

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

PROOF OF CLAIM



Bar Date Ref #

In re Fleming Companies, Inc. et al. Case Number 03-10145 (Fw)

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.

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.

Name of Creditor and Address

0354653000000

Ivie & Associates Inc
900 Parker Square Ste #250
Flower Mound TX 75028

Creditor Telephone Number ()

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

CREDITOR TAX ID # 42-1412863

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)

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 \$ 276,295.00 (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 _____

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) _____

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

THIS SPACE FOR COURT USE ONLY

FILED

SEP 05 2003

BMC

Fleming Companies Claim

08329

DATE SIGNED 9/2/03 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)

Jerry Jerry - Gary Long - CFO

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

Ivie & Associates, Inc
Fleming Bankruptcy Claim Summary
Case Number 03-10945 (MFW)
Prepared 9/2/03

Sales 1/1/03 thru 8/29/03	\$	25 959 985
Rebate %		3%
Rebate \$ earned		<u>778,800</u>

Rebate issued to date *	\$	1,069,095
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Amount due Ivie	\$	290,295
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* The amount rebated to Fleming during the early part of 2003 was issued at the 5% level based on an anticipated volume in excess of \$50,000,000 See page 10 of the Advertising Services Agreement Actual invoice copies available on request Not sent with Proof of Claim due to volume

Prepared by
Gary Long
Chief Financial Officer
Ivie & Associates, Inc
900 Parker Square, Suite 250
Flower Mound, Texas 75028
(972) 899-5354

ADVERTISING SERVICES AGREEMENT

THIS ADVERTISING SERVICES AGREEMENT ("Agreement") is made and effective as of the 1st day of October, 2002 (the "Effective Date"), between Ivie & Associates, Inc ("Ivie"), an Iowa corporation, and Fleming Companies, Inc ("Fleming"), an Oklahoma corporation

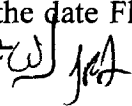
WHEREAS, Fleming desires to outsource to Ivie the advertising services that Fleming currently provides to company owned stores and certain of its customers, as such services are described in Exhibit A (the "Services"), and

WHEREAS, Ivie desires to provide the Services to Fleming and to Fleming's customers on Fleming's behalf, and

NOW, THEREFORE, for and in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fleming and Ivie agree as follows

1 Term and Services

1.1 Commencing on the Effective Date and continuing thereafter through October 31, 2007 (the "Term") Ivie will provide the Services to Fleming and Fleming's customers listed on Schedule 1.1 (collectively, the "Customers") Schedule 1.1 may be amended as existing customers leave and/or new customers are added

1.2 Commencing on the Effective Date, Fleming and Ivie will work together to establish an invoicing process which will allow Ivie to submit invoices to Fleming in a format compatible with Fleming Drop Shipment Delivery invoicing program (the "Invoicing Process") Ivie shall assume all invoicing responsibilities as contemplated by Section 3 of this Agreement upon the earlier of (1) the date Fleming and Ivie successfully establish the Invoicing Process or ~~(1) September 31, 2002~~ 

1.3 Ivie warrants and represents that it will provide and perform the Services in a professional and timely manner in accordance with all applicable laws and industry standards Ivie will cause its employees to interact with the Customers in a courteous manner In addition, Ivie agrees that all data, documents and information furnished to Ivie by either Fleming or a Customer along with all analyses, compilations, notes, recommendations or other documents prepared by Ivie containing or based in whole or in part on such data, documents or information will be kept in the strictest confidence and will be used by Ivie solely for the purpose of providing the Services in accordance with this Agreement

1.4 Fleming will notify all Customers of the approximate date that Ivie will be performing the Services. Notwithstanding the foregoing, Fleming makes no representations or warranties to Ivie with respect to number of Customers which will remain with Ivie after the Effective Date or the total revenue Ivie may obtain through this Agreement and any such representations or warranties are specifically denied.

1.5 Not later than the Effective Date, Fleming will deliver to Ivie supporting documentation and any other data that are in Fleming's possession which relate to pending advertising projects contracted by Fleming for the Customers, as are reasonably required by Ivie in order to perform the Services.

