

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

## PROOF OF CLAIM



481837

Bar Date Ref # 2-G1-3700

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.

☐ 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.

## Name of Creditor and Address

0354651481837

ADMA ASSOCIATES LLC  
C/O KARNEY MGMT CO  
P O BOX 49051  
LOS ANGELES CA 90051

Creditor Telephone Number (310) 826-5637

CREDITOR TAX ID #

95-4639295

ACCOUNT OR OTHER NUMBER BY WHICH

CREDITOR IDENTIFIES DEBTOR

Lease #AAL001000038

Check here  
if this claim

☐ 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 charges

Your social security number \_\_\_\_\_

Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

2 DATE DEBT WAS INCURRED January 1, 2003

3 IF COURT JUDGMENT DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM  
AS OF PETITION DATE

\$ 2,123.25

(unsecured)

\$

(secured)

\$

(unsecured priority)

\$ 2,123.25

(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

DATE SIGNED

September 10, 2003

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)

Diana Plotkin,

Executive  
Vice  
President

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

See Other Side For Instructions

THIS SPACE FOR COURT  
USE ONLY

FILED

SEP 11 2003

BMC

Fleming Companies Claim



09890

Database	KARNEYSMSDE	Aged Delinquencies	Page	1
		Karney Database	Date	9/10/2003
LEAS	AAL001000038	Fleming Companies Inc	Time	09 54 AM
		Period 09/03		

Invoice Date	Category	Source	Amount	Current	1 Month	2 Months	3 Months	4 Months
AAL001-000038	<b>Fleming Companies, Inc</b> Ken Dewhirst (972) 906-8000	Master Occupant Id 2626C	FlemingC 1 Current					
				Day Due 1	Delq Day 11			
				Last Payment	9/8/2003			123 726 22
2/12/2003	CAM Common Area Maintenance	CH	707 75	0 00	0 00	0 00	0 00	707 75
2/12/2003	CAM Common Area Maintenance	CH	707 75	0 00	0 00	0 00	0 00	707 75
3/1/2003	CAM Common Area Maintenance	CH	707 75	0 00	0 00	0 00	0 00	707 75
	<b>Fleming Companies Inc Total</b>		2 123 25	0 00	0 00	0 00	0 00	2 123 25
	<b>LEAS AAL001000038 Total</b>		2 123 25	0 00	0 00	0 00	0 00	2 123 25
	<b>Grand Total</b>		2 123 25	0 00	0 00	0 00	0 00	2 123 25

September 10 2003

K

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

**KARNEY MANAGEMENT CO**  
12011 SAN VICENTE BLVD STE 606  
LOS ANGELES CA 90049-4948  
Tel (310) 826-5637  
or (310) 476-5633  
Facsimile (310) 476-4712  
E-mail dvk@karney.net

RE **Case No 03-10945 (MFW)**  
**Proof Of Claim**  
**Contract Assignment No 6302**

**M a i l i n g   A d d r e s s**  
**P O   B o x   4 9 0 5 1**  
**Los Angeles CA 90049 0051**

Dear Sir or Madam

On July 22, 2003, we sent a letter to the United States Bankruptcy Court for the District of Delaware objecting to the Cure Amount stated by the Original Cure Notice dated July 11, 2003. Enclosed is a copy of the letter and enclosures.

As of today, our claim for \$2,123.25 is still not recorded in your system. Therefore, we would like to submit the enclosed Proof Of Claim in case our letter to the Bankruptcy Court was lost in the mail or not processed.

Should you have any questions concerning this matter, please feel free to call me.

Sincerely,



Diana Plotkin  
Executive Vice President  
Karney Management Company  
for Adma Associates, LLC

Enclosures

July 22, 2003

United States Bankruptcy Court for the District of Delaware  
824 Market Street  
Wilmington, Delaware 19801

RE Case No 03-10945 (MFW)  
Objection to the Cure Amount  
Contract Assignment No 6302

**KARNEY MANAGEMENT CO**  
12011 San Vicente Blvd Suite 606  
Los Angeles CA 90049-4948  
Tel (310) 826-5637  
or (310) 476-5633  
Facsimile (310) 476 4712  
E-mail dvk@karney.net

M a i l i n g   A d d r e s s  
P O   B o x   4 9 0 5 1  
Los Angeles CA 90049-0051

Dear Sir or Madam

Please accept this letter as notice that we object to the Cure Amount stated on the Schedule attached to the Original Cure Notice dated July 11, 2003, with regards to the above referenced contract

The Schedule states that the Cure Amount is \$0 00 However, the true Cure Amount is \$2,123 25 which is pre-petition and represents the following

January 2003 Common Area Maintenance charge balance	\$ 707 75
February 2003 Common Area Maintenance charge balance	707 75
March 2003 Common Area Maintenance charge balance	<u>707 75</u>

Total Pre-petition Cure Amount	<u>\$ 2,123 25</u>
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Consequently, please accept this letter also as notice of our claim for payment of the \$2,123 25 Cure Amount owed to Adma Associates, LLC Enclosed please find a copy of (i) the Original Cure Notice dated July 11, 2003 with the attached Cure Amount Schedule, (ii) the Lease between Fleming Companies, Inc and Adma Associates, LLC, and (iii) our letter dated March 6, 2003 regarding the Common Area Maintenance expense reconciliation

Should you have any questions concerning this matter, please feel free to call me

Sincerely,



Diana Plotkin  
Executive Vice President  
Karney Management Company  
for Adma Associates, LLC

Enclosures

Cc Fleming Companies, Inc , attn Contracts Department  
Shirley S Cho, Kirkland & Ellis LLP  
Geoffrey Richards, Kirkland & Ellis LLP  
Laura Davis Jones, Pachulski, Stang, Ziehl, Young, Jones & Weintraub P C  
The Lenders c/o Andrew DeNatale, White & Case  
The Committee, c/o Dennis Dunne, Milbank, Tweed, Hadley & McCloy LLP  
Robert S Hertzberg, Pepper Hamilton LLP

In re  
Fleming Companies, Inc., et al.,<sup>1</sup>

Debtors

Chapter 11  
Case No. 03-10945 (MFW)  
(Jointly Administered)

**NOTICE RE POTENTIAL ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE MOTION**

PLEASE TAKE NOTICE that Fleming Companies, Inc., Fleming Transportation Service, Inc., Piggly Wiggly Company, RFS Marketing Services, Inc., Fleming International, Ltd., Fleming Foods of Texas L.P., and Fleming Foods Management Co., L.L.C. (collectively, the "Selling Debtors") have filed the Motion for Order (A) Approving Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition LLC, (B) Authorizing (i) Sale of Substantially All of Selling Debtors' Assets Relating to the Wholesale Distribution Business to Purchaser or its Designee(s) or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and Interests and (ii) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief (the "Sale Motion") on or about July 11, 2003. Please also take notice that on July 7, 2003, the Selling Debtors filed the Motion for Entry of an Order (A) Approving Bidding Procedures and Bid Protection in Connection with the Sale of the Wholesale Distribution Business, (B) Approving Assignment Procedures for Affected Executory Contracts and Unexpired Leases, (C) Approving the Form and Manner of Notice, and (D) Setting Sale Hearing Dates (the "Bidding Procedures Motion"). The Bidding Procedures Motion and Sale Motion are filed to facilitate a sale of certain of the Selling Debtors' assets known as the Wholesale Distribution Business to C&S Acquisition LLC ("Purchaser"), a subsidiary of C&S Wholesale Grocers, Inc. ("C&S") pursuant to the asset purchase agreement entered into between the Selling Debtors and Purchaser. An auction for the Wholesale Distribution Business will be held on July 31, 2003 to determine the Successful Bidder (as defined below) for the Wholesale Distribution Business and a final hearing on the sale of the Wholesale Distribution Business is set for 11:30 a.m. (Prevailing Eastern Time), on August 4, 2003 before the United States Bankruptcy Court for the District of Delaware (the "Sale Hearing"). The hearing may be adjourned in open court from time to time, without further notice.

PLEASE TAKE FURTHER NOTICE that the proposed cure amounts (the "Cure Amount"), within the meaning of section 365 of the Bankruptcy Code, for the contracts, licenses and leases that may be assumed and assigned, are based on the Selling Debtors' books and records, and set forth in the attached Schedule. The Selling Debtors propose that the Successful Bidder's promise to perform under such contract or lease will constitute adequate assurance of future performance under such contract or lease pursuant to section 365(b) of the Bankruptcy Code. Additionally, financial information pertaining to the proposed Purchaser or other bidders may be obtained by contacting Shirley Cho at Kirkland & Ellis LLP at the below phone number.

PLEASE TAKE FURTHER NOTICE that any objection to the Cure Amount or the proposed assignment must set forth, in writing, with particularity, (i) the number assigned to your contract or lease as set forth in the Schedule attached hereto, (ii) the amount you believe should be the Cure Amount, (iii) a copy of your contract or lease if available, and (iv) any other bases for objection or other statements or position, and must be filed with the Bankruptcy Court and served in such a manner that it is actually received on or before 4:00 p.m. (Prevailing Eastern Time), on July 28, 2003, by (i) Fleming Companies, Inc., attn: Contracts Department, 1945 Lakepointe Drive, Lewisville, TX 75057, Shirley S. Cho, Kirkland & Ellis LLP, 777 South Figueroa Street, Los Angeles, California 90017 and Geoffrey Richards, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601 and Laura Davis Jones, Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., 919 North Market Street, 16th Floor, Wilmington, Delaware 19801, (ii) the Lenders, c/o Andrew DeNatale, White & Case, 1155 Avenue of the Americas, New York, New York 10036, (iii) counsel to the Committee, c/o Dennis Dunne, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, New York 10005 and Robert S. Hertzberg, Pepper Hamilton LLP, 36th Floor, 100 Renaissance Center, Detroit, Michigan 48243-1157. Any objection not conforming to the foregoing will not be considered by the Bankruptcy Court at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that if you do not object to the Cure Amount or the proposed assignment, then, at the Sale Hearing, the Selling Debtors will request the Court to enter an order determining the amount set forth on the attached Schedule to be the actual cure amount payable for such contract or lease listed on such Schedule and authorizing the assignment of your contract or lease.

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale, the Selling Debtors may seek to assume and assign to the successful bidder as shall be determined at the Auction (the "Successful Bidder") or the Successful Bidder's designee(s), your contract(s), license(s), or lease(s) as set forth on the attached Schedule within a six-month period after the closing of the proposed sale to the Successful Bidder or the Successful Bidder's designees (the "Option Period"). During the Option Period, the Successful Bidder will have the opportunity to submit an Option Notice, designating whether it wishes to acquire your contract(s), license(s), or lease(s) by assignment.

PLEASE TAKE FURTHER NOTICE that if the Successful Bidder issues an Option Notice for the assignment of your contract, license, or lease during the Option Period, the Selling Debtors will serve you with a motion and schedule a hearing before the Bankruptcy Court, at which time you will be entitled to object to the proposed assignment. If you have not filed an objection to the Cure Amount by July 8, 2003, you will be precluded from asserting an objection to the Cure Amount, provided however that you will be able to assert at such time that the Cure Amount should be adjusted to reflect any actual pecuniary loss incurred by you between the date of this Cure Notice and the date of such hearing on the assignment of your contract (the "Adjusted Cure Amount"). Any objection to the Adjusted Cure Amount, as the case may be, that is duly filed by the applicable objection deadlines shall be resolved at the hearing on the assignment. In addition, any objection based on lack of adequate assurance to a party that is not the Purchaser shall also be resolved at such hearing.

You may obtain a copy of the Bidding Procedures Motion or Sale Motion by making a written request to the Selling Debtors' designated counsel or from the internet at [www.bmccorp.net/fleming](http://www.bmccorp.net/fleming).

