UNITED STATES BANKRUPTCY COURT DISTRICT OF Deleware

PROOF OF CLAIM

Name of Debtor: Fleming Companies, Inc et al

Case Number: 03-10945 (MFW)

This form should not be used to make a claim for an administrative expenses arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S.C § 503

Name of Creditor (The person or other entity to whom the debtor owes money or property)

William T Taff

Name and address where notices should be sent

Moore Stout Waddell & Ledford, P. C
Attorneys at Law
P O Box 1345
Kingsport, TN 37662
Telephone number (423) 246-2344

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☑ Check box if the address differs from the address on the envelope sent to you by the court

REC'D JUL 31 2003

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor: N/A

Check here ☐ replaces ☐ amends if this claim a previously filed claim dated _____

1 Basis for Claim

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes _____
☑ Other Damages from rejection of Lease

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages, salaries, and compensation (fill out below)

Your SS #
Unpaid compensation for services performed from _____ (date) to _____ (date)

2 Date debt was incurred April 1, 2003

3 If court judgment, date obtained

4 Total Amount of Claim at Time Case Filed $ 26,576 93

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim

9 Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral
9 Real Estate 9 Motor Vehicle
9 Other_____

Value of Collateral $

Amount of arrearage and other charges at time case filed included in secured claim, if any $_____

6 Unsecured Priority Claim

9 Check this box if you have an unsecured priority claim

Amount entitled to priority $

Specify the priority of the claim

9 Wages salaries or commissions (up to $4 300) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 U S C § 507(a)(3)
9 Contributions to an employee benefit plan 11 U S C § 507(a)(4)
9 Up to $1 950* of deposits toward purchase lease or rental of property or services for personal family or household use – 11 U S C § 507(a)(6)
9 Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)
9 Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
9 Other specify applicable paragraph of 11 U S C § 507(a)(____)

** Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 Supporting Documents *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim

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Date: 7/15/03

Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

William T Taff

By Robert L Arrington, Attorney

Penalty for presenting fraudulent claim Fine of up to $500,00 or imprisonment for up to 5 years, or both 8 U S C 88 152 and 3571

Fleming Companies Claim

01828

SCHEDULE OF CLAIM
(1 YEARS RENT)

Base Rent	$ 12,619 33
County Taxes	$ 8281 60
City Taxes	$ 3,780 00
Insurance	$ 1,896 00
TOTAL RENT	**$ 26,576 93**

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Addendum to
FLEMING COMPANIES, INC.
CONVENTIONAL STORE
STANDARD SPECIFICATIONS FOR SUPERMARKETS
January 25, 1994

The following are revisions to the referenced specifications dated February 1991.

See 1.10.3	Neither Lessor nor his Contractor shall reimburse Lessee for criteria plans
See 1.10.4	Neither Lessor nor his Contractor shall pay Lessee for an evaluation of the Environmental Site Assessment.
See 4.3 5	Grocery storage area shall have exposed block walls and steel stud partitions covered with 5/8" sheetrock and 1/2" plywood (up to a height of 8 ft.).
See 5.1 2	Lessor's Contractor will provide depressions in concrete floor for Lessee's prefabricated freezer floor.
See 9.3.1	Neither Lessor nor his Contractor shall provide an allowance to the Lessee for interior decor.
See 11.2.9	Neither Lessor nor his Contractor has included phone service for a sprinkler monitoring system.
See 12 5	Lessee shall furnish all stainless steel sinks, Lessor's Contractor will install
See 12.6.1	Neither Lessor nor his Contractor shall be responsible for a water recovery system
See 12.6.3	No water softener will be used on the project
See 12.10	No disposal unit will be used on the project
See Div. 13	Lessor's Contractor is providing a HVAC system that utilizes wall returns rather than underfloor ducts Lessee will provide the airhandler equipment and duct furnace. All condensers will be site mounted. Lessor's Contractor will install equipment and provide and install ductwork.

See 13 7	Lessor's Contractor will provide and install unit heaters for the storage area of the project
See 13.10.5	Lessee will provide hoods complete with fire extinguishing system, Lessor's Contractor will install.
See 13.13	Lessor's Contractor is providing a slab for the Lessee's Motor Room rather than work described.
See 14 9.1	No emergency generator will be used on the project.
See Cut Sheets	Work includes details shown on cut sheets when store design incorporates the components detailed. In cases where cut sheets indicate work not in store design the Lessor assumes no responsibility for that work.

BUILD AND LEASE AGREEMENT

THIS BUILD AND LEASE AGREEMENT (the "Lease") is made and entered into this 16th day of December, 1994, by and between William T. Taff, whose address is 711 West Stone Dr, Kingsport, Tennessee 37660, (hereinafter called the "LANDLORD") and FLEMING FOODS OF TENNESSEE, INC., a Tennessee Corporation having its principal place of business at Johnson City, Tennessee (hereinafter called the "TENANT").

W I T N E S S E T H:

WHEREAS, the LANDLORD desires to construct a building (hereinafter called the "Building") containing approximately 26,567 square feet to be located at Church Hill, Tennessee and more particularly described on Exhibit "A" hereto and TENANT desires to lease the Demised Premises upon the following terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the rents to be paid and the mutual covenants to be performed, the parties agree as follows:

ARTICLE I. **Grant of Lease**

1.01. COVENANTS AND CONDITION PRECEDENT. (a) The parties hereto agree that this Lease sets forth all the agreements, covenants and conditions, whether express or implied, between the parties, and supersedes any prior oral or written agreements between the parties with respect to the premises hereinafter described. The following exhibits are attached to this Lease and made an integral part hereof·

Exhibit "A" - Legal description of real property upon which the Demised Premises will be located (the "Real Property")

Exhibit "B" - Plot Plan to the Real Property
Exhibit "C" - Title Exceptions

Exhibit "D" - Minimum Basic Building Requirements (the "Plans and Specifications")

1.02. GRANT OF LEASE. LANDLORD hereby leases to TENANT and TENANT hereby leases from LANDLORD the Building, the real property including all improvements now or hereafter erected therein, all adjacent outside areas that are under the exclusive control of TENANT and all right and appurtenances thereunto belonging as shown and outlined on Exhibit "B" (hereinafter the "Demised Premises").

1.03. OWNERSHIP/ QUIET ENJOYMENT. LANDLORD covenants that it has good title to said Real Property, and that the TENANT, upon paying the rentals herein reserved and observing, performing and keeping all and singular the covenants and agreements herein specified to be kept and performed by TENANT, shall, and may lawfully, peacefully, and quietly have, hold, use, occupy, possess and enjoy the premises hereby leased for and during the term hereof, without any hindrance, eviction, or interruption of or by the LANDLORD, or any person or persons. LANDLORD covenants that no zoning or other ordinance, law, regulation, or restrictive covenants prevent use of the Demised Premises for the intended purpose.

1.04. IMPINGEMENT. Except as herein provided for, LANDLORD warrants and guarantees that there are no prior documents of record, nor unrecorded documents within the knowledge of LANDLORD, which will permit third parties to impinge on the rights of TENANT under this Lease by use or occupancy of adjacent property, or of the Real Property, the parking area, or the other common use areas as shown on Exhibit "B". LANDLORD shall not make any deviations or

variations in the construction or use of the plotted area from that shown on Exhibit "B" without the prior written consent of TENANT

ARTICLE II. **Definitions.**

2.01. DEFINITION OF TERMS. For purposes of this Lease, and unless particularly defined within a section of an Article below, the terms and phrases defined in this Article shall have the following meanings.

(A) "Abate" as used herein with reference to payments of rent shall mean TENANT shall NOT be obligated to pay any rents to LANDLORD during such periods when rent shall be abated, nor shall TENANT be obligated to reimburse LANDLORD for the lost rent after the condition that caused such abatement of rent has been cured.

(B) "Additional Rent" shall mean any payments of rent over and above Base Rent as TENANT'S share of costs for real property taxes and insurance.

(C) "Base Rent" shall mean the minimum monthly rent as more particularly set forth in Article 6.01.

(D) "Base Term" shall be the initial term of this Lease for the number of years as set forth in Article 4.01.

(E) "Capital Improvement" shall mean a valuable addition made to the Building or Demised Premises in excess of ordinary repairs and maintenance and is properly chargeable to capital expense or capital improvements under recognized and accepted accounting principles and standards.

(F) "Change Order" shall mean any change to the Construction Schedule or Plans and Specifications and shall have the meaning commonly used in the construction trade.

(G) "Commencement Date " shall mean the date on which the Base Term begins and is more particularly defined in Article 4.01.

(H) "Commencement of Construction" shall mean the date on which LANDLORD or its/his contractors start the pouring of concrete for the foundations of the building.

(I) "Completion of Construction" shall mean the date on which LANDLORD or its/his contractor substantially completes construction of the Building in accordance with the Plans and Specifications, but exclusive of any equipment or fixtures to be installed by TENANT and exclusive of those punch list items (as the term is used in the construction trade) which in TENANT's sole discretion do not materially affect TENANT's use of the Building.

(J) "Default" shall mean any event or condition which after the giving of notice or lapse of time or both would become an Event of Default.

(K) "Demised Premises" shall mean and include the Building, the real property including all improvements now or thereafter erected therein, all right and appurtenances thereunto belonging and all adjacent outside areas that are under the exclusive control of TENANT.

(L) "Event of Default" shall have the meaning as defined in Article 17.02 hereof.

(M) "Force Majeure" shall mean any period of delay which arises from or though Acts of God; strikes, lockouts, or labor difficulty; sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; delays caused by a third party not under the control of LANDLORD; and other caused beyond the reasonable control of LANDLORD. Force Majeure shall not include the inability of LANDLORD to obtain financing, either a construction loan or permanent financing.

(N) "Latent Defect" is a defect which is a departure from the architect's working drawings and/or the Plans and Specifications and which is not apparent upon an ordinary and reasonable inspection by a professional engineer qualified to make such inspection, normal wear and tear excepted.

(O) "Lease Year" shall mean the following:

1. With reference to the first lease year, the period from the Commencement Date of this Lease through the last day of the twelfth (12th) full calendar month thereafter.