1.6 Each party agrees to act in good faith in the performance of this Agreement.

2 Sublease of Space, Purchase of Equipment

2.1 During the Term and subject to landlord approval, Fleming shall use its best efforts to sublease to Ivie a designated portion of Fleming's leased space located at the Lake Park Tower Office, 6525 N Meridian, Oklahoma City for use in providing the Services to the Customers. Ivie will reimburse Fleming for rent and other amounts payable by Fleming pursuant to the master lease on a pro rata basis based upon the square feet of the designated portion. Fleming will attempt to obtain all necessary landlord consents and agreements in writing promptly following the Effective Date. The parties agree to execute a sublease agreement substantially in the form attached as Exhibit B. In the alternative, Fleming may arrange to have Ivie lease such space directly from the landlord upon terms and conditions substantially set forth in Exhibit B. Furthermore, Fleming shall use its best efforts to provide Ivie with furnished work space at Fleming's Customer Support Center in Lewisville, Texas for up to seven (7) Ivie employees as well as individual work space for Ivie employees to be located within specific divisions of Fleming, on a cost free basis to Ivie. Upon the expiration or termination of this Agreement for any reason, Ivie shall vacate any space occupied pursuant to this Section 2.1.

2.2 Promptly following the Effective Date, Fleming shall execute the Bill of Sale attached hereto as Exhibit C wherein Fleming conveys to Ivie all rights of Fleming in certain furniture and equipment utilized by Fleming's Advertising Department, as more particularly described therein.

3 Fees

3.1 Fleming will deliver a payment to Ivie in the amount of \$1,040,000.00 (the "Prepayment") within seven (7) days following the start of every Period. The foregoing payment shall be applied in equal amounts to each weekly invoice billed to Fleming during each Period. For example, if the applicable Period contains four (4) weeks, then Ivie shall apply \$260,000 to each invoice. For the purposes of this Agreement, a "Period" shall mean any of the thirteen (13) four (4) week periods into which Fleming divides each calendar year for Fleming's internal accounting purposes.

3.2 Ivie will bill Fleming weekly for the Services that Ivie performs for Fleming and the Customers in accordance with the fee structure described in Section 3.4. Each invoice shall be in such detail as Fleming may reasonably request and shall clearly show the Prepayment allocation as required under Section 3.1. The balance of all undisputed amounts for Services provided to Fleming will be due and payable ten (10) days from the date of each invoice (assuming such invoices are delivered on such date). The balance of all undisputed amounts for Services provided to Customers, less the Allowance described in Section 3.4, will be due and payable fifteen (15) days from the date of each invoice (assuming such invoices are delivered on such date). Fleming shall invoice and collect from the Customers amounts billed on each invoice for Services provided to such Customers. Fleming shall use commercially reasonable efforts to assist Ivie in resolving disputes with the Customers, provided, however, in no event shall Fleming bear the risk of loss of non-collection of such amounts from the Customers. Fleming will have the right to offset any amounts payable to Ivie if and so long as a corresponding amount is being disputed by Fleming or a Customer, or is otherwise not paid by a Customer. Fleming agrees to communicate to Ivie all information provided to Fleming by a Customer who disputes its bill.

3.3 For a period commencing on the Effective Date and continuing for one (1) year thereafter, all Services performed by Ivie to retail stores owned and operated by Fleming shall be provided without cost or expense to Fleming, up to a maximum of \$500,000, provided, however, Ivie will invoice Fleming and Fleming will reimburse Ivie for all reasonable hard costs incurred by Ivie in the production of such Services (such as actual cost of paper, printing and newspaper insertion).

3.4 Commencing upon the Effective Date, Ivie shall provide the Services at the rates offered at that time by Fleming to the Customers. Thereafter, Ivie shall charge competitive market rates to Fleming and the Customers. Ivie and Fleming agree to meet periodically during the Term to ensure that the fees charged by Ivie under this Agreement are competitive and to discuss possible alternatives to reduce the costs of providing the Services. Fleming shall retain an allowance (the "Allowance") on all Services performed by Ivie for the Customers in accordance with the Allowance Schedule attached as Schedule 3.4. Fleming shall retain the appropriate Allowance from payments submitted to Ivie on each invoice for Customers and Ivie hereby consents to the retainages described in this Section 3.4.

Fleming and Ivie estimate that the annual gross volume of Services to be billed under this Agreement will be \$50,000,000.00. Therefore, the parties agree that the Allowance shall be retained at the five percent (5%) level. Upon the close of the thirteenth Period, Fleming and Ivie shall reconcile the actual annual gross volume with the actual amount of the Allowance retained by Fleming and any difference shall be paid within thirty (30) days following the close of such thirteenth Period. The parties further agree that all services provided by Fleming prior to the Effective Date shall count towards the current year annual gross volume.