PLEASE BE FURTHER ADVISED that, the Bankruptcy Court has yet to approve the form of this Notice and if there are any material changes from this Notice after it is considered by the Bankruptcy Court on July 17, 2003, you will receive a Supplemental Notice.

Wilmington, Delaware  
dated July 11, 2003

Co-Counsel for the Debtors and Debtors in Possession

PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB P.C.  
Laura Davis Jones (Bar No. 2436)  
Christopher J. Lhulier (Bar No. 3850)  
9 North Market Street, 16th Floor  
Wilmington, Delaware 19801  
Telephone (302) 652-4100  
Facsimile (302) 656-8865

KIRKLAND & ELLIS LLP  
James H. M. Sprayregen, P.C. (ARDC No. 6190206)  
Shirley S. Cho (CA Bar No. 192616)  
777 South Figueroa Street  
Los Angeles, CA 90017  
Telephone (213) 680-8400  
Facsimile (213) 680-8500

The Debtors are the following entities: Fleming Companies, Inc., ABCO Food Group, Inc., ABCO Markets, Inc., ABCO Realty Corp., ASI Office Automation, Inc., C/M Products, Inc., Core-Mark International, Inc., Core-Mark Interrelated Companies, Inc., Core-Mark Mid-Continent, Inc., Dunigan Fuels, Inc., FAVAR Concepts, Ltd., Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P., Fleming International, Ltd., Fleming Supermarkets of Florida, Inc., Fleming Transportation Service, Inc., Food 4 Less Beverage Company, Inc., Fuelserv, Inc., General Acceptance Corporation, Head Distributing Company, Marquise Ventures Company, Inc., Minter-Weisman Co., Piggly Wiggly Company, Progressive Realty, Inc., Rainbow Food Group, Inc., Retail Investments, Inc., Retail Supermarkets, Inc., RFS Marketing Services, Inc., and Richmar Foods, Inc. (collectively the Debtors).

## CURE AMOUNT SCHEDULE

Contract Assignment # 6302

Contracting Party Adma Associates, LLC  
P O Box 49051  
  
Los Angeles, CA 90051

Cure Amount \$0 00

Contract Description Real Estate Lessor

K

March 06, 2003

**Fleming Companies, Inc**

Attn: Chris Brown, Manager, Real Estate Administrator  
c/o The Staubach Company – (Lease ID CA-242)  
1945 Lakepoint Dr  
Lewisville, TX 75057

**KARNEY MANAGEMENT CO**  
12011 San Vicente Blvd Suite 606  
Los Angeles CA 90049-4948  
Tel (310) 826-5637  
or (310) 476-5633  
Facsimile (310) 476-4712  
E-mail dvk@karney.net

**Mailing Address**  
P O Box 49051  
Los Angeles CA 90049-0051

RE Leased premises @ 2626 S Maple Ave , Fresno, CA 93725 (Lease ID CA-242)

Dear Ms Brown

Enclosed please find a revised summary of the actual Common Area Maintenance (CAM) expenses for 2002, along with copies of all the bills for the Alarm Service and Landscape Maintenance. Previously we used an incorrect figure for the Alarm Service. Based on the actual expenses for 2002, you have a corrected balance due in the amount of \$8,493.05 calculated as follows:

Total 2002 expenses	\$32,714.69
Less 2002 payments	<u>24,221.64</u>
Corrected balance for 2002	\$ 8,493.05

Monthly estimated CAMs are also being adjusted based on the actual 2002 expenses. Your new monthly **estimated CAM, effective January 01, 2003**, is **\$2,726.22** which is \$0.005 per square foot per month. Accordingly **effective April 01, 2003** your new total **monthly rent** is **\$120,726.22** (\$118,000.00 base rent + \$2,726.22 new estimated CAM charges).

Your current CAM balance is as follows:

3 months 2003 corrected estimates <u>due</u> ( $2,726.22 \times 3$ )	\$8,178.66
3 months 2003 estimates <u>paid</u> ( $2,018.47 \times 3$ )	<u>(6,055.41)</u>
Balance due for 2003 estimates	\$2,123.25
Corrected balance due for 2002	<u>8,493.05</u>
<b>Corrected TOTAL current balance due</b>	<b>\$10,616.30</b>

This total due is \$661.33 more than what we billed in our February 12<sup>th</sup> letter. Please, send us your check for the corrected balance due of **\$10,616.30** at your earliest convenience. If you have any further questions, please, feel free to contact us. I apologize for any inconvenience this may have caused. Thank you for your prompt attention to this matter.

Very truly yours,



Stella Dekel  
Property Manager

**Adma Associates, LLC**

cc **Fleming Companies, Inc**, Legal Department, Attn: General Counsel  
1945 Lakepoint Dr, Lewisville, TX 75057

cc via fax, with copy of G/L **Karen Gilbert @ 972/906-2303**

ADMA ASSOCIATES, LLC  
 CAM Expense Reconciliation  
 For The Year Ending 2002  
 Address 2626, 2676, 2686 S Maple Ave, Fresno, CA 93725  
 Total Square Footage 650,027

revised 02/24/03

2626

	GL Acct #	YTD Total	% Billable for CAM	Total Billable CAM Exp	Fleming Co s^
square footage					502,300
% of total sq ft					77 27%
% of time occupied					100 00%
% of shared expenses					64 60%
<u>CAM Expenses</u>					
Alarm Service	502000	18,238 82	100 00%	18,238 82	14,093 81
Security Service	502005	-	100 00%	-	-
Landscape Maintenance	502010	10,915 52	100 00%	10,915 52	8,434 83
Utilities	502015	9,010 11	100 00%	9,010 11	6,962 45
Maintenance	502020	3,576 11	100 00%	3,576 11	2,763 39
Trash Hauling	502025	-	100 00%	-	-
Pond Utilities	502030	712 39	100 00%	712 39	460 21
Total CAM Expenses / 100% time occupied		42,452 95		42,452 95	32,714 69
Total CAM Charges to Tenant / time % adj'd					32,714 69
CAM Expenses <b>Not</b> Due / Not Recovered					-
Total CAM Billed in 2002					24,221 64
<b>Balance Due From/(To) Tenant</b>					<u>8,493 05</u>

## 2003 Estimated CAM Expenses

### Based on 2002 Actuals

2003 Estimated Annual Expenses	42,452 95	32,714 69
2003 Estimated Monthly Expenses	3,537 75	2,726 22
2003 Monthly CAM Cost Per Sq Ft	0 00544	0 00543



**Fleming.**

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

June 13 2003

CERTIFIED MAIL--RETURN RECEIPT REQUESTED and FEDERAL EXPRESS

Via Facsimile 310-476-4712

Adma Associates, LLC  
c/o Karney Management Company  
P O Box 49051  
Los Angeles, CA 90051

**RE 2525 Maple Avenue, Fresno, California (the "Premises")**

Dear Mr Karney


Fleming Companies Inc ( Lessee") elects to exercise its option to extend the Standard Industrial (' Lease ), entered into January 15, 1987 by and between Adma Fresno Development, Ltd (' Lessor '), and Lessee, to lease the Premises, as subsequently amended. The Lease shall remain in full force and effect under the terms and conditions of the current Lease except the term for the aforesaid Lease shall be extended Twelve Months (12) from September 1, 2003 through August 31, 2004.

Lessee's election to extend the Lease shall not constitute an assumption of the Lease under section 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101 et seq (the 'Bankruptcy Code') and shall not be construed to be a waiver of any of Lessee's rights under the Bankruptcy Code, including but not limited to Lessee's right to assume and assign or reject the Lease under section 365 of the Bankruptcy Code.

If you should have any questions concerning this matter please call Kent Ferren at Fleming at 972-906-2259.

**Agreed and Accepted**

**LESSEE  
FLEMING COMPANIES, INC**

  
Charles L. Hall  
Senior Vice President

# Fleming

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

P O Box 26647  
Oklahoma City Ok 73126  
telephone 405 840 7200

March 11 2002

Mr David V Karney  
ADMA Associates LLC  
P O Box 49051  
Los Angeles CA 90051

Re Fresno Warehouse Bldg A, B C  
2626 South Maple Ave  
Fresno CA ( Premises )  
Fleming File No CA 242

Dear Mr Karney

Reference is hereby made to the Standard Industrial Lease dated January 15 1987, as amended (' Lease' )  
by and between ADMA Fresno Development, Ltd , Lessor, and Fleming Companies Inc ( Fleming )  
Lessee covering the above referenced Premises

Please take notice that Fleming hereby exercises it s option to renew the term of the Lease on the above  
referenced premises for a period of one (1) year commencing on September 1, 2002, and expiring on  
August 31, 2003 under the same terms and conditions as currently stated in the Lease, excluding rent  
which shall be \$118 000 00 per month

Please acknowledge receipt of this notice of extension by signing and dating the enclosed copy of the letter  
in the space provided for the Sublessee and returning the same to us in the enclosed stamped pre-  
addressed envelope

Sincerely

FLEMING COMPANIES, INC



Tom Kier  
Director of Warehouse Development

Receipt of Notice of Extension of the above referenced Sublease is hereby acknowledged this  
26 day of March 2002

ADMA Fresno Development Ltd a California Limited Partnership

By



\prp  
cc

Vito Uiges  
Missy Cramer

## Seventh Amendment to Lease

This Seventh Amendment to Lease, dated for reference purposes only, July 15, 1999, amends the Standard Industrial Lease – Gross, dated January 15, 1987, between ADMA Fresno Development, Ltd , a California limited partnership (now known as ADMA Associates LLC), as “Lessor” and Fleming Companies, Inc , as “Lessee” who agree as follows

**Recitals** This Seventh Amendment to Lease is made with reference to the following facts and objectives

Lessor and Lessee entered into a written lease dated January 15, 1987, which was amended by Amendment to Lease dated October 29, 1987, Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990, Fourth Amendment to Lease dated May 4, 1990, Fifth Amendment to Lease dated March 31, 1992, Sixth Amendment to Lease dated July 19, 1995, Extension of Lease dated April 24, 1995, and Second Extension of Lease July 11, 1996, whereby Lessor leased to Lessee the Premises commonly known as 2626 South Maple Avenue, Fresno, California

**Leased Premises** The Leased Premises shall be expanded by approximately 294,000 square feet (“Expansion Space”) from 208,300 square feet (“Existing Space”) to 502,300 square feet (“Total Space”), as shown on Exhibit “A” attached hereof

**Term** The lease term for the Total Space shall commence September 1, 1999 and expire on August 31, 2002

**Rental Rate** Lessee shall pay to Lessor as Rent for the Premises during the lease term rental amounts as follows

<u>Lease Term</u>	<u>Rental</u>
September 1, 1999 to August 31, 2002	\$115,000 per month

**Possession** Lessee shall have access to the 119,000 square foot component of the Expansion Space upon execution of this Seventh Amendment to Lease

**Option to Extend Lease Term** If this Lease has not been cancelled or terminated prior to the expiration of the preceding term hereof, and if the Lessee is at the time of exercise and through the end of the preceding term in default of any of the terms, covenants or conditions of this Lease, Lessee is hereby granted an option to extend the term of this lease for two (2) additional terms of one year each from and after the expiration of the preceding term, provided that Lessee gives written notice to Lessor of the exercise of such options of extension at least one hundred twenty (120) days prior to the expiration of the preceding term The

Page 2 of Seventh Option to Extend Lease

terms and conditions of this Lease during each of the one (1) year option periods shall be the same as herein contained, except that the monthly Rent shall be increased as follows

<u>Option Period</u>	<u>Rental</u>
September 1, 2002 to August 31, 2003	\$118,000 per month
September 1, 2003 to August 31, 2004	\$121,000 per month

**Base Year for Real Estate Taxes & Insurance** Real estate taxes and insurance are included in the rental amounts noted above. Lessee shall, however, pay for increases in real estate taxes and insurance over the 2000 base year. In addition to increases in real estate taxes and insurance, common area maintenance charges shall be paid by the Lessee, on a pro-rata basis and due when billed.

