FORM B10 (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor	Case Number
Retail Supermarkets, Inc	03-10970 (MFW)

NOTE This form should not be used to make a claim for an administrative expense 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)

Walton Enterprises, Inc

☐ 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

Name and address where notices should be sent

c/o Allison R Comment
Andrews & Kurth L L P
600 Travis Street, Suite 4200
Houston, Texas 77002-3090
Telephone 713-220 4200, Telecopier 713-220-4285

This Space For Court Use Only

Account or other number by which creditor identifies debtor

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

1 BASIS FOR CLAIM

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (fill out below)
Your Social Security Number _____ _____ _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2 Date debt was incurred

3 If court judgment, date obtained

4 Total Amount of Claim at Time Case Filed $ See Attachment "A"

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

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

Brief Description of Collateral
☐ Real Estate
☐ Motor Vehicle
☐ Other _____

Value of collateral _____

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

6 Unsecured Priority Claim

☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $ _____
Specify the priority of the claim
☐ Wages salaries or commissions (up to $4 650) * 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)
☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)
☐ Up to $2 100 of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)
☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)
☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
☐ Other Specify applicable paragraph of 11 U S C § 507(a)(_____)

**Amounts are subject to adjustment on 4/1/04 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 a copy of the proof of claim

This Space For Court Use Only

FILED
JUL 3 1 2003
BMC
Fleming Companies Claim
01918

Date
July 30, 2003

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

Allison R Comment
Allison R Comment,
Attorney for Claimant

Penalty for presenting fraudulent claim **Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§152 and 3571**

HOU 2191693 1

INSTRUCTIONS FOR FILING PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor there may be exceptions to the general rules

– DEFINITIONS –

DEBTOR
The person corporation or other entity that has filed a bankruptcy case is called the debtor

CREDITOR
A creditor is any person corpora tion or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed

PROOF OF CLAIM
A form telling the bankruptcy court now much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor s claim) This form must be filed with the clerk of the bank ruptcy court where the bankruptcy case was filed

SECURED CLAIM

A claim is a secured claim to the extent that the creditor has a lien
on property of the debtor (collat
eral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property

Examples of liens are a mortgage on real estate and a security inter est in a car truck boat television set or other item of property A lien may have been obtained through a court proceeding before the bankruptcy case began in some states a court judgment is a lien In addition to the extent a creditor also owes money to the debtor (has a right of setoff) the creditors claim may be a secured claim (See also *Unsecured Claim*)

UNSECURED CLAIM
If a claim is not a secured claim it is an unsecured claim A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full

UNSECURED PRIORITY CLAIM
Certain types of unsecured claims
are given priority so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or prop
erty available to pay these claims) The most common types of prior ity claims are listed on the proof of claim form Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*

Items to be completed in Proof of Claim form (if not already filled in)

Court Name of Debtor and Case Number
Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Western District of Washington), the name of the debtor in the bankruptcy case, and the bankruptcy case number If you received a notice of the case from the court, all of this information is near the top of the notice

Information about Creditor
Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property and the debtor's account number, if any If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form

1 Basis for Claim
Check the type of debt for which the proof of claim is being filed If the type of debt is not listed, check "Other" and briefly describe the type of debt If you were an em- ployee of the debtor, fill in you social security number and the dates of work for which you were not paid

2 Date Debt Incurred
Fill in the date when the debt first was owed by the debtor

3 Court Judgments
If you have a court judgment for this debt, state the date the court entered the judgment

4 Total amount of Claim at Time Case Filed
Fill in the total amount of the entire claim If interest or other charges in addition to the principal amount of claim are included check the appropriate place on the form and attach an itemization of the interest and charges

5 Secured Claim
Check the appropriate place if the claim is a secured claim You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed A claim may be partly secured and partly unsecured (See DEFINITIONS, above)

6 Unsecured Priority Claim
Check the appropriate place if you have an unse
cured priority claim and state the amount entitled to priority (See DEFINITIONS above) A claim may be partly priority and partly nonpriority if for exam
ple the claim is for more than the amount given pri
ority by the law Check the appropriate place to
specify the type of priority claim

7 Credits
By signing this proof of claim you are stating under oath that in calculating the amount of your claim
you have given the debtor credit for all payments received from the debtor

8 Supporting Documents
You must attach to this proof of claim form copies
of documents that show the debtor owes the debt claimed or if the documents are too lengthy a summary of those documents If documents are not available you must attach an explanation of why
they are not available

Attachment "A"

