

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

**PROOF OF CLAIM**



606694

Bar Date Ref # 2-NVM-72475

In re  
**Fleming Companies, Inc.**

Case Number  
**03-10945**

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**

King-larson Inc  
PO Box 330  
Webster WI 54893

0354653606694

☐ 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.

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 (715) 366-4640

CREDITOR TAX ID #  
39-1450285

ACCOUNT OR OTHER NUMBER BY WHICH  
CREDITOR IDENTIFIES DEBTOR

Check here ☐ replaces or amends a previously filed claim dated \_\_\_\_\_

**1 BASIS FOR CLAIM**

- ☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)  
☐ Services performed ☐ Taxes ☐ Wages, salaries, and compensation (Fill out below)  
☐ Money loaned ☒ Other (describe briefly) lease-hold interest

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**

\$ \_\_\_\_\_ \$ see attached list \$ \_\_\_\_\_ \$ \_\_\_\_\_  
(unsecured) (secured) (unsecured priority) (total)

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 lease interest

Value of collateral \$ unknown

Amount of arrearage and other charges at time case filed included in secured claim above if any \$ 0

**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) \_\_\_\_\_

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

08/13/03

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

John Grindell, Attorney at Law

THIS SPACE FOR COURT

**FILED**

AUG 19 2003

**BMC**

Fleming Companies Claim



05432

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**

## RETAIL BUILDING LEASE

THIS LEASE, entered into this \_\_\_\_ day of April, 1991, by and between KING-LARSEN, INC., a Wisconsin corporation, hereinafter referred to as "Lessor", and GATEWAY FOODS OF TWIN PORTS, INC., a Wisconsin corporation, hereinafter referred to as "Lessee".

### W I T N E S S E T H

#### 1. DEFINITIONS.

1.1 Leased Building. That certain retail store building space consisting of approximately 19,837 square feet located on the Real Property and described on the site plan attached hereto as Exhibit "A".

1.2 Real Property. The certain Real Property more particularly described on Exhibit "B" attached hereto.

1.3 Leased Premises. The Leased Building, the Real Property and all appurtenances thereto known as 237 West Skyline Drive, Grantsburg, Wisconsin.

1.4 Lease Year. The term Lease Year shall mean the period of twelve (12) consecutive months commencing with the Commencement Date, as herein defined, or any succeeding twelve (12) month period during the term of this Lease.

2. PREMISES. In consideration of the covenants and agreements hereinafter set forth, Lessor does hereby lease, demise and let unto Lessee the Leased Premises, together with all the rights, easements, entrances, approaches and exits appurtenant to the Leased Premises.

3. TERM. The Initial Term of this Lease shall run and extend for fifteen (15) years from and after the Commencement Date as set forth below, unless sooner terminated as herein provided or unless extended or renewed upon the terms hereinafter stated (the "Initial Term").

3.1 Commencement Date. The Initial Term of this Lease shall commence on April \_\_\_\_, 1991.

3.3 Renewal of Lease. This Lease shall be extended automatically for the same rental and under the same terms, conditions and covenants herein contained for three (3) separate additional terms of five (5) years each ("Extended Terms"), each Extended Term to begin at the expiration of the preceding Initial Term or Extended Term, as the case may be, unless at least three

(3) months prior to the expiration of the then current Initial Term or Extended Term, Lessee shall notify Lessor that it intends not to renew the Lease.

4. RENTAL. Lessee agrees to pay Lessor as rental for the Leased Premises the following:

4.1 Minimum Rental. An Annual Minimum Rental for the Leased Premises per Lease Year payable in accordance with the following rate schedule in equal monthly installments payable in advance beginning on the Commencement Date continuing thereafter on or before the first day of each calendar month for the Initial Term and any extended term of the Lease.

<u>Lease Year</u>	<u>Annual Minimum Rental</u>
1 - 5	\$43,000
6 - 15	\$81,800
16 - 30 (1st, 2nd & 3rd options)	\$81,800

6. LESSOR'S COVENANTS AND REPRESENTATIONS. In addition to all other covenants and agreements by Lessor found in this Lease, the Lessor hereby specifically covenants and represents as follows:

