

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



483291

Bar Date Ref # 2-G5-2960

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor and Address

0354651483291

GE CAPITAL FLEET SERVICES
~~PO BOX 100363~~ **Three Capital Drive**
~~ATLANTA GA 30384-0363~~ **Eden Prairie, MN 55344**
Att n Keith Bergquist, Bankruptcy/Litigation Manager

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

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

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

Creditor Telephone Number (952) 828-1461

CREDITOR TAX ID #

36-2774566

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

309197

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)

Your social security number

Unpaid compensation for services performed from _____ to _____
 (date) (date)

Master lease Agreement dated 11/21/91

2 DATE DEBT WAS INCURRED**3 IF COURT JUDGMENT, DATE OBTAINED****4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE**

\$ _____ (unsecured) \$ 66,742.76 (secured) \$ _____ (unsecured priority) \$ 66,742.76 (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 \$ 68,000.00

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

FILED
 THIS SPACE FOR COURT
 USE ONLY

SEP 11 2003

BMC

Fleming Companies Claim



10305

DATE SIGNED

9/10/03

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

Keith Bergquist
Keith Bergquist
Bankruptcy/Litigation Manager

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

See Other Side For Instructions



GE Capital
Fleet Services

#309197

Partial Assignment and Assumption

This is a partial assignment and assumption of the Lease Agreement (the "Lease") with respect to the Vehicles listed on Exhibit A (the "Vehicles") by and between Gelco Corporation doing business as GE Capital Fleet Services ("GECFS") and The Miller & Hartman Companies, Inc. (the "Assignor") to Fleming Companies, Inc., located at 1945 Lakepointe Drive, Lewisville TX 75057 ("Assignee")

WHEREAS a valid Lease presently exists between GECFS and Assignor and, Assignor has previously provided Assignee with a copy of the Lease and Assignee hereby acknowledges receipt of same, and

WHEREAS, the Assignor has previously consented to such assignment, and the Assignee desires to acquire from the Assignor its interest under the Lease in the Vehicles

WHEREAS, GECFS is willing to consent to such assignment and transfer on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by GECFS and Assignee the parties hereby mutually agree as follows

1. **ASSIGNMENT** As of the Effective Date specified herein Assignee hereby assumes the Assignor's interest under the Lease with respect to the Vehicles including its leasehold interest in and to the Vehicles and GECFS consents to the foregoing assignment in each and every case on and subject to the terms and conditions herein set forth

2. **SPECIFIC TERMS AND CONDITIONS MODIFYING THE LEASE.** Nothing to the contrary in the Lease notwithstanding the following provisions shall apply to Assignee as conditions of GECFS consent to this Partial Assignment.

a. **Insurance.** As of the Effective Date of this Assignment and continuing for the Lease Term of each Vehicle Assignee shall maintain the following coverages with an insurance company acceptable to GECFS and deliver to GECFS a certificate thereof: (1) Automobile liability insurance naming GECFS as an Additional Insured with limits of coverage as GECFS may require but in no event less than \$1 million combined single limit per occurrence (\$5 million for Vehicles capable of transporting 9 or more passengers) No self-insured retention is permissible and (2) Comprehensive and collision insurance naming GECFS as Loss Payee with coverage for the actual cash value of each Vehicle Assignee shall bear all risk of loss, damage or destruction to the Vehicle (which may exceed actual cash value), however caused from the time of acceptance until surrender to GECFS

b. **Further Assignment.** ASSIGNEE SHALL NOT ASSIGN, SUBLET, LIEN, ENCUMBER, OR TRANSFER ANY INTEREST IN ANY OF THE VEHICLES OR ANY INTEREST IN THIS AGREEMENT TO ANY PARTY WITHOUT THE WRITTEN CONSENT OF GECFS ANY SUCH CONSENT BY GECFS SHALL NOT RELIEVE ASSIGNEE OF ITS OBLIGATIONS AND LIABILITIES HEREUNDER UNLESS ASSIGNEE IS RELEASED BY GECFS

c. **Maximum Lease Term.** The lease term of any Vehicle shall not exceed 50 months for automobiles 72 months for light trucks and 96 months for medium and heavy trucks If a Vehicle reaches its Maximum Lease Term Assignee shall have no right to continued possession of such Vehicle and will surrender such Vehicle to GECFS for sale If a Vehicle is or becomes fully amortized, but has not reached its Maximum Lease Term, Assignee agrees to pay GECFS an extended administration fee of \$25.00 per month

d. **Execution and Governing Law:** THIS ASSIGNMENT SHALL NOT BECOME EFFECTIVE UNTIL EXECUTED BY GECFS IN EDEN PRAIRIE, MINNESOTA. THE LAWS OF THE STATE OF MINNESOTA SHALL GOVERN ALL QUESTIONS OR DISPUTES, WHETHER SOUNDING IN TORT OR CONTRACT, RELATING TO THE INTERPRETATION, PERFORMANCE, VALIDITY, ENFORCEMENT, OR EFFECT OF THIS AGREEMENT, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES THEREOF WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL LEASES OF VEHICLES HEREUNDER SHALL BE SUBJECT TO MINNESOTA STATUTES §168A.17 SUBD 1A.

e. **Hazardous Substances** In no event will the Vehicles be used to transport any hazardous substances

