

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE	PROOF OF CLAIM
In re Fleming Companies, Inc	Case Number 03-10945 (MFW) Jointly Administered

484357
Bar Date Ref # 2-G1-3881
YOUR CLAIM IS SCHEDULED AS

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 and Address

0354651484357

MERIDIAN PLAZA ONE LLC
ERIC BRANDENBURG
1122 WILLOW STREET STE 200
SAN JOSE CA 95125

☐ 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 this address differs from the address on the envelope sent to you by the court.

The amounts reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth herein and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.

If the amounts shown above are listed as Contingent, Unliquidated or Disputed, a proof of claim must be filed.

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

Creditor Telephone Number **408 279-5200**

CREDITOR TAX ID #	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR	Check here <input type="checkbox"/> replaces or amends a previously filed claim dated _____
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1 BASIS FOR CLAIM

- | | | |
|---|---|--|
| <input type="checkbox"/> Goods sold | <input type="checkbox"/> Personal injury/wrongful death | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) |
| <input type="checkbox"/> Services performed | <input type="checkbox"/> Taxes | <input type="checkbox"/> Wages, salaries and compensation (Fill out below) |
| <input type="checkbox"/> Money loaned | <input checked="" type="checkbox"/> Other (describe briefly)
Non-residential real property lease (#6863) | Your social security number _____
Unpaid compensation for services performed from _____ to _____
(date) (date) |

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE	\$ <u>434,356.83</u>	\$ <u>64,172.96</u>	\$ <u>498,529.79</u>
	(unsecured)	(secured)	(total)

Plus unknown amounts per Exhibit "M"

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 of 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.

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). See Exhibit "M"

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 your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m., September 15, 2003, Pacific Daylight Time.

BY MAIL TO
Bankruptcy Management Corporation
P.O. BOX 900
El Segundo, CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

DATE SIGNED
8/18/03

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

ERIC BRANDENBURG, Manager

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions

THIS SPACE FOR COURT USE ONLY

AUG 20 2003

BMC

Fleming Companies Claim



05430

5400

Exhibit "A"

LEASE AGREEMENT

Between

CANAS FUNDING CORPORATION,
as Lessor

And

ALBERTSON'S, INC.,
as Lessee

Dated as of September 23, 1974

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LEASE AGREEMENT, dated as of September 1, 1974,

between CAMPS FUNDING CORPORATION, a Delaware corporation (herein, as further defined in paragraph 33(f), called Lessor), having an address c/o Corporation Trust Company, 100 West Tenth Street, Wilmington, Delaware 19801, and ALBERTSON'S, INC., a Delaware corporation (herein, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, called Lessee), having an address at 1623 Washington, Post Office Box 20, Boise, Idaho 83726. (Words or phrases having initial capitals which are not otherwise defined have the meanings set forth in paragraph 33.)

1. Demise of Premises In consideration of the rents and covenants herein stipulated to be paid and performed, Lessor hereby demises and lets to Lessee, and Lessee hereby demises and lets from Lessor, for the terms herein described, the premises (herein called the Leased Premises) consisting of (i) the land described in Schedule A hereto, (ii) all improvements constructed and to be constructed thereon (including all building equipment and fixtures, if any, owned by Lessor, but excluding trade equipment and fixtures owned by Lessee), and (iii) all easements, rights and appurtenances relating thereto, all upon the terms and conditions herein specified

2 Title and Condition. The Leased Premises are demised and let subject to (a) the rights of any parties in possession and the existing state of the title as of the commencement of the term of this Lease, (b) any state of fact which an accurate survey or physical inspection thereof might show, (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and (d) the condition of any buildings, structures and other improvements located thereon, as of the commencement of the term of this Lease, without representation or warranty by Lessor Lessee represents that it has

examined the title to the Leased Premises and has found the same to be satisfactory for all purposes hereof.

3. Use of Leased Premises, Quiet Enjoyment. (a) Lessee may occupy and use the Leased Premises for any lawful purpose.

(b) If and so long as Lessee shall observe and perform all covenants, agreements and obligations required to be observed and performed by it hereunder, Lessor warrants against any interference by Lessor, or any party claiming by, through or under Lessor, the peaceful and quiet occupation and enjoyment of the Leased Premises by Lessee; provided, that Lessor and its agents may enter upon and examine the Leased Premises at reasonable times. Any failure by Lessor to comply with the foregoing warranty shall not give Lessee any right to cancel or terminate this Lease, or to abate, reduce or make deduction from or offset against any Basic Rent, as hereinafter defined, or additional rent or other sum payable under this Lease, or to fail to perform or observe any other covenant, agreement or obligation hereunder. Nothing contained in the foregoing sentence shall be deemed to forbid Lessee from obtaining injunctive relief against Lessor for breach of the aforesaid warranty of peaceful and quiet occupation and enjoyment of the Leased Premises.

4 Terms. Subject to the terms and conditions hereof, Lessee shall have and hold the Leased Premises for (a) a preliminary term (herein called the Preliminary Term) commencing on October 3, 1974 and ending at midnight on November 30, 1976 and (b) a primary term (herein called the Primary Term) commencing on December 1, 1976 and ending at midnight on November 30, 2001. Thereafter, Lessee shall have the right and option to extend this Lease for five consecutive extended terms (herein called the Extended Terms) and together with the Preliminary Term and the Primary Term, called the Terms) unless this Lease shall be sooner

terminated pursuant to the terms hereof. The first such Extended term shall commence on the day immediately succeeding the expiration date of the Primary Term and shall end at midnight on the day immediately preceding the tenth anniversary of the first day of such term. Each subsequent Extended Term shall commence on the day immediately succeeding the expiration date of the next preceding Extended Term, and shall end at midnight on the day immediately preceding the fifth anniversary of the first day of such term. Lessee may exercise each such option to extend this Lease by giving written notice to Lessor at least 180 days prior to the end of the then term of this Lease. The giving of such notice shall automatically extend this Lease for an Extended Term and no instrument of renewal need be executed, provided that no Extended Term shall take effect unless this Lease is in full force and effect immediately prior to the commencement thereof. If Lessee fails to give such notice, this Lease shall automatically terminate at the end of the then term of this Lease and Lessee shall have no further option to extend this Lease. If Lessee does not exercise any such option in a timely manner, then Lessor shall have the right during the remainder of the term of this Lease to advertise the availability of the Leased Premises for sale or reletting and to erect upon the Leased Premises signs indicating such availability, provided, that such signs do not unreasonably interfere with the use of the Leased Premises by Lessee. The phrase "term of this Lease" or "term hereof" means the Preliminary Term and the Primary Term, plus any Extended Terms with respect to which the right to extend has been exercised.

5. Rent. (a) Lessee covenants to pay to Lessor, as installments of rent for the Leased Premises during the term of this Lease, the respective amounts determined pursuant to Schedule B hereto (herein

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called the Basic Rent) on the dates set forth in said Schedule (herein called the Basic Rent Payment Dates), and to pay the same at Lessor's address set forth above or at such other place within the continental United States and/or to such other person as Lessor from time to time may designate to Lessee in writing, in lawful money of the United States of America

(b) Lessee covenants that all other amounts, liabilities and obligations which Lessee assumes or agrees to pay or discharge pursuant to this Lease (except amounts payable as the purchase price for the Leased Premises or any part thereof pursuant to any provision of this Lease and amounts payable as liquidated damages pursuant to paragraph 21(g) together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof, shall constitute additional rent hereunder. In the event of any failure by Lessee to pay or discharge any of the foregoing, Lessor shall have all rights, powers and remedies provided herein or by law in the case of non-payment of Basic Rent. Lessee also covenants to pay to Lessor on demand as additional rent, interest at the rate of 10% per annum, calculated on the basis of a 360-day year of twelve equal months, on (1) all overdue instalments of Basic Rent from the due date thereof until paid in full and (11) all overdue amounts of additional rent relating to obligations which Lessor shall have paid on behalf of Lessee from the date of such payment by Lessor until paid in full

6 Net Lease, Non-Terminability (a) This is an absolutely net lease and the Basic Rent, additional rent and all other sums payable hereunder by Lessee, whether as the purchase price for the Leased Premises or otherwise, shall be paid without notice, demand, set-off, counterclaim, abatement, suspension, deduction or defense.

(b) This Lease shall not terminate, nor shall Lessee have any right to terminate this Lease (except as otherwise expressly

provided in paragraph 12(b), 14(b), 15, 22 and 23), nor shall Lessee be entitled to any abatement or reduction of rent hereunder (except as otherwise expressly provided in paragraph 12(c), 13(c), 17(b) and 22(a)), nor shall the obligations of Lessee under this Lease be affected, by reason of (i) any damage to or destruction of all or any part of the Leased Premises from whatever cause, (ii) the taking of the Leased Premises or any portion thereof by condemnation, requisition or otherwise, (iii) the prohibition, limitation or restriction of Lessee's use of all or any part of the Leased Premises, or any interference with such use, (iv) any eviction by paramount title or otherwise, (v) Lessee's acquisition or ownership of all or any part of the Leased Premises otherwise than as expressly provided in paragraph 12(b), 14(b), 15, 22 and 23, (vi) any default on the part of Lessor under this Lease, or under any other agreement to which Lessor and Lessee may be parties, (vii) the failure of Lessor to deliver possession of the Leased Premises on the commencement of the term hereof, or (viii) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Lessee hereunder shall be separate and independent covenants and agreements, that the Basic Rent, the additional rent and all other sums payable by Lessee hereunder shall continue to be payable in all events and that the obligations of Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

(c) Lessee agrees that it will remain obligated under this Lease in accordance with its terms, and that it will not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition,

readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor, (ii) any action with respect to this Lease which may be taken by any trustee or receiver of Lessor or of any assignee of Lessor or by any court in any such proceeding or (iii) the death or incapacity of any assignee of Lessor.

(d) Lessee waives all rights which may now or hereafter be conferred by law (i) to quit, terminate or surrender this Lease or the Leased Premises or any part thereof, or (ii) to any abatement, suspension, deferment or reduction of the Basic Rent, additional rent or any other sums payable under this Lease, except as otherwise expressly provided in paragraph 12(c), 13(c), 17(b) and 22(a).

7. Taxes and Assessments, Compliance with Law. (a) Subject to the terms of paragraph 20, Lessee shall pay or discharge all Impositions when due. Notwithstanding the foregoing provision of this paragraph 7(a), Lessee shall not be required to pay any franchise, corporate, estate, inheritance, succession, transfer (other than taxes or similar charges payable in connection with a conveyance hereunder to Lessee), income, profits or revenue taxes of Lessor (other than any gross receipts or similar taxes imposed or levied upon, assessed against or measured by the Basic Rent, additional rent or any other sums payable by Lessee hereunder or levied upon or assessed against the Leased Premises), except any such tax, assessment, charge or levy imposed or levied upon or assessed against Lessor in substitution for or in place of an Imposition. Lessee agrees to furnish to Lessor, within 30 days after written demand therefor, proof of the payment of all Impositions. In the event that any Imposition levied or assessed against the Leased Premises becomes due and payable during the term hereof and may be legally paid in instalments, Lessee shall have the option to pay such Imposition in instalments. In such event, Lessee shall be liable only for those instalments which become due and payable during the term hereof.

(b) Lessee shall, at its expense, comply with and shall cause the Leased Premises to comply with all governmental statutes, laws, rules, orders, regulations and ordinances which at any time may affect the Leased Premises or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any of the same involve a change of policy on the part of the body enacting the same. Lessee shall, at its expense, comply with the requirements of all policies of insurance which at any time may be in force with respect to the Leased Premises, and with the provisions of all contracts, agreements and restrictions existing at the commencement of this Lease or thereafter suffered or permitted by Lessee affecting the Leased Premises or any part thereof or the ownership, occupancy or use thereof

8 Liens. Subject to the terms of paragraph 20, Lessee will not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Leased Premises or any part thereof or Lessee's interest therein or the Basic Rent, additional rent or other sums payable by Lessee under this Lease, other than (1) encumbrances referred to in Exhibit A hereto, (2) any encumbrance permitted by any Permitted Mortgage and (3) any mortgage, lien, encumbrance or other charge created by or resulting from any act of Lessor or any agent of Lessor. The existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this paragraph 8, if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen. Nothing contained in this Lease shall be construed as constituting the consent or request expressed or implied by Lessor to any contractor, subcontractor, laborer, materialman or vendor for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Leased Premises or any part thereof. Notice is hereby given that Lessor will not

be liable for any labor, services or materials furnished or to be furnished to Lessee, or to anyone holding the Leased Premises or any part thereof, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Lessor in and to the Leased Premises

9 Indemnification Lessee agrees to pay, and to protect, indemnify and save harmless Lessor (to the extent of Lessor's liability as owner of the Leased Premises) from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorney's fees and expenses of Lessee and Lessor), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from (i) any injury to, or the death of, any person or any damage to property on the Leased Premises or upon adjoining sidewalks, streets or ways, or in any manner growing out of or connected with the use, non-use, condition or occupation of the Leased Premises or any part thereof or resulting from the condition thereof or of adjoining sidewalks, streets or ways, (ii) violation of any agreement or condition of this Lease, and/or (iii) violation by Lessee of any contract or agreement to which Lessee is a party or any restriction existing at commencement of the term of this Lease or thereafter suffered or permitted by Lessee or any law, ordinance or regulation, in each case affecting the Leased Premises or any part thereof or the ownership, occupancy or use thereof. If Lessor shall be made a party to any such litigation commenced against Lessee, and if Lessee, at its expense, shall fail to provide Lessor with counsel approved by Lessor, Lessee shall pay all costs and reasonable attorney's fees and expenses incurred or paid by Lessor in connection with such litigation.

10 Maintenance and Repair. (a) Lessee acknowledges that it has received the Leased Premises in good condition, repair and appearance. Lessee agrees that it will, at its expense, keep and maintain

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the Leased Premises, including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto, in good repair and appearance, except for ordinary wear and tear, promptly make all structural and non-structural, foreseen and unforeseen, and ordinary and extraordinary changes and repairs of every kind which may be required to be made to keep and maintain the Leased Premises in such good condition, repair and appearance and will keep the Leased Premises orderly and free and clear of rubbish. Lessee further agrees that it will at all times and at its expense take reasonable measures to protect the Leased Premises from vandalism and other similar harm. Lessor shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Leased Premises or any part thereof, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to maintain the Leased Premises or any part thereof in any way. Lessee hereby expressly waives the right to make repairs at the expense of Lessor, which may be provided for in any law in effect at the time of the commencement of the term of this Lease or which may thereafter be enacted.

(b) In the event that any improvements situated on the Leased Premises at any time during the term of this Lease shall encroach upon any property, street or right-of-way adjoining or adjacent to the Leased Premises, or shall violate the agreements or conditions contained in any restrictive covenant affecting the Leased Premises or any part thereof, or shall impair the rights of others under or hinder or obstruct any easement or right-of-way to which the Leased Premises are subject, then, promptly after the written request of Lessor or any person affected by any such encroachment, violation, hindrance, obstruction or impairment, Lessee shall, at its expense, either (1) obtain effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment,

violation, hindrance, obstruction or impairment, whether the same shall affect Lessor, Lessee or both, or (ii) make such changes in the improvements to the Leased Premises and take such other action as shall be necessary to remove such encroachments, hindrances or obstructions and to end such violations or impairments, including if necessary the alteration or removal of any improvement to the Leased Premises. Any such alteration or removal shall be made in conformity with the requirements of paragraph 11(a) to the same extent as if such alteration or removal were an alteration under the provisions of paragraph 11(a).

11 Alterations. Upon notice from Lessee to Lessor, (a) Lessee may, at its expense, make additions to and alterations of the improvements to the Leased Premises, and make substitutions and replacements therefor, provided, that (i) the market value of the Leased Premises shall not thereby be lessened, (ii) such actions shall be performed in a good and workmanlike manner, and (iii) such additions, alterations, substitutions and replacements shall be expeditiously completed in compliance with all laws, ordinances, rules, regulations and requirements applicable thereto. All work done in connection with each such addition, alteration, substitution or replacement shall comply with the requirements of any insurance policy required to be maintained by Lessee hereunder and with the codes, procedures and recommended practices of the National Fire Protection Association or any other body exercising similar functions. Lessee shall promptly pay all costs and expenses of each such addition, alteration, substitution or replacement, discharge all liens arising therefrom and procure and pay for all permits and licenses required in connection therewith.

(b) Lessee may, at its expense (i) construct additional improvements upon the Leased Premises and (ii) install, assemble or place any items of machinery or equipment upon the Leased Premises, in each case upon compliance with all the terms and conditions set

forth in paragraph 11(a) All such improvements shall be and remain part of the realty and the property of Lessor and subject to this Lease. Such machinery or equipment shall be and remain the property of Lessee and Lessee may remove the same from the Leased Premises at any time prior to the termination of this Lease, provided that Lessee shall repair any damage to the Leased Premises resulting from such removal.

12. Condemnation. (a) Subject to the rights of Lessee set forth in this paragraph 12, Lessee hereby irrevocably assigns to Lessor any award or payment to which Lessee may be or become entitled by reason of any taking of the Leased Premises or any part thereof, by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Leased Premises or any part thereof, by any governmental authority, civil or military, whether the same shall be paid or payable in respect of Lessee's leasehold interest hereunder or otherwise. Lessor shall be entitled to participate in any such proceedings at Lessee's expense.

(b) If during any Term (1) the entire Leased Premises shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, or (11) any substantial portion of the Leased Premises which is sufficient to render the remaining portion thereof unsuitable for its continued use or occupancy in the business of Lessee shall be taken by such proceedings, then Lessee shall, within 30 days after any such taking, deliver a Purchase Offer specifying a Termination Date occurring not less than 90 nor more than 180 days after the delivery of the Purchase Offer. The Purchase Offer shall be accompanied by a Lessee's Certificate stating either that the conditions set forth in clause (1) of this paragraph 12(b) has been fulfilled or, that in the judgment of the Board of Directors of Lessee, the portion of the

Leased Premises taken fulfills the conditions set forth in clause (11) of this paragraph 12(b). If the conditions set forth in clause (1) or (11) of this paragraph 12(b) are fulfilled, Lessee conclusively shall be presumed to have made a Purchase Offer pursuant to said paragraph, but nothing in this sentence shall relieve Lessee of its obligation actually to deliver such Offer.

(c) If (1) a portion of the Leased Premises shall be taken by condemnation or other eminent domain proceedings, which taking is not sufficient to require that Lessee give a Purchase Offer or (11) the use or occupancy of the Leased Premises or any part thereof shall be temporarily taken by any governmental authority, then this Lease shall continue in full effect without abatement or reduction of Basic Rent, additional rent or other sums payable by Lessee hereunder, notwithstanding such partial or temporary taking. Lessee shall, promptly after any such taking ceases, at its expense, repair any damage caused thereby in conformity with the requirements of paragraph 11(a), so that, thereafter the Leased Premises shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such taking. In the event of any such partial taking, Lessor shall make the Net Award available to Lessee to make such repair, but, if such Net Award shall exceed \$20,000 or 2% of Lessor's Cost (as defined in Schedule C), whichever is greater, only upon the delivery of Lessee's Certificates to Lessor as such repair progresses, describing the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work and whether or not such work has been completed. Any Net Award remaining after the final payment has been made for such work in an amount less than the greater of \$20,000 and 2% of Lessor's Cost shall be paid to Lessee but if any Net Award so remaining shall exceed such amount, the entire amount of such Net Award so remaining shall all be retained by Lessor. After any such retention by Lessor (1) each instalment of Basic Rent payable during the Preliminary

Term, the Primary Term and any Extended Term on and after the second Basic Rent Payment Date occurring after final payment to Lessee for such work shall be reduced by an amount equal to the amount each installment would have been before the application of this clause (i) multiplied by a fraction, the numerator of which shall be the amount so retained and the denominator of which shall be the amount of Lessor's Cost (as defined in Schedule C), and (ii) Lessor's Cost shall be reduced by the amount so retained. In the event of such temporary requisition, Lessee shall be entitled to receive the entire Net Award payable by reason of such temporary requisition or portion of such temporary requisition occurring during the term hereof. If the cost of any repairs required to be made by Lessee pursuant to this paragraph 12(c) shall exceed the amount of the Net Award, the deficiency shall be paid by Lessee. No payments shall be made to Lessee pursuant to this paragraph 12(c) if any default shall have happened and be continuing under this Lease.

(d) For the purposes of this Lease the term "Net Award" shall mean: (i) all amounts payable as a result of any condemnation or other eminent domain proceeding, less all expenses of such proceeding and the collection of such amounts and (ii) all amounts payable pursuant to any agreement with any condemning authority (which agreement shall be deemed to be a taking) which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Leased Premises, less all expenses incurred as a result thereof and the collection of such amounts.

13 Insurance (a) Lessee shall maintain, at its expense, the following insurance on the Leased Premises (herein called the Required Insurance)

- (1) Insurance against loss or damage by fire, lightning and other risks from time to time included under "extended coverage" policies, in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any loss under the applicable policies but in any event in amounts not less than 90% of the full insurable value of the Leased Premises. The term "full insurable value", as used herein, means actual replacement value adjusted to reflect physical depreciation

(11) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises and the adjoining streets, sidewalks and passageways, such insurance to afford protection to Lessor of not less than \$1,000,000 with respect to bodily injury and property damage. Policies for such insurance shall be for the mutual benefit of Lessor, Lessee and any Permitted Mortgagee, as their respective interests may appear.

(111) Workmen's compensation insurance covering all persons employed in connection with any work done on or about the Leased Premises with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee or the Leased Premises, or in lieu of such insurance, a program of self-insurance complying with the rules and regulations of the appropriate agency of the state in which the Leased Premises are situated.

(1v) Such other insurance on the Leased Premises in such amounts and against such other hazards which at the time are commonly obtained in the case of property similar to the Leased Premises, including war-risk insurance when and to the extent obtainable from the United States Government or any agency thereof.

(b) The Required Insurance shall be written by companies of recognized financial standing authorized to do an insurance business in the state in which the Leased Premises are located and shall name as the insured parties thereunder Lessor and Lessee, as their interests may appear. Lessor shall not be required to prosecute any claim against, or to contest any settlement proposed by, any insurer. Lessee may, at its expense, prosecute any such claim or contest any such settlement in the name of Lessor, Lessee, or both, and Lessor will join therein at Lessee's written request upon the receipt by Lessor of an indemnity from Lessee against all costs, liabilities and expenses in connection therewith.

(c) Insurance claim, by reason of damage to or destruction of any portion of the Leased Premises shall be adjusted by Lessee, but Lessor and any Permitted Mortgagee shall have the right to join with Lessee in adjusting any such loss. If the entire proceeds paid pursuant to any such claim shall not exceed \$20,000 or 2% of Lessor's Cost (as defined in Schedule C), whichever is greater, then such proceeds shall be payable to Lessee. If such proceeds shall exceed

such amount, there they shall be paid to Lessee as recipient thereof upon the delivery of Lessee's Certificates to Lessor as the work required by paragraph 14(a) progresses, requesting payment to Lessee of the cost of such work in excess of any deductible amount maintained by Lessee as permitted by paragraph 13(g) (11), describing the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work and whether or not such work has been completed. Any proceeds remaining (after the final payment has been made for such work) in an amount less than the greater of \$20,000 and 2% of Lessor's Cost shall be paid to Lessee. If any proceeds so remaining shall exceed such amount, they shall all be retained by Lessor. After any such retention by Lessor, (i) each instalment of Basic Rent payable during the Preliminary Term, the Primary Term and any Extended Term on and after the second Basic Rent Payment Date occurring after final payment to Lessee for such work shall be reduced by an amount equal to the amount of such installment would have been before the application of this clause (i), multiplied by a fraction, the numerator of which shall be the amount so retained and the denominator of which shall be Lessor's Cost on the date of the commencement of the Primary Term and (ii) Lessor's Cost shall be reduced by the amount so retained. No payment shall be made to Lessee pursuant to this paragraph 13 (c), if any default shall have happened and be continuing under this Lease

(d) Every policy referred to in clauses (i) and (iv) of paragraph 13(a) shall bear a first mortgagee endorsement in favor of any Permitted Mortgagee, and any loss under any such policy shall be made payable to such Permitted Mortgagee, provided that any recovery under any such policy shall be applied by such Permitted Mortgagee in the manner provided in paragraph 13(c). Every policy of Required Insurance shall contain an agreement that the insurer will not cancel such policy except after 10 days' written notice to Lessor and any Permitted Mortgagee and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Lessor or Lessee which might absent such agreement, result in a forfeiture of all or a part of

such insurance payment and notwithstanding (i) the occupation or use of the Leased Premises for purposes more hazardous than permitted by the terms of such policy, (ii) any foreclosure or other action taken by a Permitted Mortgagee pursuant to any provision of any Permitted Mortgage upon the happening of a default or event of default thereunder, or (iii) any change in ownership of the Leased Premises.

(e) Lessee shall deliver to Lessor promptly after the delivery of this Lease the original or duplicate policies or certificates of insurers, satisfactory to any Permitted Mortgagee, evidencing all of the Required Insurance. Lessee shall, within 30 days prior to the expiration of any such policy deliver other original or duplicate policies or such certificates evidencing the renewal of such policy. If Lessee fails to maintain or renew any Required Insurance, or to pay the premium therefor, or to so deliver any such policy or certificate, then Lessor, at its option, but without obligation to do so, may, upon 5 days' notice to Lessee, procure such insurance. Any sums so expended by Lessor shall be additional rent hereunder and shall be repaid by Lessee within 5 days of such expenditure.

(f) Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with any Required Insurance unless Lessor is included therein as a named insured, with loss payable as provided in this Lease. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to Lessor the policies or certificates evidencing the same.

(g) Anything contained in this paragraph 13 to the contrary notwithstanding, (i) all Required Insurance may be carried under a "blanket" or "umbrella" policy or policies covering other properties or liabilities of Lessee, provided, that such policies otherwise comply with the provisions of this Lease and specify the coverage and amounts thereof with respect to the Leased Premises, (ii) all Required Insurance referred to in clause (i) of paragraph

13(a) may provide for a deductible amount of up to \$50,000, and (111) all Required Insurance referred to in clause (11) of paragraph 13(a) may provide for a deductible amount of up to \$100,000

14 Casualty. (a) If any part of the Leased Premises shall be damaged or destroyed by casualty, and if the estimated cost of rebuilding, replacing and repairing the same shall exceed \$20,000, Lessee shall promptly notify Lessor thereof, and (whether or not such estimated cost shall exceed \$20,000) Lessee shall, with reasonable promptness and diligence, rebuild, replace and repair any damage or destruction to the Leased Premises, at its expense, in conformity with the requirements of paragraph 11(a), in such manner as to restore the same to the same condition, as nearly as possible, as existed prior to such casualty.

(b) Notwithstanding the provisions of paragraph 14(a), if during any term the Leased Premises shall be substantially damaged or destroyed by casualty so that the Leased Premises shall be unsuitable for Lessee's continued use and occupancy, then at Lessee's option, in lieu of rebuilding, replacing or repairing the Leased Premises, Lessee shall, within 30 days, after the occurrence of such damage or destruction, deliver a Purchase Offer specifying a Termination Date occurring not less than 90 nor more than 180 days after the delivery of such Offer. Such Offer shall be accompanied by a Lessee's Certificate stating that in the judgment of the Board of Directors of Lessee, the Leased Premises are unsuitable for Lessee's continued use and occupancy by reason of such damage or destruction. If the conditions set forth in the first sentence of this paragraph 14(b) are fulfilled and Lessee fails to commence to rebuild, replace or repair the Leased Premises within 60 days of the occurrence of such damage or destruction, Lessee conclusively shall be deemed to have made such Offer, but nothing in this sentence shall relieve Lessee of its obligation actually to deliver such Offer

15 Uneconomic Use. If the Leased Premises shall have become uneconomic or unsuitable for its continued use and occupancy in

the business of Lessee, and if the Board of Directors of Lessee has determined to discontinue the use of the Leased Premises, then Lessee may deliver a Purchase Offer specifying a Termination Date which is not less than 180 days after the delivery of such Offer and not prior to the tenth anniversary of the first day of the Primary Term. Such Offer shall be accompanied by a Lessee's Certificate stating that Lessee's Board of Directors has determined that the Leased Premises have become uneconomic or unsuitable for the continued use and occupancy in the business of Lessee, and that Lessee has discontinued the use of the Leased Premises or will discontinue such use during the period ending on the first anniversary of the Termination Date. In the event Lessor conveys the Leased Premises to Lessee pursuant to such Offer, neither Lessee nor any subsidiary or affiliate of Lessee shall use the Leased Premises, directly or indirectly, in its business operations for a period of ten years from such Termination Date.

