

Filed for record Mar 5, 1962, at 3:03 o'clock P.
Recorded Mar 7, 1962, at 2:36 o'clock P.

FRED HUNTRESS, County Clerk, Bexar County, Texas.

By Andres Coy Jr Deputy.

409707
RAY Ellison Homes, INC.



PHONE: GE 2-5243 • 103 SPRINGVALE DRIVE • SAN ANTONIO 27, TEXAS
HIGHWAY 90 WEST AT NEW LOOP 13

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May 31, 1961

H. E. Butt Grocery Company
P.O. Box 371
Corpus Christi, Texas

Gentlemen:

You and the undersigned have on this date executed a Lease Agreement covering a supermarket store in Valley-Hi Shopping Center.

This letter is to evidence our additional agreements which form a part of the Lease Agreement, although not written therein:

1. Rental.

Notwithstanding the provisions of the lease agreement to the contrary, it is hereby agreed that during the entire fifteen-year primary term of the lease no minimum rental will be due or payable. The rental to be paid during the primary term will be a sum equal to one and one-half percent (1½%) of the monthly net sales of Lessee's business conducted upon the leased premises. Such rental shall be paid on or before the 10th day of each month based on net sales for the preceding month. The term "net sales" shall have the same meaning as defined in the lease agreement.

During either or both of the option extension periods, the annual minimum rent shall be 80¢ per square foot. Should one and one-half percent (1½%) of the net sales in any year equal said minimum rental, and should there be additional net sales in such year over and above said amount, tenant shall pay an additional rental (in addition to the minimum rental) equal to one and one-fourth percent (1¼%) of such additional net sales.

2. Option.

The undersigned agrees that you will have an option to lease the supermarket space in the next future shopping center to be built by him or by any company controlled by him within a radius of five (5) miles of the Valley-Hi Shopping Center.

3. Opening.

You are not required to open your store in the Valley-Hi Shopping Center prior to February 15, 1962, but you may open prior to that date

Homes of Distinction

MEMBER NATIONAL ASSOCIATION HOME BUILDERS

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H. E. Butt Grocery Company

May 31, 1961

should you elect to do so.

Very truly yours,

Ray Ellison
Ray Ellison

ATTEST
[Signature]
Secretary

ACCEPTED AND AGREED TO:

H. E. BUTT GROCERY COMPANY

BY [Signature]
H. E. Butt, President

THE STATE OF TEXAS I
COUNTY OF BEXAR I

BEFORE ME, the undersigned authority, on this day personally appeared RAY ELLISON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16th day of June, 1961.

Chloe Petheil CHLOE PETHHEL
Notary Public in and for Bexar
County, Texas

THE STATE OF TEXAS I
COUNTY OF NUECES I

BEFORE ME, the undersigned authority, on this day personally appeared H. E. BUTT, President of H. E. BUTT GROCERY COMPANY, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporation.

Given under my hand and seal of office on this 22nd day of June, 1961.

Doris J. Howell
Notary Public in and for Nueces
County, Texas

DORIS J. HOWELL
Notary Public in and for Nueces County, Texas

THE STATE OF TEXAS I
COUNTY OF BEXAR I

THIS CONTRACT OF LEASE made and entered into this 31st day of May, 1961, by and between RAY ELLISON, hereinafter called "Lessor", and H. E. BUTT GROCERY COMPANY, a Texas corporation, acting herein by and through its officers hereunto duly authorized, hereinafter called "Lessee", and for such

W I T N E S S E T H :

I.

That Lessor has leased, let and demised, and by these presents does lease, let and demise unto Lessee the following described property lying and being situated in the County of Bexar, State of Texas, to-wit:

Being a store building containing sixteen thousand (16,000) square feet or more, located in a shopping center known as Valley-Hi Shopping Center, at the intersection of Interstate Highway No. 410 and Lackland City Drive, in Bexar County, Texas, said store building to be located at the location, but not necessarily of the same dimensions, as is shown on the plot plan of said shopping center attached hereto and made a part hereof.

II.