2. With reference to any succeeding lease year, except the last lease year, twelve (12) full consecutive calendar months commencing on the first day of the calendar month next succeeding the last day of the preceding lease year.

3. With reference to the last lease year, the period commencing on the first day of the calendar month next succeeding the last day of the preceding lease year and terminating on the last day of the Base Term of this Lease or the last day of the last Renewal Period thereof.

(P) "Mortgagee" shall mean any recognized financial institution such as a bank, savings and loan association, college or university, pension, retirement or trust fund, or insurance company which holds a first mortgage or first deed of trust on the Real Property.

(Q) "Plans and Specifications" shall mean that packet of specifications and design drawings that define the minimum design and plan requirements required by TENANT to constitute a supermarket (Exhibit "D" hereto)

(R) "Punch List" shall mean TENANT's list of defective construction items identified to LANDLORD upon inspection at the Completion of Construction.

(S) "Real Property" shall mean that parcel of land upon which the Building is located and as more specifically identified by the legal description on Exhibit "A" hereto.

(T) "Real Property Taxes" as used in this Lease shall mean and include all taxes, levies and assessments made by any governmental authority upon any portion of the property comprising the Demised Premises, or any tax in lieu thereof; provided, however, that there shall be excluded therefrom any franchise, excise, estate, inheritance, gift, net income or profits taxes imposed upon LANDLORD or any tax based on or measured by the net income of LANDLORD.

ARTICLE III. **Construction.**

3.01. LANDLORD'S OBLIGATION TO CONSTRUCT. LANDLORD shall construct or cause to be constructed upon the Real Property identified on Exhibit "A":

(i) The Building with such frontage and minimum ground floor area, as located within the areas shown on Exhibit "B" and in accordance with the Plans and Specifications (Exhibit "D") with all working drawings prepared by LANDLORD and reviewed by the Retail Development Division of TENANT. A copy of the Plans and Specifications shall be delivered by LANDLORD to its contractor prior to commencement of construction of the Building.

(ii) The Facilities as shown on Exhibit "B" including without limitation: (aa) a loading area for TENANT's exclusive use to be located in the area shown as "Loading Area" on Exhibit "B" and a service drive with a minimum width of twenty (20) feet connecting the Loading Area with a public street or highway; (bb) parking areas containing the minimum number of spaces provided for within the areas shown therefor on Exhibit "B" [including parking spaces of such number and configuration in front of the Building as is delineated on Exhibit "B"], and (cc) entrances and exits from and to public streets or highways as shown on Exhibit "B".

(iii) Pylon signs any and all of which LANDLORD installs shall identify TENANT or TENANT's intended Subtenant in the top position thereon.

3.02. COSTS OF CONSTRUCTION AND PERMITS. All of the construction shall be done by LANDLORD or its/his contractor at LANDLORD's own cost and expense, in a good and workmanlike manner,

using first quality materials in compliance with the Plans and Specifications and all laws, rules and regulations of all governmental authorities having jurisdiction thereof. Portions of the Facilities shall be paved with concrete or asphalt in accordance with the Plans and Specifications and shall be adequate and serviceable in all respects for use by Tenant and its customers in accordance with the terms of this Lease.

3.03. CONSTRUCTION SCHEDULE. At least twenty (20) days prior to the commencement of construction of the Building, LANDLORD shall deliver to TENANT a construction schedule setting forth in detail the times for completion of the various portions of the work and the date on which construction will commence. Commencement of Construction shall be within One Hundred, Twenty (120) days after delivery by TENANT to LANDLORD of an executed copy of this Lease. LANDLORD shall proceed with diligence and continuity to completion thereof, using its best efforts to comply with the construction schedule as delivered to TENANT. Construction of the Demised Premises shall not be considered complete until it is substantially completed in every respect ("substantially completed in every respect" shall mean complete except for those items listed on the punch list which can be and will be corrected and completed within thirty (30) days by LANDLORD in accordance with the Plans and Specifications, Exhibit "D" hereof, none of which items would materially interfere with or impair TENANT's use of the Demised Premises and to an extent permissible with respect to necessary work to be performed by TENANT in installing its trade fixtures and equipment), including, but not limited to, toilet facilities, office space, vinyl floor covering, automatic pressure-pad doors,

light fixtures (including tubes and globes), heating and refrigerated air conditioning enclosed machine rooms, curtain walls and partitions and electrical and plumbing requirements complete to the point of connection of fixtures, equipment, check-stands, and signs; interior and exterior decoration completed; parking areas completely surfaced and striped with adequate lighting and initial traffic control, and all service roads, sidewalks and loading facilities to be completed and in accordance with the Plans and Specifications. Upon Completion of Construction, the location of the buildings and improvements and the grades thereof, shall not differ materially from that depicted on Exhibit "B"; and, thereafter, no additional structures shall be erected upon the Demised Premises without the prior written approval of TENANT. Promptly after Completion of Construction of the Building, LANDLORD, at its sole cost and expense, shall obtain and deliver to Tenant (i) three [3] copies of an accurate as-built survey of the Demised Premises, showing the exact location of all buildings, (ii) a set of "as built" drawings of the Demised Premises, including as-built drawings of all systems constructed or installed by Landlord or its contractor in accordance with the Plans and Specifications, and (iii) a statement showing the discharge of all liens (if any) affecting the Demised Premises, unless such liens are otherwise permitted pursuant to any of the terms of this Lease. The obligation of LANDLORD to construct, or cause to be constructed, the improvements comprising the Demised Premises shall be a personal, non-transferable obligation of LANDLORD and shall continue notwithstanding any sale or other transfer of title to the

property comprising the Demised Premises, or any part thereof, prior to Completion of the Construction of the Demised Premises

3.04 FAILURE TO COMMENCE CONSTRUCTION OR DELIVER THE BUILDING. If (i) construction is not commenced by LANDLORD or its contractor within the requisite time as provided in Article 3.03 above; or (ii) the Demised Premises shall not be delivered to TENANT in accordance with the provisions of this Lease on or before fifteen (15) months after commencement of construction, or (iii) after any extension thereof granted to LANDLORD by TENANT, then TENANT, after issuing written notice to LANDLORD of such failure to commence or complete such construction, may at its sole option and at any time within one (1) year thereafter, terminate and cancel this Lease by written notice to LANDLORD, whereupon this Lease shall be null and void and of no further effect. Should TENANT decline to exercise its option to terminate and the one (1) year period elapses without: (i) the parties agreeing to any extension of time or modification of this Lease; or (ii) LANDLORD delivering the Demised Premises to TENANT on or before the date set forth above or a date mutually acceptable to LANDLORD and TENANT, or (iii) TENANT taking possession of the Demised Premises then and in that case, either party hereto may terminate this Lease by written notice and this Lease shall be null and void and of no further effect. The foregoing right of termination and cancellation shall be exclusive of any other rights or remedies of TENANT for the enforcement of the obligations of LANDLORD with respect to the times for commencement and completion of construction under this Lease. If TENANT terminates this Lease as permitted in this Article 3.04, or this Lease automatically terminates, then Landlord

agrees, for itself and its successors and assigns, that for a period of three (3) years after such termination, it will not permit or suffer or consent to the use of the Building or any portion of the Demised Premises as and for a supermarket or for the sale of food or food products intended for off-premises consumption, and the provisions of this sentence shall survive any such termination and shall have the force and effect of covenants running with the land.

3.05 DELAY FOR FORCE MAJEURE. Notwithstanding the provisions of Article 3.04, LANDLORD's failure to complete the construction by the above date shall be excused and TENANT may not cancel or terminate this Lease for non-delivery of the Demised Premises to the extent that LANDLORD's failure to timely complete and deliver the Demised Premises is prevented, delayed, retarded or hindered by Force Majeure or other similar cause beyond the reasonable control of LANDLORD. LANDLORD's failure to deliver the Demised Premises as a result of Force Majeure shall extend the date of Completion of Construction by one (1) day for each day's delay caused by said Force Majeure, but in no event shall this extension extend past fifteen (15) months after commencement of construction, after which TENANT may cancel or terminate this Lease according to the provisions of Article 3.04 by ten (10) days written notice to LANDLORD, whereupon this Lease shall thenceforth be null and void and of no further effect.

3 06. CHANGE ORDERS. All Change Orders to the Construction Schedule or the Plans and Specifications shall be in writing and approved by LANDLORD, its contractor and TENANT prior to execution Any Change Order initiated by LANDLORD or its contractor shall be

at LANDLORD's sole cost and expense. Where TENANT initiates a Change Order, TENANT has the option to (i) pay the cost in full, or (ii) have the cost of the Change Order amortized over the term of the Lease as additional rent at the rate of 9% interest added to the Base Rent. In no case shall an approved Change Order act to cause a termination of this Lease.

3.07. DELIVERY OF DEMISED PREMISES. On the Completion of Construction, LANDLORD shall deliver the Demised Premises to TENANT in accordance with the provisions of this Lease. At the time of delivery of possession to TENANT, the Demised Premises shall be unoccupied and all buildings and other improvements shall be in compliance with all laws, ordinances and regulations relating to the use, occupation and construction thereof. LANDLORD covenants that the Demised Premises at the Completion of Construction and subject to TENANT's Punch List being completed, shall be structurally sound and in good tenantable condition and that there shall be no Latent Defects (as defined above) therein. LANDLORD further covenants that if any Latent Defects in the Demised Premises become apparent at any time during the life of this Lease, and it shall appear that such Latent Defects existed at the Commencement Date or resulted from faulty design, workmanship or materials, then LANDLORD shall cause the same, after receiving written notice from TENANT, to be repaired and corrected with all reasonable speed. TENANT agrees to accept the Demised Premises in the condition existing on the Commencement Date (as hereinafter defined) subject to the defective items on TENANT'S Punch list being completed. In the event of LANDLORD's failure to complete such Punch List within thirty (30) days after receipt of TENANT's

Punch List, then at TENANT's sole option, TENANT may either (i) complete such Punch List items and deduct the cost thereof from rent, the costs of which are hereby agreed in advance by the parties to be reasonable and proper deductions, or (ii) require LANDLORD's specific performance of the same, or (iii) seek any other legal remedies available to TENANT.