16. Reimbursement for Alterations and Additions. (a) On any one or more dates during the Primary Term, Lessee may request in writing (herein called a Lessee's Request) that Lessor pay to Lessee the amount of Lessee's theretofore unreimbursed expenses (herein called the Reimbursable Expenses), which have been incurred by Lessee (x) in connection with the construction of additional structures on the Leased Premises and additions and alterations to structures then existing on the Leased Premises (herein collectively called the Additions), which Additions are permitted by paragraph 11(b) but are in addition to, and do not constitute, alterations or additions which Lessee is required to make upon the Leased Premises pursuant to any provision of this Lease or (y) in connection with the completion of the improvements required to be constructed pursuant to paragraph 22 of this Lease in the event that upon such completion Lessor's Cost exceeds the estimate of Lessor's Cost set forth in paragraph 22(a) by \$/40,000. Reimbursable Expenses may include the cost of acquiring real property adjacent to the Leased Premises. Lessee shall have the right to make a Lessee's Request only if (1) the construction of the Additions with respect to which such Reimbursable Expenses have been incurred shall have commenced not

earlier than two years prior to the date of the Lessee's Request and (ii) the amount of such Reimbursable Expenses exceeds the greater of (x) 10% of Lessor's Cost and (y) \$50,000. Each Lessee's Request shall be accompanied by (A) architect's drawings and specifications relating to the Additions with respect to which such Request is made, (B) a Lessee's Certificate setting forth in reasonable detail the amount and character of the Reimbursable Expenses with respect to which such Request is made and a description of such Additions, stating that the construction of such Additions has been completed in compliance with the requirements of this paragraph 16, specifying the dates on which the construction of such Additions were commenced and completed, and stating that such Reimbursable Expenses are reimbursable in the amount requested under the terms of this paragraph 16. Within 90 days after the receipt of such Lessee's Request, drawings, specifications and Certificate, Lessor agrees to pay to Lessee an amount equal to such Reimbursable Expenses so certified, but only if the following further conditions shall have been fulfilled within such 90 day period.

- (i) Lessor shall have issued and sold evidence of indebtedness (herein called the Additional Indebtedness), for the purpose of obtaining funds to pay such Reimbursable Expenses to Lessee,
- (ii) The proceeds of the sale of the Additional Indebtedness actually received by Lessor shall have been not less than the amount of such Reimbursable Expenses plus an amount at least equal to the costs of consummating the placement of the Additional Indebtedness, including, without limitation, the fees and expenses of counsel, and the costs and expenses of fulfilling the terms and conditions of any then existing Permitted Mortgage,
- (iii) Lessor and Lessee shall have authorized, executed and delivered a supplement to this Lease, which supplement (herein called the Lease Supplement) shall (A) increase each Basic Rent payment required to be made thereafter during the Primary Term of this Lease by an amount which shall be at least sufficient to make each payment, when due, of principal of, and interest on, the Additional Indebtedness, (B) increase each Basic Rent payment to be made during the Extended Terms by 0.75% of such Reimbursable Expenses during the first Extended Term and 0.625% of such Expenses during the second, third, fourth and fifth Extended Terms, (C) increase the purchase prices set forth

in Schedule C hereto that would be payable upon a purchase of the Leased Premises by Lessee pursuant to paragraphs 12(b), 14(b), 15 or 23, in each case by amounts which shall at all times thereafter be at least sufficient to prepay the principal amount of the Additional Indebtedness to be then outstanding (without adjustments for any prepayments made by Lessor), together with all accrued interest thereon and (D) make such other changes, if any, as shall be necessary or appropriate, in the opinion of counsel for holders of the Additional Indebtedness, by reason of the transactions contemplated by this paragraph; and

- (iv) Lessor shall have received from Lessee such other Lessee's Certificates, opinions of counsel for Lessee, surveys of the Leased Premises, title insurance policies, consents to assignment of Lease and other instruments as Lessor may reasonably request in order to enable Lessor to finance the cost of such Reimbursable Expenses by the issuance and sale of the Additional Indebtedness.

(b) Lessor shall incur no liability under this Lease by reason of the fact that Lessor does not pay Reimbursable Expenses, and if Lessor does not pay such Reimbursable Expenses, this Lease shall continue in full effect, without modification.

17. Free Standing Improvements (a) If during the Primary Term Lessee intends to incur expenses (herein also called Reimbursable Expenses) in connection with the construction of Additions (as defined in paragraph 16(a)) with respect to any portion of the Leased Premises (herein called the Unimproved Land) which does not have major structures thereon, Lessee may notify Lessor on any one or more dates occurring during the Primary Term, by a Lessee's Certificate, that it desires Lessor to construct at Lessor's expense Additions thereon having a total cost of not less than the greater of (x) 10% of Lessor's Cost (as defined in Schedule C) and (y) \$50,000. Such Lessee's Certificate shall be accompanied by a description of the Unimproved Land and a reasonably detailed description of such Additions, architects' drawings and specifications with respect thereto, and an estimate of the total cost thereof. If, within 90 days after delivery of such Certificate, Lessor and Lessee have not agreed as to (1) any adjustment of the Basic Rent and the purchase price of the Leased Premises in the event of the purchase thereof by Lessee pursuant to paragraph 12(b), 14(b), 15 or 23 for the remaining portion of the Term hereof and (11) other modifications of this Lease, required by reason of such construction and

payment by Lessor, then Lessee shall have the right to purchase that portion of the Unimproved Land as may be required to enable Lessee to construct thereon such Additions together with such easements as may be reasonably necessary with respect thereto, by notifying Lessor, in writing, not more than 30 days after said 90-day period, of its intention to purchase such portion of the Unimproved Land on any business day specified in such notice not less than 30 nor more than 60 days after the date thereof; provided, that after such purchase, the remainder of the Leased Premises would then (1) constitute an integrated economic unit, with sufficient parking facilities for the purposes for which the Leased Premises are being used, (2) be a contiguous parcel of land, without gap or hiatus, (3) have access to and from public highways or roads for the purpose of ingress and egress and (4) not be in violation of any laws, ordinances, rules or regulations or any restrictive covenants in effect at the commencement of the term of this Lease or other agreements applicable thereto; and provided further that no such purchase of Unimproved Land shall be permitted which would impair the use or reduce the value of the remainder of the Leased Premises. The purchase price for such portion of the Unimproved Land shall be an amount, in cash, equal to the greatest of (A) the fair market value thereof determined pursuant to the Appraisal Procedure plus 2% thereof, (B) \$ per square foot plus 2% thereof, and (C) \$20,000, plus 2% thereof. The cost of the appraisals shall be borne by Lessee. On the date for such purchase, Lessor shall convey the Unimproved Land to Lessee and Lessee shall purchase the same pursuant to paragraph 18(b) and 18(c). Lessee agrees that no Additions will be undertaken upon any portion of the Unimproved Land purchased pursuant to this paragraph 17(a) which would impair the use or reduce the value of the remainder of the Leased Premises.

(b) If Lessee purchases any portion of the Unimproved Land pursuant to paragraph 17(a), (1) each instalment of Basic Rent payable during the Primary Term on and after the second Basic Rent Payment Date occurring after such purchase shall be reduced by an amount equal to the amount such instalment would have been before the application of

this clause (1), multiplied by a fraction, the numerator of which shall be such price (exclusive of the aforesaid 2% of such price) and the denominator of which shall be Lessor's Cost and (11) Lessor's Cost shall be reduced by the amount of such purchase price (exclusive of the aforesaid 2% of such price).

18. Procedure After Purchase Offer, Procedure on Event of Purchase. (a) If Lessor shall reject any Purchase Offer not later than the 10th day prior to the Termination Date specified in such Offer, this Lease shall terminate on such Termination Date (except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such Termination Date), upon payment by Lessee of the Basic Rent due and payable by it to and including such Termination Date. Unless Lessor shall have so rejected a Purchase Offer, then Lessor shall be conclusively presumed to have accepted such Offer and on such Termination Date Lessor shall convey the Leased Premises and, in the case of a Purchase Offer delivered pursuant to paragraph 14(b), all rights to receive insurance proceeds (or an amount equal thereto) paid or payable in connection with the Leased Premises (or, in the case of a Purchase Offer delivered pursuant to paragraph 12(b), the remaining portion of the Leased Premises, if any, and all its right, title and interest in and to the Net Award, whether or not such award shall have been received by Lessor) to Lessee or its designee against payment by Lessee of the purchase price therefor in federal funds.

(b) If the Leased Premises or any part thereof shall be purchased by Lessee pursuant to any provision of this Lease, Lessor need not transfer and convey to Lessee or its designee any better title thereto than existed on the date of the commencement of this Lease, and Lessee shall accept such title, subject, however, to all liens, encumbrances, charges, exceptions and restrictions on, against

or relating to Leased Premises and to all applicable laws, regulations and ordinances, but free of all Permitted Mortgages, liens, encumbrances, charges, exceptions and restrictions incurred without the prior written consent of Lessee, and any such lien or encumbrance without such consent shall be null and void.

(c) On the date fixed for any such purchase, Lessee shall pay to Lessor, at any place within the United States of America designated by Lessor, the purchase price therefor, together with all installments of Basic Rent and all other sums then due under this Lease and unpaid to and including the purchase date without offset or deduction for any reason, and Lessor shall deliver to Lessee (i) a bargain and sale deed without covenant (or its local equivalent) describing the Leased Premises or portion thereof being sold and conveying the title thereto, together with (ii) such instruments as shall be necessary to transfer to Lessee or its designee any other property then required to be transferred by Lessor pursuant to this Lease. Lessee shall pay all charges incident to such conveyance and transfer, including counsel fees, escrow fees, recording fees, title insurance premiums and all applicable federal, state and local taxes (other than any income or franchise taxes levied upon or assessed against Lessor) which may be incurred or imposed by reason of such conveyance and transfer.

(d) Upon the completion of such purchase, but not prior thereto (whether or not any delay in the completion of, or the failure to complete, such purchase shall be the fault of Lessor), this Lease and all obligations hereunder (including the obligations to pay Basic Rent and additional rent) shall terminate, except with respect to obligations and liabilities of Lessee, actual or contingent, under this Lease which arose on or prior to such date of purchase, provided, however, that upon purchase of a portion of the Leased Premises pursuant to paragraph 17(a) this Lease and all obligations hereunder (including the obligations to pay Basic Rent and additional rent) shall continue in full force and effect with respect to the portion of the Leased Premises not so purchased.

19 Assignment and Subletting. Lessee may sublet all or any part of the Leased Premises and may assign all its rights and interests under this Lease without the consent of Lessor, provided, that even such sublease shall expressly be made subject to

the provisions of this Lease. If Lessee assigns all its rights and interests under this Lease, the assignee under such assignment shall expressly assume all the obligations of Lessee hereunder in an instrument, delivered to Lessor at the time of such assignment. No assignment or sublease made as permitted by this paragraph 19 shall affect or reduce any of the obligations of Lessee hereunder, and all such obligations shall continue in full effect as obligations of a principal and not as obligations of a guarantor or surety, to the same extent as though no assignment or subletting had been made, provided that performance by any such assignee or sublessee of any of the obligations of Lessee under this Lease shall be deemed to be performance by Lessee. No sublease or assignment made as permitted by this paragraph 19 shall impose any obligations on Lessor or otherwise affect any of the rights of Lessor under this Lease. Neither this Lease nor the term hereby demised shall be mortgaged by Lessee, nor shall Lessee mortgage or pledge the interest of Lessee in and to any sublease of the Leased Premises or the rentals payable thereunder. Any mortgage, pledge, sublease or assignment made in violation of this paragraph 19 shall be void. Lessee shall, within 10 days after the execution and delivery of any such assignment or the sublease of all or substantially all of the Leased Premises, deliver a conformed copy thereof to Lessor. Within 10 days after the execution and delivery of any sublease, Lessee shall give notice to Lessor of the existence and term thereof, and of the name and address of the sublessee thereunder.

20. Permitted Contests. Lessee shall not be required to (i) pay any Imposition, (ii) comply with any statute, law, rule, order, regulation or ordinance or any code, procedure or recommended practice of the National Fire Protection Association or other body exercising similar functions, (iii) discharge or remove any lien, encumbrance or charge or (iv) obtain any waivers or settlements or make any changes or take any action with respect to any encroachment, hindrance, obstruction, violation or impairment referred to in para-

graph 10(b), so long as Lessee shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (i) the collection of, or other realization upon, the tax, assessment, levy, fee, rent or charge or lien, encumbrance or charge so contested, (ii) the sale, forfeiture or loss of the Leased Premises, or any part thereof, or the Basic Rent or an additional rent, or any portion thereof, (iii) any interference with the use or occupancy of the Leased Premises or any part thereof, and (iv) any interference with the payment of the Basic Rent or any additional rent, or any portion thereof. While any such proceedings are pending, Lessor shall not have the right to pay, remove or cause to be discharged the tax, assessment, levy, fee, rent or charge or lien, encumbrance or charge thereby being contested. Lessee further agrees that each such contest shall be promptly prosecuted to a final conclusion. Lessee will pay, and save Lessor harmless against, any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection with any such contest and will, promptly after the final settlement, compromise or determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interests, costs and expenses thereof or in connection therewith, and perform all acts, the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Lessor or any Permitted Mortgagee to the risk of any criminal liability. Lessee shall give such reasonable security to Lessor or such Mortgagee as may be demanded by Lessor or such Mortgagee to insure compliance with the foregoing provisions of this paragraph 20.

21. Conditional Limitations, Default Provision. (a) Any of the following occurrences or acts shall constitute an event of de-

fault (herein called an Event of Default) under this Lease:

- (1) if Lessee, at any time during the continuance of this Lease (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity, or before any administrative tribunal, which have or might have the effect of preventing Lessee from complying with the terms of this Lease), shall (1) fail to make any payment of Basic Rent, additional rent or other sum herein required to be paid by Lessee and Lessee shall fail to make any such payment, for five days after receipt by Lessee of notice of such failure, or (2) fail to observe or perform any other provision hereof for 30 days after receipt by Lessee of notice of such failure (provided, that in the case of any default referred to in this clause (2) which cannot with diligence be cured within such 30-day period, if Lessee shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence, then upon receipt by Lessor of a Lessee's Certificate stating the reason such default cannot be cured within 30 days and stating that Lessee is proceeding with diligence to cure such default, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence); or
- (11) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 90 days after the filing thereof, or
- (111) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee or of the Leased Premises shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and shall not be discharged within 90 days after such appointment, or if Lessee shall consent to or acquiesce in such appointment, or
- (1v) if final judgment for the payment of money in an amount greater than \$50,000 shall be rendered against Lessee and Lessee shall not discharge the same or cause it to be discharged within 90 days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal

(b) If an Event of Default shall have happened and be continuing, Lessor shall have the right at its election to give Lessee written notice of Lessor's intention to terminate the term of this Lease on a date specified in such notice. Thereupon, the term of this Lease and the estate hereby granted shall terminate on such date as completely and with the same effect as if such date were the date fixed herein for the expiration of the term of this Lease, and all rights of Lessee hereunder shall terminate, but Lessee shall remain liable as hereinafter provided.

(c) If an Event of Default shall have happened and be continuing, Lessor shall have the immediate right, whether or not the term of this Lease shall have been terminated pursuant to paragraph 21(b), to (1) re-enter and repossess the Leased Premises or any part thereof by force, summary proceedings, ejectment or otherwise and (2) remove all persons and property therefrom. Lessor shall be under no liability by reason of any such entry, repossession or removal. No such re-entry or taking of possession of the Leased Premises by Lessor shall be construed as an election on Lessor's part to terminate the term of this Lease unless a written notice of such intention be given to Lessee pursuant to paragraph 21(b), or unless the termination of this Lease be decreed by a court of competent jurisdiction.

(d) At any time or from time to time after the repossession of the Leased Premises or any part thereof pursuant to paragraph 21(c), whether or not the term of this Lease shall have been terminated pursuant to paragraph 21(b), Lessor may (but shall be under no obligation to) relet the Leased Premises or any part thereof for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Lessor, in its absolute discretion, may determine, and Lessor may

collect and receive any rents payable by reason of such reletting Lessor shall not be responsible or liable for any failure to relet the Leased Premises or any part thereof or for any failure to collect any rent due upon any such reletting.

(e) No termination of the term of this Lease pursuant to paragraph 21(b), by operation of law or otherwise, and no repossession of the Leased Premises or any part thereof pursuant to paragraph 21(c) or otherwise, and no reletting of the Leased Premises or any part thereof pursuant to paragraph 21(d), shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting

(f) In the event of any such termination or repossession, Lessee will pay to Lessor the Basic Rent, additional rent and other sums required to be paid by Lessee to and including the date of such termination or repossession, and, thereafter, Lessee shall, until the end of what would have been the term of this Lease in the absence of such termination or repossession, and whether or not the Leased Premises or any part thereof shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages (1) the Basic Rent, additional rent and other sums which would be payable under this Lease by Lessee in the absence of such termination or repossession, less (2) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to paragraph 21(d), after deducting from such proceeds all Lessor's expenses incurred in connection with such reletting (including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, alteration costs and expenses of preparation for such reletting). Lessee will pay such current damages on the days on which the Basic Rent would have been payable under this Lease in the absence of such termination or repossession, and Lessor shall be entitled to recover the same from Lessee on each such day.

(g) At any time after any such termination or repossession by reason of the occurrence of an Event of Default, whether or not Lessor shall have collected any current damages pursuant to paragraph 21(f), Lessor shall be entitled to recover from Lessee, and Lessee will pay to Lessor on demand, as and for liquidated and agreed final damages for Lessee's default and in lieu of all current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the excess, if any, of (a) the Basic Rent, additional rent and other sums which would be payable under this Lease from the date of such demand (or, if it be earlier, the date to which Lessee shall have satisfied in full its obligations under paragraph 21(f) to pay current damages) for what would be the then unexpired term of this Lease in the absence of such termination or repossession, discounted at the rate of 5% per annum over (b) the then fair net rental value of the Leased Premises for the same period discounted at the rate of 5% per annum. If any statute or rule of law shall validly limit the amount of such liquidated final damages to less than the amount above agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law.

22. Completion of Improvements. (a) On or before July 1, 1975, Lessee, as agent and in behalf of Lessor, will complete the construction of any improvements on the Leased Premises which have not been completed on the first day of the Preliminary Term, in conformity with the requirements of paragraph 11(a), to the same extent as if such construction were alterations made under the provisions of paragraph 11(a). Lessee will deliver to Lessor immediately after such completion of construction, but in no event later than July 1, 1975, a Lessee's Certificate (1) stating that such construction has been completed in conformity with the terms of this paragraph 22(a), and that such construction was performed for the account of Lessor, (2) setting forth in reasonable detail Lessor's Cost including the aggregate cost to Lessee of completing such construction. On the date of execution and delivery of this Lease, Lessor's Cost upon completion of such construction is estimated to

be \$1,400,000. In the event that Lessor's Cost as so certified exceeds \$1,540,000 Lessee shall pay such excess in full and, if such excess is equal to \$140,000 or more, Lessee may request reimbursement therefor pursuant to paragraph 17(a). In the event that Lessor's Cost as so certified is less than \$1,400,000 by \$20,000 or more, Lessee shall pay such deficiency to Lessor and thereafter (i) each instalment of Basic Rent payable during the Preliminary Term, the Primary Term and any Extended Term on and after the second Basic Rent Payment Date occurring after such payment to Lessor shall be reduced by an amount equal to the amount such instalment would have been before the application of this clause (i) multiplied by a fraction, the numerator of which shall be the amount so paid to Lessor and the denominator of which shall be Lessor's Cost on the date of commencement of the Primary Term and (ii) Lessor's Cost shall be reduced by the amount so paid to Lessor.

(b) Upon the delivery by Lessee to Lessor of a Lessee's Certificate requesting a delay and setting forth the reasons therefor, the dates set forth above in paragraph 22(a) for the completion of such construction and the delivery of the Lessee's Certificate in respect thereof may be extended by reason of delays due to acts of God, fire, strikes or any other causes beyond Lessee's reasonable control for the period of such delays; provided, however, that such dates shall not in any event be extended beyond the first day of the Primary Term.

(c) If Lessee shall not have delivered the Lessee's Certificate required by paragraph 22(a) on or before its due date (as extended by paragraph 22(b)), then Lessee shall, at the written request of Lessor, purchase the Leased Premises at a price determined in accordance with Schedule C hereto on a Termination Date specified by Lessor which is not later than 90 days after such date (as extended). In such event Lessor shall transfer and convey the Leased Premises on such Termination Date to Lessee pursuant to paragraph 18, against payment by Lessee of the purchase price therefor. If Lessor does not so request to purchase the Leased Premises, then this Lease shall continue in full effect.

23. Purchase Offer. (a) During the first 90 days of the last year of the Primary Term, Lessee shall deliver a Purchase Offer to Lessor which Purchase Offer shall set forth a Termination Date during the last 91 days of the Primary Term. If Lessee shall fail to comply with the preceding sentence, Lessee shall be deemed to have made (and hereby makes for such purpose) its Purchase Offer with a Termination Date of the last day of the Primary Term, which, pursuant to paragraph 33(L), qualifies as a Termination Date

(b) Whether Lessee shall deliver or shall have been deemed to have delivered a Purchase Offer pursuant to the first sentence of paragraph 23(a) and if Lessor shall reject such Purchase Offer, this Lease shall continue in full effect and Lessee shall retain all of its rights contained in paragraph 4 in respect of the Extended Terms.

24. Additional Rights of Lessor. (a) No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. The failure of Lessor to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. A receipt by Lessor of any Basic Rent, any additional rent or any other sum payable hereunder with knowledge of the breach of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor. In addition to other remedies provided in this Lease, Lessor shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provision of this Lease, or to a

decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Lessor at law or in equity.

(b) Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future constitution, statute or rule of law to redeem the Leased Premises or to have a continuance of this lease for the term hereby demised after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease, or after the termination of the term of this Lease as herein provided, and (ii) the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.

(c) In the event Lessee shall be in default in the performance of any of its obligations under this Lease, and an action shall be brought for the enforcement thereof in which it shall be determined that Lessee was in default, Lessee shall pay to Lessor all the expenses incurred in connection therewith including reasonable attorney's fees.

25. Notices, Demands and Other Instruments. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if (a) with respect to Lessee, sent by certified or registered mail, postage prepaid, or sent by telegram or delivered by hand, in each case addressed to Lessee at its address first above set forth, and (b) with respect to Lessor, sent by certified or registered mail, postage prepaid, or sent by telegram or delivered by hand in each case, addressed to Lessor at its address first above set forth. Lessor and Lessee shall each have the right from time to time to specify

as its address for purposes of this Lease any other address (or not more than two addresses) in the United States of America upon giving 15 days' written notice thereof, similarly given, to the other party.

26 Estoppel Certificates and Consents. (a) Lessee will, at any time and from time to time, upon not less than 20 days' prior request by Lessor, execute, acknowledge and deliver to Lessor a Lessee's Certificate, certifying that this Lease is unmodified and in full effect (or setting forth any modifications and that this Lease is in full effect as modified) and the dates to which the Basic Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer may have knowledge; it being intended that any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Leased Premises

(b) From time to time during the Term of this Lease, Lessor expects to secure financings of its interest in the Leased Premises by assigning Lessor's interest in this Lease and the sums payable hereunder. At the date of execution and delivery of this Lease and on any one date thereafter, Lessee will, upon not less than 10 days' prior request by Lessor, execute, acknowledge and deliver to Lessor a consent to such assignment addressed to a Permitted Mortgagee substantially in the form of the Consent to Assignment attached hereto as Schedule E with such reasonable changes and modifications as may be required by such Permitted Mortgagee and will produce, at Lessee's expense, such certificates, opinions of counsel and other documents as may be reasonably requested by such Permitted Mortgagee.

27. No Merger. There shall be no merger of this Lease or the leasehold estate hereby created with the fee estate in the Leased Premises or any part thereof by reason of the same person acquiring or holding, directly or indirectly, this Lease or the leasehold es-

tate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Premises

28. Surrender. Upon the termination of this Lease, Lessee shall peaceably surrender the Leased Premises to Lessor in the same condition in which they were received from Lessor at the commencement of this Lease, except as altered as permitted or required by this Lease and except for ordinary wear and tear. Lessee shall remove from the Leased Premises on or prior to such termination all property not owned by Lessor, and, at its expense, shall, prior to such termination, repair any damage caused by such removal. Property not so removed shall become the property of Lessor. Lessor may thereafter cause such property to be removed from the Leased Premises and disposed of. The cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Lessee.

29. Severability. Each and every covenant and agreement contained in this Lease is separate and independent, and the breach of any thereof by Lessor shall not discharge or relieve Lessee from any obligation hereunder. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

30. Binding Effect. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party to this Lease. This Lease may not be changed, modified or discharged except by a writing signed by Lessor and Lessee.

31. Table of Contents, Headings. The table of contents and headings used in this Lease are for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the provisions of this Lease

32. Governing Law. This Lease shall be governed by and interpreted under the laws of the state in which the Leased Premises are located.

33 Certain Definitions

(a) The term "Agreement" means

the agreement substantially in the form of Schedule D hereto, dated the date hereof, between Lessor and Lessee

(b) The term "Appraisal Procedure" means

if Lessor and Lessee cannot agree upon a value to be determined by the Appraisal Procedure, such value shall be determined by an appraiser selected by Lessor and Lessee. If they are unable to agree upon an appraiser, each such party shall select an MAI appraiser and the two such appraisers shall select a third MAI appraiser. Such value shall be determined by any two of the appraisers. If any two of the appraisers are unable to agree as to such value, then such value shall be determined by the appraiser selected by the appraisers appointed by Lessor and Lessee

(c) The term "Impositions" means

- (i) all taxes, assessments (including assessments for benefits from public works or improvements, whether or not begun or completed prior to the commencement of the term of this Lease and whether or not to be completed within said term), levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, whether or not the same shall have been within the express contemplation of the parties hereto, together with any interest and penalties thereon, which are, at any time, imposed or levied upon or assessed against (A) the Leased Premises or any part thereof, (B) any Basic Rent, any additional rent reserved or payable hereunder or any other sums payable by Lessee hereunder, (C) this Lease or the leasehold estate hereby created or which arise in respect of the operation, possession, occupancy or use of the Leased Premises;
- (ii) any gross receipts or similar taxes imposed or levied upon, assessed against or measured by the Basic Rent, additional rent or any other sums payable by Lessee hereunder or levied upon or assessed against the Leased Premises,
- (iii) all sales and use taxes which may be levied or assessed against or payable by Lessor or Lessee on account of the acquisition, leasing or use of the Leased Premises or any portion thereof, and
- (iv) all charges for water, gas, light, heat, telephone, electricity, power and other utilities and communications services rendered or used on or about the Leased Premises

(d) The term "this Lease" means:

this lease agreement as amended and modified from time to time together with any memorandum or short form of lease entered into for the purpose of recording together with the Agreement which is hereby incorporated by reference herein and made a part hereof.

(e) The term "Lessee's Certificate" means.

a written certificate signed by the President or any Vice President of Lessee.

(f) The term "Lessor" means.

the owner for the time being of the rights of the lessor under this Lease; and upon any assignment or transfer of such rights except an assignment or transfer made as security for an obligation, the assignor or transferor shall be relieved of all duties and obligations under this Lease and the assignee or the transferee shall be deemed to have assumed all of the covenants of Lessor under this Lease

(g) The term "Lessor's Cost" means.

Lessor's Cost as set forth in Schedule C which amount is not less than an amount equal to (x) the sum (but without duplication of any item) of the following items (a) the cost to Lessor of acquiring the Land Parcel, which cost may include brokerage commissions, if any, and attorneys' fees, (b) the cost of constructing the Improvements referred to in paragraph 22, including architectural and engineering fees, (c) the cost of surveys, title reports and title insurance policies, (d) net interest paid or accrued on funds borrowed to pay for the Land Parcel and the cost of constructing such improvements, (e) filing fees and other direct expenses (including reasonable attorneys' fees) incurred in connection with the organization of Lessor in the State of Delaware and its qualification to do business in the state in which the Leased Premises are located, (f) transfer taxes, documentary, stamp and similar taxes and all recording and filing fees, expenses and taxes incurred in connection with the acquisition of the Leased Premises and the financing of the Leased Premises, and (g) the fees, expenses and disbursements of special counsel and local counsel for any Permitted Mortgagee and of counsel to Lessee minus the sum of (y) any of such amounts paid by Lessee during the Preliminary Term as additional rent and (z) any Basic Rent paid by Lessee during the Preliminary Terms.