**Security Deposit** The security deposit increase shall be waived.

**Effectiveness of Lease** Except as set forth in this Seventh Amendment to Lease, all of the provisions of the Lease shall remain in full force and effect and unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Lease.

**Lessor** ADMA ASSOCIATES LLC

By ONV Kang Date 7/16/99

**Lessee** Fleming Companies, Inc

By Paul Jones Date 7/20/99

HW  
7/24/99

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT is dated for identification purposes August 22, 1997 and made by ADMA FRESNO DEVELOPMENT, LTD (Assignor) to ADMA ASSOCIATES, LLC (Assignee)

1 Assignor assigns and delegates to Assignee all of the Lessor's rights, interest and obligations in the following Lease by and between ADMA FRESNO DEVELOPMENT, LTD, a California limited partnership and FLEMING COMPANIES, INC an Oklahoma corporation The assigned Lease includes any amendments, extensions and previous assignments thereof The effective date for this Assignment is August 22, 1997

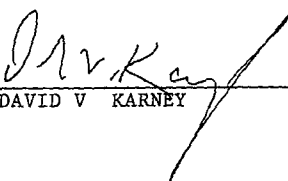
2 Concurrent with the assignment of the Lease, Assignor assigns to Assignee any security deposits and prepaid rents being held by the Lessor under the Lease

3 Assignor represents that the Lease is in effect, that there are no modifications or amendments except as delivered to Assignee, that Assignor, as Lessor, is not in default and to the best of Assignor's knowledge Lessee is not in default nor claims any default by Assignor

4 Assignee accepts this Assignment, assumes the liabilities of Lessor under the Lease arising subsequent to the effective date of this Assignment and will hold Assignor harmless from any obligation as Lessor arising after said effective date including the obligation to repay security deposits

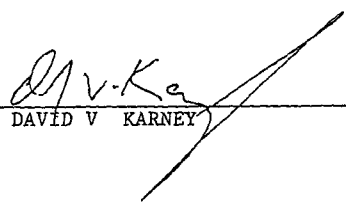
"ASSIGNEE"

ADMA ASSOCIATES, LLC

  
By DAVID V KARNEY

"ASSIGNOR"

ADMA FRESNO DEVELOPMENT, LTD

  
By DAVID V KARNEY

THIRD EXTENSION OF LEASE

This Third Extension of Lease, dated for reference purposes only, December 17, 1996, between Adma Fresno Development, Ltd, (Lessor), and Fleming Companies, Inc, (Lessee), who agree as follows

1 Recitals This Third Extension of Lease is made with reference to the following facts and objectives

- a Lessor and Lessee entered into a written Lease dated January 15, 1987, which was amended by Amendment to Lease dated October 29, 1987, Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990, Fourth Amendment to Lease dated May 4, 1990, Fifth Amendment to Lease dated March 31, 1992, Sixth Amendment to Lease dated July 19, 1995, Extension of Lease dated April 24, 1995 and Second Extension of Lease July 11, 1996, whereby Lessor leased to Lessee the Premises commonly known as 2626 South Maple Avenue, Fresno, California,
- b The Term of the Lease expires August 31, 1997,
- c The parties desire to extend the Term of the Lease for an additional three (3) years on the terms and conditions hereinafter set forth

2 Extension of Term The Term of the Lease shall be extended for an additional period of three (3) years from and after August 31, 1997, so that the Term of the Lease shall extend to and including August 31, 2000

3 Rent Lessee shall pay to Lessor as Rent for the Premises during the extended three (3) year Term the sum of \$53,377 00 per month In addition, common area charges will be due as billed

4 Options to Extend Term If this Lease has not been cancelled or terminated prior to the expiration of the preceding term hereof, and if the Lessee is at the time of exercise and through the end of the preceding term in possession of the Premises and is not at the time of exercise and through the end of the preceding term in default of any of the terms, covenants or conditions of this Lease, Lessee is hereby granted an option to extend the Term of this Lease for two (2) additional Terms of three (3) years each from and after the expiration of the preceding term, provided that Lessee gives written notice to Lessor of the exercise of such options of extension at least one hundred twenty (120) days prior to the expiration of the preceding term The terms and conditions of the Lease during each of the three (3) year option periods shall be the same as herein contained, except that the monthly Rent shall be increased as follows

- 1st Three (3) year Option Term - \$58,181 00 per month
- 2nd Three (3) year Option Term - \$63,417 00 per month

In addition, common area charges will be due as billed

5 Effectiveness of Lease Except as set forth in this Third Extension of Lease, all of the provisions of the Lease shall remain in full force and effect and unchanged

IN WITNESS WHEREOF, the parties hereto have executed this Third Extension of Lease

ADMA FRESNO DEVELOPMENT, LTD

Dated 1/5/97

DAVID V KARNEY  
DAVID V KARNEY, General Partner

FLEMING COMPANIES, INC.

Dated 12/31/96

E. Fleming

mx

SECOND EXTENSION OF LEASE

This Second Extension of Lease, dated for reference purposes only, July 11, 1996, between Adma Fresno Development, Ltd, (Lessor), and Fleming Companies, (Lessee), who agree as follows

1 RECITALS This Second Extension of Lease is made with reference to the following facts and objectives

a Lessor and Lessee entered into a written Lease dated January 15, 1987, which was amended by Amendment to Lease dated October 29, 1987, Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990, Fourth Amendment to Lease dated May 4, 1990, Fifth Amendment to Lease dated March 31, 1992, Sixth Amendment to Lease dated July 19, 1995, and Extension of Lease dated April 24, 1995, whereby Lessor leased to Lessee the Premises commonly known as 2626 South Maple Avenue, Fresno, California,

b The Term of the Lease expires August 31, 1996,

c The parties desire to reduce the size of the Premises and extend the term of the Lease on the balance of the space for an additional one (1) year on the terms and conditions hereinafter set forth

2 DELETION FROM LEASED PREMISES Commencing September 1, 1996, the Premises shall consist of 208,300 square feet as described on Exhibit "A" attached hereto

3 EXTENSION OF TERM The term of the Lease shall be extended for an additional period of one (1) year from and after August 31, 1996, so that the term of the Lease shall extend to and including August 31, 1997

4 BASE RENT Lessee shall pay to Lessor as base rent for the Premises during the extended one (1) year term the sum of \$52,075.00 per month. In addition, common area charges will be due as billed

5 SURRENDER/RESTORATION In addition to the requirements of Paragraph 7.2(c) of the Lease, unless otherwise requested by Lessor, Lessee shall also remove all alterations and equipment installed by Lessee, including but not limited to partitions, walls, cooling system, insulation and electrical and plumbing installations serving said cooling system, all to be completed by the last day of the extended term

6 BROKER'S FEES Lessor shall only be responsible for payment of a 2½% commission to CB Commercial on this extension. Payment of any fees due to Cushman & Wakefield shall be the responsibility of Lessee

7 EFFECTIVENESS OF LEASE Except as set forth in the Second Extension of Lease, all of the provisions of the Lease shall remain in full force and effect and unchanged

IN WITNESS WHEREOF, the parties hereto have executed this Second Extension of Lease

ADMA FRESNO DEVELOPMENT, LTD

DATED

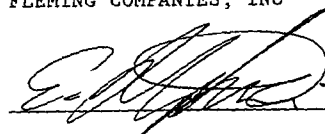
7/22/96

DAVID V. KARNEY, General Partner

FLEMING COMPANIES, INC

DATED

7/15/96



7/15/96

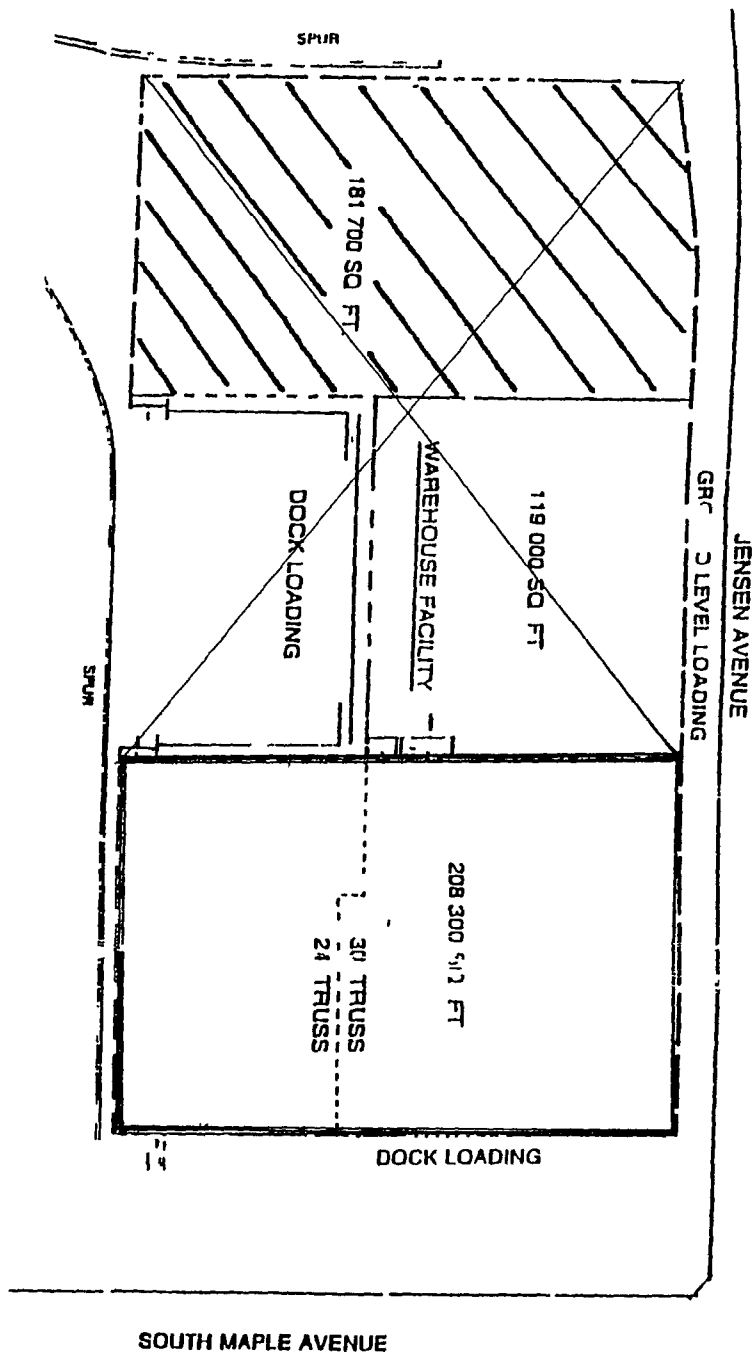


EXHIBIT A



## SIXTH AMENDMENT TO LEASE

This Sixth Amendment to Lease, dated for reference purposes only, July 19, 1995, between Adma Fresno Developments, Ltd., (Lessor), and Fleming Companies, (Lessee), who agree as follows

1 RECITALS This Sixth Amendment to Lease is made with reference to the following facts and objectives

a Lessor and Lessee entered into a written Lease dated January 15, 1987 which was amended by Amendment to Lease dated October 29, 1987, Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990 Fourth Amendment to Lease dated May 4, 1990, Fifth Amendment to Lease dated March 31, 1992, and Extension of Lease dated April 24, 1995, whereby Lessor leased to Lessee the Premises commonly known as 2626 South Maple Avenue, Fresno, California

b The parties desire to reduce the size of the Premises by 181,700 square feet and adjust the rent accordingly

2 DELETION FROM LEASED PREMISES Commencing August 1, 1995, the definition of the "Premises" as set forth in the above-referenced Lease and subsequent Amendments and Modifications is reduced by 181,700 square feet leaving a total of 327,300 remaining

3 REDUCTION OF RENT Rent for the month of August, 1995, at \$ 23 per square foot will be the following

Rent for 509,000 square feet	\$117,070 00
Less rent for 181,700	<u>41,791 00</u>
August 1995	75,279 00
Deduct for 12 days in July	<u>16,177 16</u>
Total Due for August 1995	\$59,101 84

Beginning September 1, 1995 rent at \$ 24 per square foot will be the following

Rent for 509,000 square feet	\$122,160 00
Less rent for 181,700	<u>43,608 00</u>
Total Due beginning September 1, 1995	\$78,552 00

4 EFFECTIVENESS OF LEASE Except as set forth in this Sixth Amendment to Lease, all of the provisions of the Lease shall remain in full force and effect and unchanged

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment to Lease

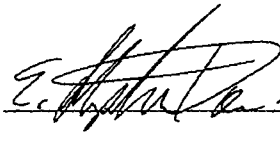
ADMA FRESNO DEVELOPMENTS INC.