6.1 Zoning. The Real Property is zoned for the type of business operation contemplated by Lessee.

6.1.1 Flooding. The Real Property is not susceptible to flooding and does not lie within a flood plain.

6.2 Quiet Enjoyment. The Lessor has good and marketable indefeasible fee simple title to the Leased Premises and warrants there are no encumbrances or liens thereon. Prior to or within ten (10) days after execution of this Lease, Lessor shall deliver to Lessee a copy of its ALTA commitment for Title Insurance, which binds the title insurance company to issue on or before the Commencement Date a title insurance policy to Lessor based on such commitment, showing that Lessor has good and merchantable and indefeasible fee simple title to the Leased Premises, free and clear of any and all encumbrances or liens except three (3) Mortgages to First Wisconsin Bank of Grantsburg. If such ALTA commitment for Title Insurance contains any statements, exceptions or exclusions ("Defects") which are unacceptable to Lessee, as solely determined by Lessee, Lessee at its option may (i) terminate this Lease, with

no liability to Lessee, by written notice to Lessor or (ii) allow Lessor to cure such Defects within a reasonable time period satisfactory to Lessee. Lessor has full authority to execute this Lease and further warrants to the Lessee that it shall have, hold and enjoy the Leased Premises and its rights hereunder during the term hereof. Lessor warrants and represents that the Leased Premises is and will be free from obnoxious fumes, odors and unsanitary conditions. Lessor shall not permit the emanation of any undue noise, obnoxious fumes or odors, or any other nuisance from any property or building adjacent to or near the Leased Premises, which is owned or controlled by Lessor.

6.3 Use of Adjacent Real Property. No portion of any real property owned by Lessor or any affiliate or related party and located within two (2) miles of the Real Property (the "Adjacent Real Property") shall be used for a bowling alley, theater, billiard parlor, night club, video arcade, video rental shop, or other place of recreation or amusement, or auto service station unless designated on Exhibit "A" attached hereto or approved in writing by Lessee. Neither Lessor nor any affiliate or related party shall, without Lessee's prior written consent, own, operate or grant any lease or permit any assignment or sublease for a store (or any portion of a store) on the Adjacent Real Property which permits a tenant under such lease to sell or offer for sale groceries, meats, poultry, seafood, dairy products, fruits, vegetables or baked goods. In the event of any violation of the term of this Subparagraph 6.3, all rental obligations under this Lease shall be abated during the period of such violation, and Lessee shall not be in default for failure to pay any rental allocated to such period.

6.4 Site Plan. The site plan attached hereto as Exhibit "A" is an accurate representation of the Leased Premises and no changes shall be made to such site plan without the prior written consent of Lessee.

6.5 Use of Parking and Access Areas. No tenants, owners, occupants or other users of land adjoining the Real Property shall be allowed access to, from or across the Real Property or use of the Real Property, without the prior written consent of Lessee, which consent shall not be granted until reciprocal access and parking agreements have been effected in a manner satisfactory to Lessee. Lessor shall not change or reconfigure the parking or access areas as shown on the site plan attached hereto as Exhibit "A", without the Lessee's prior written consent.

6.6 Utilities. Lessor, at its own cost, shall furnish, install and maintain adequate utility lines and services to serve the Leased Premises. Lessee shall pay, as they become due and payable and before they become delinquent, the actual cost of all charges for electricity, heat, air conditioning, water, gas, fuel, telephone, sewage usage or rental, and any other utility service furnished to the Leased Premises during the Initial Term or any renewal or extension thereof.

6.7 Compliance With Laws. Lessee covenants and agrees to execute and comply promptly with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county, city and other governmental authorities, regulating the use by Lessee of the Leased Premises; provided, however, that if compliance with the foregoing requires structural changes to the Leased Premises or nonstructural changes that would have been required irrespective of the nature of the use of the Leased Premises, Lessor shall so comply at its sole expense.

6.8 Taxes. At all times during the term hereof all ad valorem taxes, real estate taxes and similar taxes, special assessments and any other taxes ("Taxes") levied or assessed against the Leased Premises or any part thereof by reason of the ownership thereof shall be paid and discharged by Lessor before becoming delinquent and Lessee shall reimburse Lessor therefor as hereinafter provided.

6.8.1 Lessee shall reimburse Lessor for Taxes due and payable during the Lease Year. In the case of a fractional Lease Year, any amounts payable by Lessee shall be prorated accordingly. Lessee shall not be liable for any special assessments that have been levied as of the date hereof and special assessments levied as a result of Lessor's development activity prior to the Commencement Date. Lessor shall furnish Lessee a written statement showing the amount of Taxes due, together with a photostatic copy of the tax statement and receipt showing all Taxes which are due and payable have been paid in full. Provided Lessee is given such statement and receipt, Lessee shall remit the Taxes to Lessor within fifteen (15) days of the receipt of such statement. As to any Taxes payable, at Lessor's or Lessee's option, in installments, Lessor shall elect to pay such Taxes over the maximum term without the imposition of

interest and Lessee shall be responsible to pay only such installments as become due and payable during any Lease Year. Lessee shall have no obligation to pay special assessments due subsequent to the term of this Lease. The amount of any Taxes shall be determined without regard to any tax increment financing utilized by Lessor.

