

(b) The Lessee has furnished to the Trustee its Annual Reports for the fiscal years ended October 31, 1957 through July 31, 1963 containing consolidated balance sheets of the Lessee and its Consolidated Subsidiaries (as defined in the notes to the consolidated financial statements contained in said Annual Reports), as at the end of such fiscal years and consolidated statements of income and earned surplus of the Lessee and such Subsidiaries for such fiscal years, all as certified by Messrs. Peat, Marwick, Mitchell & Co., independent certified public accountants. Such financial statements are complete and correct and have been prepared in accordance with sound accounting principles consistently followed throughout the periods indicated. Such balance sheets accurately present the condition of the Lessee and such Subsidiaries, as at the respective dates indicated and such statements of income and surplus accurately present the results of the operations of the Lessee and such Subsidiaries, for the respective periods indicated. At July 31, 1963, the Lessee had no Subsidiaries not included as Consolidated Subsidiaries except certain foreign subsidiaries and those which engage in unrelated operations, all of which, in the aggregate, are not considered significant.

(c) Since July 31, 1963 there has been no material adverse change in the assets, liabilities, condition (financial or other) or business of the Lessee and its Consolidated Subsidiaries from that set forth or reflected in the balance sheet as at that date referred to in paragraph (b), other than changes in the ordinary course of business which have not been, in the aggregate, materially adverse.

(d) There is no action, proceeding or investigation pending or known to be threatened, nor any known basis therefor,

(i) which questions the validity or enforceability of the agreement dated the date hereof between the Assignor, the Lessee and the Trustees (the "Genesco Agreement"), the Lease, this Agreement or the Ground Leases (as defined in the Lease), or any action taken or to be taken pursuant hereto, or

(ii) which might result in any material adverse change in the business, prospects or condition (financial or other) of the Lessee and its Subsidiaries or their properties or assets, except that in 1961, a private treble damage action was filed by the assignee of Husseo Shoe Company and others

against the Lessee in the United States District Court for the Southern District of New York claiming violation of the anti-trust laws, alleging that the Lessee conspired with other parties bringing about the destruction of plaintiffs' businesses which were allegedly worth \$11,000,000; the proceeding is now in its preliminary stages and no date has been set for trial; the Lessee believes the allegations to be unfounded and counsel representing Lessee believe that the facts support the Lessee's position.

(e) Since July 31, 1963, neither the business, prospects or condition (financial or other) of the Lessee and its Subsidiaries nor their properties or assets in the aggregate have been materially adversely affected (whether or not insured) as the result of any legislative or regulatory change or any revocation of license or right to do business or any fire, explosion, flood, drought, wind-storm, earthquake, accident, casualty, labor trouble, riot, sabotage, confiscation, condemnation, requisition, embargo or act of God or of the public enemy or of armed forces, or otherwise.

(f) (i) The Lessee's consolidated net earnings available for fixed charges for the period of the five fiscal years next preceding the date hereof have averaged per year not less than one and a half times its average annual consolidated fixed charges applicable to such period, and, during one of the last two fiscal years of such period the Lessee's consolidated net earnings available for fixed charges have not been less than one and a half times its consolidated fixed charges for such fiscal year. As used in this paragraph the terms "net earnings available for fixed charges" and "fixed charges" shall have the respective meanings assigned to them in Section 81(2) of the New York Insurance Law.

(ii) The Lessee's average consolidated net earnings for the seven fiscal years preceding the date hereof have been not less than four times its average fixed charges for such seven fiscal years. As used in this paragraph, the terms "net earnings" and "fixed charges" shall have the respective meanings ascribed thereto in paragraph 14A, Section 63 of Chapter 175 of the Annotated Laws of Massachusetts.

(g) All tax returns and reports of the Lessee and its Subsidiaries required by law to be filed have been duly filed, and