(h) The term "Permitted Mortgage" means

any mortgage, deed of trust, security agreement, assignment of lease or other security instrument relating to this Lease and/or the Leased Premises, subject to the rights of Lessee under this Lease, and securing an obligation of Lessor to a Permitted Mortgagee or an obligation of Lessor which has been assigned or pledged to a Permitted Mortgagee

(i) The term "Permitted Mortgagee" means:

- (i) any bank, savings institution, trust company or national banking association, acting for its own account or in a fiduciary capacity,
- (ii) any charitable foundation, fraternal order, church, insurance company, college or university,
- (iii) any pension, retirement or profit sharing trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent,
- (iv) any self managed pension trust,
- (v) any investment company, as defined in the Investment Company Act of 1940, as amended,
- (vi) any governmental employees' pension or retirement system, or any other governmental agency supervising the investment of public funds, or
- (vii) any real estate investment trust, as defined in Section 856 of the Internal Revenue Code of 1954, as amended,

in any case as trustee, beneficiary, mortgagee, grantee or secured party under a Permitted Mortgage

(j) The term "Purchase Offer" means

an offer delivered by Lessee to Lessor executed by the president or any vice president of Lessee, irrevocably offering to purchase the Leased Premises and terminate the Lease pursuant to the provisions of paragraph 18 on any Termination Date specified in such Offer at a price determined in accordance with Schedule C. If a Purchase Offer is given pursuant to paragraph 12(b), such Offer shall be for any remaining portion of the Leased Premises and the award payable in connection with the taking pursuant to which the Purchase Offer shall have been given, or in the case of a taking of the entire Leased Premises, the award payable in connection therewith. If a Purchase Offer is given pursuant to paragraph 14(b) such Offer shall be for the Leased Premises together with all rights to receive the proceeds of any insurance payable in connection with the Leased Premises, and the right to receive from Lessor an amount equivalent to such insurance proceeds paid or payable to Lessor.

(k) The term "Termination Date" means

any business day not immediately preceding or succeeding a Saturday, Sunday or legal holiday.

34. Schedules. The following are Schedules A, B, C, D, and E referred to in this Lease, which are hereby incorporated by reference herein and made a part hereof

SCHEDULE A

San Jose, Santa Clara County,
California

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows:

All of Lot 3, "TRACT NO. 5414", filed for record on January 7, 1974 in Book 334 of Maps, Page 53, Santa Clara County Records

San Jose

SCHEDULE B

to

LEASE

Basic Rent Payments

1. Each instalment of Basic Rent payable for the Leased Premises during the Preliminary Term is an amount equal to .02585% of Lessor's Cost multiplied by the actual number of days elapsed from the later of the commencement of the Preliminary Term and the Basic Rent Payment Date next preceding the date for payment of such instalment (based on a 360-day year) and said instalments are payable on the last day of each November, February, May and August occurring during the Preliminary Term; notwithstanding the foregoing, the instalment of Basic Rent payable on November 30, 1976 shall be reduced by an amount equal to .517% of the amount, if any, by which Lessor's Cost (as determined on and as of November 30, 1976 exceeds \$880,000.

19206²
2. Each instalment of Basic Rent payable for the Leased Premises during the Primary Term is 2.1825% of Lessor's Cost, and said instalments are payable in advance on December 1, 1976 and thereafter on the first day of each March, June, September and December occurring during the Primary Term.

3. Each instalment of Basic Rent payable for the Leased Premises during the first Extended Term is 0.75% of Lessor's Cost and said instalments are payable in advance on the first day of each March, June, September and December, occurring during each such Extended Term.

4. Each instalment of Basic Rent payable for the Leased Premises during the second, third, fourth and fifth Extended Terms is 0.625% of Lessor's Cost and said instalments are payable in advance on the first day of each March, June, September and December occurring during each such Extended Term.

SCHEDULE C

to

LEASE

COMPUTATION OF PURCHASE PRICES

A Upon the purchase of the Leased Premises during the Preliminary, Primary and first Extended Terms pursuant to paragraphs 12(b), 14(b), 15, 22 or 23, the purchase price payable shall be an amount equal to the sum of (i) 100.517% of the Lessor's Cost multiplied by the percentage set forth in column 2 below opposite the period in which such purchase occurs (Period 1 being the period beginning on October 3, 1974 and ending on and including November 30, 1976, and each succeeding period being the following three month period); and (ii) if such date of purchase is not a Basic Rent Payment date, an amount equal to interest at the rate of 7.80% per annum on the amount determined as provided in clause (i) for the period beginning on the Basic Rent Payment Date immediately preceding such date of purchase (or beginning on the first day of the Preliminary Term, if there shall be no Basic Rent Payment Date immediately preceding such date of purchase) and ending on and including such date of purchase, and (iii) if such purchase is pursuant to paragraph 15 a premium equal to 5% of the amount determined as provided in clause (i). Lessor's Cost as of October 3, 1974 is \$1,150.

COLUMN 1
PERIOD

COLUMN 2
APPLICABLE PERCENTAGE

1	100.00%
2	97.82%
3	97.11%
4	97.11%
5	

COLUMN 1
PERIOD

COLUMN 2
APPLICABLE PERCENTAGE

6	96.75%
7	96 47%
8	96 18%
9	95.88%
10	95.58%
11	95.28%
12	94 97%
13	94 65%
14	94.33%
15	94.00%
16	93 66%
17	93.32%
18	92.97%
19	92 61%
20	92.25%
21	91.88%
22	91.50%
23	91.11%
24	90 72%
25	90.32%
26	89 91%
27	89 49%
28	89.07%
29	88 64%
30	88.19%
31	87.74%
32	87 29%
33	86.82%
34	86.34%
35	85 85%
36	85.36%
37	84 85%
38	84.34%
39	83.81%
40	83 27%
41	82.73%
42	82.17%
43	81.60%
44	81 02%
45	80 43%
46	79.83%
47	79 21%
48	78 59%
49	77.95%
50	77.30%
51	76 63%
52	75 95%
53	75.26%
54	74 56%
55	73.84%
56	73.11%
57	72.36%
58	71 60%

31 N 1
PERIOD

3 C JIN 2
APPLICABLE PERCENTAGE

59	70.83%
60	70.04%
61	69.23%
62	68.41%
63	67.57%
64	66.71%
65	65.84%
66	64.95%
67	64.05%
68	63.12%
69	62.18%
70	61.22%
71	60.24%
72	59.24%
73	58.22%
74	57.18%
75	56.12%
76	55.04%
77	53.94%
78	52.82%
79	51.68%
80	50.51%
81	49.32%
82	48.11%
83	46.87%
84	45.61%
85	44.32%
86	43.01%
87	41.68%
88	40.31%
89	38.92%
90	37.71%
91	36.06%
92	34.59%
93	33.08%
94	31.55%
95	29.99%
96	28.40%
97	26.78%
98	25.12%
99	23.43%
100	21.71%
101	20.00%

ST

SCHEDULE D

AGREEMENT, dated as of September 23, 1974, between CAMAS FUNDING CORPORATION, a Delaware corporation (herein, together with its successors and assigns referred to as Lessor), having an address c/o Corporation Trust Company, 100 West Tenth Street, Wilmington, Delaware 19801, and Albertson's, Inc., a Delaware corporation (herein, together with any corporation succeeding thereby by consolidation, merger or acquisition of its assets substantially as an entirety, referred to as Lessee) Lessor and Lessee have entered into a lease of which this Agreement forms a part, dated as of September 23, 1974 (herein, together with any amendment or supplement thereto, and any short form or memorandum thereof entered into for the purpose of recording, referred to as the Lease) relating to the parcel of land (herein called the Land Parcel) described in Schedule A attached hereto together with the buildings, structures and other improvements now or hereafter located thereon (herein called the Improvements, the Improvements and the Land Parcel are herein called the Leased Premises).

Lessor hereby agrees to reimburse Lessee for that portion of Lessor's Cost incurred by Lessee not paid by Lessor as of the date hereof, and Lessor intends to finance the cost of acquiring the Leased Premises and reimbursing Lessee for such costs by issuing and selling, or causing its transferee or transferees of the Land Parcel and the Improvements to issue and sell, notes (herein called the Notes) from time to time. Lessor and Lessee hereby agree that adjustments in the rentals and purchase prices payable under the Lease will be necessary from time to time in order to enable Lessor (or such transferee or transferees) to sell the Notes.

The terms used in this Agreement, unless otherwise defined, shall have the meanings set forth in the Lease.

1. Lessor and Lessee hereby agree that the Lease shall be amended from time to time as follows:

On not more than three Basic Rent Payment Dates occurring during the Preliminary Term on or prior to May 31, 1975, the amount of Lessor's Cost as set forth in Schedule C to the Lease shall be increased by an amount equal to the sum of (a) the amount by which Lessor's Cost (as defined in paragraph 38(g) of the Lease) has increased since the date of commencement of the Preliminary Term or the date of the last increase in Lessor's Cost and (b) the then estimated cost of completing the Improvements pursuant to paragraph 22(a) of the Lease, if such Improvements have not then been completed. Lessee shall deliver to Lessor a certificate setting forth in reasonable detail the items of Lessor's Cost included in such amount. In no event shall Lessor's Cost exceed \$, unless Lessor and Lessee otherwise agree.

2. The Basic Rent payable on each Basic Rent Payment Date during the Preliminary Term shall be adjusted from time to time so as to be an amount equal to 97.932% of Camas Funding Corporation's prime rate after deducting therefrom, on the first Basic Rent Payment Date \$ 651.20 and after deducting therefrom on the second Basic Rent Payment Date \$ 3,898.40. For purposes of this Agreement, "Camas Funding Corporation's prime rate" shall mean the actuarial interest rate charged by Camas Funding Corporation to the then owners of the Leased Premises and the then owners of the premises leased to Lessee pursuant to the leases dated as of September 23, 1974 (the Other Leases) between Lessor and Lessee relating to the premises located as follows: Texarkana, Arkansas, Orlando, Florida; Midwest City, Oklahoma; Clearwater, Florida; Sacramento, California; in each case to finance Lessor's Cost as defined in the Lease and as defined in the Other Leases. "Camas Funding Corporation's prime rate" shall be the lesser of (x) an amount equal to (A) the aggregate of the interest (together with any amount which is equivalent to interest) paid or to be paid by Camas Funding Corporation (for the period with respect to which such adjustment is being made) to the holders of the Secured Notes, Series A and B, Due December 1, 1976, of Camas Funding Corporation, issued pursuant to the Collateral Trust Indenture, dated as of September 23, 1974, for the purpose of acquiring the notes of the owners of the Leased Premises and the premises leased under the Other Leases minus interest (or equivalent) paid or to be paid for such period with respect to the Texarkana, Arkansas premises, divided by (B) the aggregate principal amount outstanding of said Secured Notes, Series A and B, Due December 1, 1976, minus the aggregate principal amount outstanding of said Secured Notes, Series A and B, Due December 1, 1976 with respect to the Texarkana, Arkansas premises, and (y) 10% per annum.

Lessor shall notify Lessee from time to time of "Camas Funding Corporation's prime rate" and not less than 3 days prior to each Basic Rent Payment Date during the Preliminary Term shall notify Lessee of the Basic Rent payable on such Basic Rent Payment Date and the basis upon which such amount was computed.

3. Lessor intends to issue its long-term notes (the Secured Notes) on or prior to the date for commencement of the Primary Term (the closing for such issuance being herein called the Permanent Financing) for the purpose of refinancing its debt issued to pay or cause to be paid the items of Lessor's Cost. At the time the Permanent Financing is consummated, the Lease shall be amended to adjust the Basic Rent payable during the Primary Term according to the following table. If the Secured Notes bear interest at a rate other than is stated below, the Secured Notes, Basic Rent will be determined by interpolation between the interest rate above and the interest rate below the interest rate. If the Secured Notes bear an interest rate above 11%, the Basic Rent will be extrapolated from the interest rate of 10.75% and 11.00%.

<u>ANNUAL INTEREST RATE ON SECURED NOTES</u>	<u>ANNUAL BASIC RENT (as a percentage of Lessor's Cost)</u>	<u>QUARTERLY BASIC RENT (As a percentage of Lessor's Cost)</u>
8.25%	8.86%	2.2150%
8.50%	9.06%	2.2650%
8.75%	9.26%	2.3150%
9.00%	9.46%	2.3650%
9.25%	9.66%	2.4150%
9.50%	9.86%	2.4650%
9.75%	10.06%	2.5150%
10.00%	10.26%	2.5650%
10.25%	10.47%	2.6175%
10.50%	10.67%	2.6675%
10.75%	11.08%	2.7200%
11.00%	11.08%	2.7700%

If the Secured Notes are sold at less than their principal amount and accrued interest (or without limiting the generality of the foregoing, a commitment fee is deducted from the proceeds thereof) the interest rate on the Secured Notes shall be the actuarial cost of money, weighting each instalment of principal to its retirement, as determined by Financial Publishing Company of Boston.

4. Upon consummating the Permanent Financing the purchase prices determined pursuant to Schedule C to the Lease shall be revised such that the amount payable on each date will be the greater of the amount theretofore determined pursuant to Schedule C and the amount determined by the sum (i) each Basic Rent Payment remaining during the Preliminary Term and Primary Term discounted at the effective interest rate on the Secured Notes (computed on the basis of a 360 day year of twelve equal months) and (ii) the remaining unpaid principal amount of the Secured Notes on the maturity date hereof each discounted at the effective interest rate on the Secured Notes (computed on the basis of a 360 day year of twelve equal months), and if the purchase is to take place on other than a Basic Rent Payment Date, with interest thereon at the Secured Note interest rate from the last Basic Payment Date.

IN WITNESS WHEREOF, the parties hereto have caused
this Document* to be signed and sealed as of the date first
above written.

CAMAS FUNDING CORPORATION,

[Seal]

Attest

By _____

By _____
Assistant Secretary

ALBERTSON'S, INC ,

[Seal]

Attest.

By _____

By _____
Assistant Secretary

)

SCHEDULE A

San Jose, Santa Clara County,
California

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows

All of Lot 3, "TRACT NO 5414", filed for record on January 7, 1974 in Book 334 of Maps, Page 53, Santa Clara County Records

IN WITNESS WHEREOF, the parties hereto have caused
this Document to be signed and sealed as of the date first
above written

[Seal]

Attest

By

Carol Eason
Assistant Secretary

CAMAS FUNDING CORPORATION,

By

ALBERTSON'S, INC ,

[Seal]

Attest

By

T. M. Munson
Assistant Secretary

By

Paul W. Munson
Senior Vice President

State of New York)
)ss
County of New York)

On this 3 day of October, 1974 before me,

Rose Anne Morrone^a Notary Public in and for the said County
and State, personally in said County and State appeared
JOHN H.O. LAGATTA and CAROL EASTON, to me personally known
and known to me to be the President and Secretary, respectively,
of CAMAS FUNDING CORPORATION, one of the corporations named in
and executing the foregoing instrument, which instrument was
produced to me in said County and State aforesaid by the said
President and Secretary, who are known to me to be the identical
persons who subscribed the name of the maker thereof to the
foregoing instrument as its President and Secretary, respectively,
who by me being duly sworn, did severally depose, say and
acknowledge, on their several oaths, in said County and State
aforesaid, that they are the President and Secretary, respectively,
of said corporation and that said corporation executed said
instrument; that they know the seal of said corporation, that
the seal affixed to said instrument is the corporate seal of
said corporation, that they, being informed of the contents of
said instrument, signed and sealed said instrument and that they
executed the same in the name and on behalf of said corporation
by order, authority and resolution of its Board of Directors and
that they signed their names thereto by like order, that they
executed the same as, and said instrument is, their free and
voluntary act and deed and the free and voluntary act and deed
of said corporation for the consideration, uses and purposes
therein set forth and expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal in the County and State aforesaid
on the day and year first above written.


Notary Public

ROSE ANNE MORRONE
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[Seal]

SUBLEASE

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SUBLEASE

THIS SUBLEASE is entered into as of the 28th day of October, 1986 by and between Albertson's, Inc , a Delaware corporation, and Fleming Foods West, Inc , a California corporation

1 Definitions The following terms as used in this Sublease shall have the meanings hereinafter set forth

1 1 "Sublessor" Albertson's, Inc a Delaware corporation, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof and whose address is 250 Parkcenter Boulevard, P O Box 20, Boise Idaho 83726

1 2 'Sublessee" Fleming Foods West, Inc , a California corporation

1 3 "Leased Premises" That certain real property located in the City of San Jose County of Santa Clara, State of California, more particularly described in Schedule I attached hereto and incorporated herein by this reference, together with all buildings and improvements located thereon and all easements, rights and appurtenances thereto

1 4 'Shopping Center That certain real property located in the City of San Jose, County of Santa Clara State of California and more particularly described in Schedule II attached hereto and incorporated herein by this reference

1 5 'Master Lease" That certain Lease Agreement dated as of September 23, 1974, entered into between Camas Funding Corporation, as Lessor, and Sublessor, as Lessee, covering the Leased Premises, as amended by the First Amendment to Lease dated November 1, 1974 and the Second Amendment to Lease dated August 15, 1975

1 6 'Master Landlord' Ted C Wetterau, his successors and assigns

1 7 'Receipt (a) the date of delivery of the notice or other document as shown on the return receipt (b) the date of receipt of the notice or other document by the person or entity to whom it is addressed, or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party

1 8 "Declaration" That certain Declaration of Covenants and Encumbrances recorded on January 8, 1974, in Book 716, at Page 724, Official Records of Santa Clara County, California Except where otherwise specifically referenced herein, all of the terms in this Sublease shall have the meanings set forth in the Declaration

1 9 "CAMA" That certain Common Area Maintenance Agreement recorded on January 8 1974, in Book 717, at Page 001, Official Records of Santa Clara County, California

1 10 "Gross Sales" The sum of all items included in Subsection A less the sum of all items included in Subsection B

A Items included in Gross Sales

- 1 Monies received for sales of goods or services by Sublessee or its subtenants to retail customers from the Leased Premises
- 2 Net receipts to Sublessee or its subtenants from vending machines, and fees from licensees and concessionaires allowed by Sublessee on the Leased Premises

B Items deducted from Gross Sales (if included in Subsection A above)

- 1 Credits or refunds for goods returned or exchanged by customers to Sublessee or its subtenants
- 2 The cost to Sublessee or its subtenants of trading stamps or any other premium plan
- 3 Sales from vending machines or by licensees or concessionaires
- 4 Sales taxes or other taxes measured by gross receipts, by the sales price of goods or services or by monies received from sales of goods or services
- 5 Premiums, commissions, payments and other amounts received from or in connection with the sale of travelers checks, money orders, postage stamps, licenses, tickets for sporting and entertainment events, lottery tickets and items similar thereto
- 6 Sales of fixtures or other property which is not stock in trade

7 Sales which are "bulk transfer" of inventory as that term is defined in the Uniform Commercial Code as adopted by the State of California on the date of the execution of this Sublease

8 The sale of all or a substantial portion of Sublessee's or its subtenant's inventory to one buyer

11 "Fiscal Year" That twelve (12) month period commencing on the first day of the term of this Sublease and terminating on the day next preceding the first anniversary of the date of commencement of this Sublease and each subsequent twelve (12) month period during the term of this Sublease

2 Term

2.1 Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor the Leased Premises for a primary term commencing on October 31, 1986, and terminating at midnight on November 29, 2001

2.2 Provided Sublessee is not in default on the date of exercise or on the last day of the term then in effect, Sublessee, by giving Sublessor at least one (1) year's written notice before the expiration of the primary term or option term then in effect, may extend the term of this Sublease for one (1) consecutive period of ten (10) years and thereafter four (4) consecutive periods of five (5) years each on the same terms and conditions, except, length of term as the primary term

3 Rent

3.1 Sublessee shall pay during the term of this Sublease an Annual Rent of One Hundred Thirty Thousand Dollars (\$130,000.00) payable in equal monthly installments in advance without notice or demand on the first day of each calendar month during the term of this Sublease. Annual Rent for any partial month shall be prorated.

3.2 Sublessee shall also pay during the term of this Sublease a Bonus Rent equal to one and one-half percent (1-1/2%) of Gross Sales in each Fiscal Year less the Annual Rent for that Fiscal Year. Bonus Rent for any partial Fiscal Year shall be prorated.

3.3 Bonus Rent, if any, shall be paid within sixty (60) days after the close of the Fiscal Year for which Bonus Rent is payable. Sublessee shall mail a statement of Gross Sales to Sublessor within such sixty (60) day period. Sublessor agrees to hold in confidence all sales and related information.

furnished by Sublessee except such information as may be required to be given to Master Landlord

3 4 Sublessor may inspect Sublessee's sales records at Sublessee's General Offices at any time within three (3) years after receipt of the Bonus Rent statement for the purpose of determining whether the statement was correct. If the statement for any Fiscal Year understated Gross Sales by more than two percent (2%) of Gross Sales for that Fiscal Year, Sublessee shall reimburse Sublessor for all costs reasonably incurred by Sublessor in making such inspection for such Fiscal Year. Sublessee's annual statement of Bonus Rent shall be deemed correct if Sublessor fails to give Sublessee written notice of discrepancy within the three (3) year period provided

3 5 Rent payments and the statement required under Section 3 3 shall be mailed to Sublessor at P O Box 20, Boise, Idaho 83726, Attn Property Accounting, or to such other person or address as the Sublessor may from time to time designate in writing

3 6 In the event this Sublease is terminated pursuant to the provisions of this Sublease prior to the end of the term, Annual and Bonus Rent shall be prorated to the date of termination. Sublessor shall refund to Sublessee any rent paid and unearned as of the date of termination and any other sums paid by Sublessee for periods beyond the date of termination

3 7 All other amounts which Sublessee is required to pay or discharge pursuant to this Sublease, together with any fine, penalty, interest, cost or expense which may be added or assessed for the non-payment or late payment thereof, shall constitute additional rent. If Sublessee shall fail to pay or discharge any additional rent, Sublessor shall have the right, in its sole discretion, to pay or discharge same, which amount shall thereafter be considered as rent immediately due and payable subject to all of the rights and remedies provided herein or by law for the non-payment of rent. Sublessee agrees to perform all of its obligations under this Sublease at its sole cost and expense and to pay all additional rent when due without notice or demand

4 Sublessee's Fixtures

4 1 Sublessee may install in the Leased Premises any trade fixtures and equipment Sublessee deems desirable and they shall remain Sublessee's personal property. Sublessee may remove its personal property at any time during the term of this Sublease but shall repair any damage done to the building caused by removal of such personal property

4.2 Sublessee shall prior to the date of termination of this Sublease, remove from the Leased Premises all of Sublessee's personal property (including, without limitation, trade fixtures and equipment) of every kind whatsoever failing which all such property and every interest of Sublessee in same shall, at Sublessor's option, be conclusively presumed to have been conveyed by Sublessee to Sublessor under this Sublease as a bill of sale with full warranty of title without compensation, allowance or credit to Sublessee

5 Master Lease

5.1 This Sublease is subject to each and every term, covenant, condition and agreement set forth in the Master Lease, and Sublessee acknowledges that the non-performance thereof may result in termination of the Master Lease and resulting termination of this Sublease. Except to the extent set forth in this Section 5.1, Sublessee has not agreed to affirmatively perform all of Sublessor's obligations under the Master Lease. The following sentence shall not be construed to impose an affirmative obligation upon Sublessee to perform Sublessor's affirmative obligations under the Master Lease but shall be construed to impose upon Sublessee only, an obligation to refrain from doing (or omitting to do) acts which if affirmatively done, constitute an act of default under the Master Lease. Sublessee agrees that it will not do any act or be guilty of any omission which might be or constitute a default of Sublessor under the Master Lease. Sublessee further agrees that it will not request Sublessor, nor shall Sublessor be required to do or perform any act which may constitute a default under the Master Lease. Anything in this Sublease to the contrary notwithstanding, Sublessor shall not be deemed to be in default of any term, covenant, condition or agreement in this Sublease if the Master Landlord has promised in the Master Lease to perform such term, covenant, condition or agreement and Sublessor is proceeding diligently to require the Master Landlord to perform the same. Sublessee shall perform all of Sublessor's obligations under the Master Lease except for the following obligations, which are provided for in this Sublease in a different manner than is the case under the Master Lease

- (a) The payment of rent shall be in accordance with Article 3 of this Sublease, and the Master Lease provisions shall not apply with respect thereto,

(b) Sublessee shall have no obligation to make any "Purchase Offer" as said term is used in the Master Lease in any situation where such obligation is imposed by the Master Lease,

(c) The obligations of Sublessee with respect to damage by casualty shall be determined by reference to the provisions of Article 19 of this Sublease, and the provisions of Section 14 of the Master Lease, except to the extent required by Article 19 of this Sublease, shall not apply with respect thereto

5 2 If the Leased Premises or any part thereof are damaged or destroyed by fire or other casualty, or if the use, occupancy or title of the Leased Premises or any part thereof or any easements, rights or appurtenances relating thereto is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding by any governmental authority or any other person having the power of eminent domain, which event is of such a nature as to permit Sublessor to terminate the Master Lease, Sublessor shall have the right, but not the obligation, to terminate the Master Lease, provided however, that if Sublessee is not in default hereunder, and provided Sublessee agrees to timely pay all amounts which Sublessor (as Lessee under the Master Lease) will become obligated to pay in connection with any repair, replacement or restoration of the Leased Premises on account of the event giving rise to the option to terminate pursuant to the provisions of the Master Lease, and provided Sublessee gives Sublessor "satisfactory assurance" of Sublessee's financial ability to timely pay such amounts (which "satisfactory assurance" shall be determined by Sublessor in a good-faith and commercially-reasonable manner) then Sublessor shall, if requested by Sublessee so to do, refrain from exercising such option to terminate the Master Lease. If, as a result of said termination, all of Sublessor's right, title and interest in and to the Leased Premises is extinguished or transferred to another person said termination shall not constitute a default by Sublessor under this Sublease and this Sublease shall terminate on the same date that the Master Lease terminates

6 Title

6 1 So long as Sublessee is not in default hereunder, Sublessor covenants that Sublessee shall have quiet and peaceful possession of the Leased Premises and enjoy all of the rights herein granted without interference from

Sublessor, anyone acting by, through or under Sublessor, or anyone having title paramount to Sublessor

6.2 Sublessee hereby accepts title to the Leased Premises subject to all matters of record existing on the date of this Sublease

7 Maintenance and Utilities

7.1 Sublessee shall maintain the Leased Premises in good repair and condition, except for ordinary wear and tear, and shall make all structural and non-structural, foreseen and unforeseen and ordinary and extraordinary alterations and repairs which may be required to keep the Leased Premises in good repair and condition, ordinary wear and tear excepted, or may be required by the Master Lease

7.2 Sublessee shall pay for all water, gas electricity and other utility services supplied to the Leased Premises during the term of this Sublease

8 Examination of Premises

8.1 Sublessee has examined the Leased Premises before taking possession hereunder, and such taking of possession shall be conclusive evidence as against Sublessee that at the time thereof the Leased Premises were in good order and satisfactory condition

8.2 Anything in Section 8.1 to the contrary notwithstanding, it is expressly understood and agreed that Sublessee shall take the Leased Premises in their present "as is" condition

9 Use of the Leased Premises

9.1 Sublessee shall open and initially operate the Leased Premises as a supermarket. At least one hundred twenty (120) days prior to the date the Leased Premises cease to be operated as a supermarket, Sublessee shall send written notice of the date operations shall cease to Sublessor. Sublessor shall have the right to cancel this Sublease upon sixty (60) days written notice to Sublessee, and if Sublessor does so cancel this Sublease, this Sublease shall terminate on the cessation of operations date in Sublessee's notice. If Sublessor does not so cancel this Sublease, the Leased Premises may be used for any lawful purposes. In no event, whether as a supermarket or otherwise shall the Leased Premises be used for any unlawful purpose or for any use prohibited by the Master Lease or any easements, covenants or restrictions to which the Leased Premises are subject

10 Alterations

10.1 Sublessee at its cost shall have the right to make, without Sublessor's consent, nonstructural alterations to the interior of the Leased Premises, provided the cost of such alterations is not in excess of Fifty Thousand Dollars (\$50,000.00). Except as set forth above, Sublessee shall make no alterations or improvements to the Leased Premises without the prior written consent of Sublessor, which consent shall not be unreasonably withheld. All such alterations and improvements shall constitute a part of the Leased Premises subject to all of the terms, covenants, conditions and agreements of this Sublease, and shall not be removed by Sublessee at the expiration of the term of this Sublease.