3.5 Ivie agrees that Fleming or its duly appointed accountant, at Fleming's expense, may inspect the books and records of Ivie solely for the purposes of ascertaining and verifying the amounts of fees billed by Ivie regarding the Services.

4 Termination

4.1 Either party may terminate this Agreement for any material breach by the other party of its obligations hereunder or under any related agreement if the breach continues for a period of one (1) month following written notice of default identifying the breach and demanding its cure. In the event of such termination, the parties will fulfill their respective obligations hereunder accrued and outstanding at time of termination.

4.2 Upon the first twelve (12) month anniversary following the Effective Date, or any time thereafter, Fleming may terminate this Agreement upon not less than ninety (90) days notice to Ivie. Upon any termination by Fleming pursuant to this Section 4.2, Ivie shall (i) complete all work commenced by Ivie prior to receiving notice of termination, (ii) pay to Fleming any outstanding Allowance earned by Fleming under Section 3.4 and (iii) cooperate with Fleming in transitioning the Services to the successor company designated by Fleming.

4.3 If Ivie for any reason terminates this Agreement except as provided in Section 4.1 above, then Ivie (i) will notify Fleming, in writing, six (6) months prior to the proposed effective date of such termination, (ii) will cooperate with Fleming during the six (6) month period with transitioning the Services to a successor company designated by Fleming and (iii) shall not, directly or indirectly, provide Services to the Customers for a period of two (2) years following the effective date of such termination.

5 Confidentiality Each party agrees to hold in confidence and not use for any purpose except relating to performance of this Agreement the confidential information of the other party, provided, however, that the following will in no event be deemed confidential: (i) information which at any time comes into the public domain through no fault of the recipient party, (ii) information disclosed to the recipient party by a third party owing no duty of confidentiality to the other party to this agreement, (iii) information required to be disclosed by law or judicial order.

6 Indemnification

6.1 Ivie will indemnify, defend and hold harmless Fleming, its affiliates and their employees, officers, directors, and shareholders against, for and from any third-party lawsuits, actions, claims, proceedings, investigations, charges, complaints, judgments, penalties, fines, damages amounts paid in settlement, losses, expenses and fees (including courts costs and attorneys' fees) (collectively, the "Adverse Consequences") in any manner resulting from, arising out of, based upon or related to Ivie's acts or omissions in performing under this Agreement or any related agreements.

6.2 Fleming will indemnify, defend and hold harmless Ivie its affiliates and their employees, officers, directors, and shareholders against, for and from any Adverse Consequences in any manner resulting from, arising out of, based upon or related to Fleming's acts or omissions in performing under this Agreement or any related agreements.

6.3 If a third party notifies any indemnified party with respect to any matter which may give rise to a claim for indemnification against the other party under this Article 6 (a "Claim"), the indemnified party will promptly give written notice of such Claim to the indemnifying party, describing such Claim with reasonable specificity, *provided, however*, that the failure to give such notice will not affect the right of the indemnified party to indemnification hereunder except to the extent that such failure prejudices the ability of the indemnifying party to defend any Claim. The indemnifying party will be entitled to assume the defense of such Claim with legal counsel of its choice reasonably satisfactory to the indemnified party so long as (i) the indemnifying party notifies the indemnified party in writing within thirty (30) calendar days after the indemnified party has given notice of the Claim that the indemnifying party will indemnify the indemnified party from and against the Adverse Consequences the indemnified party may suffer resulting from or arising out of the Claim, and (ii) the indemnifying party conducts the defense of the Claim actively and diligently.

6.4 In the event that such indemnifying party, within thirty (30) days after written notice of any such Claim, fails to defend any indemnified party, such indemnified party will (upon further written notice to such indemnifying party) have the right to undertake its defense of such Claim for the account of such indemnifying party and to have its reasonable expenses reimbursed promptly and periodically with respect to such Claim. The indemnifying party will remain responsible for any Adverse Consequences the indemnified party may suffer resulting from or arising out of the Claim.

6.5 Regardless of which party is controlling the defense of any Claim (i) both the indemnifying party and the indemnified party will act in good faith, and (ii) no settlement of such Claim may be agreed to without the written consent of the indemnifying party (not to be unreasonably withheld).

