

TITLE TO REAL ESTATE

Tenant agrees to keep an accurate and separate account of the gross sales made by it from said leased premises and agrees to deliver to landlord at the time of each said quarterly payment a statement of such gross sales from said leased premises for the period covered by such payment. Landlord agrees to keep such information with respect to sales and business of tenant confidential so far as possible, consistent with the enforcement of landlord's rights hereunder. It is agreed that tenant does not and has not made any representations or guarantees to landlord as to the amount of business tenant may do in said leased premises.

It is agreed that landlord shall have the right to have that part of tenant's records necessary to verify sales made by it in the demised premises examined by certified public accountants not oftener than once a year for the purpose of verifying tenant's sales in the demised premises.

Gross sales from said leased premises, however, and said percentage thereon shall be figured on an annual basis beginning January 1st and ending December 31st of each year during said term and said additional rental payments, if any, made to landlord at said quarterly periods during each year shall at the end of each calendar year be adjusted, if necessary, on said annual basis, so that the total amount received by landlord each calendar year shall be at least said minimum rental but in no event shall exceed an amount equal to said percentage on said total sales for each year. In the event said term shall begin after the first day of a quarter such fraction of said quarter shall be included in the succeeding quarter and said additional rental, if any, accruing therefrom need not be adjusted or paid for until the end of the succeeding quarter.

The term "gross sales" as herein used shall include the amount received from the sale of goods, wares, merchandise and services of every kind and character sold in or upon said leased premises without deduction or allowance for costs, charges or expenses for purchase, sale, transportation and handling but shall not include claims collected from transportation companies, or the selling price of goods which are delivered in exchange for goods returned, or the selling price of goods returned without exchange or the selling price of goods returned to the manufacturer or otherwise, or transferred to other stores of tenant, nor shall same include donations or sales for charity or receipts from the sale of government stamps, obligations, etc. from which tenant receives no profit, nor shall the total price of any merchandise sold be deemed to include any over-charge, over-tax, sales tax or other tax or cost imposed upon the sale of commodities by any governing authority for tax purposes nor shall the same include any promissory notes or other forms of hypothecation purchased and/or sold by tenant and not in the course of its merchandising business nor shall same include any sales from other property than the property hereby demised but same shall include 5% of the net receipts to tenant from vending machines, telephones, weighing machines and other concessions, if any, operated by under-tenants or concessionaires of tenant in said premises.

Anything herein to the contrary notwithstanding, it is agreed that said additional rental, if any, shall be based only on the sale of merchandise in said leased premises in the ordinary course of business and shall not apply to any sale or transfer of the entire stock of merchandise of tenant in said leased premises or of the merchandise and business of tenant located and conducted in said leased premises to another person, firm or corporation or to any successor of tenant's business in whole or in part which tenant may organize or cause to be organized for that purpose.

It is contemplated that landlord will deliver possession of said premises with the new building to be erected thereon by landlord completed to tenant about the first day of January, 1950. Landlord agrees to notify tenant in writing 90 days in advance of when landlord expects to deliver possession of said premises with the building completed to tenant. As hereinbefore provided, the term of this lease begins on the delivery of said premises with the new building to be erected thereon by landlord fully completed and the acceptance thereof by tenant and the term of this lease runs for fifteen (15) years thereafter. It is agreed that tenant shall have the right and option to cancel and terminate this lease, if possession of the premises with the new building fully completed thereon is not delivered to tenant by the first day of January, 1952, and such option and right to tenant shall continue until tenant actually accepts possession of said premises and may be exercised by tenant at any time after the first day of January, 1952, prior to the date of acceptance of said premises by tenant.

Landlord understands that on account of the Christmas season tenant does not desire to open any new stores between November 1st of any year and January 1st of the following year. It is, therefore, agreed that if landlord does not complete the building in time for tenant to open its store for business therein on or before November 1st, 1950, or November 1st, 1951, tenant shall not be obligated to accept possession of the demised premises until January 1st, 1951 or January 1st, 1952, as the case may be.

Landlord covenants and agrees during the entire term of this lease and any extensions or renewals thereof to pay any and all lawful taxes, charges and assessments, both general and special of every kind and for every purpose that shall or may hereafter by any lawful authority be imposed, levied or assessed upon the demised premises or any part thereof and any buildings and