6.8.2 Lessee shall have the right, at its option and expense, to challenge any tax assessments. Lessor shall cooperate with Lessee in any such challenge. Should any challenge (either by Lessor or Lessee) result in a reduction of Taxes or a refund of Taxes, Lessee shall first be entitled to receive its expenses incurred in such challenge. In the event of a refund of Taxes, Lessee shall then be entitled to such refund to the extent it relates to Taxes paid by Lessee hereunder.

6.8.3 Lessee shall pay as they become due and payable, and before they become delinquent, all taxes levied or assessed against its leasehold interest in this Lease and against the fixtures, equipment, merchandise and other personal property located in, upon, about or affixed to the Leased Premises.

6.9 Survey. Lessor agrees, at its expense, within thirty (30) days from the execution of this Lease, to furnish Lessee a survey satisfactory to Lessee, showing the exact location of all buildings, driveways, easements, striped parking, underground utility lines, storm water drainage systems and flood plains, if any.

6.10 Hazardous Substances. Lessor represents and warrants that no hazardous, toxic or dangerous waste, substance, or material defined as such in (or for purposes of) any state, federal or local environmental laws, regulations, decrees or ordinances or in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or in any so called state or local "Super Fund", "Super Lien" or "Cleanup Lien" law or any other federal, state or regulation, order or decree relating to or imposing liability or standards of conduct concerning any such substances or material or any amendments or successor statutes thereto, has been or shall be discharged, disbursed, released, stored, treated, generated, disposed or allowed to escape on, under, or from the Leased Premises. Lessor further represents and warrants that no asbestos or asbestos containing materials nor any polychlorinated biphenyls

nor any underground storage tanks have been or shall be installed, used, incorporated into or disposed of on or under the Leased Premises. Lessor agrees that such representations and warranties shall survive any termination of the Lease. Lessor agrees to indemnify and hold harmless the Lessee from any and all costs, expenses, claims and damages arising out of a breach of the foregoing warranties. Lessor understands that Lessee is specifically relying upon the representations of this subparagraph 6.11 in entering into this Lease Agreement and therefore, in addition to any other remedies set forth herein, in the event any representation or warranty made by Lessor in this Subparagraph 6.11 is false, misleading, or erroneous in any material respect then Lessee shall have the option of declaring this Lease void and of no further force and effect, effective as of the Commencement Date hereunder.

7. MAINTENANCE RESPONSIBILITY. The Lessor and the Lessee shall have the following responsibilities for maintenance of the Leased Premises, provided that any obligation or liability not specifically covered by the terms of this Lease shall be considered an obligation of the Lessor.

7.1 Maintenance by Lessor. Lessor, at its cost and expense and without charging Lessee any direct or indirect management fees or charges of any nature whatsoever shall keep in repair, and shall replace as necessary, all of the exterior of the Leased Premises specifically including, but not limited to, the roof, downspouts, gutters, sidewalks, and walls, and shall be responsible for all interior and exterior repairs of a structural nature or arising out of structural defect, of which plastered surfaces shall be considered a part.

7.2 Maintenance by Lessee. Lessee, at its cost, shall keep the interior of the Leased Premises in repair, including exposed plumbing, heating and air conditioning units, plate glass, doors and door closers, except for reasonable wear and tear, damage by fire and the elements and unavoidable casualty; provided, that the Lessee shall be entitled to all parts and service guaranties and any warranties in effect on equipment which it is responsible for maintaining under the terms hereof. Lessee shall be responsible for keeping the parking area repaired, lighted, striped, clean and free of all debris, ice and snow. Lessee, at its cost, shall also maintain the landscaping on the Leased Premises and all other common areas clean, lighted and in good repair, and all sidewalks and common areas clean and free of all debris, ice and snow.

7.3 Remodeling at Lessee's Expense. During the term hereof, or any extension thereof, Lessee and its successors and assigns, shall have the right and the privilege to perform nonstructural redecoration or remodeling to the interior of the Leased Premises from time to time as it shall see fit; to erect and install such machinery and equipment, counters, shelving, light fixtures, partitions, fixtures and signs in, upon and about the Leased Premises as in Lessee's judgment may be necessary or desirable in the conduct of its business and to change the same in its sole discretion. Lessee shall not perform any exterior and/or structural alterations, improvements or construction of any kind without the prior written consent of Lessor, in which event Lessee shall provide Lessor with one full and complete set of sepia and blue line design drawings, including but not limited to the architectural, mechanical, electrical, plumbing, gas and sprinkler drawings along with a demolition plan and as-built drawings if applicable. Lessee shall promptly pay and obtain a partial and final release of lien from all contractors and materialmen and suppliers, so as to minimize the possibility of a lien attaching to the Leased Premises, and should any such lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days.