7 Insurance

7.1 During the Term, Ivie will maintain (i) Commercial General Liability Insurance with Per Occurrence and Personal/Advertising Injury & Property Damage limits of not less than \$1,000,000 per occurrence and subject to a general aggregate limit of not less than \$2,000,000, and (ii) a Products and Completed Operations aggregate limit of not less than \$2,000,000. Fleming, its subsidiaries, officers, directors, partners, employees and agents will be named as additional insureds under the policy. Said policy will be written on an Occurrence Form and will include coverage for contractual liability.

7.2 During the Term, Ivie will maintain Workers Compensation Insurance with limits of not less than the applicable statutory requirements. Said policy will be endorsed to include Employers Liability Insurance for Bodily Injury By Accident with limits of not less than \$1,000,000 (each accident), Bodily Injury By Disease with limits of not less than \$1,000,000 (policy limit) and Bodily Injury By Disease with limits of not less than \$1,000,000 (each employee). Ivie employees, its agents or subcontractors are not to be construed as employees of Fleming.

7.3 The insurance policies required to be maintained hereunder by Ivie, will (i) be maintained with one or more insurance companies which have an A.M. Best rating of A-VII or greater, are reasonably acceptable to Fleming and authorized to do business in the jurisdiction where the Ivie work or service is to be performed, and (ii) provide coverage for Ivie's indemnification obligations arising in connection with the performance of the Services under this Agreement. Ivie will furnish to Fleming, at Fleming's request, certificates of such insurance, and will notify Fleming at least thirty (30) days prior to cancellation, non-renewal or material change of any such insurance.

7.4 The described coverages in Sections 7.1 and 7.2 will be required to be primary to and without contribution from any policies obtained by Fleming, or its subsidiaries. Policies referred to in Sections 7.1 and 7.2 will provide or be endorsed to provide that such insurance is primary insurance with respect to Fleming or its subsidiaries and any other insurance maintained by Fleming, or its subsidiaries is excess and not contributory with the insurance maintained by Ivie. Ivie agrees to waive and will require its insurers providing the coverage in Sections 7.1 and 7.2 above, to waive any rights of subrogation or recovery they may have against Fleming or its subsidiaries.

8 Disputes, Arbitration

8.1 The parties hereto agree that all disputes between them relating to this Agreement and any related agreement are to be resolved by arbitration as provided herein. This Agreement to arbitrate will survive the rescission or termination of this Agreement. All arbitration will be conducted in Dallas, Texas pursuant to the Commercial Arbitration Rules of the American Arbitration Association except as herein may be provided. The panel used will be selected by the American Arbitration Association based on the matter being arbitrated and the decision of the arbitrators will be final and binding on all parties. All arbitration will be undertaken pursuant to the Federal Arbitration Act, where applicable, and the decision of the arbitrators will be enforceable in any court of competent jurisdiction.

8.2 In any dispute where a party seeks \$50,000 or more in damages, three arbitrators will be employed. All costs attendant to the arbitration, excluding attorneys' and experts' fees, will be borne equally by the parties. Each party will bear its own attorney's and expert's fees. **The arbitrators will not award special, indirect, incidental, punitive, consequential (including loss of profits or revenues) or indirect damages or any other remedy inconsistent with this Agreement.** Each party has waived such damages, and any monetary damages will be limited to direct damages as aforesaid. In resolving all disputes between the parties, the arbitrators will apply the law of the State of Oklahoma, except as may be modified by this Agreement. The arbitrators are by this Agreement directed to conduct the arbitration hearing no later than three months from the service of the statement of claim and demand for arbitration unless good cause is shown establishing that the hearing cannot fairly and practically be so convened.

8.3 Except as needed for presentation in lieu of a live appearance, depositions will not be taken except by agreement of the parties or with the approval of the arbitrators. Parties will be entitled to conduct document discovery by requesting production of documents.

Responses or objections will be served twenty days after receipt of a request. The arbitrators will resolve any discovery disputes by such prehearing conferences as may be needed. All parties agree that the arbitrators and any counsel of record to the proceeding will have the power of subpoena process as provided by law.

9 General Provisions

9.1 This Agreement will be governed by and construed in accordance with the laws of the State of Oklahoma, without reference to such state's conflicts of laws provisions.