Dated 8/4/95

  
\_\_\_\_\_  
DAVID V. KARNEY, General Partner

FLEMING COMPANIES, INC

Dated 8/2/95

  
\_\_\_\_\_

M W 8/2/95

EXTENSION OF LEASE

This Extension of Lease, dated for reference purposes only, April 4, 1995, between Adma Fresno Development, Ltd , (Lessor), and Fleming Companies, Inc , (Lessee), who agree as follows

1 RECITALS This Extension of Lease is made with reference to the following facts and objectives

a Lessor and Lessee entered into a written Lease dated January 15, 1987 which was amended by Amendment to Lease dated October 29 1987 Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990, Fourth Amendment to Lease dated May 4, 1990 and Fifth Amendment to Lease dated March 31, 1992, whereby Lessor leased to Lessee the Premises commonly known as 2626 South Maple Avenue, Fresno, California,

b The term of the Lease expires August 31, 1995,

c The parties desire to extend the Term of the Lease for an additional one (1) year on the terms and conditions hereinafter set forth

2 EXTENSION OF TERM The term of the Lease shall be extended for an additional period of one (1) year from and after August 31, 1995, so that the Term of the Lease shall extend to and including August 31, 1996

3 RENT Lessee shall pay to Lessor as rent for the Premises during the extended one (1) year Term the sum of \$122,160 00 per month In addition, common area charges will be due as billed

4 At any time during this extended Term, Lessor may, upon thirty (30) days written notice to Lessee, request that Lessee vacate either the 119,000 square foot or 181,700 square foot portion of the Premises as described in Exhibit A attached hereto, and thirty (30) days after said notice is given, Lessee shall vacate the space described in said notice ~~At any time after March 1, 1996, Lessor may upon thirty (30) days written notice to Lessee, request that Lessee vacate the 208,300 square foot portion of the Premises as described in Exhibit A attached hereto, and thirty (30) days after said notice is given, Lessee shall vacate said 208,300 square foot portion of the Premises~~

5 Should Lessee vacate any of the above-described portions of the Premises prior to August 31, 1996 pursuant to Paragraph 4 above, Lessee's rent obligation would be reduced by the square footage of the vacated area multiplied by twenty-four cents (\$ .24)

6 Lessor shall pay a five percent (5%) commission on this Extension of Lease as follows

2 5/ CB Commercial  
2 57 Cushman & Wakefield

7 EFFECTIVENESS OF LEASE Except as set forth in this Extension of Lease, all of the provisions of the Lease shall remain in full force and effect and unchanged

IN WITNESS WHEREOF, the parties hereto have executed this Extension of Lease

ADMA FRESNO DEVELOPMENT, LTD

Dated

4/24/95

DAVID V KARNEY, General Partner

FLEMING COMPANIES, INC

Dated

Larry Cushman

4/4/95

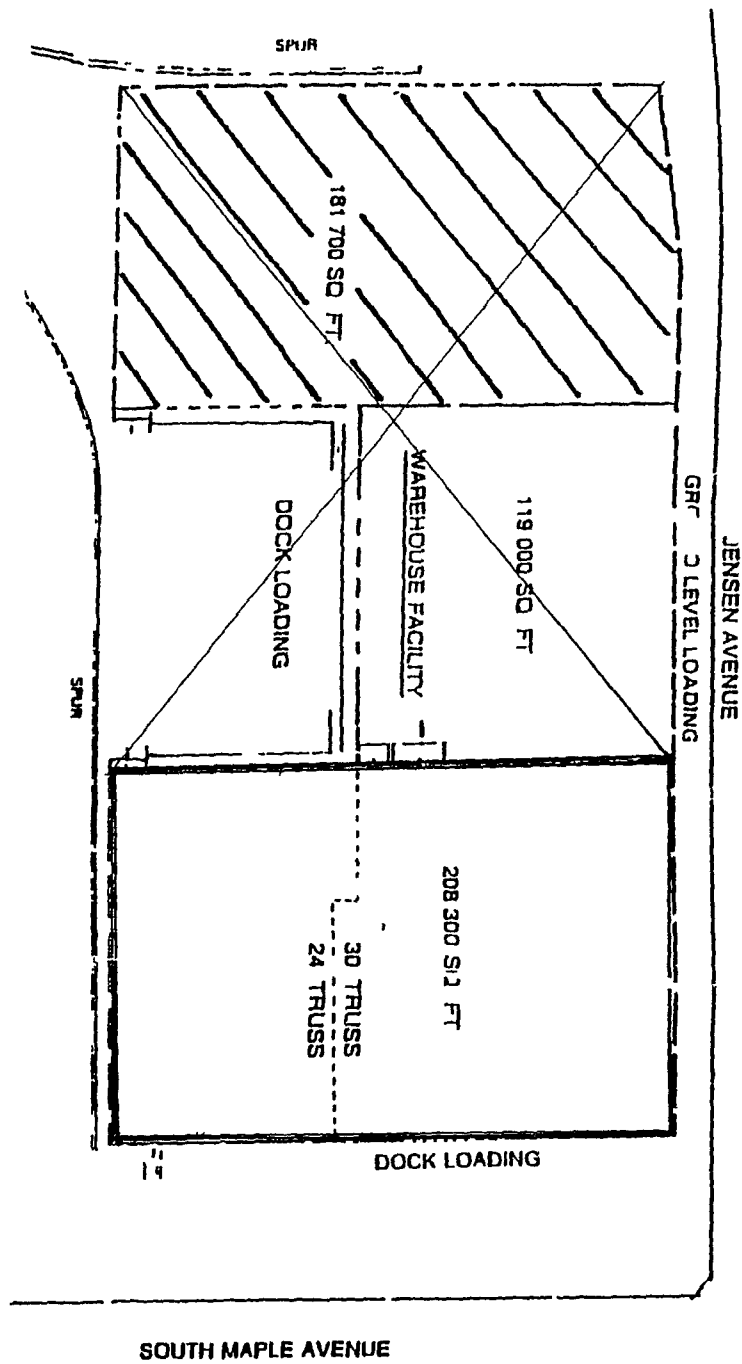


EXHIBIT A

FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE dated for reference purpose only, March 31, 1992, between ADMA FRESNO DEVELOPMENT, LTD, Lessor and FLEMING COMPANIES, INC, Lessee who agree as follows

1 RECITALS This Fifth Amendment to Lease was made with reference to the following facts and objectives

(a) Lessor and Lessee entered into a written lease dated January 15, 1987 which was amended by Amendment to Lease dated October 29, 1987, Second Amendment to Lease dated February 16, 1988, Third Amendment to Lease dated April 9, 1990 and Fourth Amendment to Lease dated May 4, 1990

(b) The leased premises is commonly known as 2626 South Maple Avenue, Unit 103, Fresno, California

(c) Lessee wishes to extend the term of the lease for three (3) years from and after August 31, 1992 and add to the leased premises approximately 181,700 square feet contiguous to the east of the leased premises

2 EXTENSION OF TERM The term of the Lease shall be extended for an additional period of three (3) years commencing September 1, 1992 and terminating August 31, 1995

3 ADDITION TO LEASED PREMISES Commencing May 1, 1992, the definition of the premises as set forth in Paragraph 2 of the Lease as amended shall be deemed to include the area outlined in yellow on the attached Exhibit A consisting of approximately 181,700 square feet making a total of 509,000 square feet

4 INTERIM MONTHLY RENTAL The monthly rental through August 31, 1992 for the 327 300 square feet shall be consistent with the original lease and its amendments through the fourth (4th) amendment. The current rent for that area is Seventy Nine Thousand Six Hundred Eighty-nine Dollars and Sixty-one Cents (\$79,689 61). The rent for the 181,700 square feet between May 1 1992 and August 31, 1992 shall be Forty-one Thousand Seven Hundred Ninety-one and no/100 Dollars (\$41,791 00) per month for a total rent of One Hundred Twenty-one Thousand Four Hundred Eighty Dollars and Sixty-one Cents (\$121,480 61) per month from May 1, 1992 through August 31, 1992

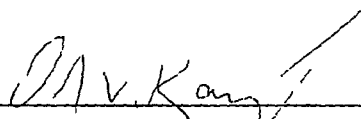
5 MONTHLY BASE RENTAL Commencing on September 1, 1992, the monthly base rental for the 509 000 square feet shall be One Hundred Seventeen Thousand Seventy and no/100 Dollars (\$117 070 00) per month and shall remain unchanged through August 31, 1995

6 CONDITION OF THE PREMISES The additional premises shall be delivered in an "as-is, where is" condition except that the two (2) toilets on the premises shall be upgraded to code

Except as expressly set forth herein, all terms and conditions of said Lease shall remain unaffected by this Amendment and are hereby ratified and affirmed

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

Lessor ADMA FRESNO DEVELOPMENT, LTD

By  DATE 5/15/92

Lessee FLEMING COMPANIES, INC

By  DATE May 11, 1992

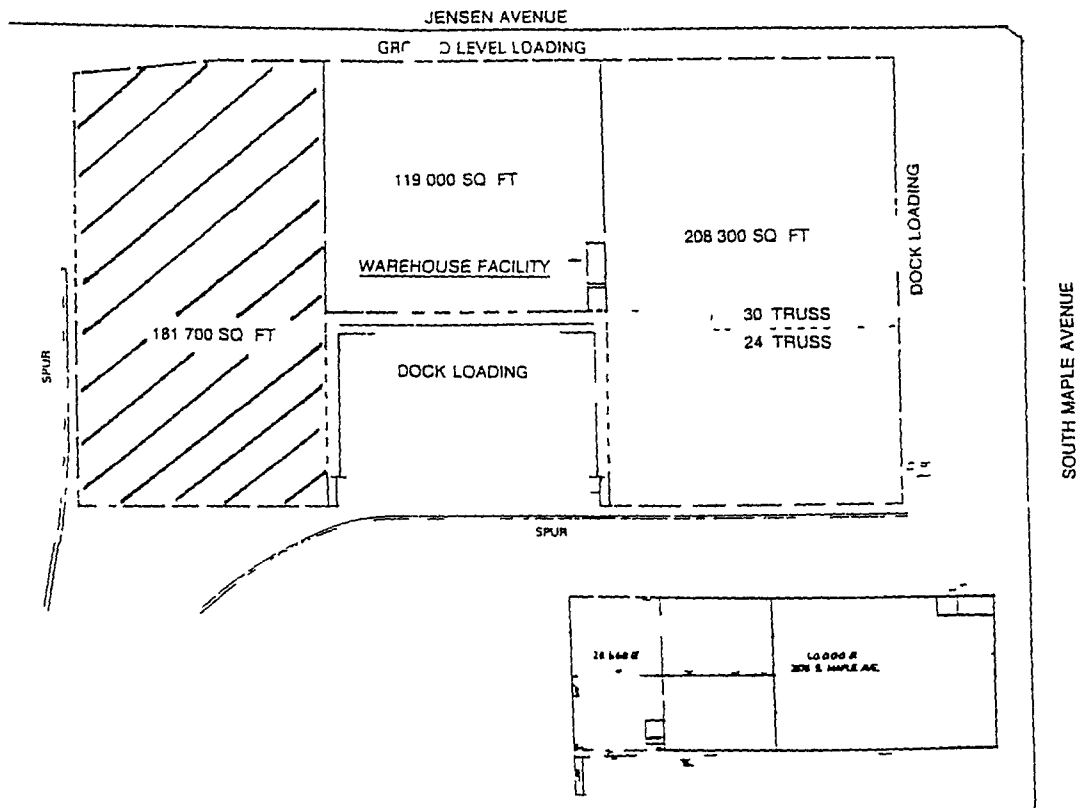
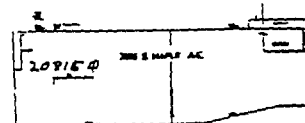