10.2 All alterations and improvements to the Leased Premises (a) shall comply with the terms of (i) the Master Lease, (ii) any mortgage(s) or deed(s) of trust placed on the Leased Premises, (iii) all laws, rules and regulations applicable thereto, (iv) any agreement to which Sublessee is a party and (v) any restriction suffered or permitted by Sublessee or existing on the date of this Sublease, (b) shall not lessen the fair market value of the Leased Premises, and (c) shall not impair the structural integrity or change the essential architectural character of the building (i.e., a building suitable for use as a single general merchandise store). Sublessee shall provide Sublessor with a copy of the plans and specifications for such alterations and improvements together with a copy of all consents and approvals required by the Master Lease or any other document referenced in subparagraph (a) above at least thirty (30) days prior to the commencement of construction of such alterations and improvements. Sublessee shall further provide Sublessor with a reproducible copy of as-built plans and specifications for all such alterations and improvements within thirty (30) days after the date of completion of same.

10.3 Unless otherwise required by the Master Lease, or surrendering possession of the Leased Premises, Sublessee shall not be required to restore the Leased Premises to its condition on the date of this Sublease, and Sublessor agrees to accept the Leased Premises with all alterations and improvements made by Sublessee which have been approved by Sublessor.

10.4 Sublessee shall not permit any lien to stand against the Leased Premises for work done or materials furnished by or on behalf of Sublessee provided that Sublessee may contest the validity of any such lien, but upon a

final determination of the validity thereof, Sublessee shall cause the lien to be satisfied and released of record

10.5 Nothing contained herein shall constitute the consent or request of Sublessor express or implied, to or for the performance of any labor or services, or the furnishing of any materials to or for the construction, restoration, reconstruction, expansion, alteration repair or remodeling of any buildings or improvements located on the Leased Premises. Notice is hereby given that Sublessor shall not be liable for any labor, services or materials furnished to Sublessee or anyone holding or claiming any interest in the Leased Premises by, through or under Sublessee and that no mechanics, materialmen or other liens for any such labor, services or materials shall attach to or affect the interest of Sublessor in and to the Leased Premises. Sublessee agrees to provide Sublessor written notice of its intent to cause the performance of any labor or services or the furnishing of any materials to or for the benefit of the Leased Premises at least thirty (30) days prior to the date Sublessor is required to post or file a Notice of Nonresponsibility or other document required to effect the provisions of this Section 10.5

11 Indemnification and Insurance

11.1 Sublessee, during the term of this Sublease, agrees to defend and indemnify Sublessor and Master Landlord against and save Sublessor and Master Landlord harmless from any and all liabilities, claims, demands, losses, damages, costs, expenses (including reasonable attorneys' fees), judgments, proceedings and causes of action of any kind whatsoever arising out of or in any way connected with (i) injury to or death of any person or damage to or loss of any property occurring on the Leased Premises or on any street, parking lot or sidewalk adjoining the Leased Premises or growing out of or connected with the use, occupancy or condition thereof, (ii) violation of any term, covenant, condition or agreement of this Sublease, or (iii) violation by Sublessee of any agreement to which Sublessee is a party, any restriction suffered or permitted by Sublessee or existing on the date of this Sublease or any law, rule or regulation, in each case affecting the Leased Premises or the ownership, occupancy or use thereof except if caused by the willful or negligent act or omission (other than negligence arising solely from Master Landlord's ownership of its interest in the Leased Premises) of the indemnified party, its agents or employees, provided, however, that Sublessee shall not be obligated to defend, indemnify or hold harmless with respect to any occurrence

which took place prior to the date of execution of this Sublease Sublessor shall indemnify, defend and hold Sublessee harmless with respect to all liabilities, claims, demands, losses, damages, costs, expenses (including reasonable attorneys fees), judgments, proceedings and causes of action of any kind whatsoever arising out of or in connection with injury to or death of any person or damage to or loss of property occurring on the Leased Premises or on any street, parking lot, or sidewalk adjoining the Leased Premises or growing out of or connected with the use, occupancy or condition thereof, where the event or occurrence giving rise to such duty of indemnification occurred prior to the date of execution of this Sublease, and subsequent to 23 September 1974

11.2 Sublessee shall maintain general public liability insurance covering its obligations under Section 11.1 in respect to bodily injury, death or property damage in an amount not less than ~~Two Million and No/100ths Dollars (\$2,000,000.00)~~ ^{One Million and No/100ths Dollars (\$1,000,000.00)} for each occurrence, which insurance shall name

Sublessor, Master Landlord and any other person required by the Master Lease as named insureds. Said insurance shall be with an insurance carrier or carriers reasonably satisfactory to Sublessor and shall not be subject to cancellation except upon not less than thirty (30) days' prior written notice to Sublessor and any other person designated by Sublessor. The policy or policies for said insurance or, at Sublessor's option, a duly executed certificate or certificates for same, reasonably satisfactory to Sublessor, evidencing compliance with all of the requirements of this Section shall at all times be kept on deposit with Sublessor and any other person designated by Sublessor.

11.3 Sublessee shall maintain all insurance which Sublessor is required to maintain pursuant to Paragraph 13 (Insurance) of the Master Lease and such insurance shall name Sublessor as a named insured.

11.4 If Sublessee fails to comply with the requirements of this Article 11, Sublessor may obtain such insurance and keep the same in force and effect and Sublessee shall pay Sublessor upon request the premium cost thereof for the term of this Sublease then unexpired.

12 Condemnation

12.1 If the use, occupancy or title of the Leased Premises or any part thereof or any easements, rights or appurtenances relating thereto is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding by any governmental authority or any other person having the power of eminent domain, Sublessee shall promptly give Sublessor

written notice thereof, and if such event is of such a nature as to permit Sublessor to terminate the Master Lease, Sublessee may terminate this Sublease by giving written notice to Sublessor at least thirty (30) days prior to the date Sublessor is required to give notice of termination under the Master Lease

12.2 If this Sublease is not terminated pursuant to Section 5.2 or 12.1 of this Sublease, Sublessee shall promptly restore the Leased Premises to an architectural unit as nearly comparable as practicable to the unit existing immediately prior to such taking or damage, and this Sublease shall continue. Such restoration shall be done in accordance with plans and specifications first approved in writing by Sublessor. After the completion of the restoration, Sublessee shall be entitled to reimbursement for the cost of such restoration from any award or amount therefor received by Sublessor pursuant to the Master Lease. If such award or amount is less than the cost of restoration, Sublessee shall be responsible for the balance of the cost. Commencing with the date on which Sublessee is deprived of the use of any portion of the Leased Premises or of any rights under this Sublease, Annual Rent shall be reduced by the percentage by which the fair market rental value of the Leased Premises immediately after the taking or damage is reduced from such fair market rental value of the Leased Premises immediately prior to such taking or damage, but in no event shall Annual Rent be reduced below the rent due and payable under the Master Lease.

12.3 In the event of any condemnation and whether or not Sublessee elects to terminate this Sublease, Sublessor's share of any condemnation award or payment under the Master Lease shall be divided between Sublessor and Sublessee as their interests may appear.

13 Assignment and Subletting

13.1 Sublessee may not assign this Sublease without the prior written consent of Sublessor, which consent may be withheld for any reason whatsoever or for no reason at all.

13.2 Sublessee may sublet the Leased Premises subject to the provisions of the Sublease, including but not limited to Article 9 above.

13.3 In the event of any subletting for a non-supermarket use, Sublessor shall receive as additional rent hereunder fifty percent (50%) of Sublessee's net profits derived from such subletting. For the mutual benefit of Sublessor and Sublessee, Sublessee shall use reasonable and good faith efforts to secure consideration from any such subtenant which would be generally

equivalent to the then current market rental, but in no event shall Sublessee's monetary obligations to Sublessor, as set forth in this Sublease, be reduced "Net profits" as used herein means the difference between the rents received under the sublease by Sublessee and the rents paid to Sublessor by Sublessee under this Sublease. Sublessor's share of such net profits shall be due and payable upon receipt thereof by Sublessee.

13.4 The termination of this Sublease shall not work a merger and shall, at the option of Sublessor, terminate all or any existing subleases or operate as an assignment to Sublessor of all or any of such subleases.

14 Default

14.1 Either party shall be deemed to be in default upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform the obligations of this Sublease unless that party prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice. However, such party shall not be in default if such failure (except the failure to pay money) cannot be rectified within said thirty (30) day period and such party is using good faith and its best efforts to rectify the particulars specified in the notice of default.

14.2 If the defaulting party is Sublessee, Sublessor shall have the following options:

(a) Sublessor shall have the right to terminate this Sublease by giving to Sublessee written notice of such termination.

(b) If Sublessor elects to terminate this Sublease as provided in subparagraph (a) above, Sublessor may then or at any time thereafter, re-enter the Leased Premises, or any part thereof, and expel or remove therefrom Sublessee and any other person occupying the same using such force as may be necessary so to do and again possess and enjoy the Leased Premises without prejudice to any other remedies that Sublessor may have by reason of Sublessee's default or of such termination.

(c) If Sublessor elects to terminate this Sublease, as provided in subparagraph (a) above, Sublessor shall have all of the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code. The amount of damages which Sublessor may recover in the event of such termination shall include (i) the worth at the time of award

(computed by allowing interest at the maximum rate permitted by law) of the unpaid rent and charges equivalent to rent earned as of the date of termination hereof, (ii) the worth at the time of the award (computed by allowing interest at the maximum rate allowable by law) of the amount by which the unpaid rent and charges equivalent to rent which would have been earned after the date of termination hereof until the time of award exceeds the amount of such rental loss that Sublessee proves could have been reasonably avoided, (iii) the worth at the time of award (computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%)) of the amount by which the unpaid rent and charges equivalent to rent for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Sublessee proves could be reasonably avoided (iv) any other amount necessary to compensate Sublessor for the detriment proximately caused by Sublessee's failure to perform its obligations under the Lease or which in the ordinary course of events would be likely to result therefrom, and (v) any other amount which Sublessor may by law hereafter be permitted to recover from Sublessee to compensate Sublessor for the detriment caused by Sublessee's default

(d) After terminating this Lease pursuant to subparagraph (a) above, Sublessor may, without any further demand or notice except as required by law, remove any and all personal property located on the Leased Premises and place such property in a public or private warehouse or elsewhere at the risk and at the sole cost and expense of Sublessee. In the event Sublessee does not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Sublessor may sell any or all thereof at public or private sale in such manner and at such times and places as Sublessor acting reasonably may deem proper, without notice to or demand upon Sublessee except as required by law, and apply the proceeds thereof to any amount due to the Sublessor from Sublessee hereunder with any excess being paid to Sublessee.

(e) Sublessor shall have the right to cause a receiver to be appointed in any action against Sublessee to take possession of the Leased Premises or to collect the rents or profits derived therefrom or both. Said receiver may, if it is necessary or convenient in order to collect such

rents or profits, conduct the business and may use the same in conducting such business on the Leased Premises. Neither the application for the appointment of such receiver nor the appointment of such receiver shall constitute an election on the part of the Sublessor to terminate this Sublease unless written notice of such intention is given to Sublessee.

(f) Even though Sublessee has breached this Sublease and abandoned the Leased Premises, this Sublease shall continue in effect for so long as Sublessor does not terminate Sublessee's right to possession, and Sublessor may enforce all of its rights and remedies under this Sublease, including the right to recover the rent and charges equivalent to rent as the same becomes due hereunder. Sublessor's acts of maintenance or preservation or efforts to relet the Leased Premises, or the appointment of a receiver upon Sublessor's initiative to protect its interest under this Sublease shall not constitute a "termination of Sublessee's right to possession" hereunder.

(g) If Sublessor elects to re-enter the Leased Premises without termination, as provided in subparagraph (f) hereof, Sublessor may at Sublessor's election use Sublessee's personal property and trade fixtures or any of such property and fixtures without liability for use or damage or store them for the account and at the cost of Sublessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(h) Notwithstanding anything to the contrary set forth herein, Sublessor's re-entry to perform acts of maintenance or preservation of or in connection with efforts to relet the Leased Premises or any portion thereof, or the appointment of a receiver upon Sublessor's initiative to protect Sublessee's interest under this Sublease shall not terminate Sublessee's right to possession of the Leased Premises or any portion thereof and until Sublessor does elect to terminate this Sublease by written notice to Sublessee, this Sublease shall continue in full force and effect. Sublessor may enforce all of Sublessor's rights and remedies hereunder including, without limitation, the right to recover from Sublessee as it becomes due hereunder all rent, additional rent and other charges required to be paid by Sublessee under the terms hereof. Any re-letting by Sublessor of the Leased Premises, or any part thereof, shall be for the account and in the name of Sublessee or otherwise. Any

reletting may be for the remainder of the term of this Lease or for a longer or shorter period. Sublessor may execute any lease made under this provision either in Sublessor's name or in Sublessee's name and shall be entitled to all rents from the use, operation or occupancy of the Leased Premises to be applied toward any amounts due to Sublessor from Sublessee hereunder with any excess being paid to Sublessee.

(i) Nothing in this Section 14.2 shall be deemed to affect Sublessor's right to defense and indemnification under Section 11.1 for any act or acts arising prior to the date of termination of this Sublease.

(j) In addition to the other remedies provided in this Sublease, Sublessor shall be entitled to injunctive relief in case of the violation or attempted or threatened violation, of any term, covenant, condition or agreement of this Sublease and to a decree compelling performance of any term, covenant, condition or agreement of this Sublease and to any other remedy allowed to Sublessor at law or in equity.

14.3 No reentry or reletting of the Leased Premises shall be construed as an election by Sublessor to terminate Sublessee's right to possession and this Sublease unless a written notice of such intention is given by Sublessor to Sublessee, and notwithstanding any such reletting without such termination, Sublessor may at any time thereafter elect to terminate Sublessee's right to possession and this Sublease in the event that at such time Sublessee remains in default hereunder.

14.4 If the default of Sublessor is material, Sublessee may terminate this Sublease.

14.5 The failure of a party to insist upon a strict performance of any of the terms, covenants, conditions or agreements set forth herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions and agreements herein contained.

14.6 In addition to the remedies set forth in this Sublease, Sublessor and Sublessee shall have all other remedies provided by law or statute to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to Sublessor or Sublessee shall exclude any other remedy herein or by law provided, but each shall be cumulative.

15 Notices, Estoppel Certificates

15 1 All notices provided for herein shall be in writing and shall be given by United States registered or certified mail, postage prepaid, return receipt requested, addressed, if to Sublessor, to Sublessor at 250 Parkcenter Boulevard, P O Box 20, Boise, Idaho 83726, Attention Legal Department, and, if to Sublessee, to Sublessee in care of Fleming Foods West, Inc , 4576 Willow Road, P O Box 5216, Pleasanton, CA 94566 The person and address to which notices are to be sent may be changed at any time by either party upon written notice to the other party

15 2 Each party agrees that a copy of all notices which said party gives to the other hereunder shall also be given by United States registered or certified mail to such other persons and at such addresses as the other party may designate in writing

15 3 Upon either party's written request, and provided the other party can do so truthfully, the other party will certify in writing to all persons designated by the requesting party

- (a) That the requesting party has performed all of its obligations and is not in default under this Sublease,
- (b) That this Sublease is in full force and effect, and
- (c) Such other items as the requesting party may reasonably request

Each person receiving such certification may rely thereon for all purposes

16 Attorneys' Fees

16 1 If either party to this Sublease is required to initiate or defend litigation in any way connected with this Sublease, the prevailing party in such litigation in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable costs and attorneys fees. If either party to this Sublease is required to initiate or defend litigation with a third party because of the violation of any term, covenant condition or agreement of this Sublease or obligation of the other party to this Sublease, then the party so litigating shall be entitled to recover its reasonable costs and attorneys fees from the other party to this Sublease. Attorneys fees shall include attorneys fees on any appeal. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

17 Taxes and Assessments

17.1 Sublessee shall reimburse to Sublessor all real estate taxes, assessments and other items required to be paid by Sublessor under Paragraph 7 of the Master Lease during the term of this Sublease with such taxes, assessments and other items being prorated to the first and last days of the term hereof

18 Compliance with Laws

18.1 Sublessee shall comply with all laws, rules and regulations applicable to the Leased Premises or the use, occupancy or condition thereof. Sublessee shall have the right to contest the validity or application of any such law, rule or regulation and shall indemnify Sublessor and Master Landlord against any loss or liability resulting therefrom

19 Damage by Casualty

19.1 If the Leased Premises are damaged or destroyed by fire or other casualty, Sublessee shall promptly give written notice thereof to Sublessor generally describing the nature and extent of such damage or destruction. If the damage or destruction is of such a nature as to permit Sublessor to terminate the Master Lease, Sublessee may terminate this Sublease by written notice given to Sublessor at least thirty (30) days prior to the date Sublessor is required to give written notice of termination to Master Landlord under the Master Lease. If Sublessee terminates this Sublease, all insurance proceeds shall be paid to Sublessor. If the insurance proceeds are not sufficient to cover the cost of restoration, Sublessee shall pay to Sublessor the excess.

19.2 If this Sublease is not terminated pursuant to Section 5.2 or 19.1 of this Sublease, Sublessee shall promptly restore the Leased Premises to its condition immediately prior to the damage in accordance with plans and specifications first approved in writing by Sublessor and the requirements of the Master Lease. The insurance proceeds may be used for such restoration, however, if the insurance proceeds are insufficient to cover the entire cost thereof, Sublessee shall pay the excess.

19.3 Sublessee agrees to keep in effect on the Leased Premises insurance against damage caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, falling aircraft, vehicles, smoke, malicious mischief, vandalism, all other risks which are from time to time included under 'extended coverage' policies, and any other risks required to be insured against under the Master Lease in an amount sufficient to prevent

Sublessor and Master Landlord from becoming a co-insurer of any loss but in no event less than one hundred percent (100%) of the replacement value of any building improvements thereon. Said insurance shall name Sublessor, Master Landlord and any other person required by the Master Lease as named insureds to the extent of their respective interests. Said insurance shall be with an insurance carrier or carriers reasonably satisfactory to Sublessor and shall not be subject to cancellation except upon not less than thirty (30) days' prior written notice to Sublessor and any other person designated by Sublessor. The policy or policies for said insurance or, at Sublessor's option, a duly executed certificate or certificates for same, reasonably satisfactory to Sublessor, evidencing compliance with all of the requirements of this Section shall at all times be kept on deposit with Sublessor and any other person designated by Sublessor.

19.4 If Sublessee fails to comply with the requirements of this Article 19, Sublessor may obtain any insurance required herein and keep the same in force and effect and Sublessee shall pay Sublessor upon request the premium cost thereof for the term of this Sublease then unexpired.

20 Successors

20.1 All of the rights and obligations under this Sublease shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

21 Holding Over

21.1 Any hold over and acceptance of rent beyond the date of termination of this Sublease shall be deemed to have established a month-to-month tenancy on the same terms and conditions, except length of term as the original term of this Sublease.

22 Declaration

22.1 Reference is hereby made to that certain instrument entitled "Declaration of Covenants and Encumbrances" recorded in the Santa Clara County Recorder's Office at Book D716, Pages 724 and following as instrument No. 4681401, hereinafter referred to as the "Declaration," which affects the Leased Premises.

Sublessor agrees that

A. While this Sublease is in effect and provided Sublessee is not in default hereunder, whenever the consent of Sublessor is required under

the Declaration, such consent will not be given without the consent of Sublessee

B Sublessor will, at the expense and upon request of Sublessee, take actions permitted under the Declaration to enforce the provisions thereof

EXECUTED as of the date first above written

SUBLESSOR
Albertson's, Inc ,
a Delaware corporation

BY Thomas R. Alden
Senior Vice President

BY Winnifred Ambler
Secretary

SUBLESSEE
Fleming Foods West, Inc ,
a California corporation

BY Rhonda Devening
Vice President

BY Janeen Clark
Secretary

SCHEDULE I

San Jose, Santa Clara County,
California

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows:

111 of Lot 3, PLACI NO 5111", filed for record on January 7, 1974 in Book 334 of Maps, Page 53, Santa Clara County Record

SCHEDULE II

SHOPPING CENTER LEGAL DESCRIPTION

Lots 1, 2 and 3 of Tract No 5414 recorded in the office of Santa Clara County Recorder on January 7, 1974, in Book 334 of Maps, Page 53

GUARANTY

FOR VALUE RECEIVED, and in consideration for, and as an inducement to Sublessor, Albertson's, Inc., a Delaware corporation, to make that certain Sublease dated October 28, 1986, covering the real property more particularly described on Schedule I attached hereto (including all Exhibits thereto), with Fleming Foods West, Inc., a California corporation, as Sublessee, the undersigned Fleming Companies, Inc., an Oklahoma corporation (hereinafter sometimes called "Guarantor"), hereby unconditionally guarantees the full performance and observance of all the covenants, conditions and agreements therein provided to be performed and observed by Sublessee, Sublessee's successors and assigns, and Guarantor hereby makes itself fully liable for such performance

Guarantor further agrees to indemnify and hold harmless Sublessor from all loss, damage, cost and expense in the event of any default by Sublessee under such Sublease

Guarantor expressly agrees that the validity of this agreement and its obligations hereunder shall in nowise be terminated, affected or impaired by reason of the assertion by Sublessor against Sublessee of any of the rights or remedies reserved to Sublessor by the Lease. Guarantor further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of this Lease, any subordination of Sublessor's liens and security interests, contractual and statutory, and any other assignment or transfer by Sublessor or Sublessee, whether or not Guarantor shall have received any notice of or consented to such renewal, modification, extension, assignment or transfer

Failure of Sublessor to insist upon strict performance or observance of any of the terms, provisions or covenants of the foregoing Sublease or to exercise any right therein contained shall not be construed as a waiver or relinquishment for the future of any such term, provision, covenant or right, but the same shall continue and remain in full force and effect. Receipt by Sublessor of rent with knowledge of the breach of any provision of the foregoing Lease shall not be deemed a waiver of such breach

Guarantor further agrees its liability under this guarantee shall be primary and that in any right of action which shall accrue to Sublessor under this Lease Sublessor may, at its option, proceed against Guarantor and Sublessee, jointly and severally, or may proceed against Guarantor without having

commenced any action against or having obtained any judgment against Sublessee

Guarantor hereby expressly warrants and represents to Sublessor as an inducement for Sublessor to make said Sublease with Sublessee that Guarantor owns one hundred percent (100%) of the entire outstanding capital stock of Sublessee and that Sublessee is a wholly-owned subsidiary of Guarantor, that the execution and delivery of this Guaranty is not in contravention of Guarantor's Charter or By-Laws, and that the execution of this Guaranty has been properly authorized

Guarantor agrees that in the event Sublessee shall become insolvent or shall be adjudicated a bankrupt, or shall file a petition for re-organization, arrangement or similar relief under any present or future provisions of the National Bankruptcy Act, or is such a petition be filed by creditors of said Sublessee, or if Sublessee shall seek a judicial re-adjustment of the rights of its creditors under any present or future Federal or state law or if a receiver of all or part of its property and assets is appointed by any state or Federal court and Sublessee shall not have had such proceeding dismissed within ninety (90) days of its filing, no such proceeding or action taken therein shall modify, diminish, or in any way affect the liability of Guarantor under this guaranty and such liability shall continue to be of the same scope as if Guarantor had executed said Sublease as the named Sublessee thereunder

All terms and provisions hereof shall inure to the benefit of the assigns and successors of Sublessor and shall be binding upon the assigns and successors of Guarantor

EXECUTED this 27th day of oct, 1986

ATTEST

James W. Clark
Secretary

FLEMING COMPANIES, INC

By Robert W. Smith
Vice President

GUARANTOR

SCHEDULE I

San Jose, Santa Clara County,
California

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows

All of Lot 3, 'TRACT NO 5411', filed for record on January 7, 1974 in Book 334 of Maps, Page 53, Santa Clara County Record

FIRST AMENDMENT TO SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE ('First Amendment') is made and entered into as of the 25th day of November, 1986 by and between Albertson's, Inc , a Delaware corporation ('Sublessor') and Fleming Foods West, Inc , a California corporation (Sublessee)

RECITALS

1 On October 28, 1986, Sublessor and Sublessee entered into a Sublease for real property located in the City of San Jose, County of Santa Clara, State of California, more particularly described in Schedule I attached hereto and incorporated herein by this reference, together with all buildings and improvements located thereon and all easements, rights and appurtenances thereto ('Leased Premises') The Leased Premises are part of a larger tract of land more particularly described in Schedule II attached hereto and incorporated herein by this reference ('Shopping Center')

2 Sublessor and Sublessee desire to amend the Sublease in certain particulars

AGREEMENTS

NOW, THEREFORE, the parties hereby agree to amend the Sublease as follows

1 Article 7 (Maintenance and Utilities) of the Sublease is amended by adding a new Section 7 3 to read as follows

"7 3 Sublessee shall reimburse Sublessor upon demand for all common area maintenance expenses which Sublessor is required to pay pursuant to Article 6 of the CAMA during the term of this Sublease, with such common area maintenance expenses being prorated to the first and last days of the term hereof "

2 The provisions of this First Amendment shall be effective as of October 28, 1986

3 The provisions of this First Amendment shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns

4 Except as amended herein, the Sublease remains unchanged and in full force and effect

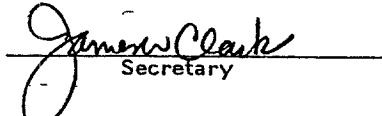
IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first above written

SUBLESSEE
Fleming Foods West, Inc ,
a California corporation

BY


Vice President

BY


Secretary

SUBLESSOR
Albertson s, Inc ,
a Delaware corporation

BY


Senior Vice President

BY


Secretary

SCHEDULE I

San Jose, Santa Clara County,
California

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows:

711 of lot 3, "TRACT NO 5111", filed for record on January 1, 1974 in Book 334 of Maps, Page 53, Santa Clara County Record

SCHEDULE II

SHOPPING CENTER LEGAL DESCRIPTION

Lots 1, 2 and 3 of Tract No 5414 recorded in the office of Santa Clara County Recorder on January 7, 1974, in Book 334 of Maps, Page 53.

SUBLEASE AGREEMENT

SUBLESSOR

FLEMING FOODS WEST, INC.

SUBLESSEE

LUNARDI SUPERMARKET, INC , a California corporation,
d'b.a LUNARDI'S

4640 Meridian Avenue
San Jose, California

GJS-5/6/88

SUBLEASE AGREEMENT

This agreement made this 16th day of May, 1988, by and between FLEMING FOODS WEST, INC., a California corporation with an office at 4576 Willow Road, P.O. Box 5216, Pleasanton, California 94566, hereinafter referred to as SUBLESSOR and LUNARDI SUPERMARKET, INC., a California corporation, hereinafter referred to as SUBLESSEE

WITNESSETH

WHEREAS, SUBLESSOR is sublessee of defined premises (hereinafter called "premises") located upon real estate located at San Jose, California, being the premises formerly operated as Albertson's Store No. 745, and most recently as H & S Food Villa located at 4640 Meridian Avenue, San Jose, California, which real property is more particularly described in Exhibit "A" to the ORIGINAL SUBLEASE described below, which premises are a part of the real property which is described in Schedule 1 attached to said ORIGINAL SUBLEASE under that certain lease (hereinafter called "ORIGINAL SUBLEASE") entitled "SUBLEASE", dated the 28th day of October, 1986, executed by Albertson's, Inc, a Delaware corporation, as sublessor and SUBLESSEE desires to sublease the premises from SUBLESSOR.

NOW, THEREFORE, in consideration of the rents to be paid, and the covenants to be performed, as hereinafter set forth, the parties agree as follows

1 ORIGINAL LEASE INCORPORATED

The terms of the ORIGINAL SUBLEASE hereinabove referred to are herein incorporated by reference with like force and effect as if the same had been fully set out, and SUBLESSEE hereby acknowledges that SUBLESSEE has received a copy of, and has read and is fully aware of, each and every provisions of.

A. the ORIGINAL SUBLEASE,

B the Master Lease which affects the premises,

which Master Lease includes.