3.08. INSTALLATION OF TENANT'S FIXTURES AND EQUIPMENT. TENANT shall have the privilege rent free of entering the Demised Premises for the purpose of installing its store and trade fixtures, storing its first items of equipment and otherwise preparing the Demised Premises for TENANT's occupancy prior to the Commencement Date.

When the performance of the construction work has proceeded to the point where TENANT can commence any portion of its work and the installation of TENANT's trade fixtures, furniture and equipment in the Demised Premises, in accordance with good construction practice, together with adequate security of the Demised Premises, is commenced, LANDLORD shall notify TENANT to that effect. TENANT agrees to install its trade fixtures and equipment in the premises for occupancy at the earliest possible date referred to hereinabove TENANT further agrees not to engage any persons in the installation of such fixtures and equipment which would result in a work stoppage by employees of the general contractor or any subcontractor engaged in readying the premises for occupancy. TENANT's entry shall not unreasonably interfere with the work being done in or to the Building by LANDLORD. Further, TENANT shall indemnify and hold harmless LANDLORD from and against any and all claims, demands and causes of actions (including without limitation reasonable attorney's fees and expenses) for injury to person

(including death) or damage to property arising from or in connection with such TENANT's use or occupancy of the Building prior to the Commencement Date. Such entry into the Demised Premises shall not be construed as an acceptance of delivery thereof under the terms and provisions of this Lease or as a waiver of any of the provisions of this Lease.

3.09 TENANT'S ALTERATIONS. TENANT, during the Base Term and any Renewal Periods, shall have the right to place or install on the Demised Premises such improvements which it shall desire at its own expense and liability. TENANT shall first obtain the prior written consent of LANDLORD if any such improvements shall involve structural changes existing on the Demised Premises or any changes of exterior appearance. LANDLORD's approval shall not be unreasonably withheld. In no event shall such installation, improvement or construction violate any law, regulation or zoning restriction and shall be done and performed in a good and workmanlike manner. All costs of any such improvements shall be paid by TENANT and TENANT shall allow no lien for labor and materials to attach to the property by virtue of such improvements. Any such improvements shall become the property of Landlord at the end of the Lease, without any offset. TENANT shall not by reason of such improvements or alterations be required to restore the property to its original condition or appearance, and in which event LANDLORD agrees to accept the Demised Premises with all alterations and improvements made by TENANT, which are not in violation hereof.

ARTICLE IV. **Term and Renewal Options**

4 01. BASE TERM AND COMMENCEMENT. This Lease shall become

effective as of the date stated above and shall continue in effect for a period of Twenty (20) years (the "Base Term") from and after that date (the "Commencement Date") which is the earlier of (i) the date on which TENANT opens for business within the Demised Premises or (ii) the date which is forty-five (45) days after the date on which LANDLORD completes construction of the Building and contemporaneously turns possession of the same over to TENANT, together with all access, egress and parking. Upon determining the Commencement Date, the parties will execute and record the commencement and termination dates by Short Form Lease as specified below.

4.02. RENEWAL OPTIONS. LANDLORD grants to TENANT four (4) separate options to extend the Base Term for four (4) separate consecutive additional periods (hereinafter the "Renewal Periods") of five (5) years each on the same terms and conditions as set forth in this Lease for the Base Term. Each option shall be automatically exercised by TENANT unless TENANT shall give written notice to LANDLORD at least six (6) months prior to the expiration of the then current term, TENANT's intention to terminate this Lease upon the expiration of the current term.

4.03. HOLD-OVER. It is agreed that, if at the end of the Base Term or any Renewal Period thereof, TENANT, at its sole discretion, shall deem it necessary to remain in occupancy of the Demised Premises beyond the termination date of the Lease, TENANT may do so for a period of time up to one hundred, eighty (180) days. For any such extension period, the rent shall be one hundred, ten (110%) percent of the Base Rent then in effect. TENANT shall give LANDLORD sixty (60) days notice should such extension be necessary.

4.04. SHORT FORM LEASE. Concurrently with the execution of this Lease, LANDLORD and TENANT shall execute a short form lease (the "Short Form Lease"). LANDLORD agrees to record the Short Form Lease at its own expense with the proper office or department in the state, county or municipality in which the Demised Premises is located. If LANDLORD fails to record the Short Form Lease and submit to TENANT evidence of the same within thirty (30) days after TENANT executes this Lease, TENANT may elect, at its sole option, to record the Short Form Lease and charge the cost of recording to LANDLORD. Any amounts expended by TENANT to record the Short Form Lease shall be payable by LANDLORD to TENANT on demand and if not paid to TENANT, TENANT may, without limiting its other remedies, withhold any rent or sums due or to become due until the cost of recording is recovered.

ARTICLE V. **Use.**

5.01. USE. TENANT may use the Demises Premises for any lawful purpose. TENANT shall indemnify and hold LANDLORD harmless of and from all fines or penalties imposed by law arising by reason of the violation by TENANT of any laws, rules, ordinances or regulations issued by any governmental authority having proper jurisdiction that relate to the conduct of TENANT's business. If TENANT,or any Subtenant or Assignee should cease operations to the extent that the Building has gone "Dark" (excluding any cessation of operations for not more than one hundred, eighty (180) consecutive days for remodeling or renovation of the Demised Premises or any cessation because of casualty damage, public taking or similar circumstances beyond the control of TENANT or its Subtenant or Assigns) then LANDLORD may, at its sole option, upon giving sixty (60) days prior

written notice to TENANT, recapture and repossess the Building by canceling this Lease at any time within six (6) months after TENANT has ceased operation.

5.02 PROTECTIVE COVENANT. In order to induce TENANT to enter into this Lease, LANDLORD agrees for itself, its heirs, successors and assigns, that none of the foregoing shall use, suffer, permit or consent to the use or occupancy as a supermarket or for the sale of food or food products intended for off-premises consumption, any other premises now or hereafter owned or controlled by LANDLORD or any of the above described parties adjacent to the Demised Premises.

5.03. RIGHT TO CLOSE STORE. LANDLORD agrees that nothing in this Lease shall be construed as compelling. Tenant to operate any particular type of business or keep the store in or upon the Demised Premises open for business.

ARTICLE VI. Rent

6.01. BASE RENT. TENANT agrees to pay to LANDLORD as rent the sum as in Rent Schedule below, payable in advance on the first day of each calendar month commencing with the first day of the month next following the Commencement Date (the first such payment to include a daily proration of amounts accrued from the Commencement Date to the end of the preceding month):

Rent Schedule

1)	**For the first (1st) five (5) yr. period**	$12,397 93
2)	**For the second (2nd) five (5) yr. period**	$12,619 33
3)	**For the third (3rd) five (5) yr. period**	$12,840 72
4)	**For the final five (5) yr. period**	$13,062 11

All payments of rent (Base Rent and any additional rent) shall be made to LANDLORD at its address as provided for herein, or to such

other person or corporation or at such other place as shall be designated by LANDLORD, in writing, delivered to TENANT at least ten (10) days prior to the next ensuing rent payment date. If any options are exercised, the monthly rent shall be $13,062 11 -

6.02. ADDITIONAL RENT. TENANT shall pay to LANDLORD as Additional Rent, TENANT's share of Real Property Taxes as defined in Articles 8.02 and its share of LANDLORD's insurance premiums as defined in Article 13.03.

ARTICLE VII. **Facilities / Parking**

7.01. FACILITIES OR AREAS. The Demised Premises are located, as approved by the parties, as shown on the plot plan marked Exhibit "B", attached hereto and incorporated herein. LANDLORD agrees that the use and occupancy by the TENANT of the Demised Premises shall include the use for its customers, suppliers, visitors and invitees, of the Facilities or Areas, including but not limited to, employees' parking areas, service roads, except the loading facilities which is exclusive to TENANT, sidewalks, and customers' parking areas, all as shown on Exhibit "B". The LANDLORD shall resurface the sidewalk, parking and driveway areas when the same shall be reasonably necessary, together with the re-striping of the parking areas

ARTICLE VIII. **Utilities/Real Property Taxes**

8.01. UTILITIES. LANDLORD shall provide to the Demised Premises throughout the Base Term and any Renewal Periods such sewer facilities and utilities (including without limitation, water, electricity and gas) as TENANT's use pursuant to this Lease may require and shall supply and maintain adequate separate meters for the purpose of measuring all utilities consumed by TENANT.

TENANT agrees to pay for all utilities it consumes during the Base Term and any Renewal Periods, as evidenced by readings taken from such meters.

8.02. REAL PROPERTY TAXES. As Additional Rental, TENANT agrees to pay to the LANDLORD, within thirty (30) days after the end of each Lease Year, or the end of the calendar year if such taxes are assessed by calendar year, the amount of all taxes levied and assessed against the Demised Premises. Such taxes must be billed by LANDLORD to TENANT no later than ninety (90) days after receipt of notice from the local taxing authority to LANDLORD. LANDLORD shall be required to send TENANT receipted tax bill(s) showing payment for taxes. If such notice is not received by TENANT within ninety (90) days following the end of the Lease year or calendar year as the case may be, then TENANT's obligation to pay such taxes will be considered to be null and void for that tax year. For any partial year occurring during the Base Term or any Renewal Period hereof, TENANT shall be liable for only that proportion of such taxes as the number of days in such partial tax year bears to 365.

8.03 PERSONAL PROPERTY TAXES. TENANT shall also pay all taxes levied and assessed upon personal property belonging to it and located upon the Demised Premises.

8.04. TENANT RIGHT TO CONTEST ANY TAXES. Any taxes levied and assessed against the Demised Premises that shall become due and payable during the term hereof and which TENANT has agreed to pay, may be contested by TENANT, by appropriate proceedings, in LANDLORD's or TENANT's name and LANDLORD will offer no objections, will cooperate with TENANT, will provided any information requested

by TENANT, and will execute any document which may be necessary andproper for such proceedings. Any refund shall be the property of TENANT to the extent it is based upon the payment of any assessments made by TENANT.