The effective date of this lease shall be the date that Lessee shall open the store located in said building for business, which said effective date shall be within not more than thirty (30) days after the date of the completion of said building and the acceptance thereof by Lessee, except that Lessee shall not be required to open said store until Winn's Variety Store of approximately nine thousand (9,000) square feet in the Center is open or is ready to open simultaneously, but Lessee may open at an earlier date at Lessee's option, said building to be completed within the time set out in paragraph VI.A. below, and the term hereof shall be for fifteen (15) years from and after said date.

III.

The rentals to be paid by Lessee to Lessor shall be the sum of One (\$1.00) Dollar per square foot per annum, payable in twelve (12) equal monthly installments in advance, or one and one-quarter (1 $\frac{1}{4}$ %) per cent of the net sales of Lessee's business conducted upon the leased premises computed on an annual basis for the fiscal year of Lessee, that is, from November 1st of one year to October 31st of the following year, whichever is the greater. The term "net sales" as used above shall mean the gross sales of said business less all refunds, revenues, allowances and all sales or excise taxes included in such gross sales and collected and remitted as such. Immediately after October 31st of each year during the initial term, or any renewal term or terms, of this lease, and immediately after the final termination of the term, or any renewal term, of this lease, Lessee shall furnish to Lessor a written statement of the net sales of the business conducted upon said premises for the preceding accounting

period, and shall pay to Lessor the excess percentage rental due, if any. The accounting period referred to shall be the fiscal year of the Lessee as above provided, except that as to the period between the inception date of the term of this lease, or any renewal thereof, and the first October 31st thereafter, and the period between the termination date of the initial term, or any renewal term hereof, and the last November 1st preceding said termination, the minimum rental shall be reduced in the same ratio as the length of the period is to the full fiscal year of Lessee. The rental for the first month of the term hereof shall be prorated for that portion of the first month of the term hereof from and after the effective date as above provided to the last day of said month, and thereafter the full amount of the minimum monthly rental shall be payable on the 1st day of each calendar month until the last fractional month of the term, or any extended term or terms hereof, which shall be prorated based upon the number of days in said month which shall be within the term of this lease.

HEB
June 15, 1961

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R. E. Paragon
By

The Lessor agrees to pay at 103 Springvale Drive, San Antonio, Texas, as and when due, each installment of rent as aforesaid to the Lessor or their order, or elsewhere as directed by Lessor. Lessee agrees to keep and maintain true and correct records and accounts showing all "net sales" as defined herein, and Lessor shall have the right at its expense during the term of this lease or any renewals or extensions thereof, and for one year thereafter, to have audited and examined such books and records to verify the statements as rendered by Lessee, and all information so obtained shall be kept strictly confidential.

IV.

Lessee shall have the option to renew this lease for two (2) successive terms of five (5) years each, the first beginning with the expiration of the primary term of fifteen (15) years, and the second beginning with the expiration of the first renewed term of five (5) years, said renewals to be effective without any notice by either party unless Lessee shall give to Lessor written notice mailed to the address at which rent is then payable, on or before

ninety (90) days prior to the expiration of the initial term of this lease, or the expiration of the first renewal term of this lease, respectively, that it does not desire to exercise such option. Any such renewal term or terms shall be upon the same terms and conditions as herein contained, except that the minimum rental shall be on the basis of eighty (80¢) cents per square foot per annum. Any hold-over by Lessee shall be on a month-to-month basis in absence of any other agreement.

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V.

Lessor agrees not to construct any building or structure on the vacant area south and west of the demised building, except as an extension of or to the original store building for the use of Lessee for an additional minimum rental of One (\$1.00) Dollar per square foot per annum, and until such time as the extension may be

built to leave said area open. Such addition to be constructed by Lessor at Lessee's option, but Lessee shall have no right to exercise said option if the remaining term of said lease be less than five (5) years unless at the time of the exercise of said option Lessee shall also exercise its option to extend the term of this lease for at least one five (5) year renewal term. In the event that Lessee shall require the construction of said addition, Lessee agrees, at Lessor's option, to construct said addition of comparable construction to the original, and Lessor shall pay Lessee therefor at Seven (\$7.00) Dollars per square foot.