EXHIBIT A



FOURTH AMENDMENT TO LEASE  
FOR PREMISES AT 2626 SO MAPLE AVENUE, UNIT 103, FRESNO, CALIFORNIA

This Fourth Amendment to Lease, dated for reference purposes only, May 4, 1990, between Adma Fresno Development, Ltd , Lessor and Fleming Companies, Inc , Lessee who agree as follows

Lessor is herewith granting Lessee the right of first refusal to lease the adjoining 181,700 square feet at 2626 South Maple Avenue, Fresno California, under the following terms

(a) The Lease of Western Cotton will expire on May 15, 1991 By January 15, 1991, Fleming Companies, Inc will inform Lessor, in writing by certified letter, of their desire to take over that space under the same terms, conditions and rental schedule per square foot that exists on the space that Fleming Companies, Inc is already occupying

(b) If notice is not given by that date, Lessor can assume that Lessee is not interested in that space

(c) If Fleming Companies, Inc decides that they are interested in the additional space, it will be conditioned on Fleming exercising the option granted to them in the Second Amendment to the Lease for the period all the way through August 31, 1994 and will be governed by the terms and conditions of the Lease This Extension will include all three occupancies of the rental areas in the building

Except as expressly set forth herein, all other terms and conditions of the Lease shall remain unaffected by this Amendment are are hereby ratified and affirmed

Dated

5/18/90

ADMA FRESNO DEVELOPMENT,  
LTD , LESSOR

BY

C. V. Kang

Dated

\_\_\_\_\_

FLEMING COMPANIES,  
INC , LESSEE

BY

E. Stephen Davis

E Stephen Davis

Executive Vice President - Distribution

THIRD AMENDMENT TO LEASE

This Third Amendment to Lease, dated for reference purposes only, April 9, 1990, between Adma Fresno Development, Ltd , Lessor, and Fleming Companies, Inc , Lessee, who agree as follows

1 RECITALS This Third Amendment to Lease is made with reference to the following facts and objectives

(a) Lessor and Lessee entered into a written Lease dated January 15, 1987, which was amended by Amendment to Lease dated October 29, 1987, and Second Amendment to Lease dated February 16, 1988,

(b) The leased premises is commonly known as 2626 South Maple Avenue, Unit 103, Fresno, California,

(c) Lessee wishes to add to the leased premises approximately 119,000 square feet contiguous to the leased premises

2 ADDITION TO LEASED PREMISES Commencing June 1, 1990, the definition of the "Premises" as set forth in Paragraph 2 of the Lease, as amended, shall be deemed to include the area outlined in yellow on the attached Exhibit "A" consisting of approximately 119,000 square feet, making a total of 327,300 square feet

3 BASIC MONTHLY RENTAL Commencing June 1, 1990, the basic monthly rent shall be increased from \$50,808 74 to \$74,608 74, an increase of \$23,800 00 representing basic monthly rent on the additional space

4 CONDITION OF PREMISES The additional Premises shall be delivered in "as is" condition

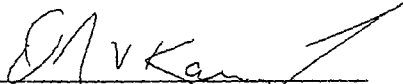
5 EXERCISE OF OPTION Lessee hereby exercises its first two (2) year option granted by the terms of Second Amendment to Lease dated February 16, 1988 There will be no rent increase on the additional 119,000 square foot portion (\$23,800 00) through August 31, 1992 If Lessee exercises its second two (2) year option, the rent on the additional 119,000 square foot portion (\$23,800 00) will be increased in accordance with the increase in the Consumer Price Index as defined in Second Amendment to Lease, between the months of August 1990 and August 1992, however such increase shall not be more than a total of ten percent (10%) nor less than a total of five percent (5%) during said period In no event shall the monthly base rent be decreased as a result of any declines in said Consumer Price Index

Except as expressly set forth herein, all other terms and conditions of the Lease shall remain unaffected by this Amendment and are hereby ratified and affirmed

Dated

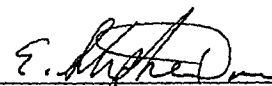
5/8/90

ADMA FRESNO DEVELOPMENT, LTD

  
DAVID V. KARNEY, GENERAL PARTNER

Dated

FLEMING COMPANIES, INC

BY   
E. Stephen Davis, Executive Vice President

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease, dated for reference purposes only, February 16, 1988, between Adma Fresno Developments, Ltd , Lessor, and Fleming Companies, Inc , Lessee, who agree as follows

1 Recitals This Amendment to Lease is made with reference to the following facts and objectives

(a) Lessor and Lessee entered into a written Lease dated January 15, 1987,

(b) The leased premises is commonly known as 2626 South Maple Avenue, Unit 103, Fresno, California,

(c) Lessor has agreed to grant Lessee two (2) two (2) year options to extend the term of the Lease

2 Options to Extend Term If this Lease has not been cancelled or terminated prior to the expiration of the original forty-two (42) month term hereof, and if the Lessee is in possession of the Premises and is not then in default of any of the terms, covenants or conditions of this Lease, Lessee is granted two (2) options of two (2) years each to extend the term of this Lease, provided that Lessee gives notice to Lessor of the exercise of such options of extension no later than one hundred twenty (120) days prior to the expiration of the preceding term, i e April 30, 1990 for the first option, April 30, 1992 for the second option. The terms and conditions of the Lease during each of the two (2) year option periods shall be the same as herein contained, except that the monthly base rent shall be increased as follows. During the period from September 1, 1990 through February 29, 1992 the monthly base rent shall be \$50,808 74. From March 1, 1992 through August 31, 1994 the monthly base rent of \$50,808 74 shall be increased in an amount equal to the increase in the Consumer Price Index as hereinafter defined. If the Consumer Price Index figure for the month of February 1992, as reflected by the "Consumer Price Index for All Urban Consumers U S City Average, All Items, 1984=100, issued by the United States Department of Labor, Bureau of Labor Statistics, is greater than the Index figure for the month of August 1989, then the base rent of \$50,808 74 during the period from March 1, 1992 through August 31, 1994 shall be increased in the same proportion as the Index figure for February 1992 exceeds that for August 1989, however such increase shall not be more than a total of ten percent (10%) nor less than a total of five percent (5%) during said period. In no event shall the monthly base rent be decreased as a result of any declines in said Consumer Price Index.

Should the United States Department of Labor readjust the above-described Consumer Price Index to a different base period than the base period in effect when this Lease is executed, then such change in the base shall be taken into account and reflected in all adjustments. Should the official reports of the United States Department of Labor be unavailable for the relevant period at the

Initials E.S.D.

Initials ML



time that any adjustment hereunder is to become effective, Lessee shall pay the rental on the unadjusted basis until the statistical information for the adjustment is available, and within fifteen (15) days from written notice by Lessor to Lessee of the adjustment including figures upon which the adjustment is based, Lessee shall pay to Lessor such sum as represents the difference between the rent paid and the adjusted amount of the rent due and payable. If the described Index shall no longer be published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within thirty (30) days after demand by either party, the substitute index shall, on application of either party, be selected by the chief officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor. If selection by such officer cannot be obtained, the adjustment shall be made by mutual agreement or by arbitration.

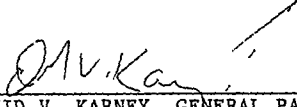
3 Lessor's Permission to Install Dairy Cooler Lessor gives its permission to Lessee for Lessee to install a dairy cooler in the leased premises. Such installation shall be at Lessee's sole cost and expense and shall comply with any applicable codes, rules or regulations governing such installations. Lessee shall have the option to either remove the cooler or leave it in the premises upon termination of this lease, however, if Lessee does remove the cooler, Lessee must restore the premises to its condition prior to installation of the cooler.

Except as expressly set forth herein, all other terms and conditions of the Lease shall remain unaffected by this Amendment and are hereby ratified and affirmed.

Dated

3/14/88

ADMA FRESNO DEVELOPMENT, LTD

  
\_\_\_\_\_  
DAVID V. KARNEY, GENERAL PARTNER

Dated

FLEMING COMPANIES, INC

BY

  
\_\_\_\_\_  
E. Stephen Davis

AMENDMENT TO LEASE

This Amendment to Lease, dated for reference purposes only, October 29, 1987, between Adma Fresno Development, Ltd, Lessor, and Fleming Companies, Inc, Lessee, who agree as follows

1 Recitals This Amendment to Lease is made with reference to the following facts and objectives

(a) Lessor and Lessee entered into a written Lease dated January 15, 1987,

(b) The leased premises is commonly known as 2626 South Maple Avenue, Unit 103, Fresno, California,

(c) Lessee desires to add to the leased premises approximately 85,962 square feet of additional space located contiguous to the leased premises

2 Addition to Leased Premises Commencing November 1, 1987, the definition of the "Premises" as set forth in Paragraph 2 of the Lease shall be deemed to include the area outlined in blue on the attached Exhibit "A" consisting of approximately 85,962 square feet, making a total of 208,300 square feet

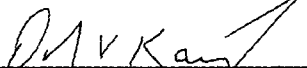
3 Basic Monthly Rental Commencing November 1, 1987, the basic monthly rental as set forth in Paragraph 4 of the Lease shall be increased from \$28,137 74 to \$46,189 76, an increase of \$18,052 02 representing basic monthly rent on the additional space Commencing September 1, 1989, the basic monthly rent shall be \$50,808 74

4 Condition of Additional Space Lessee accepts the additional space in "as is" condition

Except as expressly set forth herein, all other terms and conditions of the Lease shall remain unaffected by this Amendment and are hereby ratified and affirmed

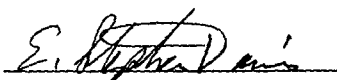
Dated October 29, 1987

ADMA FRESNO DEVELOPMENT, LTD

  
DAVID V KARNEY, GENERAL PARTNER

Dated *Nov 10, 1987*

FLEMING COMPANIES, INC

BY 

JENSEN AVENUE

GROUND LEVEL LOADING

DOCK LOADING

119,000 SQ FT

208,300 SQ FT

WAREHOUSE FACILITY

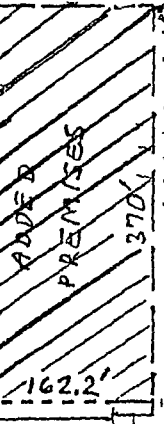
30 TRUSS

24 TRUSS

DOCK LOADING

181,700 SQ FT

SPUR



162.2'

ADDED PREMISES

370'

SPUR

60,000 SQ FT

WAREHOUSE FACILITY

24,200 SQ FT

N

SOUTH MAPLE AVENUE

EXHIBIT A



## STANDARD INDUSTRIAL LEASE — GROSS

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1 Parties This Lease dated for reference purposes only January 15 19 87 is made by and between ADMA FRESNO DEVELOPMENT, LTD., a California  
limited partnership,  
and FLEMING COMPANIES, INC., an Oklahoma (herein called Lessor)  
corporation (herein called Lessee)