If the Demised Premises are part of or constitute a part of a tract which is assessed as a whole, then TENANT may at its option contest any such tax assessment, and any refunds shall be the property of TENANT to the extent that they are based upon the payment of the share of an assessment made by TENANT, payable by TENANT under the provisions of this Lease. In the event LANDLORD shall contest any taxes, TENANT shall be immediately notified in writing.

ARTICLE IX. **Assignment and Subletting**

9.01 LANDLORD'S RIGHT TO ASSIGNMENT. Except as provided in Article 3 above, LANDLORD shall have the right to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease and in the Demised Premises. Any such sale, transfer or assignment made after Completion of Construction shall operate to release LANDLORD from any and all liabilities under this Lease arising after such sale, transfer or assignment; provided that any successors, assigns and/or transferees shall specifically assume all obligations and liabilities of LANDLORD under this Lease.

9.02. LANDLORD'S TRANSFER OF TITLE. If there shall be any change in or transfer of title of LANDLORD in or to the Demised Premises or any portion of the land and improvements comprising the Building, LANDLORD shall notify TENANT of the name and address of the person or corporation to whom the Base Rent and other sums due LANDLORD should thereafter be paid. Prior to TENANT's receipt of

such notice from LANDLORD, TENANT shall be entitled to credit against sums due under this Lease any amounts paid by TENANT to LANDLORD and for all other purposes hereof, shall be entitled to treat the Landlord as "Landlord" hereunder.

9.03. TENANT'S RIGHT TO ASSIGNMENT AND SUBLET. TENANT shall have the right, during the Base Term of this Lease or any Renewal Term thereof, to sublet all or a portion of the Demised Premises, or to assign this Lease, either in whole or in part, without LANDLORD'S consent, but no such subletting or assignment shall release TENANT from any of the obligations under the terms of this Lease, and LANDLORD shall, at all times, have the right to look to TENANT for the performance of all of the covenants to be performed on the part of the TENANT.

ARTICLE X. **Subordination and Non-Disturbance.**

10.01. SUBORDINATION. TENANT agrees that this Lease shall be subordinate to a first mortgage or deed of trust that may hereafter be placed upon the Demised Premises and to all renewals and extensions thereof to which TENANT has given its written consent to be subordinate; provided that (a) Mortgagee named in such mortgages shall agree to recognize this Lease in the event of foreclosure if the TENANT is not then in default, (b) in the event the Demised Premises are damaged or destroyed at a time when neither LANDLORD nor TENANT are in default under the terms of this Lease, and LANDLORD is not in default under the terms of any such mortgages, any insurance proceeds that are available under the insurance policy(s) hereinabove required to be maintained under Article 13.02 are first applied to repair, replace or rebuild the premises so damaged or destroyed, if LANDLORD and/or TENANT under the terms of

this Lease are required to elect to repair, replace or rebuild the Building, and (c) any proceeds from condemnation awarded to TENANT and/or its subtenant shall be the sole property of TENANT and/or its subtenant.

10.02. SUBORDINATION AGREEMENT. Mortgagee must also agree to execute and deliver to TENANT in recordable form a "Subordination and Non-Disturbance Agreement" in a form satisfactory to TFNANT

10.03. ESTOPPEL CERTIFICATES. TENANT agrees at any time and from time to time, upon not more than thirty (30) days after receipt of written request by LANDLORD, to execute, acknowledge, and deliver to LANDLORD a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article may be relied upon by prospective purchasers of LANDLORD's interest or mortgagee of LANDLORD's interest or assignees of any mortgage upon LANDLORD's interest in the Demised Premises.

ARTICLE XI. **Repairs and Replacements.**

11.01. LANDLORD'S REPAIRS AND MAINTENANCE. LANDLORD shall be liable for any and all Latent Defects as set forth in Article III and shall be obligated to maintain in good condition the structural portions of the building including foundation, slabs, walls, and roof, and electrical and plumbing service to the Building. LANDLORD shall be liable for the replacement of any Capital Improvements. Landlord shall maintain the parking area including

the patching, capping or replacing of the parking lot. Landlord shall maintain the parking lot lighting in good operating condition including the replacement of light bulbs.

11.02. TENANT'S REPAIRS AND MAINTENANCE. Except for LANDLORD's obligations in 11.01 above, TENANT, at its sole expense, agrees to maintain all other portions of the Demised Premises and to make all ordinary repairs and maintenance (except for capital expense or Capital Improvements, under recognized and accepted accounting principles and standards) in and about the Demised Premises necessary to preserve them in good condition, including the air conditioning and heating equipment, after expiration of the any warranty period extended to LANDLORD by the manufacturer or vendor. Tenant shall maintain the parking area as it relates to keeping the parking area clean of debris, sweeping, snow removal, resealing and restriping.

11.03. EMERGENCY REPAIRS BY TENANT. Notwithstanding anything to the contrary, LANDLORD agrees that if, in an emergency (defined as an event or accident which causes or portends immediate property damage or personal injury), it shall become necessary to make any repairs that are the obligation of LANDLORD, TENANT may, without notice otherwise required, have such repairs made and pay the cost thereof. LANDLORD agrees to pay TENANT the cost of such repairs within thirty (30) days after receipt of written evidence of TENANT's expenditures and payment for such emergency repairs, and if LANDLORD fails to pay within such period, TENANT may deduct the amount so expended from rent or any other payment due or to become due to LANDLORD from TENANT.

11.04. TENANT'S LOSS OF USE. If TENANT is deprived of the use

of any portion of the Demised Premises for a period of more than seven (7) consecutive days during the making of any repairs, improvements or alterations required by LANDLORD under any provisions herein, TENANT shall pay to LANDLORD rent in accordance with the provisions of Section 14.03 below.

11.05. INDEMNITY FOR LOSS OF PERSONAL PROPERTY. LANDLORD agrees to indemnify and save TENANT harmless from and against the loss of any and all merchandise, fixtures and equipment due to LANDLORD's failure to commence repairs required of LANDLORD within ten (10) days after receipt of notice that such repairs are required and such repairs are not of an emergency nature.

ARTICLE XII. **Mutual Indemnities and Waivers.**

LANDLORD and TENANT agree to indemnify each other as follows:

12.01. TENANT INDEMNITIES. (a) TENANT shall indemnify and hold LANDLORD harmless of and from all fines or penalties imposed by law, rules, ordinances or regulations relating to the conduct of business by TENANT on the Demised Premises issued by any governmental authority having jurisdiction over the Demised Premises.

(b) TENANT shall indemnify, protect, and save harmless LANDLORD from damage, loss, liability or expense, including reasonable attorney's fees and court costs, on account of injuries to persons or damage to property arising or resulting from the use of the Demised Premises during the term of this Lease agreement, except for such injuries or damage arising from the negligence or willful act of LANDLORD, its agents or employees.

12 02 LANDLORD INDEMNITIES. LANDLORD shall indemnify, protect, and save harmless TENANT from damage, loss, liability or

expense, including reasonable attorney's fees and court costs, on account of injuries to persons or damage to property arising or resulting from the use of the Demised Premises, except for such injuries or damage arising from the negligence or willful act of TENANT, its agents or employees.

12.03. SURVIVAL OF INDEMNITIES. These indemnities shall survive the termination of this Lease Agreement for any action, causes of action or claims which accrued during the term of this Lease.

12.04. LANDLORD WAIVER. LANDLORD agrees that none of the property, including food, supplies, merchandise, inventory, furniture, fixtures, machinery, equipment, cash or any proceeds therefrom that are placed upon or permitted to be upon the Demised Premises by TENANT, or any of TENANT's subtenants, assigns, or successors, during the Base Term of this Lease or any Renewal Period thereof, shall be subject to or liable for levy or distress or any legal process whatsoever for the collection of rent for the Demised Premises. In the event that there is a mortgage on the Demised Premises, LANDLORD shall obtain the same waiver from the mortgagee.

12.05. WAIVER OF LIABILITY TENANT hereby waives any cause of action which TENANT or anyone claiming by, through or under TENANT, by subrogation or otherwise, might now or hereafter have against LANDLORD, based on any loss, damage or injury which is insured against under any insurance policy which names TENANT as insured or which would be insured against under any insurance policy which this Lease requires TENANT to carry. LANDLORD hereby waives any cause of action which LANDLORD or anyone claiming by, through or

under LANDLORD, by subrogation or otherwise, might now or hereafter have against TENANT, based on any loss, damage or injury which is insured against under any insurance policy which names LANDLORD as insured or which would be insured against under any insurance policy which this Lease requires LANDLORD to carry. All policies or insurance written to insure all buildings, parking and common areas, service and delivery areas, improvements, contents and all other such property (real or personal) shall contain a proper provision, by endorsement or otherwise, whereby the insurance carrier issuing the same shall (i) acknowledge that the insured has waived and released its right of recovery pursuant to this paragraph and (ii) waive the right of subrogation which such carrier might otherwise have had, all without impairment or invalidation of such insurance. The provisions of this paragraph shall be equally binding upon and inure to the benefit of any assignee or subtenant of TENANT.

XIII. **INSURANCE REQUIREMENTS**

13.01. PUBLIC LIABILITY INSURANCE.

13.01.1. TENANT'S PUBLIC LIABILITY INSURANCE. TENANT agrees to maintain, at its own expense, during the Base Term and any Renewal Period, a policy of public liability and property damage insurance in a reputable company authorized to do business in the State of Tennessee, in which policy, LANDLORD shall be named as an additional insured, and, upon request, to furnish current certificates evidencing the existence of such insurance providing that such insurance shall not be canceled except after thirty (30) days prior written notice to LANDLORD. Such policy shall provide primary coverage for the benefit of TENANT and any named additional

insured in an amount equal to One Million Dollars ($1,000,000) single limit combined bodily injury and property damage each occurrence, to cover all situations where any other person or persons claim bodily injury, death or property damage in or upon the Demised Premises.