7.4 Lessor's Failure to Make Repairs. Lessee may make any repairs or pay any expenses required to be paid by Lessor, provided Lessee has used reasonable effort to contact Lessor or Lessor's representatives (by telephone at telephone numbers designated in writing by Lessor in the case of emergency repairs, "emergency" being defined as imminent danger to Lessee, to Lessee's property or business or to the general public) and any such payments shall be deducted from the next following rental payment or payments.

8. ADVERTISING SIGNS. Lessee may erect its standard signs on the exterior of its Leased Premises in a manner and location satisfactory to Lessee. Lessee shall install its signs at its own expenses and may remove them at the termination of this Lease. Any damage to the building as a result of the removal of Lessee's signs shall be repaired at the expense of the Lessee. Lessor shall not erect, nor permit to be erected, any signs on the Leased Premises other than those of Lessee.

9. EMINENT DOMAIN - CASUALTY LOSS. The Lessor and the Lessee agree as follows:



9.1 Eminent Domain Affecting Leased Premises. In the event any part of the Leased Premises should be taken by any public authority under the power of eminent domain or by transfer in lieu thereof, then the terms of this Lease shall cease on that part on the date of condemnation or transfer in lieu thereof, and the rent shall be paid up to that day, and from that day, the Minimum Rental shall be reduced in proportion to the amount of the store room taken; provided, however, that should five percent (5%) or more of the Leased Premises be taken by the power of eminent domain or by transfer in lieu thereof, Lessor shall give Lessee written notice thereof and Lessee shall have the option, to be exercised within sixty (60) days after receipt of written notice, to cancel this Lease and declare the same null and void effective on the date such option is exercised. If Lessee should not elect to cancel this Lease, Lessor shall, at its sole cost, build on the new building line a wall, or front, similar to the one removed. It is understood and agreed that any and all condemnation awards or payments shall be paid to and retained by Lessor, except that Lessee shall be entitled to any award or payment made for damage to fixtures, equipment and merchandise owned by Lessee (including costs of removal of same), loss of Lessee's business and moving expense.

9.2 Eminent Domain Affecting Parking Areas. In the event ten percent (10%) or more of the parking area on the Leased Premises should be taken by the power of eminent domain or transfer in lieu thereof, upon notice given to Lessor within sixty (60) days after such taking or transfer in lieu thereof, Lessee shall have the option to cancel this Lease and declare the same null and void effective thirty (30) days after such notice.

9.3 Destruction of Leased Premises. In the event the Leased Premises should be partially destroyed (less than twenty percent (20%)) as a result of fire or other casualty, regardless of the cause, then Lessor shall, at its sole cost and expense, promptly, and in any event within thirty (30) days, commence to build or replace the same in as good condition as prior to such casualty, which rebuilding or replacement shall be completed within six (6) months following such casualty. In the event the Leased Premises should be substantially (twenty percent (20%) or more) destroyed as a result of fire or other casualty, or it should be untenable and unfit for occupancy, then Lessee may at Lessee's sole option, expressed to Lessor in writing within fifteen (15) days of such occurrence, (1) require the Lessor to

promptly, and in any event within thirty (30) days of such notice from Lessee, commence to build or replace the same as aforesaid, which rebuilding and replacement shall be completed within six (6) months following such substantial destruction, or (ii) terminate this Lease, effective on the date of such casualty. Monthly Annual Rentals shall abate proportionately to the use in the event of partial or substantial destruction during the term of this Lease. Lessor shall have no interest or claim to any portion of the proceeds of any insurance carried by Lessee on Lessee's personal property. Lessee shall have no interest in or claim to any portion of the proceeds of any fire and extended insurance policy or policies carried by Lessor.

9.4 Destruction After 3/4 of the Lease Term.

Anything herein contained to the contrary notwithstanding, if any such damage, loss or destruction as described in Subparagraph 9.3 shall take place after 3/4 of the Initial Term or any Extended Term of this Lease shall have expired, Lessee shall have an option to declare this Lease ended and terminated, and notice of this election shall be given in writing by Lessee to Lessor within fifteen (15) days from the date of such loss or destruction.