2 Premises Lessor hereby leases to Lessee and Lessee leases from Lessor for the term at the rental and upon all of the conditions set forth herein that certain real property situated in the County of Fresno State of California  
commonly known as 2626 South Maple Avenue, Unit 103, Fresno, California 93725  
and described as approximately 122,338 square foot portion of approximately 509,000 square  
foot industrial type building, including approximately 3,500 square feet of office and  
print shop area as shown on Exhibit "A" attached hereto

Said real property including the land and all improvements therein is herein called the Premises

## 3 Term

3.1 Term The term of this Lease shall be for forty-two (42) months  
commencing on March 1, 1987 and ending on August 31, 1990  
unless sooner terminated pursuant to any provision hereof

~~3.2 Delay in Possession. Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof. But in such case, Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee provided however that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may at Lessee's option by notice in writing to Lessor within ten (10) days thereafter cancel this Lease in which event the parties shall be discharged from all obligations hereunder provided further however that if such written notice of Lessee is not received by Lessor within ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect. See Addendum 3.3~~

3.3 Early Possession If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rates set forth below. During the first thirty (30) months of the term

4 Rent Lessee shall pay to Lessor as rent for the Premises monthly payments of \$ 28,137.74 in advance on the first  
day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof \$ - as rent for  
During the last twelve (12) months, commencing September 1, 1989, the rent shall  
be \$30,951.51 per month

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

~~5. Security Deposit Lessee shall deposit with Lessor upon execution hereof \$ - as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. If the monthly rent shall from time to time increase during the term of this Lease, Lessee shall thereupon deposit with Lessor additional security deposit so that the amount of security deposit held by Lessor shall at all times bear the same proportion to current rent as the original security deposit bears to the original monthly rent set forth in paragraph 4 hereof. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit or so much thereof as has not theretofore been applied by Lessor shall be returned without payment of interest or other increment for its use to Lessee (or at Lessee's option to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.~~

## 6 Use

6.1 Use The Premises shall be used and occupied only for office, print shop and warehousing grocery  
products,  
or any other use which is reasonably comparable and for no other purpose

## 6.2 Compliance with Law

(a) Lessor warrants to Lessee that the Premises in its state existing on the date that the Lease term commences but without regard to the use for which Lessee will use the Premises does not violate any covenants or restrictions of record or any applicable building code regulation or ordinance in effect on such Lease term commencement date. In the event it is determined that this warranty has been violated, then it shall be the obligation of the Lessor after written notice from Lessee to promptly at Lessor's sole cost and expense rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee's sole cost. The warranty contained in this paragraph 6.2 (a) shall be of no force or effect if prior to the date of this Lease Lessee was the owner or occupant of the Premises and in such event Lessee shall correct any such violation at Lessee's sole cost.

(b) Except as provided in paragraph 6.2(a) Lessee shall at Lessee's expense comply promptly with all applicable statutes ordinances rules regulations orders covenants and restrictions of record and requirements in effect during the term or any part of the term hereof regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or if there shall be more than one tenant in the building containing the Premises shall tend to disturb such other tenants.

## 6.3 Condition of Premises See Addendum 6.3

(a) Lessor shall deliver the Premises to Lessee clean and free of debris on Lease commencement date (unless Lessee is already in possession) and Lessor further warrants to Lessee that the plumbing lighting air conditioning heating and loading doors in the Premises shall be in good operating condition on the Lease commencement date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor after receipt of written notice from Lessee setting forth with specificity the nature of the violation to promptly at Lessor's sole cost rectify such violation. Lessee's failure to give such written notice to Lessor within thirty (30) days after the Lease commencement date shall cause the conclusive presumption that Lessor has complied with all of Lessor's obligations hereunder. The warranty contained in this paragraph 6.3(a) shall be of no force or effect if prior to the date of this Lease Lessee was the owner or occupant of the Premises.

(b) Except as otherwise provided in this Lease Lessee hereby accepts the Premises in their condition existing as of the Lease commencement date or the date that Lessee takes possession of the Premises whichever is earlier subject to all applicable zoning municipal county and state laws ordinances and regulations governing and regulating the use of the Premises and any covenants or restrictions of record and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

## 7 Maintenance Repairs and Alterations

exterior plumbing

7.1 Lessor's Obligations Subject to the provisions of Paragraphs 6.2 and 9 and except for damage caused by any negligent or intentional act or omission of Lessee Lessee's agents employees or invitees in which event Lessee shall repair the damage Lessor at Lessor's expense shall keep in good order condition and repair the foundations exterior walls and the exterior roof of the Premises. Lessor shall not however be obligated to paint such exterior nor shall Lessor be required to maintain the interior surface of exterior walls windows doors or plate glass. Lessor shall have no obligation to make repairs under this Paragraph 7.1 until a reasonable time after receipt of written notice of the need for such repairs. Lessee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises in good order condition and repair.

## 7.2 Lessee's Obligations

(a) Subject to the provisions of Paragraphs 6.7.1 and 9 Lessee at Lessee's expense shall keep in good order condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Lessee) including without limiting the generality of the foregoing all plumbing heating air conditioning (Lessee shall procure and

interior

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occupied by Lessee

maintain at Lessee's expense an air conditioning system maintenance contract) ventilating electrical and lighting facilities and equipment within the Premises, fixtures, interior walls and interior surface of exterior walls, ceilings, windows, doors, plate glass and skylights located within the Premises, and all landscaping, driveways, parking lots, fences and signs located in the Premises and all sidewalks and pathways adjacent to the Premises. See Addendum 7 2

(b) If Lessee fails to perform Lessee's obligations under this Paragraph 7 2 or under any other paragraph of this Lease, Lessor may at Lessor's option enter upon the Premises after 10 days prior written notice to Lessee (except in the case of emergency in which case no notice shall be required) perform such obligations on Lessee's behalf and put the Premises in good order condition and repair and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to Lessor together with Lessee's next rental installment.

(c) On the last day of the term hereof or on any sooner termination, Lessee shall surrender the Premises to Lessor in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Lessee shall repair any damage to the Premises occasioned by the installation or removal of its trade fixtures, furnishings and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the premises in good operating condition.

### 7 3 Alterations and Additions

(a) Lessee shall not without Lessor's prior written consent make any alterations, improvements, additions or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$2 500 in cumulative costs during the term of this Lease. In any event, whether or not in excess of \$2 500 in cumulative cost, Lessee shall make no change or alteration to the exterior of the Premises nor the exterior of the building(s) on the Premises without Lessor's prior written consent. As used in this Paragraph 7 3 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Lessor against any liability for mechanics' and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense, defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal as set forth in Paragraph 7 3(a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7 3(d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7 2(c).

### 8 Insurance, Indemnity

8 1 Liability Insurance Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Property Damage Insurance insuring Lessee and Lessor against any liability arising out of the use, occupancy or maintenance of the Premises and all other areas appurtenant thereto. Such insurance shall be in an amount not less than \$1,000,000 per occurrence. The policy shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not however limit the liability of Lessee hereunder. Lessee agrees to name Lessor as an additional insured.

8 2 Liability Insurance Lessor shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Property Damage Insurance insuring Lessor but not Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto in an amount not less than \$1,000,000 per occurrence. See Addendum 8 2 (Cont.)

8 3 Property Insurance Lessor shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises but not Lessee's fixtures, equipment or tenant improvements in an amount not to exceed the full replacement value thereof as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Premises), special extended perils (all risk), as such term is used in the insurance industry) but not plate glass insurance. In addition, the Lessor shall obtain and keep in force during the term of this Lease a policy of rental value insurance covering a period of one year, with loss payable to Lessor, which insurance shall also cover all real estate taxes and insurance costs for said period.

### 8 4 Payment of Premium Increases. See Addendum 50

(a) Lessee shall pay to Lessor, during the term hereof, in addition to the rent, the amount of any increase in premiums for the insurance required under Paragraphs 8 2 and 8 3 over and above such premiums paid during the Base Period, as hereinafter defined. Whether such premium increase shall be the result of the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of a mortgage or deed of trust covering the Premises, increased valuation of the Premises or general rate increases, in the event that the Premises have been occupied previously the words "Base Period" shall mean the last twelve months of the prior occupancy. In the event that the Premises have never been previously occupied the premiums during the "Base Period" shall be deemed to be the lowest premiums reasonably obtainable for said insurance assuming the most nominal use of the Premises. Provided, however, in lieu of the Base Period, the parties may insert a dollar amount at the end of this sentence which figure shall be considered as the insurance premium for the Base Period. \$\_\_\_\_\_ In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$1,000,000 procured under paragraph 8 2.

(b) Lessee shall pay any such premium increases to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other satisfactory evidence of the amount due. If the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall also deliver to Lessee a statement of the amount of such increase attributable to the Premises and showing in reasonable detail the manner in which such amount was computed. If the term of this Lease shall not expire concurrently with the expiration of the period covered by such insurance, Lessee's liability for premium increases shall be prorated on an annual basis.

(c) If the Premises are part of a larger building, then Lessee shall not be responsible for paying any increase in the property insurance premium caused by the acts or omissions of any other tenant of the building of which the Premises are a part.

8 5 Insurance Policies Insurance required hereunder shall be in companies holding a General Policyholders Rating of at least B plus or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of Best's Insurance Guide. Lessee shall deliver to Lessor copies of policies of liability insurance required under Paragraph 8 1 or certificates evidencing the existence and amounts of such insurance. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Lessor. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with renewals of such policies. Lessor or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8 3.

8 6 Waiver of Subrogation Lessee and Lessor each hereby release and relieve the other and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under paragraph 8 3, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is confirmed in this Lease.

8 7 Indemnity Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises or else, here and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease or arising from any negligence of the Lessee or any of Lessee's agents, contractors, employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

8 8 Exemption of Lessor from Liability Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building in which the Premises are located, provided, however, that Lessee shall have the right to pursue any remedies it may have against other tenants.

\*Except for the grossly negligent or intentional acts of Lessor, Lessor's employees, agents or contractors,

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to be  
the  
party  
for which Lessee may be responsible

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9.1 Definitions / full replacement

(a) Premises Partial Damage shall herein mean damage or destruction to the Premises to the extent that the cost of repair is less than 50% of the fair market value of the Premises immediately prior to such damage or destruction. Premises Building Partial Damage shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is less than 50% of the full replacement value of such building as a whole immediately prior to such damage or destruction.

(b) Premises Total Destruction shall herein mean damage or destruction to the Premises to the extent that the cost of repair is 50% or more of the full value of the Premises immediately prior to such damage or destruction. Premises Building Total Destruction shall herein mean damage or destruction to the building of which the Premises are a part to the extent that the cost of repair is 50% or more of the full replacement value of such building as a whole immediately prior to such damage or destruction.

(c) Insured Loss shall herein mean damage or destruction which was caused by an event required to be covered by the insurance described in paragraph 8.

9.2 Partial Damage — Insured Loss Subject to the provisions of paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls into the classification of Premises Partial Damage or Premises Building Partial Damage, then Lessor shall, at Lessor's sole cost, repair such damage, but not Lessee's fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect, but not to exceed 9 mos from the date such damage occurs.

9.3 Partial Damage — Uninsured Loss Subject to the provisions of Paragraphs 9.4, 9.5 and 9.6, if at any time during the term of this Lease there is damage which is not an Insured Loss and which falls within the classification of Premises Partial Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may, at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense. In which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense without reimbursement from Lessor. In which event this Lease shall continue in full force and effect and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10 day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.4 Total Destruction If at any time during the term of this Lease there is damage, whether or not an Insured Loss (including destruction required by any authorized public authority) which falls into the classification of Premises Total Destruction or Premises Building Total Destruction, this Lease shall automatically terminate as of the date of such total destruction.