13.02 FIRE AND EXTENDED COVERAGE INSURANCE.

13.02.1. LANDLORD'S FIRE AND EXTENDED COVERAGE INSURANCE. LANDLORD agrees to keep in effect, at LANDLORD's sole expense, subject to Section 13.03 and during the Base Term and any Renewal Period of this Lease, a policy of fire and extended coverage insurance to cover damage to the premises, written by a responsible insurance company authorized to do business within the state where the premises are located, in an amount equal to the full replacement cost of the premises, and to furnish the TENANT proof thereof. Such policy of insurance shall provide protection against the losses so insured against for the benefit of the LANDLORD, TENANT, and any mortgagee as their interests may appear under the terms of this Lease and any mortgage agreement, providing that such insurance shall not be canceled except after thirty (30) days' notice to TENANT and any mortgagee.

13 02.2. BLANKET INSURANCE. The insurance to be provided by LANDLORD may be provided pursuant to a blanket insurance policy covering the premises and other locations of LANDLORD; provided, however, that in no event shall the protection afforded by such blanket insurance policy be less than the required under this Lease.

13.02.3. INSURANCE RATING DEFICIENCY. LANDLORD further understands that TENANT or TENANT's SUBTENANT is required to carry

fire and extended coverage insurance covering all of its merchandise, furniture, fixtures, and equipment located in and upon the Demised Premises. Should the Building covered by this Lease be rated deficient by an appropriate Insurance Service Organization, then LANDLORD shall pay for any differential amount between the premium paid and that which would have been paid had the Building not been rated deficient; and LANDLORD agrees to reimburse TENANT and/or its SUBTENANT for any differential amount it may incur Said differential amount shall be computed and paid annually using the then published insurance rates until the defects are cured by LANDLORD. Upon LANDLORD's receipt of notice of any deficiencies from the Insurance Service Organization, LANDLORD agrees to immediately notify TENANT in writing of said deficiencies. Upon Completion of Construction as per Article 3 above, LANDLORD agrees to provide TENANT with a rating sheet for the Demised Premises from said Insurance Service Organization citing deficiencies, if any.

13.02.4. SUBSEQUENT CHANGE OF STANDARDS. LANDLORD shall not be liable for any reimbursement of such differential if LANDLORD has complied fully with the agreed plans and specifications of the premises and has complied with all of the Insurance Service Organization's recommendations and requirements, after its review of said architectural plans and related engineering drawings and specifications of the premises Neither shall the LANDLORD be liable for any reimbursement of any such differential due to the Insurance Service Organization's subsequent change of standards of qualifications for full sprinkler credit pertaining to the standards of construction of the premises.

13.03. REIMBURSEMENT OF LANDLORD'S INSURANCE PREMIUMS. TENANT

agrees to remit to LANDLORD, on an annual basis, within thirty (30) days after being billed therefor, TENANT's share of LANDLORD's annual premium(s) for insurance covering the Demised Premises for Fire and Extended Coverage Insurance, subject to TENANT's right to obtain a like insurance coverage policy(s) covering the Demised Premises for Fire and Extended Coverage. Should TENANT be able to secure such policy(s) at a lower rate for like coverage, in such event TENANT shall provide to LANDLORD reasonable data supporting the availability of such like insurance at a lower rate; and upon receipt of such data, LANDLORD shall have the option, exercisable in its sole discretion and within thirty (30) days after receipt of such data, to cancel its insurance policy(s). Should LANDLORD elect not to cancel its insurance policy(s) and obtain TENANT's policy(s), LANDLORD agrees to deduct from amounts due from TENANT in payment of TENANT's share of LANDLORD's insurance policy(s), the difference between the premium paid or charged by LANDLORD for its insurance coverage and that which would have been paid by TENANT for TENANT's policy(s) covering the Demised Premises for Fire and Extended Coverage. If LANDLORD fails to notify and bill TENANT within One Hundred Twenty (120) days following the end of that year, then LANDLORD shall be deemed to have waived its right to collect a share of insurance premiums for that particular year. Any increase of LANDLORD's premiums not charged for a particular year shall NOT be cumulative and retroactive as to TENANT

XIV. **DAMAGE AND/OR DESTRUCTION OF THE DEMISED PREMISES.**

14.01. DAMAGE BY CASUALTY If, at any time during the Base Term or any Renewal Period hereof, the Demised Premises shall be partially damaged by fire, wind storm, or other casualty, but the

extent thereof is not sufficient to deprive the TENANT of more than twenty-five percent (25%) of the floor space in the Demised Premises, then TENANT shall notify LANDLORD thereof in writing and LANDLORD, at its expense, shall proceed promptly to rebuild and repair such portion of the premises so damaged or destroyed, and this Lease shall continue in full force and effect.

If, at any time during the Base Term or any Renewal Period hereof, the Demised Premises shall be partially or wholly damaged by such casualty, and the extent of such damage shall be sufficient to deprive TENANT of more than twenty-five percent (25%) of the floor space therein for its purposes, the TENANT shall notify LANDLORD thereof in writing and the rights and obligations of the parties shall be governed by the following:

A. If such damage shall occur during the first seventeen (17) years of the original term hereof, then at its expense, the LANDLORD shall proceed to rebuild and repair such damage, and this Lease shall continue in full force and effect.

B. If such damage shall occur during the last three (3) years of the original term hereof, or during either of the renewal terms, within thirty (30) days after the occurrence of such damage TENANT may extend the term of this Lease for not less five (5) years by giving LANDLORD notification of such extension. If TENANT so extends this Lease, LANDLORD, at its expense, shall proceed promptly to rebuild and repair such damage. If TENANT does not so extend the term of this Lease within thirty (30) days after the occurrence of such damage, LANDLORD shall have thirty (30) days in which to continue the term of this Lease by giving TENANT notice of such extension, in which event LANDLORD shall promptly rebuild and repair such damage. If both LANDLORD and TENANT fail to exercise their rights to extend or continue the Lease pursuant to this paragraph, this Lease shall terminate as of the date of the occurrence of such damage, and the rent shall be prorated accordingly.

14 02. <u>LANDLORD'S OBLIGATION TO PROMPTLY REBUILD OR REPAIR</u>. Whenever, under the foregoing provisions of this Article 14, LANDLORD shall have the obligation to rebuild and repair all or any

portion of the Demised Premises, other building or buildings, and so to continue this Lease in full force and effect, the same shall be commenced within thirty (30) days after LANDLORD's obligation so to do becomes fixed by receipt of notice of such damage, or receipt of notice of TENANT's intent to exercise the necessary option to renew, or the exercise of LANDLORD's election to rebuild, as the case may be. LANDLORD shall prosecute such rebuilding and repairing diligently and to the end that the premises will be restored to substantially the same condition as before the occurrence of such damage. If, for any reason whatsoever, such rebuilding and repairing is not completed within six (6) months after receipt of the applicable notices, unless LANDLORD be prevented from completing such rebuilding and repairing by causes or conditions beyond its control, then, and in either such events, TENANT may, at its sole option, terminate this Lease by written notice to LANDLORD of its intention to do so, upon the happening of which, rental shall be adjusted as of the date of termination. TENANT shall have no further rights hereunder and TENANT shall have no further interest in the proceeds of said insurance.

14.03. <u>ABATEMENT OF RENT DURING REPAIR OR REBUILDING</u>

Whenever, under the foregoing provisions of Articles 11 or 14, LANDLORD shall have the obligation to rebuild and repair all or any portion of the Demised Premises and so to continue this Lease in full force and effect, the rentals payable by TENANT hereunder shall abate from the date of the occurrence of such casualty to the date of completion of such rebuilding and repairing in proportion to TENANT's deprivation of use of the Demised Premises for its purposes.

14.04 TENANT'S WAIVER OF INSURANCE INTEREST UPON TERMINATION. Whenever, under the foregoing provisions of this Article 14, the Demised Premises shall not be rebuilt or this Lease shall be terminated by reason of the exercise or non exercise of any option herein granted to either the LANDLORD or the TENANT, the TENANT shall have no further interest in the proceeds of such insurance.

XV. CONDEMNATION / EMINENT DOMAIN

15 01. DEFINITIONS APPLICABLE TO THIS ARTICLE. As used in this Article, the following words have the following meanings:

(a) "Award" shall mean the award for, or proceeds of, any Taking less all expenses in connection therewith including reasonable attorney's fees.

(b) "Taking" shall mean the taking of, or damage to, the Demised Premises or the Building or any portion thereof as the case may be, other than a taking for temporary use, as the result of the exercise of any power of eminent domain, condemnation, or purchase under threat thereof or in lieu thereof.

(c) "Taking Date" means the date on which the condemning authority shall have the right to possession of the Demised Premises or the Building or any portion thereof as the case may be.

15.02 CONDEMNATION FOR REPAIRS LANDLORD agrees that if any authority condemns the Building or any part thereof, other than the Demised Premises, as being unsafe, or not in conformity with the applicable laws or regulations, LANDLORD, at its own cost and expense, will promptly make such changes, alterations or repairs (structural or non structural) as may be necessary to comply with such laws and regulations, or with the requirements of the authority If, during the time such changes, alterations or repairs are being performed, the Demised Premises are rendered unsuitable for occupancy and use by TENANT, the rent shall abate,

and if only a portion of the Demised Premises is rendered unsuitable for such occupancy and use, then the rent shall abate proportionately Provided, however, in the event the Demised Premises or any part thereof are condemned as being unsafe or not in conformity with the applicable laws and regulations due to the defective condition or use of supplies, materials, and/or equipment owned or used by TENANT, or due to a defective condition of any part of the Demised Premises TENANT is required to maintain as herein provided, then, and in that event, TENANT, at its own cost and expense up to but not to exceed the Award so granted, agrees to make such changes, alterations and repairs (structural or nonstructural) in the building and equipment or the use of the same as may be necessary to comply with such laws and regulations, or with the requirements of the authority, but TENANT shall be entitled to any Award made to LANDLORD in respect thereto. If, during the time such changes, alterations, and/or repairs are being performed to the Demised Premises, the Demised Premises are rendered untenantable for occupancy and use by TENANT, the rent shall abate in proportion to the TENANT's deprivation of the use of the Demised Premises.