VI.

A. Lessee agrees to construct the store building constituting the demised premises, all in accordance with the construction contract and exhibits thereto made and entered into by and between the parties hereto at the time of the execution of these presents, the same to be completed at the time of the completion by Lessor of the remainder of the shopping center. In the event that all of Lessor's construction shall not be completed by July 1, 1962, Lessee shall have the option to cancel this lease, such option to be exercised by Lessee by notice in writing to Lessor.

B. Lessor shall furnish and install all outside parking area lighting, together with the poles supporting the same.

C. Lessee shall furnish all trade fixtures and equipment and all heating and cooling equipment and the installation thereof,

which such fixtures so furnished by the Lessee shall remain the property of the Lessee and may be removed by Lessee providing no un-repaired damage is done to the building.

D. Lessor shall pave the entire parking and drive areas which are shown on the plot plan attached hereto and marked Exhibit A, and shall complete the paving and lighting thereof within the time provided for the completion of the other improvements, and shall construct the walks and curbs upon said plot plan within said period, all of said paving, walks and curbs to be constructed at Lessor's sole cost and expense, and which shall be maintained in a reasonable state of repair during the term, or any renewal term,

of this lease, at Lessor's sole cost and expense. During the term of this lease, or any renewal thereof, neither the Lessor nor the Lessee shall in any manner obstruct the area designated as "parking area" on the plot plan attached hereto and marked Exhibit A, and the parking area shall never be reduced below three square feet of parking for each one (1) square foot of building.

E. The Lessee shall maintain and keep in repair all glass, including plate glass windows and doors, except such plate glass damage as may be covered by Lessor's insurance under a standard fire and extended coverage policy.

F. All signs in said shopping center shall be confined to locations on the building except one Center identification sign, and any pylon constructed by Lessee for its use.

G. The final construction and parking layout of said shopping center shall be subject to the approval of Lessee, which approval will not be unreasonably withheld.

H. The shopping mall connecting the various stores in said shopping center shall be summer-winter air conditioned and the width thereof shall be subject to approval of Lessee.

VII.

Lessee shall promptly execute and fulfill all the ordinances of the City of San Antonio applicable to said premises, and all orders and requirements imposed by the Board of Health, Sanitary and Police Departments for the correction, prevention and abatement of nuisances in, upon or connected with the premises during the term of this lease, and to pay for all utility charges while Lessee occupies the premises, including gas, electricity, water, sewer,

garbage removal and heating and air conditioning, and upon the termination hereof, shall deliver up said premises in good condition, ordinary wear and tear, damage by fire, water or act of God alone excepted. Lessor shall keep the exterior (except plate glass windows and doors) of said building in all respects in good repair and condition for the purpose of retailing during the term of this lease and any extension thereof, including roof and walls, so that

same shall be tenantable, but Lessor shall not be liable to make any repairs until after reasonable notice by Lessee that any repair is necessary. Lessee shall maintain and repair all fixtures and interior of said building.

VIII.

Lessee shall have the right, during the term or any extended term of this lease, to assign this agreement or underlet the premises, or any part thereof to any type of business to which Lessor has not theretofore granted the exclusive right to operate and which is then operating in Valley-Hi Shopping Center, without the consent of the Lessor; but any such assignment or underletting of the premises, or any part thereof, shall not relieve the Lessee of any obligation or condition of this agreement, and all liens or rights herein retained by Lessor shall remain binding and unimpaired, and the sublessee or assignee shall comply with all other covenants and agreements of the Lessee.

IX.