This claim arises out of a lawsuit brought by Markham West Shopping Center, L P ("Markham") against Walton Enterprises, Inc ("WEI"), Walton Enterprises II, L P ("WEI II"), Phillips Companies, Inc ("Phillips"), and Benchmark Realty Advisors, Inc ("Benchmark" and, collectively with WEI, WEI II, and Phillips, the "Walton Entities") in the 164th Judicial District Court of Harris County Texas A true and correct copy of the Second Amended Original Petition ("Complaint") instituting this proceeding against the Walton Entities is attached hereto as Exhibit "1" The lawsuit bears the caption *Markham West Shopping Center, L P v Walton Enterprises, Inc , Walton Enterprises II, L P , Phillips Companies, Inc , and Benchmark Realty Advisors, Inc* , No 2003-38682 (the "Lawsuit") In the Lawsuit, Markham asserts that the Walton Entities are liable for rental payments due under a lease of retail property space located in the Markham Commercial Center, 11400 Markham Street, Little Rock, Arkansas (the "Premises") between Markham's predecessor in interest (hereinafter "Markham") and WEI dated June 30, 1988 (the "Lease") and seeks all amounts owing under the Lease, attorneys' fees, costs of suit, and pre-judgment and post-judgment interest The Walton Entities deny that they are liable under the Lease and nothing in this Proof of Claim or this Attachment "A" constitutes a representation of liability on their part or an admission of liability in any form

In June of 1990, the Lease was assumed by and assigned to ATI, Inc ("ATI"), which, upon information and belief, has been merged into Fleming Companies, Inc Pursuant to this assumption and assignment, Fleming Companies, Inc guaranteed ATI's obligations under the Lease A true and correct copy of the Guarantee of Lease between Markham and Fleming Companies, Inc (the "Guarantee") is attached hereto as Exhibit "2" According to the Complaint, ATI ceased paying rent under the Lease in January, 2003 Additionally, the Lease was rejected by the Debtors on April 30, 2003 According to a computation provided by Markham, as of June 1, 2003, Fleming Companies, Inc (via the Guarantee or directly under the Lease through ATI) was in arrears under the Lease in the amount of $165,993 54

This proof of claim is based upon enforcement of one or more of the Debtors' obligations under the Lease and Fleming Companies, Inc 's liability under the Guarantee in the event that the

Walton Entities are held liable for ATI's Lease obligations in the Lawsuit The Walton Entities' potential exposure is unknown as Markham does not specify the amount of default rent it seeks to recover in the Complaint, and the relief requested includes interest, costs, and attorneys' fees

NO. 2003-38682

MARKHAM WEST SHOPPING CENTER, L.P.	§	IN THE DISTRICT COURT OF
V.	§	HARRIS COUNTY, TEXAS
WALTON ENTERPRISES, INC., WALTON ENTERPRISES II, L.P., PHILLIPS COMPANIES, INC., and BENCHMARK REALTY ADVISORS, INC.	§	164TH JUDICIAL DISTRICT

FILED CHARLES BACARISSE DISTRICT CLERK 2003 JUL 15 PM 12:07

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

Plaintiff, Markham West Shopping Center, L P , files this Second Amended Original Petition complaining of Defendants, Walton Enterprises, Inc , Walton Enterprises II, L.P , Phillips Companies, Inc., and Benchmark Realty Advisors, Inc , and for cause of action would show the Court the following:

Discovery Control Plan

1 In accordance with Rule 190 3 of the Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2 of Rule 190

Parties

2 Markham West Shopping Center, L P ("Markham") is a Delaware limited partnership duly authorized to conduct business in Harris County, Texas

3. Walton Enterprises, Inc. ("Walton") is a Delaware corporation having its principal place of business at 125 West Central, Bentonville, Arkansas 72712, and may be served with

Exhibit "1"

process through its registered agent, CT Corporation System, Walton Enterprises, Inc , P O Box A, Bentonville, Arkansas 72712

4 Walton Enterprises II, L P , is a Delaware limited partnership, and may be served with process through its registered agent, The Corporation Company, 417 Spring Street, Little Rock, Arkansas 72201

5 Phillips Companies, Inc is an Arkansas corporation, and may be served with process through its registered agents, John A Phillips or J Kirkwood Dupps, P O Box 989, Main and Central, Bentonville, AR 72712, or alternately by serving the Corporate Officer and Owner, Friday, Eldredge & Clark, c/o William H. Sutton, 2000 Regions Center, 400 West Capitol Avenue, Little Rock, Arkansas 72201