15.03. <u>CONDEMNATION UNDER EMINENT DOMAIN</u> Upon LANDLORD's receipt of notice from any condemning authority of a proposed Taking, LANDLORD shall immediately notify TENANT in writing If all of the Demised Premises shall be taken under the right of eminent domain by any authority having the right of condemnation, or if a portion of the Demised Premises is taken so that there does not remain:

(a) a parking area sufficient to accommodate a minimum of 138 standard sized American cars of which a minimum of 81 parking

spaces shall be within 150 feet of any front entrance of the Demised Premises, or

(b) the Building, suitable in the opinion of TENANT for the operation of TENANT's business, or

(c) direct access at grade level to all abutting streets, or

(d) a loading area as shown outlined on Exhibit "B"; then

this Lease, and all obligations hereunder, shall terminate on the Taking Date. If such Taking does not prevent the practical use of the Demised Premises for the purposes of the TENANT, then this Lease shall continue in full force and effect, but the rent shall abate proportionately, and such other adjustments shall be made as shall be just and equitable.

15.04. ARBITRATION. In the event the proper judicial authority does not divide the Award to compensate the separate loss of each party, the total Award made in such proceedings shall be equitably distributed between the LANDLORD and TENANT; provided that if the parties cannot agree upon an equitable distribution of such Award, either party may petition a court of competent jurisdiction in the state of Tennessee, where the premises are located, for equitable distribution of such Award, and in the event no such court has jurisdiction to determine an equitable distribution of such Awards then either party may request arbitration under the terms hereinafter set forth.

In any instance in this Agreement in which it is provided that a question shall be determined by arbitration, the arbitration shall be governed by the laws of the state of Tennessee and the American Arbitration Association.

XVI. HAZARDOUS MATERIALS / WASTE

16.01. DEFINITIONS. As used in this paragraph, the following

terms shall have the following meanings:

16.01 1 "Hazardous Material" means any substance, material or waste which is reasonably considered by TENANT to be posing an actual or potential threat to the health or safety of persons entering the Property or which is or at any time hereafter becomes regulated as "hazardous" , "toxic" or under any other similar designation by any local, state or federal governmental authority. Such term includes, without limitation, (i) asbestos, (ii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C Section 6901, et seq.), (iii) any material, substance or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq) or (iv) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U.S.C. Section 6991, et seq).

16.01.2. "Improvements" means the buildings and other improvements located on the Real Estate including, but not limited to, the Demised Premises.

16.01.3. "Property" means the Real Estate and the Improvements.

16.01.4. "Real Estate" means the tract of land under and surrounding the Demised Premises owned by the LANDLORD, including, without limitation, all groundwater and other substances therein.

16.01.5 "Indemnified Person" means the TENANT, any Subtenant holding an interest in the Demised Premises or any portion thereof, and any director, officer, employee, agent or invitee of TENANT or any such Subtenant.

16.02. <u>REPRESENTATIONS AND WARRANTIES</u>. LANDLORD represents and warrants to TENANT that to the best of its knowledge and belief (i) any handling, transportation, storage, treatment or usage of Hazardous Material that has occurred on the Property has been in compliance with all applicable federal, state and local laws, regulations and ordinances, (ii) no leak, spill, release, discharge, emission or disposal of any Hazardous Material has occurred on the Property, (iii) the Property is free of any Hazardous Material and will be free of any Hazardous Material as of the date the term of this Lease commences, and (iv) there are no

underground storage tanks located on the Property.

16.03 INDEMNIFICATION. LANDLORD hereby agrees to indemnify, defend and hold each Indemnified Person harmless from any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of (i) the presence or suspected presence at any time of any Hazardous Material in or on the Property, regardless (except as set forth below) of the source of such Hazardous Material, (ii) the presence at any time of any underground storage tank on the Property, or (iii) the inaccuracy of any of the representations and warranties set forth in the preceding paragraph. The costs covered by the LANDLORD'S indemnification include, without limitation, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, cost and expenses incurred by TENANT in exercising any of its rights under paragraph 16.02 hereof and any damages suffered as a result of any termination of this Lease in accordance with paragraph 16.02 hereof. Excluded from the LANDLORD'S indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Property by any Indemnified Person.

16 04. NOTICES. LANDLORD and TENANT agree to promptly notify the other in the event such party becomes aware of the presence of any Hazardous Material or any underground storage tank on the Property

16.05. REMEDIAL ACTION

16 05.1. DEVELOPMENT OF REMEDIAL PLAN. If, at any time during the term of this Lease, TENANT becomes aware of the presence or suspected presence of any Hazardous Material in or on the

Property and determines that the presence of such Hazardous Material presents an actual or potential threat to the health or safety of any Indemnified Person or becomes aware of any pendency or threatened action by any federal, state or local governmental authority with respect thereto, TENANT may so notify LANDLORD and request that LANDLORD institute remedial action. LANDLORD and TENANT shall confer on what remedial action may be appropriate and within sixty (60) days of LANDLORD'S receipt of such notice, LANDLORD shall deliver to TENANT a written plan describing in detail the remedial action which is necessary to eliminate any actual or potential threat to the health or safety of any Indemnified Person. If, at any time during the term of this Lease, TENANT becomes aware of any underground storage tank located on the Property, TENANT may so notify LANDLORD and request that LANDLORD institute remedial action. TENANT and LANDLORD shall confer on what remedial action may be appropriate, and within 60 days of LANDLORD'S receipt of such notice LANDLORD shall deliver to TENANT a written plan to (i) remove any risk of any present or future leakage of substances from the tank into the Real Estate, and (ii) eliminate the possibility that the presence of such tank may, at any time during the term of this Lease, pose a threat to the health or safety of any Indemnified Person or may, at any time during the term of this Lease, require such maintenance, repair or other work so as to interfere with the conduct of business on the Leased Premises Any plan developed pursuant to this paragraph shall, without limitation of the foregoing, cause the Property to comply with all applicable federal, state and local laws, ordinances and regulations and shall be sufficient to abate any pending or

threatened action with respect to the Property by any federal, state or local governmental authority.

16.05.2. TERMINATION. If (i) any plan required by the preceding paragraph is not delivered to TENANT within the time prescribed , (ii) any such plan is not acceptable to TENANT in all respects, or (iii) TENANT determines that the actual or suspected presence of Hazardous Material or any underground storage tank has had a materially adverse effect on the business conducted from the Leased Premises or that the implementation of such plan may have such an effect, TENANT may, by notice to LANDLORD within 30 days of TENANT'S receipt of such plan (or, if LANDLORD fails to provide such plan, within 30 days of the expiration of the time for LANDLORD to provide such plan) terminate this Lease, such termination to be effective as of a date thereafter to be specified in such notice.

16.05.3. IMPLEMENTATION OF PLAN. If LANDLORD delivers the plan required hereunder within the specified time and TENANT does not terminate this Lease as provided herein, then, within 30 days of TENANT'S notice to LANDLORD that the plan is acceptable (of TENANT'S failure to terminate this Lease prior to the expiration of the time for TENANT to do so), LANDLORD will, at its sole cost and expense, commence action necessary to implement the plan and diligently pursue such action to completion Any work required by this paragraph will be performed strictly in accordance with the plan and in accordance with all applicable laws, ordinances and regulations governing such work

16.05 4. PERFORMANCE BY TENANT. If LANDLORD fails to deliver a plan for remedial action within the time prescribed above and

TENANT does not terminate this Lease, or if LANDLORD fails to undertake such work as is required by this paragraph and diligently pursue such work to completion, TENANT may take such remedial action as it deems necessary and LANDLORD shall promptly reimburse TENANT for all costs incurred in such action.

16.05.5. MAINTENANCE. Throughout the term of this Lease, LANDLORD shall, at its sole cost and expense, maintain in good condition and repair any improvements to the Property made under this paragraph and shall continually cause the Property and such improvements to remain in compliance with all applicable federal, state and local laws and regulations. If at any time LANDLORD fails to perform such maintenance, TENANT may perform the same, in which event TENANT shall be promptly reimbursed by LANDLORD for all costs incurred in such work.

16.06. REMEDIES.

16.06.1. TERMINATION. Notwithstanding any other provision herein, in the event of any breach of LANDLORD'S representations and warranties set forth above or in the event LANDLORD fails to undertake remedial or maintenance work required of it hereunder and diligently pursue such work to completion, TENANT may, by notice to LANDLORD, terminate this Lease as of a date thereafter to be specified in such notice.

16.06.2. OFFSET. TENANT shall be entitled to offset against rent payable hereunder any loss, cost, damage or expense covered by the LANDLORD'S indemnification set forth in paragraph 16.03 hereof.

16.06.3. NONEXCLUSIVE REMEDIES TENANT shall be under no obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice any

other remedy available hereunder or under law The remedies provided herein shall not be considered exclusive or preclude any claim for damages or any other remedy which may be available under this Lease or under law.

16 06.4 Environmental Studies and Reports. LESSOR represents to LESSEE that it has heretofore provided to LESSEE full, accurate and complete copies of any and all reports, studies, and other information in its possession relating to the issue of the presence or suspected presence of any Hazardous Materials on the Property and agrees that it will, promptly following its receipt thereof, furnish to LESSEE full, accurate and complete copies of any such reports, studies and other information hereafter obtained by LESSOR. Without limitation of the foregoing, LESSOR represents and warrants to LESSEE that it has received and reviewed LESSEE'S environmental site assessment guidelines and that it has provided LESSEE with an environmental report complying with such guidelines. LESSEE hereby acknowledges its receipt and acceptance of such report.

XVII. DEFAULT / REMEDIES

17.01. **COMPLIANCE WITH LAWS.** LANDLORD agrees to take such action, from time to time, as is necessary to assure the building is in compliance with all applicable federal, state and local laws, ordinances and regulations, including, without limitation, all building codes and the American With Disabilities Act (collectively the "Legal Requirements"). Further, LANDLORD shall, at its sole cost and expense, make all alterations and improvements to the building, which may be required by reason of changes in or additions to Legal Requirements. TENANT shall, at its sole cost

and expense, make all alterations in and improvements to the interior Premises and any fixtures, equipment, and other improvements placed on or incorporated in the Premises by TENANT, which may be required by reason of changes in or additions to Legal Requirements.