9.2 Either party may assign this Agreement with only the written consent of the other, such consent not to be unreasonably withheld.

9.3 No waiver of any provision or any breach of this Agreement will be effective hereunder unless contained in a writing signed by the party sought to be charged with such waiver.

9.4 Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirements, civil or military authority, act of God, or other causes beyond such party's reasonable control.

9.5 If any clause of this Agreement will be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable this entire Agreement, and such clause will be severed from this Agreement to the minimum extent necessary to avoid such invalidity or unenforceability, and the rights and obligations of the parties will be construed and enforced accordingly.

9.6 This Agreement will not provide third parties with any remedy, cause, liability, reimbursement, claim of action or other right in law or in equity. There are no third party beneficiaries of this Agreement.

9.7 This Agreement, together with its exhibits and schedules, will constitute the entire agreement between the parties governing the subject matter of this Agreement. The provisions of this Agreement supersede all prior oral and written promises, representations, communications, agreements and understandings of the parties in respect to the subject matter of this Agreement. This Agreement and its schedules and exhibits may be amended or modified only by authorized representatives of each party agreeing to any such amendment or modification in writing.

9.8 Unless otherwise provided herein, each of the parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

9 9 Both parties acknowledge that (i) Ivie is an independent contractor, (ii) no partnership or joint venture between the parties is created as a result of this Agreement, and (iii) no party has the authority to bind the other

9 10 All persons employed by Ivie in connection with its performance of this Agreement shall be Ivie employees, and not the employees or agents of Fleming All persons employed by Fleming in connection with its performance of this Agreement shall be Fleming employees, and not the employees or agents of Ivie

9 11 All notices, demands, claims and other communications hereunder will be in writing and will be given by (i) personal delivery, (ii) mailed by registered or certified mail, or (iii) by overnight courier, addressed to the recipient as set forth below

If to Ivie Ivie & Associates, Inc
900 Parker Square, Suite 250
Flower Mound, TX 75028
Attn Warren Ivie
Facsimile _____

If to Fleming Fleming Companies, Inc
1945 Lakepointe Drive
Lewisville, TX 75057
Attn Tim LaBeau
Facsimile 972-906-_____

With a copy to Fleming Companies, Inc
1945 Lakepointe Drive
Lewisville, TX 75057
Attn Legal Department
Facsimile 972-906-2322

Either party may, by written notice to the other, designate a new address and/or person to which notices to the party giving the notice will thereafter be sent

IN WITNESS WHEREOF, this Agreement has been executed and delivered by a duly authorized representative as of the date first set forth above

IVIE & ASSOCIATES, INC
BY Warren Ivie
TITLE President
DATE 10-15-02

FLEMING COMPANIES, INC
BY Timothy A. LaBeau
TITLE SVP Operations
DATE 10/15/02

SCHEDULE 1 1

Customers

SCHEDULE 3 4

Allowance Schedule

If the Gross Annual Volume is	Then the Allowance shall be
\$0 - \$34,999,999	3 00%
\$35,000,000 - \$39,999,999	4 00%
\$40,000,000 - \$44,999,999	4 50%
\$45,000,000 - \$49,999,999	4 75%
\$50,000,000 - \$54,999,999	5 00%
\$55 000,000 - \$59,999,999	5 25%
\$60 000,000 - \$64,999,999	5 50%
\$65,000,000 or greater	6 00%

EXHIBIT "A"

Description of Services

- 1 Execute communications plans based on marketing objectives and strategies developed by Fleming and/or Fleming Independent Retailer/s. If possible, we will endeavor to relate these plans to measured objectives to determine effectiveness. We will also assist in developing marketing objectives and strategies if desired.
- 2 Provide all creative, production and media services to develop advertisements, commercials, media advertising plans, direct mail, brochures and other projects as required by the plan and as agreed to by Fleming and/or Fleming Independent Retailer/s. Arrange photography, printing, display construction, publicity, etc as needed. Carry through production in all aspects to completion.
- 3 Provide continuous, as-needed, account service and consultation to ensure prompt completion of projects.
- 4 Maintain internal procedures that ensure budget control, prompt billing and quality control.
- 5 Ivie will submit the following to Fleming and/or Fleming Independent Retailer/s for approval: all advertising plans and campaigns, copy, layouts, artwork, storyboards and scripts, media schedules, cost estimates of these various items when required, and other specified projects. Ivie will therefore require Fleming's authority before ordering production materials, making contracts with suppliers and making reservations or contracts for media space or time.