10. INSURANCE.

10.1 The Lessee shall keep in effect, at its sole expense, a comprehensive general liability policy or policies covering the Leased Premises and providing coverage with a combined single limit of liability of not less than \$1,000,000 for property damage and bodily injury to one or more persons as the result of any one accident. The Lessee shall also keep in effect, at its expense, an occurrence based umbrella policy providing \$3,000,000 of overriding coverage above the base public liability policy limit specified above. Such policies shall name the Lessor as an additional insured, and a copy of such policy, or a certificate thereof, shall be delivered to Lessor.

10.2 The Lessee shall keep the buildings and improvements located on the Leased Premises insured against loss by fire and casualty, at its sole expense (with extended coverage) in an amount equal to its full replacement cost and against loss by boiler explosion in an amount deemed adequate by Lessor if there is a boiler on the premises. Such policy shall name the Lessor as an additional insured, and a copy of such policy, or a certificate thereof, shall be delivered to the Lessor.

10.3 The Lessee, at its sole expense, shall insure its trade fixtures and its other personal property or merchandise located in the Leased Premises against loss by fire or other casualty.

11. ASSIGNMENT, SUBLETTING AND DISCONTINUANCE OF OPERATIONS.

11.1 Assignment and Subletting. Lessee shall have the right to assign this Lease or to sublease the Leased Premises or any part thereof without the consent of Lessor.

11.2 Discontinuance of Operations. Lessee shall have the right to discontinue its operations in the Leased Premises without the consent of Lessor.

12. INDEMNITY.

12.1 Lessor's Indemnity. Lessor agrees to defend and indemnify, and shall hold Lessee harmless against all claims, judgments and demands of any person or persons whomsoever on account of injuries or accidents occurring in, on or about the Leased Premises as a result of willful or negligent acts or omissions of Lessor, its employees, agents or representatives.

12.2 Lessee's Indemnity. Lessee agrees to defend and indemnify and shall hold Lessor harmless against all claims, judgments and demands of any person or persons whomsoever on account of any injuries or accidents occurring in its Leased Premises as a result of willful or negligent acts or omissions of Lessee, its employees, agents or representatives.

13. DEFAULT.

13.1 Lessee's Default. In the event Lessee should default in payment of rental, Lessor shall give Lessee written notice of such default by certified mail, and Lessee shall have sixty (60) days from the date of receiving such notice to correct same. Should Lessee fail to correct such default in said sixty (60) day period, Lessor may, in addition to all other rights available to Lessor under the laws of the state in which the Leased Premises is located, at its option, terminate this Lease. In the event Lessee should fail to comply with any other provision of this Lease, Lessor shall give Lessee written notice of such default by certified mail. Should such default continue to exist at the expiration of ninety (90) days from the date of receipt

of such notice, and Lessee is not then engaged in prudent efforts to cure such default, Lessor may, in addition to all other rights available to Lessor under the laws of the state in which the Leased Premises is located, at its option, terminate this Lease. Should Lessee correct its default within the time provided or correct such default by action commenced during such time period and prudently pursued thereafter, then Lessee's rights hereunder shall be re-established as though said default had not occurred.

13.2 Lessor's Default. Should Lessor default in fulfillment of any of the covenants or agreements of this Lease and fail to correct such within sixty (60) days from receipt of written notice from Lessee of such default, (except for failure to make emergency repairs as set forth in subparagraph 7.5 hereof which shall not require sixty (60) days written notice), or in the event any representation or warranty made by Lessor is false, misleading or erroneous on any material respect, then Lessee, at its option, may (i) correct such default and deduct any and all cost as a result of such correction from rentals due or becoming due until Lessee shall be reimbursed in full for cost of such correction, or (ii) Lessee shall have the right, so long as default shall continue, to terminate this Lease.

14. REDELIVERY OF LEASED PREMISES. Lessee shall, at the termination of this Lease or any extension thereof, peacefully quit, surrender and deliver up to Lessor, its successors or assigns, the Leased Premises in good condition, with the exception of usual wear and tear, fire, the elements, civil riot, war, or other unavoidable casualty, loss or damage, regardless of the cause.

15. HOLDING OVER. In the event the Lessee should remain in possession of the Leased Premises after expiration of this Lease, without the execution of a new Lease, Lessee shall be deemed to be occupying the Leased Premises as a tenant from month to month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month to month tenancy.