6 Benchmark Realty Advisors, Inc is apparently the successor-in-interest to Phillips Companies, Inc by name change, and may be served with process through its registered agent for service of process, Corporation Services Company, d/b/a CSC-Lawyers Incorporating Service Company, 800 Brazos, Austin, Texas 78701

All of the defendant entities will be collectively referred to as "Defendants "

Venue

6 Venue is proper in Harris County, Texas pursuant to section 15 002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas

Factual Allegations

7 By lease agreement dated June 30, 1988, (the "Original Lease"), John J Flake, Karen E Flake, George M Wells, and Rebecca F Wells (predecessors-in-interest to Markham) as Landlord, leased to Walton, as Tenant, certain commercial premises consisting of

approximately 70,000 square feet located in The Markham Commercial Center, 11400 Markham, Street, Little Rock, Arkansas (the "Demised Premises") The Original Lease has been subsequently amended by the parties by the following instruments First Amendment to Lease, dated February 28, 1990 and Second Amendment to Lease dated March 31, 1991 (the Original Lease and the First Amendment to Lease and Second Amendment to Lease are hereinafter collectively referred to as the "Lease"). On July 16, 1990, the Defendants assumed the obligations of lessee under the Lease together with Walton Also, on July 16, 1990, Defendants assigned their interest in the Lease to ATI, Inc., which then merged into Fleming Companies, Inc ("Fleming"), effective December 31, 1994 Notwithstanding said assignment, Defendants remain liable on the Lease Fleming has become insolvent and has ceased making timely payments under the Lease

8 Defendants have committed a default under the Lease by failing to timely pay the rental and other sums owing since January 2003, and by wrongfully vacating the demised premises

9 Defendants have committed a default under the Lease by failing to timely pay taxes and assessments, and other sums owing since October 2002

Suit For Breach of Lease

10. Defendants have failed and refused to pay all or any part of the sums presently due and owing under the Lease Markham hereby sues Defendants for those amounts due and owing under the Lease, jointly and severally

Attorneys' Fees

11 As a result of Defendants' default and refusal to pay those sums due and owing, Markham has been required to retain counsel and has incurred attorneys' fees and court costs

Markham has retained the law firm of Bracewell & Patterson, L L P to represent it, and has agreed to pay all reasonable and necessary attorneys' fees Markham seeks recovery of such attorneys' fees and costs as provided for in the under § 38 001 of the Texas Civil Practice and Remedies Code

Conditions Precedent

12 All conditions precedent to the filing of this suit have been performed or have occurred Defendants have ignored Markham's demands that Defendants comply with their obligations under the Lease.

Right to Future Action

13 Markham reserves the right to amend, or to file such other and further suits against Defendants as may be necessary and appropriate to collect all delinquent rents, damages, and other sums which have or will become due subsequent to the trial of this matter

Relief Requested

WHEREFORE, Plaintiff, Markham West Shopping Center, L P., prays that Defendants, Walton Enterprises, Inc , Walton Enterprises II, L P , Phillips Companies, Inc , and Benchmark Realty Advisors, Inc be cited to appear and answer herein, and that upon final trial, it be awarded the following against these Defendants, jointly and severally

a. Judgment for all amounts due and owing under the Lease as of the time of trial,

b Reasonable and necessary attorneys' fees,

c Costs of suit,

d Pre-judgment and post-judgment interest on all applicable amounts at the maximum non-usurious interest rate as allowed by law, and

e Such other and further relief to which Plaintiff may show itself to be justly entitled

GUARANTY OF LEASE

This Guaranty of Lease (the "Guaranty") guarantees a lease dated as of June 30, 1988, by and between John J. Flake and Karen E. Flake, as tenants by the entirety, and George M. Wells and Rebecca F. Wells, as tenants by the entirety, together as Tenants in Common ("Lessor"), and Walton Enterprises, Inc., a Delaware Corporation ("Walton"), as amended by an Addendum to Lease, dated as of May 31, 1988, the First Amendment to Lease, dated as of November 7, 1988, and the First Addendum to the Lease Agreement, dated as of February 28, 1990, which such instruments as they may further be altered, modified, or changed ("the Lease"), covering the Demised Premises (as that term is defined in the Lease) located at West Markham, Little Rock, Arkansas 72202 as more specifically set forth as Exhibit A to the Lease. The terms used in this Guaranty shall have the same meaning as set forth in the Lease, unless such terms are specifically defined in this Guaranty. In consideration for Lessor's consent to the assignments and assumptions of Lease by Walton to Phillips Companies, Inc. ("Phillips"), and Phillip's concurrent further assignment to ATI, Inc., an Oklahoma Corporation, and for ten dollars ($10.00) and other good and valuable consideration, Fleming Companies, Inc , an Oklahoma Corporation ("Guarantor"), has agreed to execute and deliver this Guaranty to Lessor. Guarantor acknowledges that Lessor would not consent to the assignments and assumptions if Guarantor did not execute and deliver this Guaranty to Lessor.