EXHIBIT "B"

Sublease Form

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is entered into as of the ____ day of October, 2002 by and between Fleming Companies, Inc., an Oklahoma corporation (hereinafter referred to as "Sublandlord") and Ivie & Associates, Inc., a(n) Iowa corporation (hereinafter referred to as "Subtenant")

WHEREAS, Sublandlord is the tenant of certain office space located at 6525 North Meridian, Oklahoma City, Oklahoma, together with certain parking and service areas adjacent thereto (the "Premises") under a lease between Sublandlord and Domain Lake Park Associates, successor by assignment from The Equitable Life Assurance Society of the United States (the "Prime Landlord") dated November 13, 1996, as amended by First Amendment to Office Lease dated June 16, 1998, Second Amendment to Office Lease dated April 19, 1999, Third Amendment to Office Lease dated September 30, 1999 and Fourth Amendment to Office Lease dated August 4, 2000 (collectively, the "Lease"), and

WHEREAS, Sublandlord and Subtenant are parties to that certain Advertising Services Agreement of even date herewith (the "Related Agreement") wherein Subtenant agreed to provide certain advertising services to Sublandlord and customers of Sublandlord, and

WHEREAS, Subtenant desires to sublease a portion of the Premises from Sublandlord to be used in connection with Subtenant's performance of services under the Related Agreement and Sublandlord has agreed to sublease such space upon the terms and conditions contained herein

NOW, THEREFORE, in consideration of the terms, covenants, conditions and agreements contained herein, the parties hereto agree as follows

1 Sublease Sublandlord hereby subleases to Subtenant the portion of the Premises illustrated by crosshatching on Exhibit "A" (the "Subleased Space") and Subtenant subleases the Subleased Space from Sublandlord subject to all terms and conditions contained in the Lease, except for the term, rental, assignment, subletting, use, renewal, discontinuance of operations, right of first refusal and option to purchase provisions of the Lease, if any, and except as otherwise set forth herein. In addition, in no event shall Subtenant have the right to receive any payments due from Prime Landlord under the Lease. To the extent not inconsistent with this Sublease, the terms of the Lease are hereby incorporated into this Sublease by reference. Sublandlord shall have all of the rights of Prime Landlord under the Lease. A true and correct copy of the Lease is attached hereto as Exhibit "B"

2 Term This Sublease shall commence on the date hereof (the "Commencement Date") and continue thereafter for a term expiring on July 31, 2006 (the "Term") Notwithstanding any provision herein to the contrary, this Sublease shall automatically terminate upon the expiration or termination of the Lease and/or Related Agreement for any reason In no event shall Subtenant have the right to exercise any options to extend the term of the Lease that may be available to Sublandlord under the Lease

3 Rent Commencing on the Commencement Date, Subtenant shall pay to Sublandlord monthly base rent ("Base Rent") for the Subleased Space as follows

Commencement Date – July 31, 2004 \$ _____
August 1, 2004 – July 31, 2006 \$ _____

Base Rent shall be payable in advance, without demand, offset or deduction, on the first (1st) day of each month during the Term A partial month's payment shall be due on the Commencement Date if the Commencement Date is other than the first (1st) day of a month

4 Utilities Subtenant shall be responsible for all utilities servicing the Subleased Space during the Term

5 Assumption Agreement and Covenants Subtenant hereby assumes and shall faithfully and promptly make all payments and perform all obligations and duties imposed on Sublandlord as lessee under the Lease, including without limitation, any obligations to maintain and repair the Premises, to make payments or contributions for taxes, special assessments, insurance and any other payments required to be made by Sublandlord, not to commit or suffer waste, not to use the Premises for any unlawful purposes, and, at the termination of this Sublease, to surrender the Premises in good condition, reasonable wear and tear excepted and in the condition required by the Lease Any and all payments required under the Lease and this Sublease to be made by Subtenant as aforementioned shall be made in a timely manner directly to Sublandlord

6 Default Upon any failure of Subtenant to pay Base Rent or other payments when due, or any failure of Subtenant to perform any of its other covenants required to be performed by Subtenant under this Sublease after five (5) days written notice of such default, Sublandlord shall have all remedies available at law or in equity, including, without limitation, the right, at its option, to terminate this Sublease and re-enter and repossess the Subleased Space