9.5 Damage Near End of Term

(a) If at any time during the last six months of the term of this Lease there is damage, whether or not an Insured Loss, which falls within the classification of Premises Partial Damage, Lessor may, at Lessor's option, cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.5(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired, Lessee shall exercise such option, if it is to be exercised at all, no later than 20 days after the occurrence of an Insured Loss falling within the classification of Premises Partial Damage during the last six months of the term of this Lease. If Lessee duly exercises such option during said 20 day period, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said 20 day period, then Lessor may, at Lessor's option, terminate and cancel this Lease as of the expiration of said 20 day period by giving written notice to Lessee of Lessor's election to do so within 10 days after the expiration of said 20 day period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 Abatement of Rent Lessee's Remedies

(a) In the event of damage described in paragraphs 9.2 or 9.3, and Lessor or Lessee repairs or restores the Premises pursuant to the provisions of this Paragraph 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence such repair or restoration within 90 days after such obligations shall accrue, Lessee may, at Lessee's option, cancel and terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.7 Termination — Advance Payments Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

9.8 Waiver Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10 Real Property Taxes

10.1 Payment of Tax Increase Lessor shall pay the real property tax as defined in paragraph 10.3 applicable to the Premises, provided however that Lessee shall pay, in addition to rent, the amount, if any, by which real property taxes applicable to the Premises increase over the fiscal real estate tax year 1986-1987. Such payment shall be made by Lessee within thirty (30) days after receipt of Lessor's written statement setting forth the amount of such increase and the computation thereof. If the term of this Lease shall not expire concurrently with the expiration of the tax fiscal year, Lessee's liability for increased taxes for the last partial lease year shall be prorated on an annual basis.

10.2 Additional Improvements Notwithstanding paragraph 10.1 hereof, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Lessee or at Lessee's request.

10.3 Definition of Real Property Tax As used herein the term "real property tax" shall include any form of real estate tax or assessment, general special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of partially or totally any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Lessor's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto or any transfers hereof.

10.4 Joint Assessment If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof in good faith shall be conclusive. See Addendum 10.4 (cont.)

10.5 Personal Property Taxes

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11 Utilities Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises. See Addendum 11 (cont.)

12 Assignment and Subletting

12.1 Lessor's Consent Required Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Lessor shall respond to Lessee's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void and shall constitute a breach of this Lease. See Addendum 12.1 (cont.)

12.2 Lessee Affiliate Notwithstanding the provisions of paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent to any corporation which controls is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes in full the obligations of Lessee under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Lessee under the terms of this Lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Lessee, the consent of whom shall not be necessary.

12.3 No Release of Lessee Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee. Lessor may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Lessee, without notifying Lessee, or any successor of Lessee, and without obtaining its or their consent thereto and such action shall not relieve Lessee of liability under this Lease.

12.4 Attorneys' Fees In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting, or if Lessee shall request the consent of Lessor for any act Lessee proposes to do, then Lessee shall pay Lessor's reasonable attorneys' fees incurred in connection therewith, such attorneys' fees not to exceed \$250.00 for each such request.

E.S.D.  
D.V.K.

### 13 Defaults Remedies

13.1 Defaults The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee

- (a) ~~The vacating or abandonment of the Premises by Lessee.~~ See Addendum 13.1(a)
- (b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder as and when due where such failure shall continue for a period of 15 days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph
- (c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee other than described in paragraph (b) above where such failure shall continue for a period of 30 days after written notice thereof from Lessor to Lessee provided however that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30 day period and thereafter diligently prosecutes such cure to completion
- (d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors (ii) Lessee becomes a debtor as defined in 11 U.S.C. §101 or any successor statute thereto (unless in the case of a petition filed against Lessee the same is dismissed within 60 days) (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within 30 days or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease where such seizure is not discharged within 30 days. Provided however in the event that any provision of this paragraph 13.1(d) is contrary to any applicable law such provision shall be of no force or effect
- (e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder and any of them was materially false

13.2 Remedies In the event of any such material default or breach by Lessee Lessor may at any time thereafter with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach

(a) Terminate Lessee's right to possession of the Premises by any lawful means in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including but not limited to the cost of recovering possession of the Premises, expenses of reletting including necessary renovation and alteration of the Premises, reasonable attorney's fees and any real estate commission actually paid the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided that portion of the leasing commission paid by Lessor pursuant to Paragraph 15 applicable to the unexpired term of this Lease

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease including the right to recover the rent as it becomes due hereunder

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law

13.3 Default by Lessor Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing specifying wherein Lessor has failed to perform such obligation provided however that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30 day period and thereafter diligently prosecutes the same to completion. See Addendum 13.3 (cont.)

13.4 Late Charges Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to processing and accounting charges and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due then without any requirement for notice to Lessee Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder whether or not collected for three (3) consecutive installments of rent then rent shall automatically become due and payable quarterly in advance rather than monthly notwithstanding paragraph 4 or any other provision of this Lease to the contrary

~~13.5 Impounds In the event that a late charge is payable hereunder whether or not collected for three (3) installments of rent or any other monetary obligation of Lessee under the terms of this Lease Lessee shall pay to Lessor if Lessor shall so request in addition to any other payments required under this Lease a monthly advance installment payable at the same time as the monthly rent as estimated by Lessor for real property tax and insurance expenses on the Premises which are payable by Lessee under the terms of this Lease. Such fund shall be established to insure payment when due before delinquency of any of such real property taxes and insurance premiums. If the amounts paid to Lessor by Lessee under the provisions of this paragraph are insufficient to discharge the obligations of Lessee to pay such real property taxes and insurance premiums as the same become due Lessee shall pay to Lessor upon Lessor's demand such additional sums necessary to pay such obligations. All moneys paid to Lessor under this paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a default in the obligations of Lessee to perform under this Lease then any balance remaining from funds paid to Lessor under the provisions of this paragraph may at the option of Lessor be applied to the payment of any monetary default of Lessee in lieu of being applied to the payment of real property tax and insurance premiums. See Addendum 14~~

14. Condemnation ~~(If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation") this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession whichever first occurs. If more than 10% of the floor area of the building on the Premises or more than 25% of the land area of the Premises which is not occupied by any building is taken by condemnation Lessee may at Lessee's option to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing this Lease shall remain in full force and effect as to the portion of the Premises remaining except that the rent shall be reduced to the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee or as severance damages provided however that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.~~

### 15 Broker's Fee

~~(a) Upon execution of this Lease by both parties, Lessor shall pay to~~ Licensed real estate broker(s) a fee as set forth in a separate agreement between Lessor and said broker(s) or in the event there is no separate agreement between Lessor and said broker(s) the sum of \$\_\_\_\_\_ for brokerage services rendered by said broker(s) to Lessor in this transaction

(b) Lessor further agrees that if Lessee exercises any Option as defined in paragraph 30 of this Lease which is granted to Lessee under this Lease or any subsequently granted option which is substantially similar to an Option granted to Lessee under this Lease or if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised or if Lessee remains in possession of the Premises after the expiration of the term of this Lease after having failed to exercise an Option or if said broker(s) are the procuring cause of any other lease or sale entered into between the parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest then as to any of said transactions Lessor shall pay said broker(s) a fee in accordance with the schedule of said broker(s) in effect at the time of execution of this Lease

(c) Lessor agrees to pay said fee not only on behalf of Lessor but also on behalf of any person, corporation, association or other entity having an ownership interest in said real property or any part thereof when such fee is due hereunder. Any transferee of Lessor's interest in this Lease whether such transfer is by agreement or by operation of law shall be deemed to have assumed Lessor's obligation under this Paragraph 15 and broker shall be a third party beneficiary of the provisions of this Paragraph 15

### 16 Estoppel Certificate

(a) Lessee shall at any time upon not less than 15 days prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the date to which the rent and other charges are paid in advance if any and (ii) acknowledging that there are not to Lessee's knowledge any uncured defaults on the part of Lessor hereunder or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises

(b) At Lessor's option Lessee's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Lessee (i) that this Lease is in full force and effect without modification except as may be represented by Lessor (ii) that there are no uncured defaults in Lessor's performance and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Lessor as a default by Lessee under this Lease



(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. Such statements shall include the past three years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth. See Addendum 16(c) (cont.)

**17 Lessor's Liability** The term Lessor as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations hereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns only during their respective periods of ownership.

**18 Severability** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

**19 Interest on Past due Obligations** Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease, provided, however, that interest shall not be payable on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.

**20 Time of Essence** Time is of the essence.

**21 Additional Rent** Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.

**22 Incorporation of Prior Agreements, Amendments** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises, and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises, and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

**23 Notices** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee. See Addendum 23 (cont.)

**24 Waivers** No waiver by Lessor or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

**25 Recording** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

**26 Holding Over** If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

**27 Cumulative Remedies** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28 Covenants and Conditions** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

**29 Binding Effect, Choice of Law** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State wherein the Premises are located.

**30 Subordination**

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within 10 days after written demand shall constitute a material default by Lessee hereunder, or, at Lessor's option, Lessor shall execute such documents on behalf of Lessee as Lessee's attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to execute such documents in accordance with this paragraph 30(b). (See Addendum 30(b) (cont.))

**31 Attorney's Fees** If either party or the broker named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of the broker named herein who seeks to enforce a right hereunder.

**32 Lessor's Access** Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders or lessees and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary For Sale signs and Lessor may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary For Lease signs, all without rebate of rent or liability to Lessee.

**33 Auctions** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

**34 Signs** Lessee shall not place any sign upon the Premises without Lessor's prior written consent except that Lessee shall have the right without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.

**35 Merger** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

**36 Consents** Except for paragraph 33 hereof, wherever in this Lease the consent of one party is required to an act of the other party, such consent shall not be unreasonably withheld.

**37 Guarantor** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.

**38 Quiet Possession** Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises.

**39 Options**

**39.1 Definition** As used in this paragraph the word Options has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (3) the right or option to purchase the Premises or the right of first refusal to purchase the Premises or the right of first offer to purchase the Premises or the right or option to purchase other property of Lessor or the right of first refusal to purchase other property of Lessor or the right of first offer to purchase other property of Lessor.

**39.2 Options Personal** Each Option granted to Lessee in this Lease are personal to Lessee and may not be exercised or be assigned voluntarily or involuntarily by or to any person or entity other than Lessee, provided, however, the Option may be exercised by or assigned to any

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Lessee Affiliate as defined in paragraph 12.2 of this Lease. The Options herein granted to Lessee are not assignable separate and apart from this Lease.

**39.3 Multiple Options.** In the event that Lessee has any multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised.

**39.4 Effect of Default on Options**

(a) Lessee shall have no right to exercise an Option notwithstanding any provision in the grant of Option to the contrary (i) during the time commencing from the date Lessor gives to Lessee a notice of default pursuant to paragraph 13.1(b) or 13.1(c) and continuing until the default alleged in said notice of default is cured or (ii) during the period of time commencing on the day after a monetary obligation to Lessor is due from Lessee and unpaid (without any necessity for notice thereof to Lessee) continuing until the obligation is paid or (iii) at any time after an event of default described in paragraphs 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee) or (iv) in the event that Lessor has given to Lessee three or more notices of default under paragraph 13.1(b) where a late charge becomes payable under paragraph 13.4 for each of such defaults or paragraph 13.1(c) whether or not the defaults are cured during the 12 month period prior to the time that Lessee intends to exercise the subject Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect notwithstanding Lessee's due and timely exercise of the Option if after such exercise and during the term of this Lease (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of 30 days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee) or (ii) Lessee fails to commence to cure a default specified in paragraph 13.1(c) within 30 days after the date that Lessor gives notice to Lessee of such default and/or Lessee fails thereafter to diligently prosecute said cure to completion or (iii) Lessee commits a default described in paragraph 13.1(a), 13.1(d) or 13.1(e) (without any necessity of Lessor to give notice of such default to Lessee) or (iv) Lessor gives to Lessee three or more notices of default under paragraph 13.1(b) where a late charge becomes payable under paragraph 13.4 for each such default or paragraph 13.1(c) whether or not the defaults are cured.

**40. Multiple Tenant Building.** In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the building. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Lessee.