- 1) that certain Lease Agreement dated as of
23 September, 1974, between Camas Funding
Corporation, as Lessor and Albertson's,
Inc as Lessee,
- 2) the First Amendment to Lease, dated
1 November 1974;
- 3) the Second Amendment to Lease, dated
15 August 1975, and,

C. the Declaration of Covenants and Encumbrances dated
28 December 1973 bearing Recorder's Serial No.
4681401, made by Desin Development Co.,
Sav-On-Realty, Inc , and Albertson's, Inc. and the
Common Area Maintenance Agreement dated 28 December
1973 between said parties

2. TERM AND ACCEPTANCE

A. SUBLESSOR hereby leases to SUBLESSEE, and SUBLESSEE hereby hires from SUBLESSOR, only for operation of a retail food market, the above-described premises for an initial term commencing 1 June 1988 and terminating 29 November 2001. This initial term shall coincide with the term of the sublease of the subject premises from Fleming Foods West, Inc to H & S Markets, Inc. which sublease is being terminated prior to the commencement of this sublease.

B. Provided SUBLESSEE is not in default on the date of exercise or on the last day of the term then in effect, SUBLESSEE, by giving SUBLESSOR at least four hundred (400) days written notice before the expiration of the primary term or option term then in effect, may extend the term of this Sublease for one consecutive period of ten (10) years, and thereafter for one consecutive period of five (5) years each on the same terms and conditions, except, length of term, as the primary term.

Notwithstanding any such extension of the term, or any other provision hereof, this Sublease shall automatically terminate on (1) day earlier than the expiration or termination, for whatever reason, of the ORIGINAL SUBLEASE. SUBLESSEE hereby acknowledges that, unless extended, the term of the ORIGINAL SUBLEASE will expire on 29 November 2001

C. SUBLESSEE has examined the premises before execution of this Sublease and acknowledges that the premises are, in all respects, in good order and satisfactory condition, and that SUBLESSEE agrees to accept the premises in their present "AS-IS" condition.

3 ASSUMPTION BY SUBLESSEE

A. SUBLESSEE agrees that this Sublease is expressly made, and SUBLESSEE accepts the same, subject to each and every provision of the ORIGINAL SUBLEASE and the Master Lease, as that term is defined in the ORIGINAL SUBLEASE and the other instruments referred to in paragraph 1 C hereof

B SUBLESSEE agrees that it will not do any act or be guilty of any omission or permit any condition to exist which might be or constitute a default of SUBLESSOR under the ORIGINAL SUBLEASE or the Master Lease as defined therein, or the other instruments referred to in paragraph 1 C. hereof.

C SUBLESSEE shall timely do and perform each and every covenant and obligation which is imposed upon or required to be performed by SUBLESSOR, as sublessee under the ORIGINAL SUBLEASE or under the other instruments referred to in paragraph 1 C hereof, except that the obligation and covenant to pay rent as required by the ORIGINAL SUBLEASE shall be considered performed by SUBLESSEE to the extent and in the amount rent is paid to SUBLESSOR in accordance with the provisions of Paragraph 4 hereof.

D Except where lesser rights are provided for under this Sublease, SUBLESSEE shall have, as against SUBLESSOR, only such

rights and remedies as SUBLESSOR (as sublessee) has against the sublessor under the ORIGINAL SUBLEASE, and no others. If, pursuant to this subparagraph, SUBLESSEE desires that SUBLESSOR exercise any right which SUBLESSOR (as sublessee) has against the sublessor under the ORIGINAL SUBLEASE, then, upon request by SUBLESSEE so to do, SUBLESSOR shall take all reasonable actions to enforce such rights (in the manner provided in the ORIGINAL SUBLEASE where applicable). SUBLESSOR'S obligation to take such actions is conditioned upon SUBLESSEE giving SUBLESSOR reasonable assurances of SUBLESSEE'S ability to pay, and SUBLESSEE shall pay, all costs and expenses of such actions. SUBLESSEE shall indemnify, defend, and hold SUBLESSOR harmless from all demands, claims, causes of action, and judgments, arising out of the taking of such actions, which shall be conducted by counsel selected by SUBLESSEE. SUBLESSEE shall have the right to terminate this Sublease only if, under the ORIGINAL SUBLEASE, SUBLESSOR has acquired the right to terminate the ORIGINAL SUBLEASE.

E SUBLESSOR shall have, as against SUBLESSEE, the same rights and remedies as the sublessor has against SUBLESSOR, as sublessee under the ORIGINAL SUBLEASE, and, in addition thereto, SUBLESSOR shall have such additional rights and remedies as against SUBLESSEE as are provided for herein.

4. RENT

As rent for the premises, SUBLESSEE agrees to pay to SUBLESSOR, at its office in Pleasanton, California, or to such other address as is designated by SUBLESSOR in a written notice given to SUBLESSEE.

A On or before Wednesday of each week during the term or any extension of the term of this SUBLEASE, in advance, minimum weekly rent of Two Thousand Six Hundred Twenty-Five Dollars (\$2,625.00).

B On or before the fifth (5th) day of each calendar month during the term or any extension of the term of this SUBLEASE,

percentage rent equal to 1.625% of SUBLESSEE'S gross sales (as that term is defined in the ORIGINAL SUBLEASE) for the previous calendar month, less the minimum weekly rent paid by SUBLESSEE during such previous calendar month.

SUBLESSEE shall deliver to SUBLESSOR, at the time percentage rent is payable hereunder, SUBLESSEE'S statement of gross sales for such previous calendar month

The percentage rent required under this subparagraph B shall not exceed 1.625% of SUBLESSEE'S gross annual sales during any calendar year, or portion thereof, during which time this Sublease shall be in effect. In the event that the percentage rent paid hereunder has in fact exceeded 1.625% of SUBLESSEE'S gross annual sales during any applicable year or portion thereof, SUBLESSOR shall refund the excess to SUBLESSEE no later than January 31, immediately following the year or portion thereof in question.

C At the times and in the amounts provided for in the ORIGINAL SUBLEASE, SUBLESSEE shall perform and pay such other obligations and amounts as are required of SUBLESSOR (as sublessee under the ORIGINAL SUBLEASE) whether or not such obligations or amounts are characterized as additional rent, excepting only the SUBLESSOR'S obligation to pay annual rent and percentage rent under the ORIGINAL SUBLEASE.

5. ASSIGNMENT AND SUBLETTING

A. SUBLESSEE may not assign this Sublease without the prior written consent of SUBLESSOR, which consent may be withheld for any reason whatsoever or for no reason at all.

B SUBLESSEE may sublet portions of the leased premises, but not the entire leased premises, so long as that subletting is limited to supermarket purposes and is otherwise subject to the provisions of the Sublease. The parties intend that this limited right to sublease portions of the leased premises shall be to allow

specialized operations for individual departments such as a bakery or delicatessen to be operated by persons other than SUBLESSEE.

C The termination of this Sublease shall not work a merger and shall, at the option of SUBLESSOR, terminate all or any existing subleases or operate as an assignment to SUBLESSOR of all or any such subleases

6 SUBLESSEE DEFAULT

In the event of SUBLESSEE'S default, SUBLESSEE'S rights and obligations shall, except as set forth below, be governed by this paragraph and not by the ORIGINAL SUBLEASE. If SUBLESSEE defaults by failing to pay rent when it becomes due, failing to keep or to perform any covenant or obligation made incumbent upon SUBLESSEE under any part of this Sublease or under any part of the ORIGINAL SUBLEASE or by failing to pay any amount otherwise due from SUBLESSEE to SUBLESSOR pursuant to this Sublease, and if any such default shall continue for fifteen (15) days after notice thereof is given to SUBLESSEE, or if the leasehold interest or any property of SUBLESSEE in the premises shall be taken or levied upon by attachment, execution or other process, or if a receiver, trustee, guardian, conservator or similar officer shall be appointed to take charge of SUBLESSEE or any of SUBLESSEE'S property, whether in the premises or not, or to windup SUBLESSEE'S business or affairs, or if any assignment is made for the benefit of SUBLESSEE'S creditors, or if SUBLESSEE files a petition under any bankruptcy or insolvency law or if such a petition is filed against SUBLESSEE and is not dismissed within thirty (30) days, or if SUBLESSEE abandons the premises, or if the voting control of SUBLESSEE shall be sold, assigned or hypothecated or in any other manner transferred, by operation of law or otherwise, without the prior written consent of SUBLESSOR, then, in any such case, and in addition to other remedies, now or hereafter provided by law or by the ORIGINAL SUBLEASE, SUBLESSOR

may, at its option, terminate, cancel and annul this lease at once and enter and take possession of the premises immediately without any previous notice of intention to reenter, and may remove all persons and property from the premises in order to recover, at once, full and exclusive possession of the premises. In addition, SUBLESSOR shall have each and all of the rights and remedies provided for in Civil Code, Sections 1951.2 and 1951.4, and all of the rights and remedies provided for in Article 14 of the ORIGINAL SUBLEASE.

If this lease shall be terminated, or if SUBLESSOR repossesses the premises as a result of any of the causes set forth above in this paragraph, then SUBLESSEE shall remain liable to SUBLESSOR for all loss sustained by SUBLESSOR by reason of such termination, cancellation or repossession.

7. WAIVER

One or more waivers of any covenant or condition by SUBLESSOR shall not be construed as a waiver of a further breach of the same or any other covenant or condition, and any consent or approval shall not be deemed to waive or render unnecessary SUBLESSOR'S consent or approval to any subsequent similar action.

8. PARTIAL INVALIDITY

It is the intent and understanding of both parties that the covenants of this agreement are separable and, therefore, if any one or more covenants, agreements, or stipulations to be kept, performed, or observed by either or both of the parties, be declared or adjudged void, invalid, or unenforceable by any court of competent jurisdiction, then it is mutually agreed that the remaining portions of this Sublease agreement shall remain in full force and effect and the invalid provisions merely be severed.

9. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by any person as creating a relationship of principal and agent or of

partnership or of joint venture between SUBLESSOR and SUBLESSEE. It is understood and agreed that neither the method of computation of rent, nor any other provision hereof, nor any act of the parties hereunder, shall create a relationship between SUBLESSOR and SUBLESSEE other than that of landlord and tenant.

10 SUCCESSORS

All covenants and agreements herein contained shall be binding upon, and inure to the benefit of, SUBLESSEE and SUBLESSOR, their heirs, executors, administrators, successors and assigns. This paragraph is subject to the provisions of paragraph 5 hereof, and shall not be construed to permit assignment contrary to the provisions of said paragraph.

11. SUBLESSOR PRIOR CONSENT

Except as otherwise provided in paragraph 2 of this Sublease.

A. Whenever SUBLESSOR, as sublessee under the ORIGINAL SUBLEASE, is granted under the terms of the ORIGINAL SUBLEASE the right or option (i) to renew or extend the ORIGINAL SUBLEASE for a period of time beyond the original term thereof, or (ii) to terminate, cancel or annul the ORIGINAL SUBLEASE, SUBLESSEE shall not have the right to exercise such right or option granted to SUBLESSOR; and

B. Further, SUBLESSEE shall not have the right to give consent where consent must be given by SUBLESSOR as the sublessee under the terms of the ORIGINAL SUBLEASE, unless SUBLESSOR shall first give its written permission to SUBLESSEE.

12 NOTICES

Any notice required or desired to be given to either party shall be in writing and be sent by registered mail, postage prepaid. Any such notice to SUBLESSOR shall be addressed to Fleming Foods West, Inc., P.O. Box 5216, Pleasanton, CA 94566. Any notice to SUBLESSEE shall be addressed to the premises and to SUBLESSEE'S

corporate office at 100 Skycrest Shopping Center, San Bruno, CA 94066. Either party may change the place for giving notice from time to time by doing so in the same manner as set forth in this paragraph 12.

Whenever, under the provisions of the ORIGINAL SUBLEASE, SUBLESSOR (as sublessee) is required or permitted to give notice to the sublessor or to the lessor under the Master Lease (as defined in the ORIGINAL SUBLEASE) SUBLESSEE shall give such notice to SUBLESSOR at least five (5) business days prior to the date SUBLESSOR is required to give such notice

13. CHOICE OF LAWS

This agreement shall be construed under and in accordance with the laws of the State of California, and all obligations of the parties created hereunder are performable in Santa Clara County.

14. MERGER

This agreement sets forth the entire agreement between the parties hereto, both written and oral, and shall not be altered, amended or otherwise modified except in writing signed by the parties.

15. ATTORNEY'S FEES

If either party to this Sublease brings legal action to enforce or interpret the provisions of this Sublease, the party prevailing in such action shall be entitled to recover, in addition to any other relief awarded, its attorney's fees and costs incurred in such action

16. STORE CLOSING

SUBLESSEE shall, at all times during the term or any extension of the term of this Sublease, continuously use the premises for the conduct of a retail food market, and shall continuously and fully merchandise the premises, during all usual business hours and on all such days as comparable businesses of like nature in the area are

open for business SUBLESSEE shall not have the right to close its store, notwithstanding any right SUBLESSOR may have in that regard under the ORIGINAL SUBLEASE.

Notwithstanding the foregoing closure restrictions as set forth in this paragraph 16, SUBLESSEE may close its store for Easter Sunday, Thanksgiving, Christmas, and New Year's Day. SUBLESSEE may also close for periods of remodeling for not more than one-week at a time.

17. RIGHT TO CONTEST TAXES

In the event SUBLESSEE shall contest any imposition, taxes or assessments pertaining to the premises, SUBLESSEE shall indemnify, defend, and hold SUBLESSOR harmless from any and all costs, expenses, damages, and other sums which SUBLESSOR may pay or incur, caused by or arising out of any such contest, and SUBLESSEE shall in addition, comply with all other requirements or restrictions pertaining to such contests in the ORIGINAL LEASE and Sublease.

18 INSURANCE

Whenever, by reason of the provisions of this Sublease and the provisions of the ORIGINAL SUBLEASE or the provisions of the Master Lease (as defined therein), SUBLESSEE is required to provide insurance, SUBLESSEE shall cause SUBLESSOR to be named as an additional insured thereunder (in addition to any other parties required to be so named) and SUBLESSEE shall cause to be furnished to SUBLESSOR current certificates evidencing the existence of such insurance, including an endorsement which will provide for no cancellation or change in the coverage or scope of such insurance without thirty (30) days' prior written notice to SUBLESSOR and to such other persons as are required to be named as additional insureds.

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

SUBLESSOR

FLEMING FOODS WEST, INC.,
a California corporation

By Leslie A. Dalecio
Its Vice President

ATTEST.

(S E A L)

SUBLESSEE

LUNARDI SUPERMARKET, INC.,
a California corporation,

By Ralph Chomicki
Its President & Treasurer

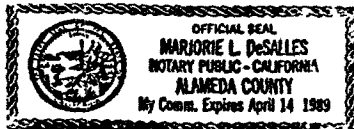
ATTEST.

(S E A L)

STATE OF CALIFORNIA)
) ss
COUNTY OF Alameda)

On this the 6th day of July, 1988, before
me, the undersigned Notary Public in and for said State, personally
appeared Leslie A. Dalecio, personally known to me or proved
to me on the basis of satisfactory evidence, to be the person who
executed the within instrument as Vice President of FLEMING
FOODS WEST, INC., or on behalf of said corporation, and acknowledged
to me that the corporation executed the same.

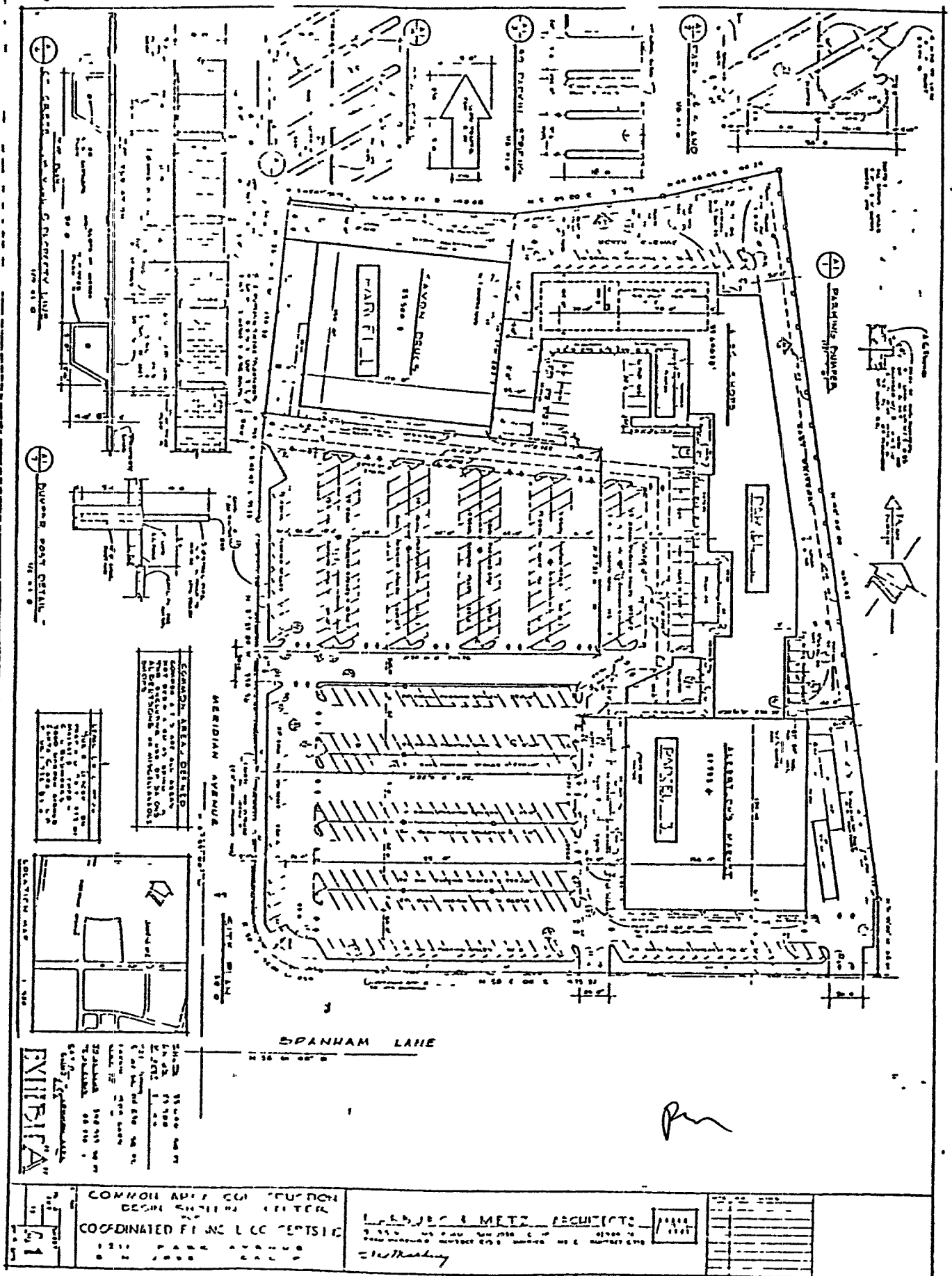
WITNESS my hand and official seal



Marjorie L. DeSalles
NOTARY PUBLIC

GJS 5/6/88

-12-



#745 - Meridian Avenue
San Jose, California
9/16/02

**ASSIGNMENT AND ASSUMPTION OF
MASTER LEASE AND SUBLEASE**

THIS ASSIGNMENT AND ASSUMPTION OF MASTER LEASE AND SUBLEASE (“Assignment”) is made as of October 29, 2002, between **Albertson’s, Inc.**, a Delaware corporation (“Albertson’s”), and **Meridian Plaza One, LLC**, a California limited liability company, (“Buyer”)

RECITALS.

WHEREAS, Camas Funding Corporation, a Delaware corporation, as landlord, and Assignor, as tenant, entered into that Lease Agreement dated September 23, 1974 (the “**Initial Master Lease**”), as amended by (i) the First Amendment to Lease dated November 1, 1974 between John H La Gatta, as landlord, and Assignor, (ii) Assignment and Assumption of Leases and related agreements dated November 18, 1974 between John La Gatta and Ted Wetterau, (iii) letter agreement from John La Gatta dated November 18, 1974 regarding Assignment of Initial Master Lease to Ted Wetterau, (iv) Power of Attorney by Ted Wetterau dated November 18,

1974, (v) Agreement of Discharge, Termination, Release and Cancellation between Camas Funding Corporation, Albertson's, Mellon Bank, N A , a national banking association, as trustee, and D A Hazelet, an individual trustee, dated August 15, 1975, (vi) Second Amendment to Lease by and between Ted Wetterau and Albertson's dated August 15, 1975 as referenced in said Memorandum of Amendments to Lease Agreement by and between Ted Wetterau and Albertson's dated August 15, 1975, (vii) Consent and Agreement to Reassignment of Lease by and between Albertson's and Guardian Life Insurance Company dated August 15, 1975, (viii) Reassignment of Lease by and between Camas Funding Corporation, as assignor, and the Guardian Life Insurance Company of America dated August 15, 1975, (ix) letter agreement from the Guardian Life Insurance Company dated April 25, 1986, (x) letter agreement from Camas Funding Corporation dated September 7, 1990, (xi) letter agreement from Minnesota Mutual dated September 18, 1990, (xii) letter agreement from Albertson's dated January 16, 2001, and (xiii) letter agreement from Albertson's dated May 3, 2001 exercising its first option term (the Initial Master Lease with all amendments and letter agreements thereto are collectively referred to herein as "**Master Lease**"), whereby Albertson's leased the certain premises (the "**Leased Premises**") as described on **Schedule I** attached hereto and by this reference incorporated herein, situated in the City of San Jose, County of Santa Clara, State of California (the "**Property**"), and

WHEREAS, Albertson's succeeded to the interest as landlord under the Master Lease pursuant to Grant Deed dated November 29, 2001, and

WHEREAS, Albertson's and Fleming Foods West, Inc , a California corporation ("**Fleming**"), entered into that Sublease Agreement dated October 28, 1986, (the "**Initial Sublease**"), as amended by (i) a First Amendment to Sublease executed by Albertson's and Fleming on November 25, 1986, (ii) Acquisition Agreement by and between Fleming

Companies, Inc an Oklahoma corporation, Fleming Foods West, Inc , a California corporation, H&S Markets, Inc dba H&S Food Villa, a California corporation and Albertson's dated October 28, 1986, (iii) Letter Agreement by Albertson's dated April 25, 1988, (iv) Landlord's Waiver by Albertson's dated October 28, 1986, (v) Letter Agreement from Fleming Companies, Inc as successor tenant to Fleming Foods West, Inc regarding exercise option under Initial Sublease dated November 2, 2000, (vi) Letter Agreement from Fleming Companies, Inc dated April 8, 2002, (the Initial Sublease and all amendments referred to as the "Lease"), whereby Albertson's subleased the Leased Premises to Fleming, and

WHEREAS, on July 25, 2002, Albertson's and Buyer entered into that certain Contract of Sale and Contract to Assign Master Lease and Sublease (the "Assignment Contract"), and

WHEREAS, Albertson's desires to assign its interest in and to the Master Lease and Sublease to Buyer and Buyer desires to assume the Master Lease and Sublease, and

WHEREAS, all capitalized terms used herein shall have the meanings attributed to such terms in the Master Lease and Sublease, except as otherwise defined herein or in the Assignment Contract

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Albertson's and Buyer covenant and agree as follows

1 Master Lease and Sublease Assignment and Assumption.

(a) Albertson's hereby assigns, conveys and transfers to Buyer, without representation, warranty or covenant, express or implied in law or in fact, all of Albertson's right, title and interest in and to the Master Lease and Sublease and the Leased Premises

(b) Buyer hereby accepts the foregoing assignment and agrees to assume, pay, perform and discharge, as and when due, all of the covenants and obligations of the Landlord under the Master Lease and Sublease and of the tenant and landlord under the Master Lease, with respect to the period which arises after the Effective Date (as defined below) of this Assignment (except as set forth in Section 4 herein), and agrees to be bound by all of the terms and conditions thereof with respect to the period from and after the Effective Date (as defined below)

2. Condition of Leased Premises.

The Leased Premises shall be conveyed in the condition as set forth in the Contract and Albertson's makes no representation or warranty, express or implied, with respect to the necessity (or lack of necessity) for or availability of any permits, licenses or other governmental authorizations in order to modify, alter or make additions to the Leased Premises or to operate the Leased Premises for the uses intended by Buyer, it being agreed that all such risks are to be borne by Buyer except as expressly set forth in the Contract

3. Effective Date

This Assignment shall be effective as of the date hereof (the "Effective Date") upon execution by each of the parties hereto

4. Proration.

Taxes, assessments, utilities, Annual Rent (as defined under the Sublease) and other items capable of proration and payable by Albertson's under the Sublease shall be prorated as of the Closing Date All Bonus Rent (as defined under the Sublease) payable for the 2002 calendar year by a subtenant to Albertson's under the Sublease shall be paid directly to Buyer by the subtenant pursuant to the terms of the Sublease For the purposes of prorations, Buyer shall be

deemed to have owned the Subject Property for the entire Closing Date. Albertson's shall pay the cost of a standard owner's policy of title insurance referred to in Section 6(b) of the Contract and all county documentary taxes and Buyer shall pay any surcharge or additional premium for any extended title insurance coverage, and the cost of any additional survey or other items required by the title company to issue such extended title insurance coverage. Buyer shall pay all city conveyance taxes. All other costs including all other recording fees shall be paid equally by both parties.

5 Indemnification

Buyer shall defend, indemnify and hold harmless Albertson's, its successors and assigns, subsidiaries and affiliates, from and against any and all damage, loss, liability, claim, cost, expense, action and cause of action (including, without limitation, attorneys' fees and the reasonable costs of investigation) incurred by or asserted against Albertson's, its successors and assigns, accruing subsequent to the Effective Date arising from or pertaining to a default under the Master Lease and/or Sublease.

Albertson's shall defend, indemnify and hold harmless Buyer, its successors and assigns, from and against any and all damage, loss, liability, claim, cost, expense, action and cause of action (including, without limitation, attorneys' fees and the reasonable costs of investigation) incurred by or asserted against Buyer, its successors and assigns, accruing prior to the Effective Date arising from or pertaining to a default under the Master Lease and/or Sublease.

6 Buyer's Representations

Buyer represents and warrants to Albertson's that, as of the Effective Date: (a) Buyer is a trust in good standing under the laws of the State of California and has the power to own its own property and is authorized to do business in the State of California, (b) Buyer has the full right,

power and authority to enter into this Assignment without the prior consent of any other person, corporation or governmental entity; and (c) the execution of this Assignment and the performance of the Master Lease and Sublease will not cause the breach of Buyer's articles of organization or governing charter or any agreement to which Buyer is or may be bound

7. Albertson's Representations.

Albertson's represents and warrants to Buyer that, as of the Effective Date (a) Albertson's is a Delaware corporation in good standing under the laws of Delaware and has the power to own its own property and is authorized to do business in the State of Delaware, (b) Albertson's has the full right, power and authority to enter into this Assignment without the prior consent of any other person, corporation or governmental entity, and (c) Albertson's has not heretofore assigned, subleased, mortgaged or otherwise transferred, amended (except as expressly set forth herein) or encumbered, voluntarily or involuntarily, the Master Lease and Sublease or its interest therein or in the Leased Premises which have not yet expired or terminated

8. Release.

(a) As of the Effective Date, except as set forth below, Buyer and Albertson's (including their respective shareholders, directors, partners, members, officers, agents, employees, attorneys and affiliated or related entities or persons) release and forever discharge each other from any Claim (as defined herein) of any kind and nature arising out of, resulting from or related to, whether directly or indirectly, the Master Lease and Sublease, including (without limitation) the Albertson's occupancy of or interest in the Leased Premises, the use, generation, storage, disposal, release, or the threatened release of Hazardous Waste, the relationship of the parties hereto with respect to the Master Lease and Sublease, or any other

relationship with respect to the Master Lease and Sublease or the Leased Premises, excepting only (1) the obligations created under this Assignment or the Contract (including, but not limited to, a breach of any express representation or warranty by a party hereunder), (2) third party claims for damage to property or personal injury or death of persons arising out of the use or occupancy of the Leased Premises and occurring prior to the Effective Date, and (3) mechanics' or materialmen's liens or claims arising out of labor performed or materials supplied by or on behalf of Albertson's. For purpose of this Assignment, the term "Claim" shall mean any claim, demand, obligation, debt, loss, controversy, promise, agreement, default, breach, liability, damage, cost, expense, injury, compensation, action, cause of action, contribution, or reimbursement. The parties expressly state and intend that the term "Claim" includes, without limitation, any known or unknown, suspected or unsuspected Claims. The parties hereto expressly waive and relinquish the benefit of any and all laws that purport in any way to limit the effectiveness or scope of the release and discharge provided in this Assignment, including (without limitation) the type or extent of any Claim released and discharged hereby.

