporation which executed the foregoing instrument, who acknowledge that they did sign and seal the foregoing instrument, for and on behalf of said corporation, being thereunto duly authorized by its Board of Directors, that the same is their free act and deed as such officers and the free act and deed of said F. W. WOOLWORTH CO.

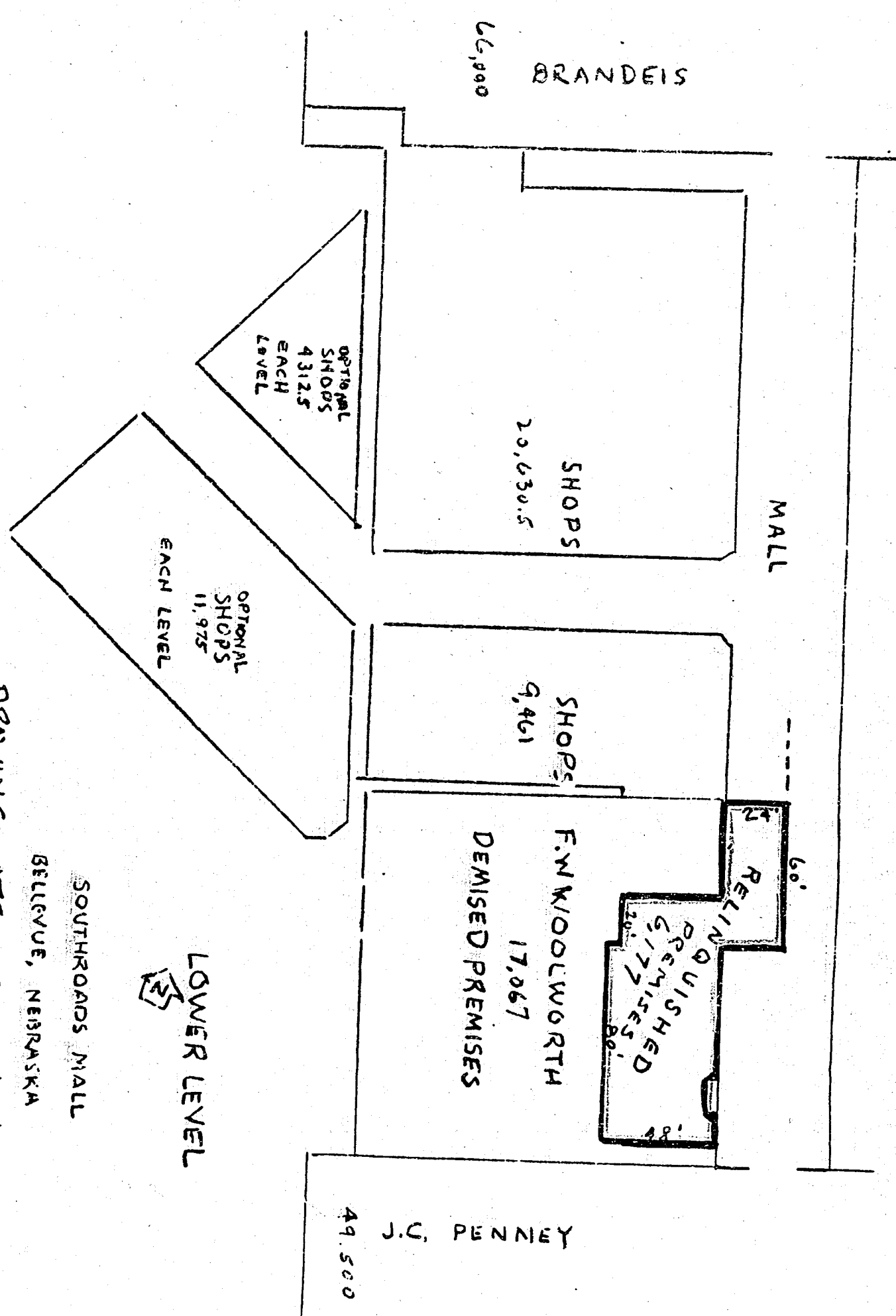
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 13th day of November, 1984.

MY COMMISSION EXPIRES:

James I. Gannon
NOTARY PUBLIC

JAMES I. GANNON
Notary Public, State of New York
No. 4794915
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires March 30, 1985

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DRAWING ATTACHED TO LEASE MODIFICATION
AGREEMENT DATED April 27, 1984 BETWEEN
Southroads Mall Limited Partnership, AS LANDLORD AND F.W.
WOOLWORTH CO. AS TENANT.