**41. Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of Lessee, its agents and invitees from acts of third parties.

**42. Easements.** Lessor reserves to itself the right from time to time to grant such easements, rights and dedications that Lessor deems necessary or desirable and to cause the recordation of Parcel Maps and restrictions so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

**43. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment under protest and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

**44. Authority.** If Lessee is a corporation, trust or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

**45. Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**46. Addendum.** Attached hereto is an addendum or addenda containing paragraphs 47 through 50 which constitutes a part of this Lease.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND BY EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease at the place on the dates specified immediately adjacent to their respective signatures.

Executed at Los Angeles, California  
on 12011 San Vicente Blvd, Suite 606  
Address Post Office Box 49051  
Los Angeles, California 90049

ADMA FRESNO DEVELOPMENT, LTD  
By DAVID V. KARNEY, General Partner  
By \_\_\_\_\_  
LESSOR (Corporate seal)

Executed at \_\_\_\_\_  
on \_\_\_\_\_  
Address \_\_\_\_\_

FLEMING COMPANIES, INC  
By E. Stephen Davis  
By \_\_\_\_\_  
Executive Vice President-Distribution

LESSEE (Corporate seal)

ADDENDUM TO LEASE BETWEEN  
ADMA FRESNO DEVELOPMENT, LTD , LESSOR,  
AND  
FLEMING COMPANIES, INC , LESSEE,  
DATED JANUARY 15, 1987

Addendum 3 Early Possession Lessee is in the process of vacating leased premises consisting of 84,200 square feet at 2676 South Maple Avenue and 60,000 square feet at 2626 South Maple Avenue and consolidating its operation into the new premises covered by this Lease. ~~During the period of early possession, Lessee shall continue to pay the rent called for by the lessor for the 84,200 square feet and the 60,000 square feet, namely, \$18,282.00 and \$14,400.00~~

Addendum 6 3 Condition of Premises Lessor at Lessor's expense, shall construct 3,500 square feet of office and print shop as described in Exhibit "B" attached hereto

Addendum 7 2 Lessee's Obligations Landscaping of the areas adjacent to the Premises and Maintenance of the gardening and cleanup of such areas shall be furnished by Lessor to all tenants of the development of which the leased Premises are a part, and Lessee agrees to pay to Lessor as additional rent hereunder its prorata share of the reasonable cost of such maintenance and gardening

Addendum 8 2 Liability Insurance - Lessor Lessor agrees to name Lessee as additional insured as to its liability insurance covering the common areas of the Premises

9 9 Additional Provision Whenever, under the foregoing provisions of this Paragraph 9, the Premises shall not be rebuilt or this Lease shall be terminated by reason of the exercise or non-exercise of any option herein granted to either the Lessor or the Lessee, the Lessee shall have no further interest in the proceeds of such insurance

10 4 Assessments (cont) In the event during the term of this Lease or any extension thereof that an assessment is placed upon the Premises by any taxing authority of competent jurisdiction, and if such assessment is payable or may be paid in installments, then, and in that event, such assessment shall be paid by installments, and Lessee shall be liable to pay said assessment only to the extent of making timely payment of those installments falling due during the term of this Lease or any extension thereof. Further, if any assessment is proposed by any competent taxing authority during the term of this Lease or any extension thereof, then, upon the request of Lessee, Lessor and any mortgagee shall use due diligence, at no cost to Lessor or such mortgagee, to obtain an assessment which is payable or may be paid in installments

In the event during the term of this Lease or any extension thereof that an assessment is placed upon the Premises by any taxing authority of competent jurisdiction, and such assessment is payable only in lump sum, then and in that event Lessee shall be liable only for payment of a proportionate share of such assessment in the proportion which the number of years remaining in the original term and/or any renewal options then remaining available to Lessee hereunder bears to the useful life of the improvement against which the assessment is made, said useful life being determined by agreement of the parties, or in absence of agreement, by arbitration under the procedures set forth by the American Arbitration Association

11 Utilities If other tenants of Lessor use Lessee's utilities, Lessor agrees to work with such other tenants and Lessee whereby such costs can be equitably billed to such other tenants

→ Lessor and Lessee hereby covenant that upon commencement of this lease on March 1, 1987, that the two (2) facility leases referenced above, between Lessor and Lessee, are terminated by mutual agreement of the parties to each lease and of this lease agreement

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OK

12.1 Lessor's Consent Required (cont) Lessor shall not withhold its consent to a sublease or assignment if (a) the use of the Premises intended by the proposed sublessee or assignee is reasonably similar to usage by others within the property of which the Premises are a part, and (b) the proposed sublessee or assignee has a verifiable net worth of at least \$5,000,000

13.1 Defaults (a) So long as Lessee is paying the rent and otherwise performing its obligations pursuant to the Lease, Lessee shall have the right to terminate operation or conduct of business on the Premises at any time and shall have no duty to occupy the Premises either personally or through any subtenant and the failure of Lessee to occupy the Premises shall not be construed as a default under this Lease

13.3 Default by Lessor (cont) In the event that Lessor disputes its obligation to perform, the matter shall immediately be submitted to arbitration in Los Angeles, California, and the decision of such arbitration shall be final and binding upon the parties, provided, however, that in the event of an emergency, if Lessor does not respond within a reasonable amount of time under the emergency circumstances, Lessee shall have the right to make emergency repairs. In no event shall Lessee have the right to deduct or withhold the amount of such repairs from the rent due hereunder. In the event that it is finally determined that Lessor had the obligation to repair, Lessor shall pay the amount of such repairs to Lessee within ten (10) days after receipt from Lessee of bills evidencing the amount of said repairs

14 Condemnation If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If any portion of the floor area of the building on the Premises or the land area of the Premises which is not occupied by a building is taken by condemnation and such taking materially affects the delivery access to the Premises and parking, Lessee, may, at Lessee's option, to be exercised in writing only within fifteen (15) days after Lessor shall have given Lessee written notice of such taking, terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages, provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair, only as to the use or operation of the Premises for which Lessee is responsible. If the proceeds of the condemnation received by Lessee are insufficient to complete such repairs, Lessee may cancel this Lease within fifteen (15) days after notice of the amount of such award.

16 Estoppel Certificate (c) (cont) For purposes of this Paragraph 16(c), financial statements shall mean the most recent annual report and 10-K of Lessee's parent company

Initials E. S. D.  
JSK

23 Notices (cont) At the same time as notice is given to Lessee at the address noted below the signature of Lessee, notice shall also be given by Lessor to Fleming Companies Inc , 6301 Waterford Boulevard, Oklahoma City, Oklahoma 73126

30 Subordination (b) (cont) The documentation to effectuate an attornment or subordination shall not change the terms of this Lease

Addendum 47 Fixtures All fixtures, equipment, furniture and property installed by or at the expense of Lessee shall remain the property of Lessee At any time during or at the expiration of the term hereof or earlier termination of this Lease, Lessee may, but is not obligated to, remove any or all such fixtures, equipment, furniture and property installed by or at the expense of Lessee, as it may elect, provided that such removal is made in a neat and workmanlike manner and that Lessee repair any damage caused to the Premises by reason of such removal Lessee's obligation to repair any such damage shall not imply or encompass any obligation of Lessee to restore the Premises to the condition the Premises were in before Lessee installed such fixtures, equipment, furniture and property Throughout the term hereof or any extensions hereto, any fixtures, equipment, furniture or property of the Lessee installed or stored by Lessee in, on or about the Premises shall not be subject to and shall be free of any lien for the payment of rent by Lessee or the performance of any obligation of Lessee under this Lease

Addendum 49 Common Area All of the parking area, roadways, walkways, landscaped areas, malls and service areas outlined in orange in Exhibit A are herein referred to as the "Common Area "

For the express benefit of the Premises, Lessor agrees on behalf of itself and any and all successive owners of the Premises, that during the entire term of this Lease and any extension of such terms

(a) All of the Common Area shall be used only for parking, loading, unloading, pedestrian and vehicular purposes

(b) During the term of this Lease and any extensions or renewal of such term, Lessee and its customers, business invitees and employees shall have the right in common with other tenants, their customers, business invitees and employees to use without charge all of the Common Area for the parking of vehicles and to use roadways, walkways shown thereon for the purpose of ingress and egress to and from the Premises, including said parking areas The parking layout and pattern of traffic flow within the parking areas shown on Exhibit A shall not be modified without Lessee's written consent, and no obstructions to the free flow of pedestrian and vehicular traffic to and from said parking areas and within the same shall be made or suffered by Lessor

(c) Lessor will cooperate in providing Lessee's reasonable use of the railroad spur track servicing the premises

Lessor shall maintain or cause to be maintained all of the Common Area (including paving, lighting, draining, striping, landscaping and signing thereof) in good condition for its intended use during the entire term of this Lease and any extension thereof Lessor will cooperate with and give notice to Lessee prior to any repairs being done to the Common Area that will necessitate the closing off of any part of the Common Area during Lessee's normal business hours

Addendum 50 Lessor's Building Insurance Lessee shall, as additional rent for the Premises, pay its prorata share of the cost of all insurance required hereunder, except for that portion of the cost attributable to Lessor's liability insurance coverage in excess of \$1,000,000 per occurrence Lessee shall, within ten (10) days following demand by Lessor, reimburse Lessor for the cost of the insurance so obtained With respect to any insurance effective for a term extending beyond the term of this lease, Lessee shall be obligated to pay only such proportion of the premium upon such insurance as that portion of the term of the policy lapsing prior to the expiration of the term of this Lease bears to the entire term of the policy Lessor and Lessee each agree to provide the other certificates evidencing said coverage

Initials E. P. D.

DK

JENSEN AVENUE

GROUND LEVEL LOADING

DOCK LOADING

208 300 SQ FT

30 TRUSS

24 TRUSS

ADDED

PREFABRICATED

370'

162.2'

119'000 SQ FT

WAREHOUSE FACILITY

DOCK LOADING

SPUR

60,000 SQ FT  
WAREHOUSE FACILITY

24 200  
SQ FT

N

SPUR

181,700 SQ FT

175,000

SOUTH MAPLE AVENUE

EXHIBIT A



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

**In re: Fleming Companies, Inc. et al.  
Case No. 03-10945-(MFW)-11**

**DOCUMENTS APPENDED TO CLAIM**

On July 13, 2005, document(s) were appended to Claim Number **9890 and 18355** for the following reason(s)

- ☐ Stipulation and Order
- ☐ New Supporting Documents
- ☐ Stipulation and Settlement Agreement
- ☒ E-mail communication dated 7/1/05
- ☐ Other Docket Number 6730

## Lisa Ruppaner

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**From** Stephenie Kjontvedt  
**Sent** Wednesday, July 13, 2005 11 37 AM  
**To** Lisa Ruppaner  
**Subject** FW: Resolution of claims 9890 and 18355 (Adma Associates)

Please have this email appended to claims 9890 and 18355

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**From:** Barb Hall [mailto:[flemingbhall@yahoo.com](mailto:flemingbhall@yahoo.com)]  
**Sent:** Friday, July 01, 2005 11 37 AM  
**To:** MJ John, Stephenie Kjontvedt  
**Cc:** 'Outland, Shannon', 'Franks, John'  
**Subject:** Resolution of claims 9890 and 18355 (Adma Associates)

Claim 9890 is allowed as filed as a GUC for \$2,123.25. This claim was originally scheduled as a Convenience Class claim. It should be combined with claim 18355 for distribution.

Claim 18355 is altered and allowed as a GUC in the amount of \$650,000.00 per Order Granting PCT's Twenty-Sixth Omnibus Objection to Claims docket 1052 5/5/05.

Barbara Hall  
PCT of Fleming Companies  
5801 N Broadway Ext., Suite 100  
Oklahoma City, OK 73118  
(405) 286-9802  
(405) 286-9819 fax  
[flemingbhall@yahoo.com](mailto:flemingbhall@yahoo.com)