1 **Guaranty**. Guarantor unconditionally and irrevocably guarantees the payment and performance of, and agrees to pay and perform as primary obligor, all liabilities, obligations and duties (including but not limited to payment of rent) imposed upon Lessee under the terms of the Lease, from and after the date hereof, as if Guarantor had executed the Lease as Lessee This is a continuing Guaranty and shall apply to any and all Lease amendments, extensions and modifications whatsoever. Guarantor expressly consents to any extension of time, leniency, modification, waiver, forbearance, or any change which may be made in any term, condition or provision of the Lease, and no such change, modification, extension, waiver, or forbearance shall release Guarantor from any liability or obligation hereby incurred or assumed.

2. Waivers. Guarantor expressly waives notice of acceptance of this Guaranty, demand, all setoffs and counter-claims, notice of dishonor, protest or notice of protest of every kind, each and every notice to which Guarantor may be entitled under the Lease or otherwise, notice of default in or under any of the terms of the Lease, notice and demand of any and all proceedings in connection with the Lease (including demand for

Exhibit "2"

performance of the Lease), diligence in collecting any sums due under the Lease or enforcing any of the obligations under the Lease, bringing of suit and diligence in taking any action with reference thereto or in handling or pursuing any of Lessor's rights under the Lease.

3. Judgments. Guarantor agrees that any and all judgments resulting from the liabilities, obligations and duties (including but not limited to payment of rent) imposed upon Lessee under the terms of the Lease shall be binding upon Guarantor.

4. Modifications of Lease. Without notice to or consent by Guarantor, Lessor and Lessee may at any time, modify, extend, amend or make other covenants respecting the Lease as may be appropriate, including subleasing and assigning the Lease to third parties. Guarantor shall not be released but shall continue to be fully liable for payment and performance of all liabilities, obligations and duties of Lessee under the Lease as modified, extended, or amended. The obligations of Guarantor hereunder shall not be released by Lessor's receipt, application, or release of security given for the performance and observance of any covenants, conditions, or provisions in the Lease to be performed or observed by Lessee

5. Obligations are Unconditional. Guarantor recognizes that the obligations under this Guaranty are absolute and unconditional, and that in the event of a default by Lessee under the Lease and after expiration of any applicable grace period in the Lease, Lessor and its successors and assigns shall have the right to demand performance from and proceed against Guarantor or otherwise exercise any available remedy at law or in equity to enforce the provisions of this Guaranty without the necessity of first proceeding against or demanding performance by Lessee of or with respect to any obligation under the Lease, it being expressly agreed by the Guarantor that its liability under this Guaranty shall be primary. Lessor may maintain successive actions for other defaults under the Lease. Lessor's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions, until and unless all obligations hereby guaranteed have been paid and fully performed

6 No Release Any act of Lessor consisting of a waiver of any of the terms or conditions of the Lease, or the giving of any consent to any manner or thing related to the Lease, or the granting of any indulgences or extensions of time

to Lessee, may be done without notice to Guarantor and without releasing the obligations of Guarantor hereunder.

7. **Attorneys' Fees and Costs**. In the event that any action is commenced by Lessor to enforce the provisions of this Guaranty, Lessor shall be entitled, if it shall prevail in any such action or proceeding, to recover from Guarantor all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

8 **Subrogation; Subordination**. Without prior written consent of Lessor, which such consent shall not be unreasonably withheld, until all the covenants and conditions in the Lease on Lessee's part to be performed and observed are fully performed and observed, Guarantor: (a) shall have no right of subrogation against Lessee by reason of any payments or acts or performance by Guarantor, in compliance with the obligations of Guarantor hereunder; (b) waives any right to enforce any remedy that Guarantor now or hereafter shall have against Lessee by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder; and (c) subordinates any liability or indebtedness of Lessee now or hereafter held by Guarantor to the obligations of Lessee to Lessor under the Lease.