Lessor agrees that it will not permit the use of any property in said Valley-Hi Shopping Center, other than the leased premises for the operation therein or thereon of any business selling groceries, meats, produce, fish, bakery products or frozen foods, except for consumption on the premises, nor for the operation of a motion picture show. No bowling alley shall be operated in that portion of the Center lying within 300 feet of Lessee's store. Lessor further covenants and agrees that for a period of ten (10) years from the date of occupancy of the demised premises by Lessee, Lessor will not use or occupy or permit the use or occupancy of any other space for the operation of a supermarket (not including a drive-in food store of not more than 3,000 square feet) on any land owned or controlled either directly or indirectly by Lessor, his

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heirs, successors or assigns within a radius of three miles of the Valley-Hi Shopping Center. Lessee agrees that for a period of ten (10) years from the date of occupancy of the demised premises by Lessee, Lessee, its successors or assigns, will not own or operate, either directly or indirectly a supermarket (other than the demised

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premises) or discount store within a radius of three miles of the Valley-Hi Shopping Center.

X.

During the term of this lease, or any extended period thereof, Lessee shall have unobstructed use of the parking area upon all the plot plan attached hereto and marked Exhibit A, Lessor to pay all costs of the lighting thereof, it being understood that the Lessee does not have the exclusive use of the parking area, but the same shall be available to other tenants and their customers in the shopping center. The Lessee agrees to require its employees to park their cars in space designated by Lessor, but violation of this requirement by Lessee's employees shall not create any liability upon the Lessee, nor shall such violation be grounds for cancellation of this lease.

XI.

In case the premises or any part thereof shall, during the term of this lease, or any extended term hereof, be destroyed or damaged by fire or inevitable accident so that the same shall be rendered unfit for use and habitation, then and in such event the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be suspended or abated until the premises shall be put in proper condition for use by Lessor, who shall restore said premises as soon as reasonably possible under the circumstances. Provided, however, that if such damage shall occur during the last thirty-six (36) months of the term or first renewal term of this lease, Lessor shall not be obligated to restore said premises unless Lessee shall immediately exercise the option it has for the next ensuing renewal term; and provided further that if such damage shall occur during the last thirty-six (36) months of the second renewal term, Lessor

shall not be obligated to restore said premises. In the event that any portion of the original 54,000 square feet of the Valley-Hi Shopping Center shall be destroyed or damaged by fire or inevitable accident, Lessor shall be obligated to restore said portion as soon as reasonably possible under the circumstances; and should Lessor fail to do so Lessee may declare its intent to terminate this lease

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by notice in writing to Lessor; and should Lessor not begin the restoration of said premises within thirty (30) days after receipt of such notice, this lease shall cease and terminate.

XII.

In the event of the existence of a lien against the above described premises, Lessor shall secure the ratification of this lease by the lienholder or lienholders to the end that in the event of a foreclosure of any such lien, the rights of Lessee under the terms of this lease shall not be terminated thereby.

XIII.

That in the event of default in any of the covenants herein, including the covenant to pay rents, Lessor may enforce the performance of this lease in any modes provided by law, and this lease may be forfeited at Lessor's discretion if such default continues for a period of thirty days after Lessor notifies said Lessee of such default and its intention to declare the lease forfeited, such notice to be sent by Lessor by mail, or otherwise, to the main office of Lessee in Corpus Christi, Texas; and thereupon (unless Lessee shall have completely removed or cured said default) this lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof, and Lessor's agent or attorney shall have the right, without further notice or demand, to re-enter and remove all persons and Lessee's property therefrom without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or breach of covenant, or Lessor's agent or attorney may resume possession of the premises and relet the same for the remainder of the term at the best rent said agent or attorney may obtain for account of Lessee, which shall make good any deficiency; and Lessor shall have a lien as security for the rent aforesaid upon all the goods, wares and chattels, im-

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plements, fixtures, furniture, tools and other personal property which are or may be put on the demised premises. The Lessee agrees to pay all costs, including a reasonable attorney fee in the event Lessee should make any default hereunder and it shall become necessary for Lessor to employ an attorney or institute legal proceedings.

XIV.

In the event that Lessee shall become bankrupt or shall make a voluntary assignment for the benefit of creditors, or in the event a receiver of Lessee shall be appointed, then, at the option of Lessor and upon five days' notice to Lessee of the exercise of such option, this lease shall cease and come to an end.