17.02. **EVENTS OF DEFAULT.** The following events shall each constitute an Event of Default under this Lease:

(i) TENANT shall fail to make any payment of Base Rent, Additional Rent or other amount owing hereunder after receipt of written notice from LANDLORD as specified in 17.03 below that the same is due; or

(ii) TENANT shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for thirty (30) days after the earlier of (a) the date on which TENANT obtains knowledge of such failure; or (b) the date on which notice thereof shall be given by LANDLORD to TENANT; or

(iii) Any representation or warranty made by TENANT herein or in any document, certificate or financial or other statement now or hereafter furnished LANDLORD in connection with this Lease shall prove at any time to have been untrue or misleading in any material respect as of the time when made; or

(iv) The entry of a decree or order for relief by a court having jurisdiction in respect of TENANT, adjudging TENANT a bankrupt or insolvent, or approving as properly filed a petition seeking a reorganization, arrangement, adjustment or composition of or in respect of TENANT in an involuntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of TENANT or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order not stayed and in effect for a period of thirty (30) days; or

(v) The institution by TENANT of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the commencement by TENANT of a voluntary proceeding or case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the

consent by it to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of TENANT or of any substantial part of its property, or the making by it of any assignment for the benefit of creditors or the admission by it of its inability to pay its debts generally as they become due or its willingness to be adjudicated to a bankruptcy or the failure of TENANT generally to pay its debts as they become due or the taking of corporate action by TENANT in furtherance of any of the foregoing; or

(vi) LANDLORD shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it with respect to this Lease and such failure shall continue unremedied for thirty (30) days after the earlier of (a) the date on which LANDLORD obtains knowledge of such failure; or (b) the date on which notice thereof shall be given by TENANT to LANDLORD.

17.03. TENANT'S DEFAULT IN RENT. If an Event of Default exists because TENANT fails to pay the Base Rent, Additional Rent or any part thereof when it becomes due and such Event of Default shall continue for thirty (30) days after written notice specifying such default has been received by TENANT, then, in addition to the other remedies or courses of action now or hereafter provided by law, LANDLORD may, at its option, either (1) terminate, forfeit, cancel and annul this Lease, in which case neither LANDLORD nor TENANT shall have any further rights or obligations under this Lease as of the date of termination, forfeiture, cancellation and annulment except with respect to those amounts that TENANT was obligated to pay to LANDLORD prior to the date of termination, forfeiture, cancellation and annulment; or (2) terminate TENANT'S possessory rights, without terminating the term of this Lease, in which case LANDLORD shall have the rights hereinafter set forth LANDLORD shall give written notice to TENANT of LANDLORD's election In no case shall a termination of this Lease give LANDLORD the right to accelerate the Base Rent.

17.04 OTHER EVENTS OF DEFAULT BY TENANT If an Event of Default exists because TENANT violates or neglects any covenant, agreement or stipulation herein contained on TENANT's part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice specifying such Event of Default has been received by TENANT, and TENANT does not cure such default within said thirty (30) days, of if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and TENANT has not proceeded with reasonable diligence and good faith to complete the curing thereof, then, in addition to the other remedies or courses of action now or hereafter provided by law, LANDLORD may cure such default for the account of and at the sole cost and expense of TENANT. Any sum so expended by LANDLORD shall be deemed to be additional rent and on demand, shall be paid by TENANT on the day when the Base Rent shall next be due and payable. Notwithstanding the foregoing, in the event of a bona fide dispute, LANDLORD shall not have the right to make repairs, except after such liability has been finally judicially determined or so long as TENANT continues to pay the Base Rent as herein above provided in Article VI. In no event shall a default by TENANT under this paragraph 17.04 be the basis of a forfeiture or this Lease or otherwise result in the eviction of TENANT or the termination of this Lease.

17.05. TERMINATION OF TENANT'S POSSESSORY RIGHTS. If LANDLORD elects to terminate TENANT'S possessory rights, without terminating the term of this Lease, LANDLORD shall have the right, after appropriate judicial hearing and process or with TENANT'S consent in lieu thereof, to enter and take possession of the Demised

Premises immediately and may remove all persons, furniture, fixtures and equipment from the Demised Premises, at TENANT'S sole expense, in order to recover at once, full and exclusive possession of the Demised Premises, and such entry shall not operate as a waiver or satisfaction, in full or in part, of any claim or demand arising out of or connected with, any breach, default, or violation by the TENANT of any covenant or agreement on its part to be performed.

17.06. RELETTING ON TERMINATION OF POSSESSORY RIGHTS Should LANDLORD elect to terminate TENANT'S possessory rights, without terminating the term of this Lease, as herein above provided, LANDLORD shall, with the prior written consent of TENANT, which consent shall not be unreasonably withheld, relet the Demised Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as LANDLORD may deem advisable, and LANDLORD shall have the right to make, with the prior written consent of TENANT, which consent shall not be unreasonably withheld, reasonable alterations and repairs to the Demised Premises Such reletting shall not work as a forfeiture of the rent to be paid by TENANT; provided, that rentals received by LANDLORD from any such reletting shall be applied first, to the payment of any indebtedness other than rent due hereunder from TENANT to LANDLORD; second, to the payment of rent then due and unpaid hereunder; third, to the payment of any cost of such reletting; fourth, to the payment of any alterations and repairs to the premises to which TENANT has given its written consent. The residue, if any, shall be held by LANDLORD and applied in payment of future rent as the same may become due and

payable hereunder; if no future rent becomes due and payable hereunder, such residue shall be retained by LANDLORD Should such rentals received from such reletting by LANDLORD to which TENANT has given its written consent, during any month be less than the base rental agreed to be paid hereunder during that month by TENANT, then TENANT shall upon receipt from LANDLORD specifying the amount, pay the difference to LANDLORD. Such difference shall be calculated and paid monthly.

No such termination of TENANT'S possessory rights, without terminating the lease term, shall be construed as an election on the part of LANDLORD to terminate this Lease unless a written notice of such intention be given to TENANT or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, LANDLORD may at any time thereafter elect to terminate this Lease for such previous default, unless LANDLORD has allowed TENANT or TENANT'S subtenant to reenter and relet the Demised Premises.

17.07. LANDLORD DEFAULT. The LANDLORD further covenants with the TENANT that if LANDLORD shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice thereof is given by TENANT to LANDLORD and Mortgagee (provided LANDLORD provides name and notice address of Mortgagee to TENANT), and LANDLORD or Mortgagee does not cure such default within said thirty (30) days, or if such default is of such a nature that it cannot reasonably be cured within said thirty (30) day period and LANDLORD or Mortgagee has not proceeded

if such default materially adversely impairs Tenants use of the Premises 11-7-94 W.T

with reasonable diligence and good faith to complete the curing thereof, then, and in addition to the other remedies or courses of action now or hereafter provided by law, TENANT may, at its option, among other things, (1) cancel and annul this Lease, (2) remedy the condition or need referred to in such notice, (3) make the payment which LANDLORD has not made, but should have made, or (4) remedy the condition or need referred to in such notice and deduct TENANT'S actual cost or the amount of the payment thereof from subsequent installments of Base Rent, which actual cost is hereby agreed by the parties in advance to be reasonable and proper costs and deductions. In the event of any dispute between the parties as to the right of TENANT to such deduction, LANDLORD further covenants and agrees that it will not give TENANT any notice of default or termination of this Lease unless TENANT shall fail to pay to LANDLORD the amount of any such deduction within ten (10) days after receipt of notice by TENANT of a final and unappealable judgment with respect thereto in favor of LANDLORD.

XVIII. WASTE/TERMINATION/SHOWING

18.01. WASTE. TENANT shall not commit waste or permit waste to be committed in or upon the Demised Premises and, at the termination of this Lease, shall surrender and deliver the Demised Premises to the LANDLORD in as good condition as the same were at the commencement of the term excepting (1) usual wear and tear, (2) acts of God and unavoidable casualties, (3) repair of latent defects for which LANDLORD is responsible hereunder, (4) damage of loss for which LANDLORD has waived recovery hereunder, and (5) other causes beyond the control of TENANT.

18.02. REMOVAL OF TENANT'S TRADE FIXTURES. TENANT may remove

its trade fixtures and equipment from the Demised Premises at any time and from time to time during the Base Term and any Renewal Period. TENANT shall, within thirty (30) days after the expiration of the final term hereof, repair any damage to the Demised Premises caused by TENANT's removal of any such trade fixtures and equipment.

18.03. SHOWING. LANDLORD may, at any time within six (6) months before the expiration of this Lease, enter the Demised Premises at all reasonable hours for the purpose of offering the Demised Premises for rent, subject to TENANT's rights, as set out in this Lease.

XIX. **SIGNS/SPECIAL SALES PROMOTIONS/TELECOMMUNICATIONS**

19.01. SIGNS. TENANT shall have the right to install and maintain a sign affixed to the exterior of the Demised Premises, provided that LANDLORD shall have the right to approve the design and placement of any and all signs of any nature upon the exterior of the Demised Premises, which approval shall not be unreasonably withheld.

19.02. SPECIAL SALES PROMOTION. Notwithstanding any provision in this Lease to the contrary, it is agreed that TENANT may place special sales promotion signs on the parking area light poles from time to time and may string pennants and streamers around the parking area These signs and decorations, however, shall be of a strictly temporary nature.

19 03 TELECOMMUNICATIONS TENANT shall be allowed access, either underground or aerial as required by the telecommunications supplier, to all telecommunications lines and facilities, including the right to install at TENANT's expense on an exterior wall or

roof area, a digital communications reflector no larger than two (2) meters in diameter, complete with attached cable to the Demised Premises, and TENANT may offer access to telecommunications services to other tenants. Tenant shall pay for any damage to roof or wall caused by the installation of such reflector.