(b) It is agreed and understood that each of the parties have made factual, legal and/or other assessments or assumptions in connection with this Assignment. Each party hereby assumes any and all risk that such assumptions or assessments may eventually be proven or perceived to be inaccurate or otherwise unreliable for any reason. Any such inaccuracy or unreliability shall not provide any basis for termination, rescission or reformation of this Assignment.

9. Memorandum of Assignment.

The parties hereto have simultaneously, with the execution and delivery of this Assignment and Assumption Lease, executed a Memorandum of Assignment in the form attached hereto as "**Exhibit A**" and made a part hereof

10 Notices

All notices given pursuant to this Assignment shall be in writing and shall be given by telefacsimile, by personal service, U S Mail, certified, return receipt requested, or other reliable delivery service such as Federal Express or UPS, postage or delivery charges prepaid, addressed to the appropriate party at the address or telefacsimile number set forth below

To Buyer	Brandenburg Properties 1122 Willow Street, Suite 200 San Jose, CA 95125 Attn Eric Brandenburg Phone (408) 279-5200 Fax (408) 279-3678
With copy to	Cox, Castle & Nicholson, LLP 555 Montgomery Street, Suite 1500 San Francisco, CA 94111 Attention Scott Brooks Phone (415) 262-5110 Fax (415) 392-4250
To Albertson's	Albertson's, Inc P O Box 20 250 Parkcenter Boulevard Boise, ID 83726 Attention Legal Department Fax (208) 395-6575
With copy to	Hawley Troxell Ennis & Hawley LLP P O Box 1617 877 Main Street, Suite 1000 Boise, ID 83701-1617 Attn Paula Landholm Kluksdal Fax (208) 342-3829

All notices given pursuant to this Assignment shall be deemed given upon receipt. For the purpose of this Assignment, the term “**receipt**” shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document as shown on the return receipt, (b) the date of receipt of the notice or other document by the person or entity to whom it was addressed, (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt, or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party, or (d) in the case of a telefacsimile, the date and time of receipt as shown on a confirmation of the telefacsimile transmission.

11 Miscellaneous

(a) Successors This Assignment shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto.

(b) Headings The captions to the paragraphs are intended for convenient reference only and shall not be used and are not intended to modify, aid, describe or otherwise affect the meaning of the paragraph from that which is indicated by the text of the paragraph alone.

(c) Construction This Assignment is the product of negotiation and the parties agree that it shall not be construed against the drafter. If any part of this Assignment shall be found to be invalid or unenforceable, the remainder of the Assignment shall be enforceable in accordance with its terms, deleting such unenforceable or invalid provisions.

(d) Entire Agreement The Contract of Sale and Contract to Assign Lease and this Assignment constitute the entire agreement between the parties with regard to the Master Lease and Sublease and the Leased Premises. Except for those terms contained therein which

specifically survive the closing of the Contract, any prior negotiations, agreements or other writings pertaining to the subject matter of this Assignment are merged herein and extinguished

(e) Governing Law This Assignment shall be construed under the laws of California

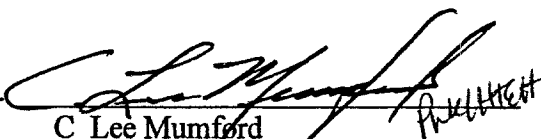
(f) Counterparts This Assignment may be executed in counterparts and shall be effective upon execution of one or more of such counterparts by each of the parties hereto. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple(s) of this Assignment.

(g) Joint and Several Obligations In the event any party hereto is composed of more than one (1) person, the obligations of such party shall be joint and several.

IN WITNESS WHEREOF, Albertson's and Buyer have executed this Assignment as of the day and year first written above.

ALBERTSON'S:

**Albertson's, Inc ,
a Delaware corporation**

By: 
C Lee Mumford
Vice President, Real Estate Law

BUYER:

**Meridian Plaza One, LLC, a California
limited liability company**

By Eric Brandenburg
Name Eric Brandenburg
Its Manager

LIST OF EXHIBITS AND SCHEDULE

Exhibit A – Memorandum of Assignment

Schedule I – Description of Leased Premises

Recording Requested By and
When Recorded Return to
Brandenburg Properties
1122 Willow Street, Suite 200
San Jose, California 95125-3157
ATTN Eric Brandenburg

EXHIBIT A

SPACE ABOVE THIS LINE FOR RECORDER S USE ONLY

**#745 - Meridian Avenue
San Jose, California
9/16/02**

MEMORANDUM OF ASSIGNMENT

THIS MEMORANDUM OF ASSIGNMENT (“**Memorandum**”) is entered into as of the _____ day of _____, 2002, between **Albertson’s, Inc.**, a Delaware corporation (“**Assignor**”), and **Meridian Plaza One, LLC**, a California limited liability company, (“**Assignee**”)

WITNESSETH:

WHEREAS, Camas Funding Corporation, a Delaware corporation, as landlord, and Albertson’s, Inc , a Delaware corporation, as tenant, entered into that Lease Agreement dated September 23, 1974 (the “**Initial Master Lease**”), as amended by (1) the First Amendment to

Lease dated November 1, 1974 between John H La Gatta, as landlord, and Albertson's, Inc , (ii) Assignment and Assumption of Leases and related agreements dated November 18, 1974 between John La Gatta and Ted Wetterau, (iii) letter agreement from John La Gatta dated November 18, 1974 regarding Assignment of Initial Master Lease to Ted Wetterau, (iv) Power of Attorney by Ted Wetterau dated November 18, 1974, (v) Agreement of Discharge, Termination, Release and Cancellation between Camas Funding Corporation, Albertson's, Melon Bank, N A , a national banking association, as trustee, and D A Hazelet, an individual trustee, dated August 15, 1975, (vi) Second Amendment to Lease by and between Ted Wetterau and Albertson's dated August 15, 1975 as referenced in said Memorandum of Amendments to Lease Agreement by and between Ted Wetterau and Albertson's dated August 15, 1975, (vii) Consent and Agreement to Reassignment of Lease by and between Albertson's and Guardian Life Insurance Company dated August 15, 1975, (viii) Reassignment of Lease by and between Camas Funding Corporation, as assignor, and the Guardian Life Insurance Company of America dated August 15, 1975, (ix) letter agreement from the Guardian Life Insurance Company dated April 25, 1986, (x) letter agreement from Camas Funding Corporation dated September 7, 1990, (xi) letter agreement from Minnesota Mutual dated September 18, 1990, (xii) letter agreement from Albertson's dated January 16, 2001, and (xiii) letter agreement from Albertson's dated May 3, 2001 exercising its first option term (the Initial Master Lease with all amendments and letter agreements thereto are collectively referred to herein as "**Master Lease**"), whereby Albertson's leased the certain premises (the "**Leased Premises**") as described on **Schedule I** attached hereto and by this reference incorporated herein, situated in the City of San Jose, County of Santa Clara, State of California (the "**Property**")

WHEREAS, Albertson's succeeded to the interest as landlord under the Master Lease pursuant to Grant Deed dated November 29, 2001

WHEREAS, Albertson's and Fleming Foods West, Inc., a California corporation ("**Fleming**"), entered into that Sublease Agreement dated October 28, 1986 (the "**Initial Sublease**"), as amended by (i) a First Amendment to Sublease executed by Albertson's and Fleming on November 25, 1986, (ii) Acquisition Agreement by and between Fleming Companies, Inc. an Oklahoma corporation, Fleming Foods West, Inc., a California corporation, H&S Markets, Inc. dba H&S Food Villa, a California corporation and Albertson's dated October 28, 1986, (iii) Letter Agreement by Albertson's dated April 25, 1988, (iv) Landlord's Waiver by Albertson's dated October 28, 1986, (v) Letter Agreement from Fleming Companies, Inc. as successor tenant to Fleming Foods West, Inc. regarding exercise option under Initial Sublease dated November 2, 2000, (vi) Letter Agreement from Fleming Companies, Inc. dated April 8, 2002, (the Initial Sublease and all amendments referred to as the "**Lease**"), whereby Albertson's subleased the Leased Premises to Fleming

1. Lease Assignment and Assumption

Assignor and Assignee have entered into an Assignment and Assumption of Master Lease and Sublease dated as of _____, 2002 ("**Assignment**"), whereby Assignor has assigned and Assignee has assumed, and Assignor does hereby assign and Assignee does hereby assume, all of Assignor's right, title, obligation and interest in and to the Master Lease and Sublease and the Leased Premises with respect to the period from and after the date of such Assignment

IN WITNESS WHEREOF, Assignor and Assignee have executed this Memorandum as
of the day and year first above written

ASSIGNOR.

ALBERTSON'S, INC ,
a Delaware corporation

By _____
C Lee Mumford
Vice President, Real Estate Law

STATE OF IDAHO)
) ss
County of Ada)

On this ____ day of _____, 2002, before me, the undersigned, a Notary Public
in and for said State, personally appeared C Lee Mumford, known to me to be the Vice
President, Real Estate Law, of **Albertson's, Inc.**, the corporation that executed the within
instrument or the person who executed the instrument on behalf of said corporation, and
acknowledged to me that such corporation executed the same

WITNESS MY HAND and official seal hereto affixed the day, month and year in this
certificate first above written

Notary Public for the State of Idaho
Residing at _____
My Commission Expires _____

ASSIGNEE.

**Meridian Plaza One, LLC, a California
limited liability company**

By _____
Name Eric Brandenburg
Its Manager

STATE OF _____)
County of _____) ss

On this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Eric Brandenburg, known to me to be Manager of Meridian Plaza One, LLC, a California limited liability company, the limited liability company that executed the within instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

Schedule I – Description of Leased Premises

SCHEDULE I

That certain real property situate in the City of San Jose, County of Santa Clara, State of California described as follows

All of Lot 3, "TRACT NO 5414," filed for record on January 7, 1974 in Book 334 of Maps, Page 53, Santa Clara County Records

4681402

BK 0717
PC 1

COMMON AREA MAINTENANCE AGREEMENT

THIS AGREEMENT, made this 29th day of December,
1973, by and between

DESIN DEVELOPMENT CO., a general
partnership, hereinafter referred
to as "Developer",

SAV-ON-REALTY, INC , a California
corporation, hereinafter referred
to as "Sav-On",

and

ALBERTSON'S, INC , a Delaware
corporation, hereinafter referred
to as "Albertson's",

R E C I T A L S

A Sav-On is or will be the owner of that certain
real property hereinafter referred to as "Parcel 1", which
property is described on Exhibit "A" attached hereto and
incorporated herein.

B. Developer is or will be the owner of that
certain real property hereinafter referred to as "Parcel 2"
on Exhibit "A".

C. Albertson's is or will be the owner of that
certain real property hereinafter referred to as "Parcel 3"
on Exhibit "A".

D. Parcels 1, 2 and 3 as shown on Exhibit "A",
attached hereto and incorporated herein, are hereinafter
collectively referred to as the "Shopping Center"

E By virtue of that certain document entitled "Declaration of Covenants and Encumbrances" dated of even date herewith (hereinafter called the "Declaration"), the parties hereto have imposed certain covenants, conditions and restrictions upon their respective parcels within the Shopping Center and have executed reciprocal easements each in favor of the other covering those portions of the said Shopping Center which are designated on Exhibit "A" as "common area"

F The parties hereto desire to provide for the common operation, cleaning and maintenance of said common area as hereinafter provided.

A G R E E M E N T S

NOW, THEREFORE, the parties hereto do hereby agree as follows

1. Following completion of improvements and the opening of said common area for public use and thereafter, Developer shall become the Maintenance Director and shall, except as hereinafter provided, maintain the said common area at all times in good and clean condition and repair, said maintenance to include, but not be limited to the following

(a) Maintaining the asphalt surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability,

(b) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly fashion,

(c) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines,

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required (except for the "special" artificial lighting mentioned in Paragraph 2 below);

(e) Maintaining and repairing any and all common storm drains, utility lines, sewers and other services which are necessary for the operation of the buildings and improvements within the Shopping Center;

(f) Maintaining landscaping and boundary walls.

In addition to the foregoing, Developer shall provide general public liability insurance insuring Developer, Sav-On and Albertson's, and all persons who now or hereafter own or hold portions of the Shopping Center or building space within the Shopping Center or any leasehold estate or other interest therein as their respective interests may appear (provided that Developer is notified in writing of such interest) against claims for personal injury, death or property damage occurring in, upon or about said "common area" Such insurance shall be written with an insurer licensed to do business in the State of California, and

Developer, Albertson's and Sav-On shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$1,000,000 for injury to or death of any one person, \$3,000,000 for injury to or death of more than one person in one occurrence and \$100,000 with respect to damage to property. Developer shall furnish Sav-On and Albertson's with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be changed or canceled without the giving of ten (10) days written notice to the holders of such insurance and the holders of such certificates.

2. It is agreed that the artificial lighting for the 'common area' shall remain on until thirty (30) minutes after Sav-On and Albertson's have closed their respective businesses to the public. It is further agreed if 'special' artificial lighting for a time or hour later than the foregoing is needed by any of the parties hereto, or by owners ^{"Shopping Center"} or tenants of the ~~'common-area'~~ other than the parties hereto, then the artificial lights to service such owners or tenants shall be separately metered and all expenses thereof shall be paid by such owners or tenants.

3. Each party hereto and its respective successors and assigns shall pay direct to the tax collector when due, the real property taxes and other special taxes and assessments assessed against the property owned by said party, including the portion of the "common area" owned by said party.

Maintenance Agreement - Page Four

Notwithstanding anything hereinabove to the contrary Sav-On shall only be liable for its prorata share of lighting expenses up to 1/2 hour after the close of its business each day.

Notwithstanding anything hereinabove to the contrary Albertson's shall only be liable for its prorata share of lighting expenses up to 1/2 hour after the close of its business each day.

per cent (5%) of said expenses to cover administration costs. The Maintenance Director agrees to operate on a nonprofit basis with an end to keeping such expenses at a reasonable minimum.

6. The parties of the Shopping Center (or their respective delegates, tenants, or agents, as they may direct) shall be billed monthly by detailed itemized statements for their pro rata share of all expenses incurred by the Maintenance Director in maintaining said "common area" as provided above including the five per cent (5%) administration cost in Paragraph 5 above, with the first billing date being the last day of the first full calendar month following the date the said "common area" is open for use to the general public. The proportionate share of the total "common area" expenses to be borne by each of the parties hereto for any year shall be as follows:

Albertson's	29.80%
Developer	42.21%
Sav-On	27.99%

7. Anything to the contrary notwithstanding, if any party hereto sells all or part of the Shopping Center real property owned by it, other than to perfect a sale and leaseback of such property, then after the date of sale, or upon the termination of such leaseback, such party or lessee shall have no further obligation under this agreement with respect to such real property sold as aforesaid, provided, however, the provision hereof shall bind successors in interest in the manner set forth in Paragraph 8 below.

per cent (5%) of said expenses to cover administration costs. The Maintenance Director agrees to operate on a nonprofit basis with an end to keeping such expenses at a reasonable minimum.

6. The parties of the Shopping Center (or their respective delegates, tenants, or agents, as they may direct) shall be billed monthly by detailed itemized statements for their pro rata share of all expenses incurred by the Maintenance Director in maintaining said "common area" as provided above including the five per cent (5%) administration cost in Paragraph 5 above, with the first billing date being the last day of the first full calendar month following the date the said "common area" is open for use to the general public. The proportionate share of the total "common area" expenses to be borne by each of the parties hereto for any year shall be as follows

Albertson's	29.80%
Developer	42.21%
Sav-On	27 99

7 Anything to the contrary notwithstanding, if any party hereto sells all or part of the Shopping Center real property owned by it, other than to perfect a sale and leaseback of such property, then after the date of sale, or upon the termination of such leaseback, such party or lessee shall have no further obligation under this agreement with respect to such real property sold as aforesaid, provided, however, the provision hereof shall bind successors in interest in the manner set forth in Paragraph 8 below.

(b) In addition to the foregoing, if any party defaults under this Agreement, any other party may institute legal action against the defaulting party for specific performance, declaratory relief, damages, or other suitable legal remedy. In addition to recovery of the sum or sums so expended on behalf of the defaulting party, the prevailing party shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in any such action.

9. The lien provided for in Paragraph 8 above may be filed for record by the curing party as a claim of lien against the defaulting party or parties in the Office of the County Recorder of Santa Clara County, California, signed and verified, which shall contain at least

- (1) A statement of the unpaid amount of costs and expenses,
- (11) A description sufficient for identification of that portion of the property of the defaulting party which is the subject of the lien, and
- (111) The name of the owner or reputed owner of the property which is the subject of the alleged lien.

Such lien, when so established against the real property described in said lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing such lien. Such lien shall be for the use and benefit of the person curing the default of the defaulting

party or parties, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

10. In the event there should at any time cease to be a Maintenance Director as provided herein, each owner in the Shopping Center shall be responsible for the maintenance of its own parcel according to the standards herein enumerated, as well as the provision for insurance as to its parcel.

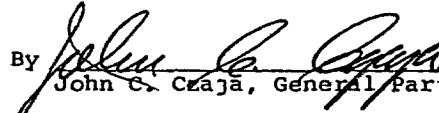
11. This agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding any of the provisions of this agreement, a breach of any of the conditions and/or covenants under the provisions herein shall not defeat or affect or render invalid the lien of any mortgage or deed of trust made in good faith and for value but such conditions and/or covenants shall be binding and effective against any owners of any of said parcels of the Shopping Center or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Each condition and/or covenant respecting any one parcel in the Shopping Center shall be appurtenant to and for the benefit of the other parcels in the Shopping Center and each part thereof. Each condition and/or covenant respecting any one parcel shall be a burden thereon for the benefit of the other parcels and each part thereof, and shall run with the land.


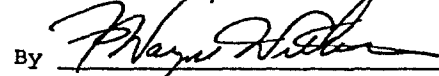
IN WITNESS WHEREOF, the parties hereto have executed

this agreement the day and year first above written.

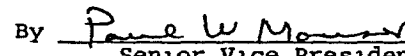
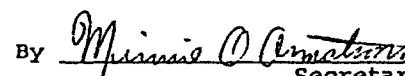
DESIN DEVELOPMENT CO.,
A General Partnership

By 
John C. Czaja, General Partner

SAV-ON-REALTY, INC.,
A California Corporation

By  President
By 
Secretary-Treasurer

ALBERTSON'S, INC.,
A Delaware Corporation

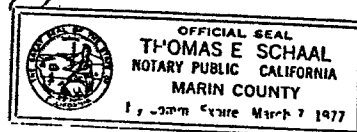
By 
Senior Vice President
By 
Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

On this 5th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN C. CZAJA, known to me to be a General Partner of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

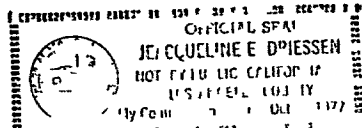
Thomas E. Schaal



STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On this 11 day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared Ira D. Brown known to me to be the President, and F. Wayne Withers known to me to be the Secretary-Treasurer of Sav-On Realty, Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Jacqueline E. Driesen

On this 26th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL W. MOUSER & MINNIE O. ARMSTRONG known to me to be the Senior Vice President, and Edith H. Stephens known to me to be the Secretary of Albertson's Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Edith H. Stephens

in records set to

6716 724

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Mr. John C. Ortega
Suite 200
1211 Park Avenue
San Jose, California 95126

0716 724

Recorded at the request of
Loury's Title Insurance Corp.

JAN 8 1974 3 20AM

GEORGE A. MANN, Recorder
Santa Clara County Official Records

20.00

DECLARATION OF COVENANTS
AND ENCUMBRANCES

1001101

This Declaration of Covenants and Encumbrances is
made as of this 24th day of December, 1973, by

DESIN DEVELOPMENT CO., a general
partnership, hereinafter referred
to as "Developer"

SAV-ON-PEALTY, INC. a California
corporation, hereinafter referred
to as "Sav-On",

and

ALBERTSON'S INC., a Delaware
corporation, hereinafter referred
to as "Albertson's",

sometimes hereinafter collectively referred to as "Declarants"
This instrument is, for convenience, hereinafter referred to as
the Declaration".

PRELIMINARY

1. Declarants are the owners of adjoining real
property located at the northeast corner of the intersection
of Branham Lane and Meridian Avenue in the City of San Jose
County of Santa Clara State of California, as shown on the
plan attached as Exhibit 'A', and as described as Lots 1, 2
and 3 of Tract No. 5414 recorded in the office of Santa Clara
County Recorder in Book 334 of Maps at Page 53 and here-
inafter referred to as the Grouping Parcel. The following
Declarants are owners of the following parcels indicated on
Exhibit 'A': Sav-On, Parcel 1; Developer, Parcel 2, and
Albertson's, Parcel 3.

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2. Declarants plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the shopping center and for such purposes do hereby establish easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as "restrictions") subject to which all of said Shopping Center or any part thereof shall be improved, held, leased, sold and/or conveyed. Such restrictions shall run with the land and shall inure to and pass with said property and shall apply to and bind the respective successors in interest thereof, and all and each thereof is imposed upon said property as a mutual equitable servitude in favor of said property and any portion thereof.

I. BUILDING AND COMMON AREA DEVELOPMENT

1. Building Area: Subject to the requirements set forth in Paragraph 3 of this Section I, all buildings and structures shall be single story with optional mezzanine areas (except for approximately 3,000 square feet of second story area in Parcel 4, and shall only be placed or constructed upon the respective parcels in the Shopping Center in those hatched areas designated on said Exhibit "A", as Building Area, and further, no buildings or structures shall be placed or constructed in the Shopping Center within those areas on each respective parcel designated as Common Area (as defined in Paragraph 2) or Enclave A except prior and in accordance with the provisions provided in Section III bumper guards or curbs, landscape planters, lighting standards and any other landscaping.

0715 - 72

improvements as may be required under applicable controls and regulations of the City of San Jose, or the County of Santa Clara, or any other governmental body having jurisdiction over the Shopping Center. [REDACTED] In addition, it is also agreed that each of the parties hereto may construct and locate such ancillary portions of the buildings so as to make them useful for their intended use, including but not limited to canopies and roof overhangs projecting from such Building Area, including columns or pillars supporting the same, normal foundations, and doors for ingress and egress may project from such Building Area. All the foregoing must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities sharing jurisdiction.

2. Common Area. The aforementioned Common Area is hereby defined to include all of those areas (as set on Exhibit "A") on each of the respective parcels of the Shopping Center not defined as Building Area, which Common Area shall be used for vehicular driving, parking and pedestrian traffic (which areas also include all sidewalks, walkways, driveways and landscaping). It is understood that the Common Area may be increased with respect to all parcels of the Shopping Center. This means that those portions of the Building Area on each parcel within the Shopping Center shall not or cannot under the terms of this declaration be used for buildings in order to maintain the respective

0716 - 727

parking requirements set forth below in Paragraph 3) shall become part of the said Common Area to be used for the aforesaid vehicular driving, parking and pedestrian traffic areas and shall be improved, kept and maintained as provided for in that certain Common Area Maintenance Agreement between the parties of and in date with this Agreement. No portion of the Common Area or sidewalks shall be used for the promotion, display, advertising or sale of goods or services nor for the distribution of written or printed materials nor for the installation, maintenance or use of entertainment devices.

3 Common Area Requirements Anything to the contrary notwithstanding, each respective parcel within the Shopping Center must comply with the Common Area requirements set forth herein for that parcel. The Common Area (as defined above in Paragraph 2 of this Section I) for each respective parcel shall not be less than 290 times the square footage of floor area contained in all buildings (but excluding mezzanines therein) allowed to be built on each of the said parcels. It is understood that the cross-hatched areas designating Building Area for each respective parcel on Exhibit "A" is only to show where buildings may be located but the entire amount of Building Area so designated for any parcel is not necessarily to be used for buildings. The maximum square footage of floor area contained in all buildings (but excluding mezzanines therein) situated on each of the said parcels is indicated as "Maximum Area" in the Shopping Center Parcel Statistics indicated on Exhibit "A" for each respective parcel.

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4 Changes in Common Area Unless required by the City of San Jose, or the County of Santa Clara, or some other governmental authority, the location and size of any and all sidewalks, parking stalls, walkways, driveways and landscaping in the said Common Area shall not be changed from the manner set forth above and on Exhibit "A" except by the written consent of the owners and occupants of ninety percent (90%) of the total land area of the Shopping Center. If the parties agree to any material change in the above or in Exhibit "A" then a new exhibit will be recorded as an amendment to this Declaration.

5 Type and Design of Buildings No buildings shall be erected, altered or placed on the premises within the Shopping Center that are not of the same type and quality of design, materials and workmanship as is consistent with other modern shopping centers now existing in Northern California.

(a) It is agreed that each building in the Shopping Center now and in the future, will be of first quality construction and architecturally designed so that the exterior elevation (including signs, and color thereof) will be architecturally and aesthetically compatible and harmonious with all other buildings of said Shopping Center. It is further agreed that the exterior design, color and elevations (including signs) of any building in the Shopping Center must first be approved in writing by the owners of Parcels 1, 2, and 3, which approval shall not be unreasonably withheld except that the standard signs of Javon and Albermarle as they may exist for the

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require such approval. Prior to construction of any new building or buildings upon any of the respective parcels within the Shopping Center, and prior to any exterior changes, alterations or modifications of any existing building or buildings, the party who desires to construct such building or buildings or make such exterior changes, alterations or modifications shall submit to the owners of Parcels 1, 2, and 3 whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the owners of Parcels 1, 2, and 3 to adequately review the exterior design, color and elevations (including signs, except the aforesaid standard signs of Sav-on and Albertson's that are proposed for all buildings, and thereupon either approve or disapprove of the same and shall obtain the approval of said owners. No owner may arbitrarily or unreasonably withhold its approval of such plans and specifications if same are in conformity with the intent of this paragraph. If approval or disapproval of any such plans and specifications (as accompanied by the pertinent information and drawings) is not given within thirty (30) days from receipt thereof, then the owner failing to act within said time period shall be deemed to have approved such plans and specifications. If any owner rejects or disapproves such plans and specifications, then said owner must provide a written explanation in reasonable detail within the said thirty (30) day time period its reasons for disapproving, failing which explanation, the plans and specifications shall be deemed to be approved. If the plans and specifications of any party are disapproved as provided herein, then it may

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submit alternate plans and specifications, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Any building built on any portion of the Shopping Center shall be either equipped with such automatic sprinkler systems as meet all of the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of the building built upon any other parcel. The purpose of this paragraph is to allow buildings built on each separate parcel to be fire rated as separate and distinct units without deficiency charge.

II. EASEMENTS

1. Ingress, Egress, and Parking Each party hereto, as grantor, hereby grants to the other parties for the benefit of said other parties their respective successors, assigns, tenants, employees, agents, customers and invitees, and the customers, employees and invitees of such tenants, and for the benefit of each respective parcel or parcels belonging to the other parties as grantees, the right in common with each other of mutual non-exclusively ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across that portion of the 'common area' within the grantor's parcel or parcels. It is understood that the aforesaid reciprocal rights of ingress and egress shall apply to the Common Area for each parcel of the Shopping Center as such area shall be increased pursuant to Paragraph 2 of Section 1 above.

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2. Utility Lines: Each party hereto, as grantor, hereby grants to the other parties, for the benefit of said other parties, nonexclusive easements under, through and across the Common Area of each party's parcel for water, drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities and service easements. All such systems, structures, mains, sewers, conduits lines and other public utilities shall be installed and maintained below the ground level or surface of such

easements. In the event it is necessary for any party hereto to cause the installation of a storm drain, utility line or sewer across the Common Area subsequent to the initial paving and improving thereof, the parties agree not to unreasonably withhold the granting of an additional easement or easements, provided, however that the granting of such easement or easements does not unreasonably interfere with the normal operation of any business in the Shopping Center.

3. Signs: Each party hereto, as grantor, hereby grants to the other parties, for the benefit of said other parties, easements under, through and across the Shopping Center to each other for the purpose of installing and maintaining the free standing pylon signs hereinafter referred to in Section III of this Declaration.