7 Subtenant Indemnity, Waiver of Subrogation Subtenant shall defend, indemnify and hold Sublandlord harmless from any and all damages, costs, losses and expenses (including reasonable attorney fees) resulting in any way from Subtenant's occupancy of the Subleased Space and use of the common areas of the Premises, or the breach of any obligation of Subtenant as set out in the Sublease, and Subtenant shall carry, at Subtenant's expense, public liability insurance on the Subleased Space with an insurance company having a BEST rating of at least A XIV and licensed to issue such insurance within the state wherein the Subleased Space is located, which insurance shall stipulate a combined single limit of not less than Two Million Dollars (\$2,000,000) for personal injury, death and property damage No later than the Commencement Date

and thereafter on each anniversary of the Commencement Date, Subtenant shall provide Sublandlord with certificates evidencing such insurance naming the Prime Landlord and Sublandlord as additional named insureds, which certificate shall require the insurance carrier to give Sublandlord thirty (30) days written notice of any cancellation or material amendment to such insurance

Sublandlord and Subtenant hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein on account of fire or other casualty or for injuries sustained on or about the Sublease Space and common areas of the Premises to the extent such loss or damage is or would be covered by the insurance required to be carried by each party hereunder, even if such coverage is not actually maintained. Such waiver shall also apply to the extent of any deductible maintained by either party under its insurance policies. It is understood that this waiver applies to any loss or damage regardless of the cause, including, without limitation, if caused by the negligence of Sublandlord, Subtenant or their respective employees, agents, assigns or sublessees

8 Use, Compliance with Law

(a) The Premises shall be used by Subtenant only for providing advertising services under the Related Agreement

(b) Subtenant shall obey, observe and promptly comply with all rules, regulations, ordinances and laws which shall be applicable, now or at any time during the Term, to the Subleased Space and shall promptly comply with all orders, rules, rulings and directives of any governmental authority or agency having jurisdiction of the Premises. Subtenant shall not store, use, discharge or dispose of any hazardous or toxic substances, pollutants, contaminants or any other substances regulated by any state or federal statute (collectively "Contaminants") on the Premises other than in the ordinary course of its business. Subtenant shall be solely responsible for the costs of removing or cleaning any Contaminants found on the Premises and caused by Subtenant

9 Assignment and Subletting Subtenant shall not assign its interest in the Sublease voluntarily or by operation of law and shall not sublet or license all or any portion of the Subleased Spaces without the prior written consent of Sublandlord (and Prime Landlord if such consent is required by the Lease). No assignment, subleasing or licensing shall release Subtenant from any of its obligations hereunder. Subtenant shall not mortgage or otherwise encumber its leasehold interest hereunder without the prior written consent of Sublandlord. This Sublease shall not be construed as an assignment of Sublandlord's interest in the Lease, and Subtenant shall not attempt to negotiate, modify or amend the Lease

10 Inspection, Alterations Subtenant has inspected the Subleased Space and is satisfied that the same is acceptable to Subtenant for all of its purposes and uses, and accepts the same and any included trade fixtures and equipment in "AS IS" condition, without any warranties, representations or obligation on Sublandlord's part to make any repairs, replacements, alterations, additions, installations or improvements whatsoever. Subtenant shall not expand or make or install any additions, renovations, alterations, improvements, or changes in or to the Subleased Space, or any part thereof, without Sublandlord's prior written consent. As between Sublandlord and

Subtenant, any permitted improvements or additions upon the Subleased Space at the expiration or termination of this Sublease shall be deemed a part of the Premises

11 Termination Notwithstanding anything contained herein to the contrary, the existence of this Sublease is dependent and conditioned upon the existence of the Lease, and in the event of the cancellation or termination of the Lease for any reason, this Sublease shall thereupon be terminated without the need for further action and without liability to Sublandlord. If Subtenant is not in default under the terms and conditions hereof, any such termination shall be without liability between Sublandlord and Subtenant, except for such liability theretofore accruing or as otherwise provided herein, however, if Subtenant is in default, the provisions hereof including those of default shall control as to Subtenant's liability. Upon the expiration or termination of this Sublease, Subtenant shall deliver the Subleased Space to Sublandlord in the same condition existing on the Commencement Date, reasonable wear and tear excepted.