16. REMOVALS BY LESSEE. Lessee shall have the right at any time prior to or upon termination or expiration of this Lease to remove any and all of its merchandise, machinery, equipment, counters, shelving, light fixtures, signs and other fixtures (regardless of the manner in which any of said items have been attached or fastened to the Leased Premises) which it owns and has placed in, upon and about the Leased Premises, as well as any and all personal property located in said Leased Premises and owned by Lessee at such time. In

removing such personal property, Lessee shall not materially injure or damage the Leased Premises and any such material damage resulting shall be repaired at the expense of Lessee. It is understood that a bona fide dispute between Lessor and Lessee as to rental claimed to be due shall not operate to prevent removal of property by Lessee pursuant to this paragraph, but in such event Lessee shall have the right to remove the same as if no rental were then due. Lessor hereby waives rights, security interest or any "Landlord's Lien" whether by statute or common law in Lessee's personal property.

17. NOTICES. All notices required or options granted under this Lease shall be given or exercised in writing, and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, or (ii) sent by telegram, or (iii) personally delivered to the address hereinafter identified. Except as herein otherwise specifically provided to the contrary, the effective date of such notice or exercise of any option shall be the date which is stamped by the United States Post Office Department on the envelope enclosing same, the date of the telegram or the date on which personal delivery is made. The parties hereto shall not refuse to accept delivery of said notices.

17.1 Addresses. Until changed by written notice from the appropriate party to the other, the addresses of the parties are and shall be:

LESSOR: King-Larsen, Inc.  
Box 330  
Webster, WI 54893  
Attention: Terry R. Larsen

LESSEE: Gateway Foods, Inc.  
1637 St. James Street  
La Crosse, WI 54602-1957  
Attn: President  
Copy: Legal Department

17.2 Rental Payment Address. Until appropriately changed by thirty (30) days written notice to Lessee, rental payments hereunder shall be made to Lessor either by mail or otherwise as follows:

First Wisconsin Bank of Grantsburg  
P.O. Box 69  
Grantsburg, WI 54840  
Attention: Kathy Hansen

In the event the rental payment address is changed in connection with the transfer of beneficial interest in the Leased Premises, Lessee shall not be required to comply with such notice unless the same is accompanied by evidence satisfactory to Lessee of such change of ownership, and any payments made by Lessee prior to receiving such satisfactory evidence shall be deemed properly paid.

18. AUTHORITY. Each party hereto affirms and states that it has full right and authority to enter into and perform this Lease Agreement.

19. MEMORANDUM OF LEASE. The Lessor agrees that it will not record this Lease, but will at any time, at the request of Lessee, execute a Memorandum of Lease, in the form of Exhibit "C" attached hereto, which will set forth a legal description of the Real Property, the term of the Lease and any other provisions hereof as Lessee may request, and Lessee may, at its option, record such Memorandum of Lease in the real property records of the county in which the Real Property is located.

20. SUBORDINATION AND NON-DISTURBANCE. The Lessee agrees that it will obtain execution of a Subordination and Non-Disturbance Agreement in the form of Exhibit "D" attached hereto which will subordinate Lessee's interest hereunder to the interest of any mortgagee holding a mortgage lien on the Leased Premises, if the mortgagee requires such a subordination; provided, however, such subordination shall be subject to the non-disturbance provisions contained therein.

21. MISCELLANEOUS.

21.1 Modifications to Lease. Lessor and Lessee agree that no alterations, changes or modifications of this Lease shall be effective unless made in writing and executed in the same manner as is this present instrument and specifically agree that no verbal or oral changes are effective.

21.2 Partial Invalidity. Should any clause or provision of this Lease be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect.

21.3 Descriptive Headings. The descriptive headings of the paragraphs of this Lease are for convenience only and shall not be used in the construction of the contents hereof.

21.4 Binding Effect. It is covenanted between the parties hereto that all covenants and undertakings in this Lease contained shall extend to and be binding upon the respective successors and assigns of the parties hereto. The covenants and agreements contained herein shall run with the land and continue for the term of this Lease and any extension thereof.

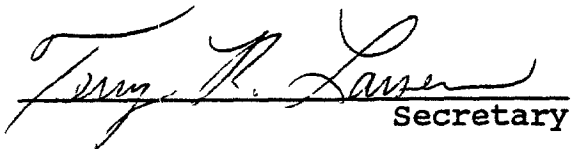
21.5 Non-Waiver. Any assents, expressed or implied, by Lessor or Lessee to any breach of any specific covenant or condition herein contained, shall not be construed as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof.

21.6 Lessee's Use. Lessee may use the Leased Premises for any lawful purpose.

21.7 Choice of Law. This Lease shall be governed by and construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the Lessor and Lessee have executed and delivered this Lease on the date first above written.

ATTEST: "LESSOR": KING-LARSEN, INC.