XX. GENERAL PROVISIONS

20.01. LANDLORD ENTRY. LANDLORD shall have the right to enter the premises at any reasonable time for the purpose of inspecting the same, or for the purpose of doing anything that may be required under this Lease, or for the purpose of doing any thing TENANT may be required to do and shall fail to do.

20.02. RELATIONSHIP. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relation of principal and agent or of partnership or of joint venture between the parties hereto. It is understood and agreed that neither method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of LANDLORD and TENANT.

20 03 Notices. All notices or demands required or permitted to be given shall be deemed to have been given only if in writing, forwarded by certified or registered mail, postage prepaid and addressed as follows:

If to Landlord:

William T Taff
711 West Stone Drive
Kingsport, Tennessee 37660

If to Tenant:

Fleming Foods of Tennessee, Inc
c/o Fleming Companies, Inc
6301 Waterford Blvd
Oklahoma City, Oklahoma 73118

Copy to:

Attn: Jim Barwick
General Counsel
Same Address

Such addresses may be changed from time to time by either party by serving notice of such change as outlined above.

20.04. CAPTIONS. Any headings preceding the text of the several paragraphs and subparagraphs hereof, are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

20.05. BINDING EFFECT. This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

20.06. MERGER. This agreement contains the entire agreement of the parties hereto, both written and oral, and shall not be amended, altered or otherwise modified except in writing signed by the parties

20.07. TIME. Time is of the essence in the performance of all obligations of LANDLORD and TENANT hereunder for which a time of performance is specified.

20.08. CHOICE OF LAWS. This agreement shall be construed under and in accordance with the laws of the State of Tennessee.

20 09. MULTIPLE PARTIES. If more than one person or corporation is named as LANDLORD in this Lease and executes the same as LANDLORD, then the word "LANDLORD" wherever used herein shall refer to all such persons or corporations, and the liability for compliance with or for the performance of all the terms, conditions and covenants herein shall be joint and several.

20 10. SEVERABILITY. The sections of this Lease are intended

to be severable. If any section or provisions of this Lease shall be held to be unenforceable by any court of competent jurisdiction, this Lease shall be construed as though such section had not been included in it. If any section or provision of this Lease shall be subject to two constructions, one of which would render such section or provision invalid, then such section or provision shall be given that construction which would render it valid.

20.11. ATTORNEY FEES AND COSTS. If either party requires the services of an attorney to enforce any of the terms, covenants and conditions of this Lease, the prevailing party shall have the right to recover reasonable attorney's fees and costs.

20.12. No Option. The submission of this Lease for examination does not constitute a reservation of or option for the Demised Premises and this Lease becomes effective as a Lease only upon the execution and delivery thereof by LANDLORD and TENANT.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date and year first above written.

WITNESS:	LANDLORD:
BY Tamara L. McCann	BY: William R. Toft
DATE. 11-07-94	DATE: 11-7-94
	TENANT:
WITNESS	FLEMING FOODS OF TENNESSEE, INC
BY Karen M. Nallan	BY [signature]
DATE 12-16-94	DATE: 12-16-94

RDL/KINGTAF LSE

GUARANTY

December 16, 1994

IN CONSIDERATION of and as an inducement for the granting, execution and delivery of that certain Build and Lease Agreement (hereinafter "Lease") dated December 16, 1994, by and between William T. Taff, as Landlord, and Fleming Foods of Tennessee, Inc., a Tennessee corporation, as Tenant, covering certain premises located in Church Hill, Tennessee, the undersigned, Fleming Companies, Inc., an Oklahoma corporation, hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, and any and all other sums and charges payable by Tenant under the Lease, and hereby further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements to be performed and observed by Tenant under the Lease, and the Guarantor hereby covenants and agrees with the Landlord, its successors and assigns, that if Tenant defaults in the payment of amounts due under the Lease, or if Tenant defaults in the performance and observance of any of the terms, covenants, provisions or conditions contained in the Lease, the Guarantor shall pay such amounts and shall perform and fulfill all of such terms, covenants, conditions and provisions, and will pay all charges that may arise in consequence of any default by Tenant under the Lease, including without limitation, all reasonable attorney's fees and disbursements incurred by the Landlord and caused by any such default and/or by the enforcement of this Guaranty.

FLEMING COMPANIES, INC.

By _____
David R. Almond
Senior Vice President

/rigg/flm/church_gty

W T
12-21-94

DESCRIPTION
Oakwood Markets Store Site
Church Hill, Tennessee

BEGINNING at a point at the eastern most corner of the property hereby conveyed in the line of Lot 12, Block 1, Meadow View Subdivision thence S. 68° 03' W , crossing an old iron pin located 21.10 feet from the point of BEGINNING, a total distance of 193.98 feet to a nail in the northeasterly boundary of an asphalt roadway; thence N. 43° 39' W. 125.41 feet to a point; thence N 23° 02' W. 349.44 feet to a point; thence N. 65° 04' E. 214.85 feet to a point in the line of N. Scott King and William R. King property, thence with said line S 25° 43' E 395.48 feet to the corner between Lot 2 of the said King property and Lot 12, Block 1 of Meadow View Subdivision; thence with the line of said Lot 12 S. 26° 25' E 82 71 feet to the point of BEGINNING being a total of 2.389 acres as shown on Plat by Emory A. Henry dated January 11, 1994, scale 1" = 40 feet, entitled "Plat Showing Proposed Site of Oakwood Market" and being a part of the property conveyed to Oakwood Properties by Deed dated February 15, 1993, of record in the Register's Office for Hawkins County in Deed Book 352 at page 490 and by Deed of Correction to Oakwood Properties dated October 11, 1993, of record in said Register's Office in Deed Book 358 at page 668.

HSTAS/5315

WK 12-21-94

TITLE ENCUMBRANCES

1. 1994 Town of Church Hill and Hawkins County, Tennessee taxes and subsequent years liens not yet due and payable.

2. General permit of record in Deed Book 103, page 464.

3. Rights of others in the 50-strip conveyed to Oakwood Markets, Inc. recorded in Deed Book 352, page 490.

4. Such matters as might be revealed by an accurate survey orpersonal inspection of the premises.

5. Liens for work performed or materials furnished which may constitute a lien on the property, but which are not yet of record.

6. Rights of parties in possession.

UNITED STATES BANKRUPTCY COURT DISTRICT OF Deleware

PROOF OF CLAIM

Name of Debtor	Case Number
Fleming Companies, Inc et al	03-10945 (MFW)

This form should not be used to make a claim for an administrative expenses arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503

Name of Creditor (The person or other entity to whom the debtor owes money or property)

William T Taff

Name and address where notices should be sent

Moore Stout Waddell & Ledford, P C
Attorneys at Law
P O Box 1345
Kingsport, TN 37662
Telephone number (423) 246-2344

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars
☐ Check box if you have never received any notices from the bankruptcy court in this case
☑ Check box if the address differs from the address on the envelope sent to you by the court

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor
N/A

Check here
☐ replaces
if this claim a previously filed claim, dated _____
☐ amends

1 Basis for Claim
☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes _____
☑ Other Damages from rejection of Lease

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages, salaries, and compensation (fill out below)

Your SS #
Unpaid compensation for services performed
from _____ to _____
(date) (date)

2 Date debt was incurred April 1, 2003

3 If court judgment, date obtained

4 Total Amount of Claim at Time Case Filed $ 26,576 93
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim
9 Check this box if your claim is secured by collateral (including a right of setoff)
Brief Description of Collateral
9 Real Estate 9 Motor Vehicle
9 Other_____

Value of Collateral $

Amount of arrearage and other charges at time case filed included in secured claim, if any $_____

6 Unsecured Priority Claim
9 Check this box if you have an unsecured priority claim
Amount entitled to priority $
Specify the priority of the claim
9 Wages salaries or commissions (up to $4 300) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier 11 U S C § 507(a)(3)
9 Contributions to an employee benefit plan 11 U S C § 507(a)(4)
9 Up to $1 950* of deposits toward purchase lease or rental of property or services for personal family or household use – 11 U S C § 507(a)(6)
9 Alimony maintenance, or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)
9 Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
9 Other specify applicable paragraph of 11 U S C § 507(a)(____)
** Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

7 **Credits** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim
8 **Supporting Documents** *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary
9 **Date-Stamped Copy** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

JUL 23 A 10
DISTRICT OF DELAWARE

Date	Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)
7/15/03	William T Taff Robert L Arrington By Robert L Arrington, Attorney

Penalty for presenting fraudulent claim Fine of up to $500,00 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 3571

COPY

MOORE STOUT WADDELL & LEDFORD, P C
ATTORNEYS AT LAW
238 BROAD STREET
KINGSPORT TENNESSEE 37660

P O Box 1345

Dorman L Stout
W Gorman Waddell
J Patrick Ledford
Robert L Arrington
William S Lewis
Brent B Young

Frank K Moore
(1927 1987)

Area Code 423
Telephone 246 2344
Facsimile 246 2210

Writer=s E Mail Address
larrington@lawmswl com

July 16, 2003

United States Bankruptcy Court
824 North Market Street, 5th Floor
Wilmington, Delaware 19801

Re Bankruptcy Case No 03-10945 (MFW)
Debtors Fleming Companies, Inc et al
Claimant William T Taff
Our File A-a-14786

Dear Clerk

Enclosed is a Notice of Appearance and a Proof of Claim, with attachments, that we have prepared on behalf of William T Taff, a creditor in the above-referenced bankruptcy Please file these documents in the usual way and send us a file-stamped copy of the Proof of Claim We enclosed a self-addressed stamped envelope and an extra copy of the Proof of Claim for your use

By copy of this letter we are sending copies of these documents to the persons listed below

Thank you for your time and assistance in this matter

Very truly yours,

MOORE STOUT WADDELL & LEDFORD, P.C

Robert L Arrington

RLA/cc
Enclosures
cc
Laura Davis Jones Esq , Attorney for Debtor
Christopher Lhulier, Attorney for Debtor
Scotta Edelen McFarland, Attorney for Debtor
Sheldon K Rennie, Attorney for Debtor
Dana B Geyer, Esq , Trustee
William T Taff, Creditor

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