XV.

Lessor hereby warrants that it has full authority to execute this lease, and warrants to Lessee that upon payment of said rental and the performance of the other covenants of this lease, Lessee may quietly have, hold and enjoy the demised premises during the term hereof, and Lessor warrants and agrees to defend such peaceable possession to Lessee against the lawful claim of any and all persons whomsoever. Lessor further warrants that there are no zoning restrictions or deed restrictions that would prohibit the use of the shaded area shown on the plot plan and marked Exhibit A for such parking.

XVI.

Lessor shall provide fire insurance upon said building at its sole cost and expense; and it is understood and agreed that in no event shall Lessee be liable to Lessor, his successors or assigns, or subrogees, for any loss or damage to said building from fire or act of God, and to this end Lessor agrees that the insurance carried shall be so written as to protect Lessee from liability to Lessor, his successors, assigns or subrogees, from any loss or damage to said leased premises, regardless of whether said fire was caused by negligence of Lessee, its agents, servants or employees, or otherwise, so long as such type of insurance coverage is available under the laws and regulations governing the writing of such insurance in the State of Texas.

Lessor shall not be liable for any damage to persons or property caused by any act of negligence of Lessee, and without any negligence of Lessor, or due to the interior of the building or the plate glass, windows and doors thereof becoming out of repair, and Lessee agrees to hold Lessor harmless from all claims for any such damages.

XVIII.

Lessor agrees to complete buildings with a minimum square footage of fifty-four thousand (54,000) square feet, including Lessee's store space in the Valley-Hi Shopping Center to be finished at the same time as Lessee's space and to include a Winn's Variety Store of approximately 9,000 square feet.

XIX.

Lessor reserves the right to assign his interest in this lease, either as collateral or by absolute assignment. In the event of absolute assignment, Lessor shall not be liable for defaults occurring subsequent to such assignment.

XX.

In consideration of building and installing all necessary items of construction and equipment to provide a completely enclosed air conditioned mall area as shown and described on the shopping center plot plan marked Exhibit A, Lessee hereby covenants and agrees that it will pay to the Lessor the sum of one-third of one cent per square foot of leased space per month during the term of this lease and extensions thereof, said sum to be paid at the time of payment of the monthly rental.

WITNESS the hands of the parties hereto in duplicate originals the day and year first above written.

Ray Ellison
RAY ELLISON

LESSOR

ATTEST:
[Signature]

H. E. BUTT GROCERY COMPANY

BY *[Signature]*
H. E. BUTT

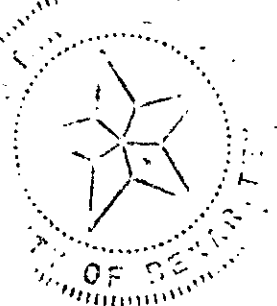
LESSEE

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THE STATE OF TEXAS }
COUNTY OF BEXAR }

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared RAY ELLISON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 7th day of June, 1961.



Chloe Petzel
Notary Public in and for Bexar County, Texas

THE STATE OF TEXAS }
COUNTY OF }

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared H. E. BUTT, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said H. E. BUTT GROCERY COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 15th day of June, 1961.

Doris J. Howell
Notary Public in and for Nueces County, Texas
DORIS J. HOWELL
Notary Public in and for Nueces County, Texas

Filed for record Mar 5, 1962, at 3:28 o'clock P.M.
Recorded Mar 7, 1962, at 2:38 o'clock P.M.

FRED HUNTRESS, County Clerk, Bexar County, Texas.
By Andres Cruz Jr Deputy.

409708

STATE OF TEXAS }
COUNTY OF BEXAR }

KNOW ALL MEN BY THESE PRESENTS:

That we, JOE A. LOESSBERG and wife, DOROTHY B. LOESSBERG of Bexar County, Texas, in consideration of the sum of TEN AND NO/100 ----- DOLLARS, (\$ 10.00) and other good and valuable considerations, to said grantor s in hand paid by the grantee s hereinafter named, the receipt of which is hereby