  
Secretary

By: \_\_\_\_\_  
Wayne King, President

[SEAL]

ATTEST: "LESSEE": GATEWAY FOODS, INC.  
a Wisconsin corporation

\_\_\_\_\_  
Asst. Secretary

By: \_\_\_\_\_  
President

[SEAL]

**EXHIBIT "A"**

**Site Plan**

[To Be Attached]



**EXHIBIT "B"**

**Real Property Legal Description**

All that tract and parcel of land located in Burnett County, Wisconsin, described as follows:

Lot 1 of Certified Survey Map, Volume 2, page 78 as recorded in the Office of the Register of Deeds for Burnett County, Wisconsin, excepting therefrom Certified Survey Map, Volume 2, page 91 as recorded in the Office of the Register of Deeds for Burnett County, Wisconsin. Also excepting a parcel of land 50 feet wide lying adjacent to and east of the east Boundary line of that parcel conveyed to Lloyd Kallman by way of a Warranty Deed dated April 22, 1977, which deed was recorded in the Office of the Register of Deeds for Burnett County, Wisconsin, on May 4, 1977 in Volume 31 of Records, page 422. Also excepting the West 184 feet of said Lot 1, except the South 66 feet thereof.

EXHIBIT "C"

Memorandum of Lease

This Memorandum of Lease made and entered into the \_\_\_\_ day of April, 1991, by and between KING-LARSEN, INC., a Wisconsin corporation, ("Lessor") and GATEWAY FOODS, INC., a Wisconsin corporation ("Lessee").

Recitals

Lessor and Lessee have entered into a Lease dated April \_\_\_\_, 1991, (the "Lease"), covering premises known as 237 West Skyline Drive, Grantsburg, Wisconsin, as described in Exhibit "A" attached hereto.

The parties desire to record a memorandum of said Lease in the office of the Register of Deeds of Burnett County, State of Wisconsin.

NOW, THEREFORE, Lessor and Lessee hereby state the following for recording:

1. The term of said Lease is for a period of fifteen (15) years, commencing April \_\_\_\_, 1991, and ending April 30, 2006, with three (3) five (5)-year options to extend.

2. The Lease contains provisions for payment of rent, for quiet possession and attornment and other provisions, all of which are incorporated herein by reference.

3. This Memorandum of Lease is solely for recording purposes and shall not be construed to alter, modify or supplement the Lease of which this is a Memorandum.

IN WITNESS WHEREOF, this Memorandum of Lease has been duly executed by the parties hereto as of the date first above written.

"LESSOR": KING-LARSEN, INC.

By: \_\_\_\_\_  
Wayne King, President

"LESSEE": GATEWAY FOODS, INC.

By: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF WISCONSIN       )  
                                  ) ss.  
COUNTY OF                   )

Personally came before me this \_\_\_\_ day of April, 1991, the above named Wayne King, President of King-Larsen, Inc., to me known to be the person who executed the foregoing instrument and acknowledged that he executed the same for the said corporation by its authority.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission: \_\_\_\_\_

STATE OF WISCONSIN       )  
                                  ) ss.  
COUNTY OF LA CROSSE       )

Personally came before me this \_\_\_\_ day of April, 1991, the above-named Rudolph A. Comchoc, the President of Gateway Foods, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged that they executed the same for the said corporation by its authority.

\_\_\_\_\_  
Notary Public, State of WI  
My Commission: \_\_\_\_\_

This instrument was drafted by:

Christopher A. Butler  
Corporate Counsel  
1637 St. James Street  
La Crosse, WI 54603

EXHIBIT "D"

Subordination and Non-Disturbance Agreement

THIS AGREEMENT, made as of the \_\_\_\_ day of April, 1991, by and between \_\_\_\_\_, a Wisconsin corporation (hereinafter referred to as the "Mortgagee"), and GATEWAY FOODS, INC., a Wisconsin corporation (hereinafter referred to as the "Lessee");

W I T N E S S E T H

WHEREAS, the Lessee has entered into a certain Lease dated April \_\_, 1991, (hereinafter referred to as the "Lease") with King-Larsen, Inc., a Wisconsin corporation, (hereinafter referred to as the "Lessor"), which Lease covers retail store space (hereinafter referred to as the "Leased Premises") located at 237 West Skyline Drive, Grantsburg, Wisconsin, which is located on the real property more particularly described on Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Property"); and

WHEREAS, the Lease is evidenced of record by Memorandum of Lease recorded in Volume \_\_\_\_, page \_\_\_\_ of the records of the \_\_\_\_\_ of Burnett County, Wisconsin; and

WHEREAS, the Mortgagee is the holder of a certain mortgage dated \_\_\_\_\_, executed by Lessor, covering the Property, and recorded in Volume \_\_\_\_, page \_\_\_\_ of the records of Burnett County, Wisconsin (hereinafter referred to as the "Mortgage"); and