4. Access and Eaves. Each of the parties hereto hereby grants to the other parties for the benefit of said other parties and their respective parcels, an easement for

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canopies, eaves and roof overhangs appurtenant to any buildings or structures on any parcel of the Shopping Center which may encroach into or over an adjoining parcel, provided such encroachment has been first approved in writing by the party on whose parcel the encroachment occurs.

5. Building Encroachments: It is recognized that by reason of construction errors, the walls of buildings located in the Shopping Center may not fall exactly within the Building Area of the parcels shown on Exhibit "A" or the walls of such buildings may encroach beyond the boundary lines of said parcels. In either such event, the parties hereto shall each join in the execution of an agreement, which agreement shall be recorded, amending Exhibit "A" to reflect the "as built" conditions. In addition, it requested, the owner of the parcel which has the burden of the encroachment agrees to grant to the other party an easement for, or quitclaim to, (for the benefit of the encroaching parcel), that portion of the burdened parcel covered by the encroachment. Nothing herein contained shall be deemed to relieve or excuse any party hereto from exercising all due diligence to construct its building and improvements within the respective parcel and Building Area, as shown on Exhibit "A".

III. OPERATION OF COMMON AREA

1. Employee Parking Anything to the contrary notwithstanding, areas to be used for motor vehicle parking purposes by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time by the unanimous consent of the owners of Parcels 1, 2 and 3.

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In the event employee parking areas are designated as provided herein then employees of any owner, lessee, or other occupant

of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any owner or commercial establishment in the Shopping Center.

2. Signs. One (1) free-standing pylon sign may be erected at the location designated "Shopping Center Sign" on Exhibit A hereto and shall contain the respective trade names of the owners of Parcel 1 and 3, and the cost of erecting and maintaining said sign pylons shall be paid for by the owners of Parcels 1 and 3, whose names appear on such pylons. In addition, at Developer's election, the pylon sign may also contain the trade name for the Shopping Center, or the name of one occupant of the building constructed on Parcel 2, which shall be equal in size to the other trade name identifications thereon, if for the Shopping Center identification, or one-half (1/2) thereof if for an occupant of Parcel 2; provided, however, that if Developer elects to install a Shopping Center identification sign, or a sign identifying one occupant of the buildings constructed on Parcel 2, then the owner of Parcel 2 shall pay the cost of such sign together with its proportionate share of the costs of erecting and maintaining the sign pylon. No signs other than the signs provided hereinabove and directional signs for guides upon the parking driveway areas shall be erected or maintained upon said Common Area except those obtained by

the unanimous written approval of the owners of Parcels 1, 2 and 3. All signs hereinabove referred to shall require the approval as to size and design of the parties hereto except for the standard signs of Sav-On and Liberton's.

3. In the absence of an agreement among the owners of all of the property comprising the Common Areas, to clean, maintain and repair such areas in a slightly, serviceable and safe condition, each owner shall be responsible to so clean and maintain the Common Area within its parcel

IV. RESTRICTIONS ON USE

1. Food Market Restrictions: Except as specifically provided herein, the owners of Parcels 1 and 2 agree, for the benefit of Parcel 3, that no portions of Parcels 1 and 2 will be used for the sale (for off-premises consumption) of the following items (whether canned, fresh, frozen or smoked):

general groceries, meats, poultry or fish, fruits, vegetables, or any combination of the foregoing items. It is provided, however, that the above restriction shall not apply to a Sav-On drug store (being the type of drug store known as a super-drug store operated by Sav-On, whether as owner or as a lessee or tenant of the owner of said Parcel 1 or some part thereof) so long as such items as are sold do not include fresh or frozen meat, fish, poultry, or produce. The above restrictions shall not prohibit the operation of a delicatessen on Parcel 2 containing not more than 1,500 square feet.

2. Drug Store Restrictions: Except as specifically provided herein, the owners of Parcels 2 and 3 agree, for the benefit of Parcel 1, that no portions of Parcels 2 and 3 shall

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ever be used for a drug store or a store compounding prescriptions (whether separately or as a part of a store) or a store handling and selling patent or other medicines or drugs including but not limited to any and all items of merchandise which under any law, rule, regulation or other obligation by a competent governmental authority must be sold by or in the presence of, a registered pharmacist provided however that without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, or to include in its terms an Albertson's market (being a market operated by Albertson's Inc., whether as owner or as a lessee or tenant of Parcel 3 or some part thereof) its lessee or its tenant or successors to Parcel 3, selling items customarily sold by other Albertson's stores or its successors or assigns, upon the condition that it or they continue to conduct a typical grocery store or supermarket business on Parcel 3 and so long as such items as are customarily sold are not required to be sold by, or in the presence of, a registered pharmacist as aforesaid.

5. Additional Provisions

Each of Albertson's, their respective successors and assigns, conduct their respective businesses on Parcel 1 (Sav-On drug store) and Parcel 3 (Albertson's supermarket) under the following restrictions shall apply to certain parcels of the Group required:

(a) Parcel 1 and Parcel 3 shall not be used as a theater, motion picture, or for any other purpose in connection with the sale or lease of real estate, leasing or sale.

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or displaying for the purpose of renting, leasing or sale
of motor vehicles or trailers

(b) Parcel 2 shall not be used for a beauty
supply, camera shop, photographic supply store, nor for the
sale of alcoholic beverages, except for on premises consump-
tion so long as such uses are not located within 150 feet
of any building on parcels 1 or 3

(c) Alcoholic beverages sold on either Parcel
1 or 3 shall occur only as a department within the principal
building on each respective parcel and not as a business
served by a separate entrance

GENERAL PROVISIONS

1. Covenants Run with the Land Each easement
restriction and covenant over Parcels 1, 2 and 3 shall be
appurtenant to and for the benefit of the other parcels in
the Shopping Center and each part thereof. Each covenant,
restriction and undertaking as to Parcels 1, 2 and 3 shall
be a burden thereon for the benefit of the other parcels
and each part thereof, and shall run with the land

This Declaration and the easements, covenants
restrictions, benefits and obligations created hereby shall
inure to the benefit of and be binding upon Declarants and
their successors and assigns, and however soon after
owner sells any portion or all of its interest in any parcel
owned by such owner, the vendor shall thereupon be released
and discharged from all obligations under
this Declaration in such owner's connection with the property,
sold by it

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of May, 1974

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JUN 11 1974

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2 Tulacior Except as otherwise provided herein, each easement, setback line, covenant, restriction and undertaking of this document shall be for the term of sixty-five (65) years from the date hereof

3 Injunctive Relief: In the event of any violation or threatened violation by any owner, lessee or occupant of any portion of the Shopping Center of any of the terms, covenants and conditions herein contained, in addition to the other remedies herein provided, or provided by law, any or all of the owners of the property included within the Shopping Center, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction

4 Modification Provision. This Declaration may not be modified in any respect whatsoever or rescinded in whole or in part, except with the consent of the owners of ninety percent (90%) of the total square footage comprising the Shopping Center, plus the tenants of Parcels 1, 2 and 3, if any, at the time of such modification or rescission, and then only by written instrument duly executed and acknowledged by all of said owners and said tenants, if any, duly recorded in the office of the Recorder of Santa Clara County

5. Method of Approval: Wherever the approval or consent of an owner is required, such approval or consent shall be exercised only in the following manner.

The record owners and or prime lessees of each parcel shall be entitled to only one vote for each parcel. The record owners and or prime lessees of each

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parcel shall agree among themselves and designate to the record owners of each of the other parcels a single person or entity who is entitled to cast the vote for such parcel. In the event as to any parcel the record owners and prime lessees thereof cannot agree who shall be entitled to cast said single vote of such parcel, such parcel shall not be entitled to vote. The term "prime lessee", as used herein shall mean a leaseback lessee of an entire parcel, its successors and assigns and does not include sublessees, licensees or concessionaires of such primary lessees.

6. Not a Public Dedication Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed.

7. Breach Shall not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any owner to cancel, rescind or otherwise to terminate this Declaration but such limitations shall not affect in any manner, any other rights or remedies which such owner may have hereunder by reason of any breach of this Declaration. Any breach of any of said covenants or restrictions, however, shall not defeat, or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants

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or restrictions shall be binding upon and effective against
such owner of any of said property or any portion thereof

whose title thereto is acquired by foreclosure, trustee sale,
or otherwise.

8. Severability. If any clause, sentence or other
portion of this Declaration shall become illegal, null, or
void for any reason, or shall be held by any court of competent
jurisdiction to be so, the remaining portions thereof shall
remain in full force and effect.

IN WITNESS WHEREOF, Declarants have duly executed
this Declaration on the day and year first hereinabove set
forth

DESIN DEVELOPMENT CO.,
A General Partnership

By John C. Czaja
John C. Czaja, General Partner

SAV-ON-REALTY, INC.,
A California Corporation

By David L. Brown President

By Wayne W. Wilson
Secretary-Treasurer

ALBERTSON'S, INC.,
Delaware Corporation

By Paul W. Monney
Senior Vice President

By John F. Brown
Secretary

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STATE OF CALIFORNIA

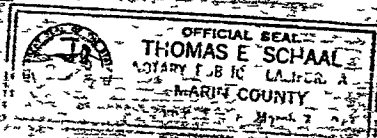
COUNTY OF MARIN

ss.

On this 5th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN C. CZAJA, known to me to be a General Partner of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Thomas E. Schaal



STATE OF CALIFORNIA

COUNTY OF Los Angeles

ss.

On this 11 day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared Ira D. Brown known to me to be the President, and F. Wayne Withers known to me to be the Secretary-Treasurer of Sav-On Realty, Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Jacqueline E. Driesen



STATE OF IDAHO

COUNTY OF ADA

ss.

On this 28th day of December, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL W. FOWLER & MARILYN C. FOWLER known to me to be the Senior Vice President, and known to me to be the Secretary of Albertson's Inc., that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

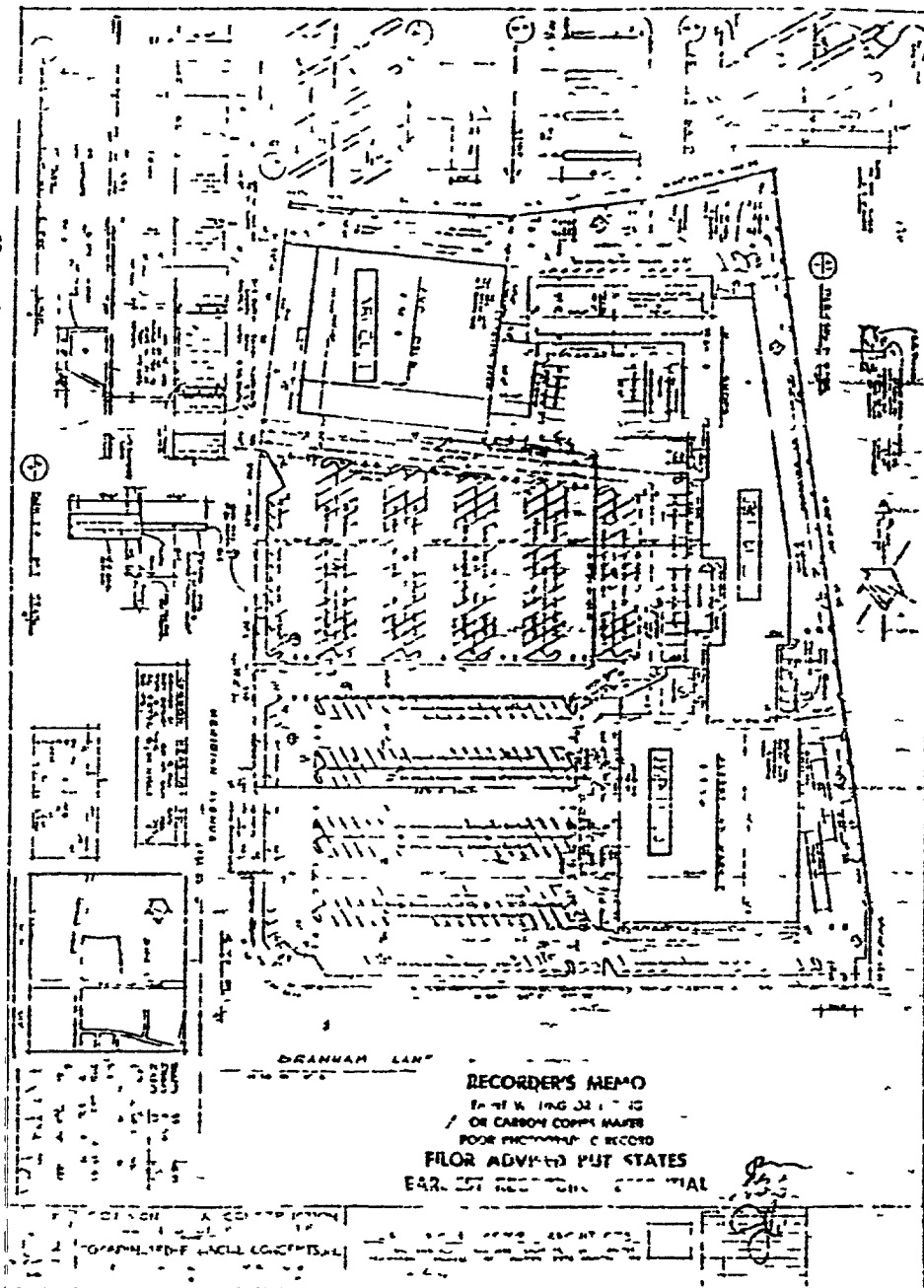
WITNESS my hand and official seal.

Beth A. Hoffman

Notary Public

GI	PL	LOC	DOC	PAR	LT	BLK	SUB	BK	PG
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BRANDENBURG

PROPERTIES

February 20, 2003

Josephine Brooks
Staubach Portfolio Services
1945 Lakepoint Drive
Lewisville, Texas 75057

RE Real Property Taxes for 4650 Meridian Avenue, San Jose

Dear Josephine

In accordance with the terms of your Sublease, the second installment of the 7/2002 – 6/2003 Santa Clara County Real Property Taxes for the above referenced property are now due. The taxes are paid by Meridian Plaza One, LLC and, pursuant to the Sublease, are to be reimbursed by Fleming Foods, Inc. The total 2002-2003 taxes summarized as follows:

Real Property Taxes for Parcel #451-46-054	\$15,331.44
Real Property Taxes for Parcel #451-46-048	<u>\$ 3,841.82</u>
Total Real Property Taxes	\$19,173.26

We received your payment for the first installment in the amount of \$9,586.63 on December 16, 2002. ✓

Please prepare a check for the second installment in the amount of \$9,586.63 payable to Meridian Plaza One, LLC and mail to:

Meridian Plaza One, LLC
Attn: Joe DiLeo, Controller
1122 Willow Street, #200
San Jose, CA 95125

If you have any questions, please call me at 408 279-5200 ext. 3028. Thank you.

Sincerely,
For Meridian Plaza One, LLC


Ronald Zraick, Jr.

Enc 2



2002 - 2003

TO PAY 2nd INSTALLMENT
SEND THIS STUB WITH YOUR PAYMENT

MAKE CHECK PAYABLE TO TAX COLLECTOR, SANTA CLARA COUNTY

DUE FEB. 1, 2003

451-46-054-00
42

PENALTY AFTER APR 10, 2003

\$7,665.72

204514605400003

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ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

76657 D

844229 E

1687458 F

0008442290000007665720451460540000350007665724

DETACH HERE

ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

PROPERTY ADDRESS

1531
SAN JOSEASSEESSEE JANUARY 1, 2002
ALBERTSON'S INC (LAND)

DOCUMENT NO 5991874

THIS DUPLICATE BILL WAS ISSUED DUE TO A CHANGE IN NAME, OWNER, TRUST, OR MAILING ADDRESS AND IS FURNISHED FOR YOUR USE. ANY PAID INSTALLMENTS ARE INDICATED

2002 - 2003

TO PAY 1st INSTALLMENT
SEND THIS STUB WITH YOUR PAYMENT

MAKE CHECK PAYABLE TO TAX COLLECTOR, SANTA CLARA COUNTY

DUE NOV. 1, 2002

451-46-054-00

PENALTY AFTER DEC 10, 2002

\$7,665.72

\$15,331.44

104514605400006

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766572

ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

76657 A

843229 B

1609801 C

00084322900000076657304514605400006500076657

DETACH HERE

2002 - 2003

SECURED PROPERTY TAX BILL

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

FISCAL YEAR JULY 1 2002 TO JUNE 30 2003

TAX COLLECTOR, SANTA CLARA COUNTY

COUNTY GOVERNMENT CENTER, EAST WING

70 W HEDDING ST, SAN JOSE CA 95110-1767

(408) 808 7800

WWW.SCLTAX.ORG

TAX RATE AREA
17-076PARCEL NUMBER
451-46-054-00TAXING AGENCY TAX RATE
1% MAXIMUM TAX LEVY 1.0000
CD RETIREMENT LEVY .0388
ELEM OR UNIF SCH BONDS .0590
SAN JOSE CITY G O BONDS .0193
HIGH SCHOOL BONDS .0166
TOT ASSESSED VAL RATE 1.1337
SCVWD-STATE WATER PROJ .0063
SCVWD-ZONE W-1 BOND .0009
TOT LAND & IMPR RATE .0072
800 SJ SEWER SANI/STORM \$2,613.01
802 S.J. LIBRARY ASSMT. 75.20
820 SCVWD CLN SAFE CRKS 430.61
847 SCCO VECTOR CONTR 18.01
882 SCVWD FLOOD CONTR 323.91
990 OPENSACE DISTRICTS 197.71
TOTAL SPECIAL ASSESSMENTS \$3,658.61

DESCRIPTION	FULL CASH VALUE	TAX RATE PER \$100	TAX AMOUNTS	1st DUE NOV 1, 2002 10% PENALTY ADDED AFTER DEC 10, 2002	2nd DUE FEB 1, 2003 10% PENALTY + \$10 COST ADDED AFTER APR 10, 2003	TOTAL
LAND IMPROVEMENTS	193,762					
TOTAL LAND & IMPROVEMENTS	829,364	.00720	73.66			
PERSONAL PROPERTY	1,023,126					
TOTAL FULL CASH VALUE	1,023,126	1.13370	11,599.16			
SPECIAL ASSESSMENTS			3,658.62			
GROSS TAX			15,331.44			
LESS HOMEOWNER'S EXEMPTION OTHER EXEMPTION						
TOTAL TAXES			\$15,331.44	\$7,665.72	\$7,665.72	\$15,331.44

FOR U S MAIL PAYMENTS, THE U S POSTMARK IS USED AS THE DATE PAYMENT IS RECEIVED BY THE TAX COLLECTOR. BE SURE YOUR PAYMENT IS MAILED EARLY ENOUGH TO BE PROCESSED BY THE U S POSTAL SERVICE WITH A POSTMARK NOT LATER THAN THE DELINQUENT DATE.

2002 - 2003

TO PAY 2nd INSTALLMENT
SEND THIS STUB WITH YOUR PAYMENT

MAKE CHECK PAYABLE TO TAX COLLECTOR, SANTA CLARA COUNTY

DUE FEB. 1, 2003
PENALTY AFTER APR 10, 2003451-46-048-00
42

\$1,920.91

204514604800008

42

192091

ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

19209 D

212300 E

423600 F

00021230000000192092045146048000001920914

DETACH HERE

ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

PROPERTY ADDRESS

4640
SAN JOSEMERIDIAN
95124ASSEESSEE JANUARY 1, 2002
ALBERTSON'S INC (LAND)

DOCUMENT NO

5991874

THIS DUPLICATE BILL WAS ISSUED DUE TO A CHANGE IN NAME, OWNER, TRUST, OR MAILING ADDRESS AND IS FURNISHED FOR YOUR USE. ANY PAID INSTALLMENTS ARE INDICATED.

DESCRIPTION	FULL CASH VALUE	TAX RATE PER \$100	TAX AMOUNTS
LAND IMPROVEMENTS	166,704		
TOTAL LAND & IMPROVEMENTS	63,014	.00720	16.52
PERSONAL PROPERTY	229,718		
TOTAL FULL CASH VALUE	229,718	1.13370	2,604.30
SPECIAL ASSESSMENTS			1,221.00
GROSS TAX			3,841.82
LESS HOMEOWNERS EXEMPTION			
OTHER EXEMPTION			
TOTAL TAXES			\$3,841.82

FOR U.S. MAIL PAYMENTS, THE U.S. POSTMARK IS USED AS THE DATE PAYMENT IS RECEIVED BY THE TAX COLLECTOR. BE SURE YOUR PAYMENT IS MAILED EARLY ENOUGH TO BE PROCESSED BY THE U.S. POSTAL SERVICE WITH A POSTMARK NOT LATER THAN THE DELINQUENT DATE.

2002 - 2003

TO PAY 1st INSTALLMENT
SEND THIS STUB WITH YOUR PAYMENT

MAKE CHECK PAYABLE TO TAX COLLECTOR, SANTA CLARA COUNTY

DUE NOV. 1, 2002
PENALTY AFTER DEC 10, 2002

451-46-048-00

\$1,920.91

104514604800000

42

ALBERTSON'S INC (LAND)
ALBERTSON'S INC GENERAL OFFICES
PO BOX 20
BOISE ID 83726

192091

19209

211300

403391

0002113000000019209104514604800000001920914

DETACH HERE

2002 - 2003

SECURED PROPERTY TAX BILL

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

FISCAL YEAR JULY 1, 2002 TO JUNE 30, 2003

TAX COLLECTOR, SANTA CLARA COUNTY

COUNTY GOVERNMENT CENTER, EAST WING

70 W HEDDING ST. SAN JOSE, CA 95110-1767

(408) 806-7900

WWW.SCCCLAX.ORG

TAX RATE AREA
17-076

PARCEL NUMBER
451-46-048-00

TAXING AGENCY

1X MAXIMUM TAX LEVY 1.0000

CO RETIREMENT LEVY .038

ELEM OR UNIF SCH BONDS .059

SAN JOSE CITY G O BONDS .019

HIGH SCHOOL BONDS .016

TOT ASSESSED VAL RATE 1.133

SCVWD-STATE WATER PROJ .006

SCVWD-ZONE W-1 BOND .000

TOT LAND & IMPR RATE .007

800 SJ SEWER SANI/STORM \$365.

802 S.J. LIBRARY ASSMT. 65.

820 SCVWD CLN SAFE CRKS 343.

847 SCCO VECTOR CONTR 18.

882 SCVWD FLOOD CONTR 250.

990 OPENSOURCE DISTRICTS 170.

TOTAL SPECIAL ASSESSMENTS \$1,221.

M15 10/10/02 42

1st DUE NOV 1, 2002 10% PENALTY ADDED AFTER DEC 10, 2002	2nd DUE FEB 1, 2003 10% PENALTY + \$10 COST ADDED AFTER APR 10, 2003	TOTAL
\$1,920.91	\$1,920.91	\$3,841.82

Meridian Plaza One, LLC

*1122 Willow Street
Suite 200
San Jose, CA 95125
(408) 279-5200 fax (408) 279-3678*

June 24, 2003

Ms Adrian Cooper
Staubach Portfolio Services
1945 Lakepoint Drive
Lewisville, Texas 75057

RE Supplemental Property Tax for 4640 Meridian Avenue, San Jose

Dear Ms Cooper

In accordance with the terms of your Lease, 7/2002 – 6/2003 Supplemental Property Taxes are due

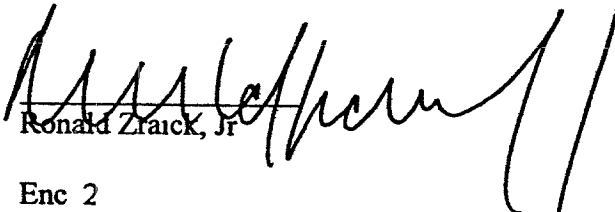
Parcel #451-46-054	2002/03	\$11,518 56
Parcel #451-46-048	2002/03	<u>\$ 7,569 72</u>
Total		\$19,088 28

Please make your check payable to Meridian Plaza One, LLC and mail to

Meridian Plaza One, LLC
Attn Joe DiLeo, Controller
1122 Willow Street, #200
San Jose, CA 95125

Sincerely,

For Meridian Plaza One, LLC


Ronald Zraick, Jr.

Enc 2

Fleming.