12 Sublandlord's Obligations Sublandlord shall have no duty to perform any obligations of Prime Landlord under the Lease and shall under no circumstances be responsible for or liable to Subtenant for any default, failure or delay on the part of Prime Landlord in the performance of any obligations under the Lease.

13 Costs and Expenses Subtenant shall pay all costs and expenses, including reasonable attorney fees, that may be incurred by Sublandlord in enforcing the provisions of this Sublease or in enforcing Prime Landlord's obligations under the Lease if requested to do so by Subtenant. In the event any amounts due from Subtenant hereunder are not paid when due, such amounts shall bear interest from and after the date thereof to the date of payment at an annual rate of eighteen percent (18%).

14 Notices Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person hereunder shall be in writing and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, (ii) sent by receipted overnight delivery service, or (iii) personally delivered to the address set forth below. The effective date of any such notice shall be the date which is stamped by the United States Post Office on the envelope enclosing same, the date of the receipt for the overnight delivery or the date on which personal delivery is made, whichever is applicable. Any notice sent by Subtenant to Prime Landlord shall also be sent concurrently to Sublandlord. Until changed by written notice from the appropriate party to the other, the addresses of the parties are as follows:

Sublandlord	Fleming Companies, Inc Manager, Real Estate Administration C/o The Staubach Company 1945 Lakepointe Drive Lewisville, Texas 75057
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Copy to Fleming Companies, Inc
1945 Lakepointe Drive
Lewisville, Texas 75057
Attention Legal Department – Real Estate

Subtenant Ivie & Associates, Inc
900 Parker Square, Suite 250
Flower Mound, Texas 75028
Attention Warren Ivie

15 Accord and Satisfaction No payment by Subtenant or receipt by Sublandlord of a lesser amount than the full amount of any payments to be made by Subtenant hereunder shall be deemed to be other than on account of the earliest stipulated unpaid installment thereof, and no endorsement or statement on any check or letter accompanying any check or payment shall be deemed to be an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice of Sublandlord's right to recover the full amount due hereunder or pursue any other remedy available to Sublandlord

16 Entire Agreement, Consent This Sublease constitutes the entire agreement and understanding of the parties with respect to the matters contained in this Sublease and supersedes all other agreements between and representations by the parties with respect to such matters. Subtenant is not relying upon any representations, market analysis, projections, reports or warranties of Sublandlord except as stated herein. No changes, amendments or modifications of this Sublease shall be effective or enforceable unless made in writing and executed by the parties hereto. Whenever Sublandlord's consent is required by the terms of this Sublease, Prime Landlord's consent shall also be obtained if so required by the terms of the Lease. The consent by Sublandlord to any act by Subtenant requiring Sublandlord's consent shall not waive or render unnecessary Sublandlord's consent to any subsequent similar act by Subtenant.

17 Multiple Originals This Sublease is executed simultaneously in multiple originals, each of which shall be deemed an original, without the production of the other such originals.

18 Authority The individual executing this Sublease on behalf of Subtenant represents and warrants to Sublandlord that Subtenant is a limited liability company in good standing under the laws of the state in which the Premises are located and has full right and authority to enter into the Sublease and perform its obligations hereunder.

19 Entry by Sublandlord Sublandlord and its representatives shall have the right, at all reasonable times, to enter upon the Subleased Space for the purposes of examining and inspecting the same, provided, however, this section shall not be construed as imposing any obligation upon Sublandlord to inspect the Premises.

20 Non-Waiver Any assent, expressed or implied, by Sublandlord to any breach of any 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 Relationship of Parties Nothing contained herein shall be deemed or construed to create a joint venture or partnership relationship between Sublandlord and Subtenant

22 Interpretation This Sublease shall be interpreted in a fair and impartial manner without regard to such factors as the party that drafted this Sublease or the relative bargaining power of the parties

IN WITNESS WHEREOF, Sublandlord and Subtenant have agreed to the foregoing Sublease in its entirety as of the day and year first set forth above, and have executed the same on the day and year first set forth above

“SUBLANDLORD”

FLEMING COMPANIES, INC ,
an Oklahoma Corporation

By _____
Its _____

“SUBTENANT”

IVIE & ASSOCIATES, INC
an Iowa corporation

By _____
Its _____

EXHIBIT "A"

Floor Plan of Subleased Space

EXHIBIT "B"

Lease