WHEREAS, the Mortgagee has agreed to the extension of credit secured by the Mortgage provided that the Lease is subordinated to the lien of the Mortgage; and

WHEREAS, the Lessee desires to be assured of continued occupancy of the Leased Premises under the terms of said Lease and subject to the terms of the Mortgage; and

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Said Lease is and shall be subject and subordinate to the Mortgage and the lien thereof as it affects the Property of which the Leased Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions of such Mortgage, as fully and as if the Mortgage and all of its renewals, modifications, consolidations, replacements and extensions had been executed, delivered and recorded prior to execution of the Lease.

2. In the event of foreclosure of the Mortgage, the Mortgagee thereunder will not join the Lessee under said Lease in foreclosure proceedings so long as: (a) the Lessee is not in default under any of the terms, covenants or conditions of said Lease, or (b) any applicable cure period under the Lease for Lessee's default has not expired.

3. It is the express intent of the parties hereto that a foreclosure of the Mortgage or the exercise of any other remedies provided therein, or provided in any other instrument securing the indebtedness secured by the Mortgage, or the delivery of a deed to the Property in lieu of foreclosure shall not, of itself, result in the termination of the Lease, but any purchaser or other grantee upon foreclosure of the Mortgage or conveyance in lieu of foreclosure shall thereby automatically succeed to the position of the Lessor under the Lease.

4. If, by disposition, foreclosure or otherwise, the Mortgagee, its successors or assigns, or any purchaser at a foreclosure sale, or otherwise shall come into possession or become the owner of the Property, such person shall succeed to the interest of the Lessor under said Lease, and the Lease shall take effect as a lease of the Leased Premises, together with all of the rights and privileges therein contained, between such person and the Lessee for the balance of the term of the Lease between the Lessor and the Lessee; the Lessee agrees to attorn to and accept such person as Lessor under said Lease, and to be bound and to perform all of the obligations imposed by said Lease upon the Lessee therein, and the Mortgagee, its successors or assigns, or any purchaser at a foreclosure sale or otherwise will not disturb the possession of the Lessee, and will be bound by all of the obligations imposed by said Lease upon the Lessor therein.

5. Upon the written request of either Lessee or Mortgagee to the other given after a foreclosure of the Mortgage or conveyance in lieu of foreclosure, which covers the Leased

Premises, the said parties agree to execute a Lease of the Leased Premises upon the same terms and conditions as said Lease between the Lessor and the Lessee, which Lease shall cover any unexpired term of said Lease existing prior to such foreclosure or conveyance in lieu of foreclosure.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date first above written.

ATTEST: "Mortgagee" \_\_\_\_\_  
a Wisconsin Banking corporation

\_\_\_\_\_  
Secretary By: \_\_\_\_\_  
[SEAL] President

ATTEST: GATEWAY FOODS, INC.  
a Wisconsin corporation

\_\_\_\_\_  
Asst. Secretary By: \_\_\_\_\_  
[SEAL] President

STATE OF WISCONSIN )  
                          ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 1991, by \_\_\_\_\_,  
President and \_\_\_\_\_, Secretary, of  
\_\_\_\_\_, a Wisconsin banking corporation, on  
behalf of the corporation.

[SEAL] \_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

STATE OF WISCONSIN - )  
 ) ss.  
COUNTY OF LA CROSSE )

The foregoing instrument was acknowledged before me this  
\_\_\_ day of April \_\_\_, 1991, by Rudolph A. Comchoc, President  
and Terrance V. Helz, Assistant Secretary, of Gateway Foods,  
Inc., a Wisconsin corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
My Commission expires:\_\_\_\_\_

[SEAL]

# GRINDELL LAW OFFICES, S.C.

105 West Oak Street, PO Box 585  
Frederic, Wisconsin 54837  
Telephones 715-327-5561 715-327-8925  
Facsimile 715-327-4598

John Grindell  
David L. Grindell

Robert L. Grindell  
1914-2000

August 13, 2003

Bankruptcy Management Corporation  
P O Box 900  
El Segundo, CA 90245-0900

RE In re Fleming Companies, Inc  
Case No 03-10945

To Whom It May Concern

Enclosed for filing is the original and one copy of the Proof of Claim of creditor King-Larson, Inc regarding the above referenced bankruptcy action

Please return the acknowledgment copy to me in the enclosed envelope

Thank you

Very truly yours,

GRINDELL LAW OFFICES, S C



John Grindell

JG lg

v Encl

cc King-Larson, Inc /encl