9. **Financial Interest in Lessee**. Guarantor acknowledges that Guarantor is financially interested in ATI, Inc

10. **Indulgence, Etc**. Guarantor's liability shall not be affected by any indulgence, compromise, or settlement agreed upon by Lessee and Lessor, or any Lease termination to the extent Lessee continues to be liable.

11. **Liability not Affected**. The liability of Guarantor hereunder shall in no way be affected by, and Guarantor expressly waives any defenses that may arise by reason of (a) the release or discharge of Lessee in any creditors', receivership, bankruptcy or other proceedings; (b) the impairment, limitation, or modification of the liability of Lessee or the estate of Lessee in bankruptcy, or of any remedy for the enforcement of Lessee's liability under the Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court, (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the modification, assignment, or transfer of the Lease by Lessee; (e) any disability or other defense of Lessee; or (f) the cessation from any cause whatsoever of the liability of Lessee

12 **Payments**. All payments by Guarantor hereunder shall be made to Lessor at the address of Lessor set forth in the Lease, or at such other address hereafter furnished in writing to Guarantor by Lessor.

13 **Severability**. In the event any condition of this Guaranty shall be found illegal or invalid for any reason, the remaining provisions shall be interpreted and construed as if the illegal or invalid provision were not a part of this Guaranty.

14. **Successors and Assigns**. This Guaranty shall inure to the benefit of Lessor, its legal representatives, successors, and assigns and shall be binding upon the heirs, executors, administrators, legal and personal representatives, and assigns of Guarantor.

15. **Place of Performance**. Guarantor agrees that this agreement is performable in Pulaski County, Arkansas, and waives the right to be sued elsewhere. This Guaranty shall be construed in accordance with the laws of the State of Arkansas and the laws of the United States applicable to transactions in Arkansas.

16 **Representation Regarding Lease**. Guarantor hereby represents and warrants to Lessor that Guarantor has received a copy of the Lease, has read or had the opportunity to read the Lease, and understands the terms of the Lease

17. **Lessor's Reliance**. Lessor shall not be required to inquire into the powers of Lessee or the officers, employees, partners, or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

18. **Guarantor's Duty**. Guarantor assumes the responsibility to remain informed of the financial condition of Lessee and of all other circumstances bearing upon the risk of Lessee's default, and agrees that Lessor shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstance.

19 **Encumbrances** If Lessor's interest in the Shopping Center or the Lease, or the rents, issues, or profits therefrom, are subject to any deed of trust, mortgage, or assignment for security, Guarantor's acquisition of Lessor's interest in the Shopping Center or Lease shall not affect any of Guarantor's obligations under this Guaranty. In such event, this Guaranty shall nevertheless continue in full force and effect for

the benefit of any mortgagee, beneficiary, trustee, or assignee or any purchaser at any sale by judicial foreclosure or under any private power of sale, and their successors and assigns.

20. **Bankruptcy; Assumption and Rejection of Lease.** The liability of Guarantor under this Guaranty is not and shall not be affected or impaired by any payment made to Lessor under or related to the Lease for which Lessor is required to reimburse Lessee pursuant to any court order or in settlement of any dispute, controversy or litigation in any bankruptcy, reorganization, arrangement, moratorium or other federal or state debtor relief proceeding. If, during any such proceeding, the Lease is assumed by Lessee or any trustee, or thereafter assigned by Lessee or any trustee to a third party, this Guaranty shall remain in full force and effect with respect to the full performance of Lessee, any such trustee or any such third party's obligations under the Lease. If the Lease is terminated or rejected during any such proceeding, or if any of the events described in Paragraph 11 (a) through (c) and (f) herein occur, then as between Lessor and Guarantor, Lessor shall have the right to accelerate all of Lessee's obligations under the Lease and Guarantor's obligations under this Guaranty. In such event, all such obligations shall become immediately due and payable by Guarantor to Lessor without any notice or demand whatsoever. Guarantor waives any defense arising by reason of any disability or other defense of Lessee or by reason of the cessation from any cause whatsoever of the liability of Lessee.

21 **Captions.** The captions employed in this Guaranty are for convenience only and are not intended in any way to limit or amplify the terms and provisions of this Guaranty

22. **Date.** This Guaranty is executed to be effective as of the date of the Lease.

Address of Guarantor:

6301 Waterford Boulevard
Post Office Box 26647
Oklahoma City, OK 73126

Guarantor:

Fleming Companies, Inc.

By: Stephen D. Marquardt

Title: Vice President