

ROCK 745 DECEMBER 1955

transferee (other than a sublessee) shall have executed and delivered to Lessor and the Mortgagee an instrument, satisfactory in substance and form to Lessor and the Mortgagee, assuming all the obligations of Lessee under this Lease (including the obligations of Lessee under this Section 16.2 with respect to any subsequent transfer or assignment by such assignee or transferee) and the Assignment as to the Property or Properties so assigned or transferred and agreeing that such assumed obligations shall be enforceable directly against such assignee or transferee by Lessor and Mortgagee; (ii) Lessor, Lessee and such assignee or transferee shall have executed and delivered to themselves and the Mortgagee an instrument, satisfactory in form and substance to the Mortgagee, eliminating from this Lease, from and after the date of such assignment or transfer, as to the Properties so assigned or transferred, Sections 6.2, 6.3, 9.2, 9.3(2), 10.1, 17.1, 17.2, 17.3 and 17.4 and the second paragraph of Section 12.6; and (iii) there shall have been executed and delivered to Lessor and Mortgagee a certificate of the President or a Vice President and the Treasurer or an Assistant Treasurer of Lessee, to the effect that in the judgment of the officers executing such certificate the assignee or transferee has financial resources reasonably adequate for its performance pursuant to the assumption provided for above and that the assignment or transfer is not in its overall effect against the interests of Lessor or persons deriving an interest through Lessor; and (iv) there shall have been executed and delivered to Lessor and Mortgagee a certificate of the President or a Vice President and the Treasurer or an Assistant Treasurer of Lessee, stating that, as of the date of such assignment or transfer, there exists no condition or event which at such time, or after notice or lapse of time or both, would constitute a default under this Lease, the Ground Leases, the Genesco Agreement or the Assignment and that no such condition or event will result from such assignment or transfer. The provisions of clauses (i) and (ii) above, except as such provisions refer to Sections 6.2 and 6.3, shall not apply in the event of an assignment or transfer by Lessee to any Affiliate of Lessee, which is an Affiliate at all times thereafter during the term of this Lease, or if Lessor and Mortgagee shall have approved in writing such transfer or assignment and agreed to the waiver of such clause (ii).

No assignment, transfer or sublease, and no assumption, shall affect or reduce any obligations of Lessee hereunder and the obligations of Lessee hereunder shall be in nowise impaired and shall remain in full force and effect until the end of the term of this Lease. This Lease and all obligations of Lessee hereunder shall continue after any such assignment, transfer, sublease or assumption in full force and effect as the obligations of a principal and not as the obligations of a guarantor or surety. To charge Lessee hereunder after any such assignment or transfer no demand shall be required, nor shall there be required any notice of any default in any of the terms, covenants or conditions of this Lease, Lessee hereby expressly waiving any such demand or notice. Lessee agrees that it will not at any time during the term of this Lease assert any claim against, or offset to, the enforcement of this Lease by reason of any act or omission to act of any such assignee, transferee or sublessee.

16.3. Merger, Consolidation or Sale. Lessee covenants and agrees that, unless it is the surviving corporation, it will not consolidate or merge with or into any other corporation or suffer or permit any other corporation to consolidate or merge with or into Lessee, nor will Lessee sell or transfer all or substantially all of its property or assets unless the corporation formed by or resulting from any such consolidation or merger, or which shall have received a transfer of all or substantially all of the property and assets of Lessee, shall have a consolidated net worth, as determined in accordance with generally accepted accounting principles, at least equal to the consolidated net worth, similarly determined, of Lessee, immediately prior to such consolidation, merger or transfer and unless prior thereto there shall have been delivered to Lessor and Mortgagee:

1. An Opinion of Counsel that such consolidation, merger, sale or transfer is not in violation of applicable law or any contractual obligation of Lessee.
2. A certificate of a firm of independent public accountants of recognized national standing certifying that the net worth of the aforesaid corporation is in compliance with this Section 16.3.