1945 Lakepointe Dr.
P O Box 299013
Lewisville TX 75029
telephone 972 906.8000

January 31, 2003

Meridian Plaza One, LLC
1122 Willow Street, Ste 200
San Jose, CA 95125

Fax 408-279-3678

RE Lunardi's, 4640 Meridian Ave , San Jose, CA (CA-114)

Dear Landlord

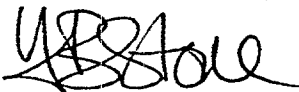
In accordance with the terms of the lease, we are hereby reporting sales at the above referenced location for November 2001 through October 2002

November 2001	\$1,729,665
December	\$1,947,579
January 2002	\$1,676,028
February	\$1,546,876
March	\$1,833,647
April	\$1,675,200
May	\$1,883,591
June	\$1,842,270
July	\$1,766,025
August	\$1,729,723
September	\$1,355,106
October	\$1,637,704
Total Sales	\$20,623,414
X 1 5%	\$309,351
Less Minimum rent	\$130,000
Percentage Rent Due	\$179,351

Please feel free to call me at 972-906-2243 with any questions

Sincerely,

Staubach Portfolio Services
Performing Real Estate Administration Services for Fleming Companies, Inc



Josephine B Stone
Real Estate Administrator
972-906-2243 direct
972-906-2303 fax
Jbrooks2@email.fleming.com

Meridian Plaza - Lunardi's
Fiscal Year Ended October 31, 2002 Percentage Rent Paid

	Gross Revenue	Gross Revenue Times 1 5%	Less Base Rent	Actual Monthly Percentage Rent	Cumulative "Actual" Monthly Percentage Rent	Cumulative "Average" Monthly Percentage Rent	Cumulative Variance
11/01	1,729,665 00	25,944 98	10,833 33	15,111 64	15,111 64	14,945 92	165 72
12/01	1,947,579 00	29,213 69	10,833 33	18,380 35	33,491 99	29,891 83	3,600 16
01/02	1,676,028 00	25,140 42	10,833 33	14,307 09	47,799 08	44,837 75	2,961 33
02/02	1,546,876 00	23,203 14	10,833 33	12,369 81	60,168 89	59,783 67	385 22
03/02	1,833,647 00	27,504 71	10,833 33	16,671 37	76,840 26	74,729 58	2,110 67
04/02	1,675,200 00	25,128 00	10,833 33	14,294 67	91,134 93	89,675 50	1,459 42
05/02	1,883,591 00	28,253 87	10,833 33	17,420 53	108,555 46	104,621 42	3,934 04
06/02	1,842,270 00	27,634 05	10,833 33	16,800 72	125,356 17	119,567 33	5,788 84
07/02	1,766,025 00	26,490 38	10,833 33	15,657 04	141,013 22	134,513 25	6,499 96
08/02	1,729,723 00	25,945 85	10,833 33	15,112 51	156,125 73	149,459 17	6,666 56
09/02	1,355,106 00	20,326 59	10,833 33	9,493 26	165,618 98	164,405 08	1,213 90
10/02	1,637,704 00	24,565 56	10,833 33	13,732 23	179,351 21	179,351 00	0 21
	<u>20,623,414 00</u>	<u>309,351 21</u>	<u>130,000 00</u>				

July 17, 2003

Brandenburg Properties
1122 Willow Street, Suite 200
San Jose, CA 95125

Attn Eric Brandenburg

Re Lunardi's Market/Center
4650 Menden Ave , San Jose

Dear Mr Brandenburg,

We are pleased to provide the following pricing based on drawings and site visit



DEVCON CONSTRUCTION
INCORPORATED
General Building Contractors

690 Gibraltar Drive
Milpitas California 95035
Phone (408) 942-8200
FAX (408) 262-2342
www.devcon-const.com
Lic #399163

SITE AREA	A	B	C	D	E	Total
1 Re-surface parking areas	124,171	91,785	6,762	55,105	29,995	307,778 29.8% = \$91,717.84
2a Re-lamp parking lights, new ballasts at existing parking areas, re-paint poles & heads	12,300	7,100	—	—	4,500	23,900 29.2% = 7,122.20
2b Install new fixtures at existing poles	—	—	—	—	—	—
2c Install new fixtures and poles (same height)	—	—	—	—	—	—
3a Prepare and repaint Lunardi's Market exterior (excl slump stone)	16,970	—	—	—	—	16,970
3b Power wash slump stone	2,550	—	—	—	—	2,550
3c Paint slump stone	5,250	—	—	—	—	5,250
3d Misc ext/iron & rails	1,670	—	—	—	—	1,670



**DEVCON CONSTRUCTION
INCORPORATED**
General Building Contractors

690 Gibraltar Drive
Milpitas California 95035
Phone (408) 942-8200
FAX (408) 262-2342
www.devcon-const.com
Lic #399163

4a Remove and replace Lunardi's roof 4-ply mineral cap sheet, 10 yr bondable straight time	42,500	—	—	—	—	42,500
4b Add of overtime, temporary lighting	8,500	—	—	—	—	8,500
4c Repair cickets, 2 areas for proper drainage	5,500	—	—	—	—	5,500
4d Remove and replace existing sleepers at small condensing unit with 4x8 P T	3,200	—	—	—	—	3 200
4e Remove battens at parapet, install shingles over existing plywood, replace approximately 25%	16,929	—	—	—	—	16,929
4f Remove battens and install new 1/2" OSB over existing plywood, install shingles	33,451	—	—	—	—	33,451
4g Remove battens and plywood without removing clay tile ridge, install new sheetmetal flashing top and counterflash bottom, install shingles	41,151	—	—	—	—	41,151
4h Covered walkway Remove existing T&G roofing and replace with new T & G	ST 15,759 OT 20,259	—	—	—	—	ST 15,759 OT 20,259
5 Signage Remove and replace monument sign at corner of Menden and Branham (allowance)	22,000	—	—	—	—	22,000 50/ = 11,000
6 Supervision Based on the entire scope listed above, 3 weeks duration	8,040	—	—	—	—	8,040
7 Overhead and profit on selected scope, add 3%	3%	3%	3%	3%	3%	3%

Sub

*Chec Engineer estimate 6/2/03

Notes

- 1 Rooftop mechanical units are condensers, cooling towers and exhaust fans So roofing odors should not be easily pulled into store Propose to do this work straight time
- 2 Parking lot renovations would occur in phases allowing continued use of the balance of the parking area
- 3 We do not include removal of clay tile at ridge when replacing parapet materials since they are mortared in place

We appreciate the opportunity to be of service and look forward to further discussions regarding this project

Very truly yours,

Devcon Construction Inc



Warren Tilbury
Project Manager

**DEVCON CONSTRUCTION
INCORPORATED**
General Building Contractors

690 Gibraltar Drive
Milpitas California 95035
Phone (408) 942-8200
FAX (408) 262-2342
www.devcon-const.com
Lic #399163

NISHKIAN MENNINGER

CONSULTING AND STRUCTURAL ENGINEERS SINCE 1919



June 24, 2003

Mr Ron Zraick
BRANDENBURG PROPERTIES
1122 Willow Street, Suite 200
San Jose, CA 95125

Re Lunardi's Market
4650 Meridian
San Jose, CA

Dear Mr Zraick

We are pleased to present this proposal to provide structural engineering services for the above-referenced project

SERVICES TO BE PROVIDED (Based on C A S E National Practice Guidelines for Structural Engineer of Record)

- 1 Participate in preliminary conferences and coordinate with yourselves and the architect, as required, to identify and establish necessary requirements
- 2 Provide required structural drawings, calculations, and specifications in accordance with the governing code
- 3 Provide necessary structural engineering services required to obtain plan check approval from the city of San Jose
- 4 Review all submitted structural detailed shop drawings to verify conformance with Nishkian Menninger Contract Drawings, and provide coordination support to the general contractor during bidding and construction
- 5 Provide periodic site observations during the structural phase of construction

SCOPE OF WORK

The Scope of Work has been defined in a "Property Condition and Seismic Risk Assessment" by Earthquake and Structural Engineering Consultants dated August 16, 2002. In addition, it is our understanding that this project will consist of the seismic upgrade of existing facility to address deficiencies listed in the referenced report

Mr Ron Zraick
Re Lunardi's Market, San Jose
June 24, 2003
Page 2

The items to be addressed will include and be limited to the following

- Add wall ties from the roof structure to exterior concrete masonry walls at the perimeter
- Add cross ties connecting opposite sides of the structure across the interior at the the roof level

FEE DATA

Compensation to Nishkian Menninger for the above-stated Scope of Work items 1, 2 and 3 will be a lump sum fee of Seven Thousand Five Hundred Dollars (\$7,500) Construction administration services, items 4 and 5 will be billed on an hourly basis with an anticipated maximum of \$2,000

We will bill you based upon monthly progress

If the scope of the project varies from our original assumptions we will be willing to adjust our fee up or down as appropriate

All reimbursable expenses will be documented and billed at cost. Reimbursable expense will include items such as travel, plotting, printing and delivery services. Any authorized changes/revisions to the project after preliminary approval will be identified separately and billed at 2.5 times Direct Personnel Expense. This proposal is valid for 90 days and is contingent upon the Construction Documents being completed within one calendar year. If these terms are acceptable please return a signed copy of the enclosed agreement to our office.

Very truly yours,

NISHKIAN MENNINGER

Kevin L. Menninger, S E
Vice President

KLM0624 prp/Contract

2. S. K. AMMENGER



745-10
Fleming Foods

September 26, 2002

VIA FACSIMILE

Fleming Companies, Inc
Manager, Real Estate Administration
c/o The Staubach Company
Re Lease ID CA-114
1945 Lakepoint Drive
Lewisville, TX 75057

Re #745- 4640 Meridian Avenue
San Jose, CA (Lease ID CA-114)

Dear Sir/Madam

Albertson's, Inc , a Delaware corporation ("**Albertson's**"), is currently in negotiations to sell the above-referenced property (the "**Property**") to Eric and Kristy Brandenburg and The Elliott Family Trust (collectively referred to herein as the "**Buyer**") In connection with the sale of the Property, the Buyer will assume all rights and obligations of Albertson's under any lease agreement's encumbering the Property

Several lease documents encumber the Property Albertson's is the fee owner of the Property and has succeeded to the interest of landlord under that Lease Agreement dated September 23, 1974 and entered into by and between Camas Funding Corporation, a Delaware corporation ("**Camas**"), as landlord, and Albertson's, as tenant, and all amendments thereto (collectively referred to herein as the "**Master Lease**") Albertson's is also Sublessor under that certain Sublease Agreement dated October 28, 1986 (the "**Sublease**") and entered into between Fleming Foods West, Inc , a California corporation ("**Fleming Foods**"), as sublessee, and Albertson's, as sublessor, as amended by a First Amendment to Sublease executed by Seller and Fleming Foods on November 25, 1986 Fleming Companies, Inc , an Oklahoma corporation ("**Fleming**"), has succeeded to the interest of Fleming Foods under the Sublease The Sublease is subject to all terms, covenants, conditions and agreements of the Master Lease Fleming has subsubleased the Property to Lunardi's Supermarket, Inc , a California corporation ("**Lunardi's**") pursuant to the certain Sublease dated May 16, 1988 ("**Lunardi's Subsublease**")

Pursuant to Section 3 of the Master Lease, Albertson's as successor in interest to Camas is entitled to examine the Property Pursuant to its right to examine, Albertson's has requested that the Buyer be allowed entry to the Property to conduct Phase II environmental testing In connection with such testing, Albertson's and the Buyer are willing to enter into a license with Fleming and Lunardi's (the "**License**") Pursuant to the License, the Buyer would indemnify



Fleming Companies, Inc
September 26, 2002
Page 2

Lunardi's and Fleming for any damage arising out of the testing completed under the License, except for damages arising out of the mere discovery of hazardous materials. Additionally, the Buyer is prepared to ensure that any testing be done at a reasonable time and in a reasonable location as approved by Lunardi's and Fleming. Extensive negotiations have ensued to obtain a License which is agreeable to all parties involved.

Lunardi's, however, has demanded that Albertson's, in addition to the indemnification provided by the Buyer, indemnify Lunardi's for damages to persons and property (including business losses) arising out of the mere discovery of the hazardous materials (including clean-up and defense costs associated with the discovery of any hazardous materials). Lunardi's has proposed that such indemnity exclude any claim arising from hazardous materials placed upon the Property by Lunardi's. Insistence upon Albertson's providing such indemnity to Lunardi's goes beyond what is required under the Lease Documents and, in effect, forces Albertson's to amend the Lease Documents. The Lease Documents address the indemnities between the parties and are therefore dealt with and should only be dealt with under the Lease Documents. Such testing will be done at a reasonable time and location as agreed to by Fleming and Lunardi's.

Albertson's has demanded of Fleming that it be allowed access to the Property to allow the Buyer to conduct the necessary testing. Albertson's demands have been denied. Therefore, Fleming is hereby notified that Albertson's deems such refusal by Fleming a default under the Sublease. In the event this default is not cured within the timeframe set forth in the Sublease, Albertson's will take all action afforded it under the Lease Documents. In the event Albertson's is not provided access to the Property and any damages are suffered by Albertson's as a result of such violation, Albertson's hereby retains all rights to pursue all legal remedies available to Albertson's against Fleming and/or Lunardi's as a result of Fleming's improper refusal, including without limitation, damages from any failed sale of the Property as a result of the inability to timely examine the Premises.

Sincerely,

ALBERTSON'S, INC

A handwritten signature in black ink, appearing to read 'C. Lee Mumford', written over a horizontal line.

C Lee Mumford
Vice President, Real Estate Law

Handwritten initials in black ink, possibly 'HJ' or 'JH', written below the typed name.

Enclosures

cc Martin Leon
Scott Brooks
George Silvestri, Jr

Meridian Plaza One

1122 Willow Street, Suite 200
San Jose, California 95125
408 279 5200
408 279 3678 fax

January 29, 2003

Via Facsimile &
Federal Express
(972)906-2303

Mr Brian Lake
Manager, Store Development
Fleming
1945 Lakepointe Drive
Lewisville, TX 75057

RE 4640 Meridian Avenue, San Jose
(Fleming File CA-114)

Dear Bryan

Since we have been unable to connect on the telephone, I wanted to put in writing the items I would like to discuss with you and Chuck Hall. It is my understanding from Martin Leon, III of Albertson's Surplus Property Division, that Fleming Foods is interested in exiting the retail business and is concentrating on its core businesses. We would be interested in entering into discussions to acquire your Sublease position in the referenced Store (the "Fleming Sublease").

We acquired the land and improvements constituting the Fleming Sublease from Albertson's, Inc. on October 29, 2002 by Grant Deed. At that time, Albertson's assigned all of their interest in the Fleming Sublease to the undersigned by the enclosed Assignment.

As you know, Fleming Foods entered into a Sublease of its interest in the ~~Albertson's~~ Sublease with Lunardi's Supermarket, Inc. on May 16, 1988 (the "Lunardi's Sublease"). A copy of the Lunardi's Sublease is enclosed for your review. As a result of the various subleases, we find ourselves in a unique position of not being the direct Landlord to the Tenant occupying the Property.

With regard to our acquiring Fleming Foods Sublease interest, we need to discuss the following items:

1. There is deferred maintenance work most of which needs to be immediately undertaken given the condition(s) including a new roof, strapping the roof to the structure, major repairs to the parking lot, painting of building, etc. Please see enclosed Property Condition and Seismic Risk Assessments report which was prepared for us prior to our acquisition by ESEC dated August 16, 2002 for specifics.

- 2 There is a pending default by Fleming Foods for not allowing a Phase II investigation during our acquisition as recommended by our consultant (the "Toxic Default"). Please see enclosed Notice of Default correspondence from Albertson's, Inc. to Fleming Foods dated September 26, 2002 together with Fleming Companies, Inc. attorneys response of October 23, 2002

Other reasons Fleming Foods should consider relinquishing its interest in the Sublease include

- 1 Potential liability for existing toxics. Please review the enclosed Phase One Report prepared for us prior to our acquisition by Ninyo & Moore, Geotechnical and Environmental Sciences Consultants, dated August 14, 2002
- 2 We have been informed by Lunardi's that Operating Agreements to provide packaged goods to Lunardi's have expired. The Lunardi's Sublease does not expire until November 30, 2016
- 3 Fleming Foods is not making much money under the Lunardi's Sublease. Please see attached calculation of Fleming Foods, Inc.'s Total Return From Lunardi's Sublease
- 4 Fleming Foods is incurring expenses for Property Management.
- 5 Fleming Foods is incurring attorney's fees to enforce the recorded Declaration of Covenants and Encumbrances (see attached letter from Fleming's attorney) as well as responding to the above described Toxic Default

Additionally, Fleming Companies, Inc. executed a Guaranty Agreement wherein Fleming agreed to perform and observe all of the Covenants, Conditions and Agreements on behalf of Fleming as Sublessee and Sublessee's successor and assigns for the Fleming Sublease (copy enclosed). The Lunardi's Sublease requires Lunardi's Supermarket, Inc. to perform all the terms and conditions under the Fleming Sublease and Master Lease. For example, Lunardi's Supermarket, Inc., does not carry any insurance for earthquake protection. Although this specific insurance is not required under the Master Lease or the Fleming Sublease, lack of such insurance would be costly to Fleming Foods if an earthquake should occur since all structural replacements and repairs are Fleming's responsibility under the Fleming Sublease and Master Lease. In other words, is Lunardi's financially able to meet all of Fleming Food's obligations under the Fleming Sublease and Master Lease?

Please call me at your earliest convenience so we can get these discussions started. I know I have raised a number of issues and provided a lot of information you may not be immediately familiar with in this letter. I am hoping we can discuss these issues "businessman to businessman" to come to a mutually beneficial arrangement.

Sincerely,
Meridian Plaza One, LLC



Eric Brandenburg
Manager

Enc 1



745.42

VIA OVERNIGHT DELIVERY

November 7, 2001

Vinod C and Janak D Bansal
4644 Menden Avenue
San Jose, CA 95124

Re Albertson's Store #745 – Branham & Menden
San Jose, California
Setareh Market – Mediterranean Delicatessen
Located at 4644 Menden Avenue
San Jose, California
NOTICE OF DEFAULT

Legal/Real Estate Filing
Store # 745
Real Est ☒ Mini Bank ☐
to it ☐ ATM ☐
Fi Acq ☐
Lit ga ☐ Li Li Acq ☐
Mow ☐ Li Li ☐
Description C
Bluebook ☐ House ☐

Dear Mr and Mrs Bansal

Albertson's has been informed that you are the titled owners of Parcel 2 at the above-referenced location. Reference is hereby made to that certain Declaration of Covenants and Encumbrances dated December 28, 1973, executed by Desin Development Co., Sav-On Realty, Inc. and Albertson's, Inc., and recorded in the Office of Santa Clara County in Book 0716 at Page 724, which encumbers the Shopping Center (hereinafter the "Declaration")

Section IV(1) of the Declaration provides the following in part

the owners of Parcels 1 and 2 agree, for the benefit of Parcel 3, that no portions of Parcels 1 and 2 will be used for the sale (for off-premises consumption) of the following items (whether canned, fresh, frozen or smoked) general groceries, meats, poultry or fish, fruits, vegetables, or any combination of the foregoing items. The above restrictions shall not prohibit the operation of a delicatessen on Parcel 2 containing not more than 1,500 square feet.

It has come to our attention that the Setareh Market, a Mediterranean Delicatessen is under construction on Parcel 2 and that it is planned to exceed 1,500 square feet, in breach of the Declaration. Please confirm within two weeks from the date of this letter, or by November 6, 2001, that such plans are not going forward. If we do not hear from you by November 6, and upon further information that a violation exists, Albertson's intends to exercise any and all remedies under the Declaration.

Please contact me at (208) 395-5194 to discuss. Thank you for your immediate attention to this matter.

Sincerely,

ALBERTSON'S, INC.

Daniel S Day
Daniel S Day
Senior Attorney

cc Brad Beckstrom
Carolyn Bock
Pete Katzdorn, Fleming, via fax (405) 858-5970

RECEIVED
NOV 12 2001
RECORD CENTER

1837808



March 8, 2002

Certified Mail—Return
Receipt Requested

Vinod C and Janak D Bansal
4630 Meridian Avenue
San Jose, CA 95124

Vinod C and Janak D Bansal
478 E Santa Clara St. #203
San Jose, CA 95112-3555

Setareh Market
4644 Meridian Avenue
San Jose, CA 95124

Re Albertson's Store No 745
 Branham & Meridian, San Jose CA
 Setareh Market—Mediterranean Delicatessen (4664 Meridian Avenue)
 NOTICE OF DEFAULT

Dear Sirs

Reference is made to that certain Declaration of Covenants and Encumbrances dated December 28, 1973, executed by Desin Development Co., Sav-On Realty, Inc and Albertson's, Inc and recorded in the Office of Santa Clara County in Book 0716 at page 724, which encumbers the Shopping Center (the "Declaration")

Under the terms of the Declaration, the Setareh Market is prohibited from selling general groceries and other food items for off-premises consumption, and is additionally prohibited from operating a delicatessen in excess of 1,500 square feet. Albertson's Inc sent prior notices that Setareh Market is operating in violation of the Declaration. Although Albertson's received assurances that the market would operate in compliance with the Declaration, Albertson's is informed that the market is still violating the terms of the Declaration.

Based on the foregoing, Albertson's hereby demands that the Setareh Market comply with the terms of the Declaration. If Setareh Market does not comply, Albertson's reserves the right to exercise any and all remedies under the Declaration, including, if necessary, the option of initiating legal proceedings to force compliance with the Declaration.

RECEIVED

MAR 18 2002

RECORD CENTER

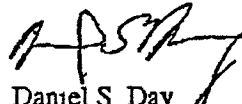
Legal/Real Estate Filing
Store # 745
Store ☒ Tenant ☐
Litigation ☐ Misc ☐
File/Description COCC
Blueback ☐ Route ☐



If you have any questions, please call me at (208) 395-5194

Very truly yours,

ALBERTSON'S, INC


Daniel S. Day
Senior Attorney

DSD

cc Martin Leon
Tyler Seamons



1945 Lakepointe Dr
P O Box 299013
Lewisville TX 75029
telephone 972 906 8000

September 11, 2002

Eric and Kristy Brandenburg and
The Elliot Family Trust

Re Request for Estoppel Certificate
Lunardi's
4640 Meridian Avenue
San Jose, CA
Fleming File # CA-114

Gentlemen

Albertson's Inc , as Sublessor ("Sublessor"), and Fleming Companies, Inc , successor in interest to Fleming Foods West, Inc , as Sublessee ("Sublessee"), are parties to a Sublease Agreement dated October 28, 1986, as amended November 25, 1986, and Letter Agreement dated November 2, 2000 (the "Sublease"), for certain space ("Premises") located in the aforementioned shopping center

At the request of the Sublessor and knowing that you, as potential purchaser of the Premises, are relying in part upon the accuracy of the information contained herein, the undersigned, as Sublessee under the terms of the above described Sublease, hereby certifies, as of the date of this letter, to the best of our knowledge that

- 1 The Sublease is in full force and effect, and Sublessee's Sub-Sublessee is in actual possession of the Premises
- 2 Except as described above, the Sublease has not been modified, supplemented or amended in any way
- 3 All work required by the Sublease to be performed by the Sublessor has been completed and is in accordance with the provisions of the Sublease
- 4
 - a The fixed monthly rent presently payable under the terms of the Sublease is \$10,833 33 The amount of Bonus Rent paid for the year 2002 to date is \$164,615 00 and the amount of Bonus Rent paid for the year 2001 was \$129,520 00
 - b The fixed monthly rent payable under the terms of the Sublease has been paid through August 31, 2002
 - c All additional charges owed by Sublessee (i/e taxes, insurance and common area maintenance) and currently payable under the terms of the Sublease have been paid
 - d The Sublease shall terminate on November 29, 2011

- e The Sublease contains four (4) options to renew for five (5) years each on the same terms and conditions
- 5 It is unknown at this time whether Sublessee may be entitled to a credit in the event of any overpayment of estimated percentage rent or estimated common area charges and Sublessee hereby preserves its rights for any such credit. Otherwise, Sublessee claims no offsets, setoffs, rebates, concessions, abatements or defenses against or with respect to rent, additional rent or other sums payable under the terms of the Sublease (unless the work described on Exhibit "A" is not performed and completed by Sublessor)
- 6 There are no defaults under the terms of the Sublease. (Unless the items listed on Exhibit "A" are not resolved to Sublessee's satisfaction)
- 7 The amount of security deposit made with the Lease is \$0.00
- 8 The Sublessee does not have any option or preferential right to purchase all or any part of the Leased Premises. Sublessee does not have any right, title or interest with respect to the Lease Premises other than as Sublessee under the Sublease

It is agreed and understood that any party relying on this letter is obligated to perform its own inspection and review the documents referenced herein. Please be advised that the information stated herein is as of the date of this letter, and we disclaim any obligation to advise you of any changes or update the information contained herein, except as specifically required herein or by the Sublease.

FLEMING COMPANIES, INC

By 

Its Se Vice President, Real Estate
Fleming Companies, Inc

EXHIBIT "A"

This Exhibit "A" is attached to and made a part of an Estoppel Letter, dated August 6, 2002

No known defaults currently exist, although Sublessee is aware of an unresolved problem with respect to the aforementioned shopping center which involves the ongoing violation of the Declaration of Covenants and Encumbrances ("Declaration"), dated December 28, 1973, recorded in the Offices of Santa Clara County Recorder Book D716 pages 724 et seq (Instrument No. 468141) which prohibits delicatessens exceeding 1,500 square feet from operating at 4644 Meridian Avenue, San Jose, CA. The Declaration is being violated by the property owners and operators of the business known as Mediterranean Delicatessen located at 4644 Meridian Avenue, San Jose, CA. The Premises are intended to be benefited by the Declaration.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE

Chapter 11

FLEMING COMPANIES, INC , et al ,

Case No 03-10945 (MFW)
(Jointly Administered)

Debtor

HEARING DATE August 4, 2003 @ 11 30 A M

OBJECTION DEADLINE July 28, 2003 @ 4 00 P M

**CERTIFICATION OF SERVICE OF
OBJECTION OF MERIDIAN PLAZA ONE, LLC TO DEBTOR'S
CURE AMOUNT AND NOTICE RE POTENTIAL ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE MOTION**

MAGDALENA SCHARDT, of full age, hereby certifies as follows

1 I am an associate with the law firm of Fox Rothschild LLP, attorneys for
Meridian Plaza One, LLC in the above proceedings

2 On July 25, 2003, a true and correct copy of the Objection of Meridian Plaza
One, LLC to Debtor's Cure Amount and Notice Re Potential Assumption and Assignment of
Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion was served,
via Federal Express, on the parties listed on the attached service list

3 I hereby certify that the following statements made by me are true I am aware
that if any of the foregoing statements made by me are willfully false, I am subject to
punishment

/s/ Magdalena Schardt
Magdalena Schardt

Dated July 25, 2003

SERVICE LIST

Fleming Companies, Inc
Attn Contracts Department
1945 Lakepointe Drive
Lewisville, TX 75057

Shirley S Cho, Esquire
Kirkland & Ellis, LLP
777 South Figueroa Street
Los Angeles, CA 90017

Geoffrey Richards, Esquire
Kirkland & Ellis, LLP
200 East Randolph Drive
Chicago, IL 60601

Laura Davis Jones, Esquire
Pachulski, Stang, Ziehl, Young,
Jones & Weintraub PC
919 North Market Street – 16th floor
Wilmington, DE 19801

Andrew P DeNatale, Esquire
White & Case
1155 Avenue of the Americas
New York, NY 10036-2787

Dennis Dunne, Esquire
Milbank, Tweed, Hadley & McCloy, LLP
One Chase Manhattan Plaza
New York, NY 10005

Robert S Hertzberg, Esquire
Pepper Hamilton LLP
100 Renaissance Center – 36th floor
Detroit, MI 48243-1157

Julie Compton, Esquire
Office of the U S Trustee
844 King Street – Room 2313
Wilmington, DE 19801

Exhibit “M”
Summary of Pre- and Post-Petition Amounts Due Under Lease

Description	Pre-Petition Amount	Date	Post-Petition Amount	Date	Total Pre-Petition	Total Post - Petition	Total
Real Estate Taxes	\$9 586 63	2/1/02					
Bonus Rent	\$76 840 20 ¹	11/01/02 03/31/02	\$64 172 96 ²	4/01/02 7/31/03 ³			
Deferred Maintenance Work	\$265 430+ 3% + Seismic Repairs initial structural engineering @ \$7 500 & wall to floor anchors @ \$75 000 (Further costs Unknown) ⁴	Unknown		Unknown			
Declaration of Covenants & Encumbrances	Unknown ⁵	Unknown	Unknown	Unknown			
Environmental Remediation	Unknown costs access to site denied ⁶	1/29/03	Unknown				
Total					\$434 356 83 (plus unk amts)	\$64 172 96 (plus unk amts) ⁷	\$498 529 79 (plus unk amts)

¹ Estimate only, based upon prior year sales figures (see Exhibit “T”) Current sales figures unavailable

² Estimate only, based upon prior year sales figures (see Exhibit “T”) Current sales figures unavailable

³ Additional amounts accrue each month, current sales figures are unavailable

⁴ Estimate only, see Exhibit “J” and Seismic report, available upon request

⁵ See Exhibits “F” & “L”

⁶ See Exhibit “K”

⁷ Landlord reserves right to augment claim upon rejection of Lease per 11 USC 502(b)(6)

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. My business address is 40 South Market Street, Second Floor, San Jose California 95113

On the date indicated below, I served by mail a true copy of the following document(s)

PROOF OF CLAIM

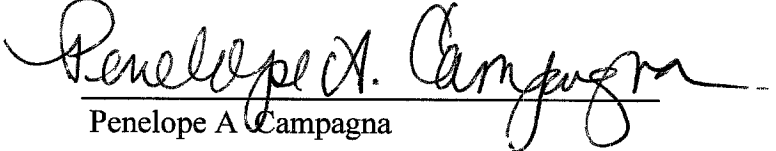
I am readily familiar with the practice of this business for collection and processing of documents for mailing with the United States Postal Service. Documents so collected and processed are placed for collection and deposit with the United States Postal Service that same day in the ordinary course of business. The above-referenced document(s) were placed in (a) sealed envelope(s) with postage thereon fully prepaid, addressed to each of the below listed parties and such envelope(s) was (were) placed for collection and deposit with the United States Postal Service on the date listed below at San Jose, California

Attorneys for Debtor

Laura Davis Jones, Esq
PACHULSKI, STANG, ZIEHL, YOUNG,
JONES & WEINTRAUB, P C
919 No Market St, 16th Floor
P O Box 8705
Wilmington, DE 19899-8705

James H M Sprayegen, P C
KIRKLAND & ELLIS
777 South Figueroa Street
Los Angeles, CA 90017

Executed on August 19th, 2003 at San Jose, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Penelope A Campagna

McGRANE, GREENFIELD,
HANNON & HARRINGTON LLP

Attorneys at Law

San Francisco Office
One Ferry Building
Suite 220
San Francisco CA 94111
Phone (415) 283 1776
Fax (415) 283 1777

San Jose Office
40 South Market Street
Second Floor
San Jose CA 95113
Phone (408) 995 5600
Fax (408) 995 0308

August 18, 2003

Please reply to
Bernard S Greenfield
San Jose Office

Via Federal Express

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

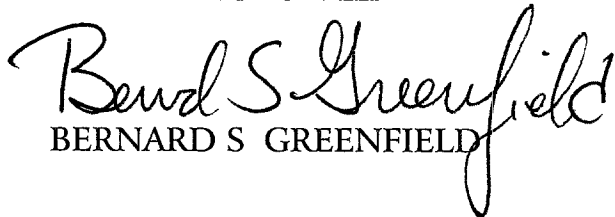
RE OUR CLIENT BRANDENBURG PROPERTIES
In re FLEMING COMPANIES, INC CH 11 Case No 03-10945 - 72
U S Bankruptcy Court, District of Delaware

Dear Sir/Madam

Enclosed for filing please find a Proof of Claim in connection with the above-referenced matter. Please return the endorsed, filed copies to this office in the envelope provided. Thank you for your assistance.

Very truly yours,

McGRANE GREENFIELD HANNON
& HARRINGTON LLP


BERNARD S GREENFIELD

BSG pac
Enclosures
cc Eric Brandenburg

E:\MGHH SJ\1 McGrane Greenfield\Brandenburg\Lunardi\Ltrs\030818 BSG to Bk Mgmt Corp ltr.wpd