3. **ASSUMPTION OF LEASE** The Assignee acknowledges that the Assignee has read the Lease and Schedules attached thereto and hereby assumes as of the earlier of the Effective Date or the date of actual possession of the Vehicles all of the obligations, liabilities and duties of Assignor under the Lease directly or indirectly related to the Vehicles as though the Assignee had originally entered into the Lease including without limitation, the covenants of indemnification and GECFS disclaimer of any warranties provided that Assignee hereby assumes the obligations of rental payments and other payments or reimbursements with respect to the Vehicles as of the Effective Date

4. **EFFECTIVE DATE** This consent to Assignment is effective as of the 1st day of the month following acceptance by GECFS or such subsequent date as the parties mutually agree *(Must be the 1st day of the month)*

5. **COSTS** Assignee agrees to reimburse GECFS for any out of pocket expenses related to this assignment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized representatives

Fleming Companies, Inc.
Assignee

By

Paul J. [Signature]

Title Vice Pres. - Dev. - Planning & Dev.
(President, Vice President or Treasurer (or provide certificate of authority))

GE Capital Fleet Services

By

[Signature]

Title Authorized Signatory

Effective Date October 1, 2001

4/99

No Assignment will be accepted until GECFS receives a Certificate of Insurance from Assignee providing required coverage. Certificate should accompany document or be faxed to (952)828-1717

kal

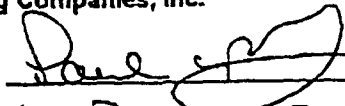


GE Capital
Fleet Services

Assignee Business Use Certification
(Pursuant to the Internal Revenue Code)

- 1 Assignee certifies under penalty of perjury that it intends the Vehicles leased pursuant to this Agreement to be used more than 50% in the trade or business of Assignee, and
- 2 Assignee has been advised that GECFS and not Assignee will be treated as the owner of the Vehicles for Federal Income Tax purposes.

Fleming Companies, Inc.

By 
Title VICE PRESIDENT - FLEMING & DEL.
(President, Vice President or Treasurer (or provide certificate of authority))

Ken

Exhibit A

Unit #	Year	Make	Model	VIN #
20010994	2001	CHVRL	CAVALIER	1G1JF524017184616
20010996	2001	CHVRL	CAVALIER	1G1JF524517172381
20011477	2001	FORDX	FOCUS	1FAFP34P51W150298
20012653	2000	GMCXX	SONOMA 4X2 R	1GTCS14W1Y8181165
20012764	2000	CHVRL	S10 4X2 REG	1GCCS14W0YK123907
20013078	2000	DODGE	DAKOTA 4X2 C	1B7GL22X5YS585041
20013166	2001	TOYOT	CAMRY	4T1BF22K51U967128
20013704	2000	CHVRL	CAVALIER	1G1JF5243Y7348404
20013705	2000	CHVRL	CAVALIER	1G1JF5245Y7286083
20013848	2001	FORDX	RANGER 4X2 S	1FTYR14U21TA53777
20013946	2000	DODGE	DAKOTA 4X2 C	1B7GL22X2YS697053
20013947	2000	DODGE	DAKOTA 4X2 Q	1B7GL2AN4YS697054
20014842	2000	DODGE	DAKOTA 4X4 Q	1B7GG2AN4YS719770
20014872	2000	CHVRL	CAVALIER	1G1JF5248Y7424294
20014873	2000	CHVRL	CAVALIER	1G1JF5243Y7423876
20014874	2000	CHVRL	CAVALIER	1G1JF524XY7425110
20015130	2000	CHVRL	IMPALA	2G1WF52E0Y9361253
20015337	2000	DODGE	DAKOTA 4X2 C	1B7GL22X5YS767371
20015338	2000	CHVRL	IMPALA	2G1WF52E9Y9347609
20015640	2001	CHVRL	EXPRESS COMM	1GBJG31R211101992
20015816	2000	CHVRL	IMPALA	2G1WF52E8Y9328386
20016216	2001	TOYOT	TUNDRA 4X4 A	5TBBT44111S204615
20016390	2000	CHVRL	EXPRESS COMM	1GBJG31R5Y1192640
20016391	2000	CHVRL	EXPRESS COMM	1GBJG31R4Y1195089
20016392	2000	CHVRL	EXPRESS COMM	1GBJG31R4Y1193214
20016395	2000	CHVRL	EXPRESS COMM	1GBJG31R6Y1193389
20016498	2000	CHVRL	CAVALIER	1G1JF524XY7456647
20016499	2000	CHVRL	CAVALIER	1G1JF5249Y7456929
20016500	2000	CHVRL	CAVALIER	1G1JF5240Y7458326
20016900	2001	PNTCX	GRAND PRIX	1G2WR521X1F229078
20017108	2000	TOYOT	CAMRY	4T1BF22K6YU940899
20017357	2000	DODGE	DAKOTA 4X2 C	1B7GL22X6YS743726
20017781	2001	TOYOT	CAMRY	4T1BF22K31U130331
20017782	2001	TOYOT	CAMRY	4T1BF22K91U971599
20018064	2001	TOYOT	AVALON	4T1BF28B01U179106
20018102	2001	TOYOT	CAMRY	4T1BF22K91U130897
20018551	2001	PNTCX	GRAND PRIX	1G2WP52K61F246717
20018552	2001	PNTCX	GRAND PRIX	1G2WP52K91F247117
20018553	2001	PNTCX	GRAND PRIX	1G2WP52K81F245973
20021032	2002	CHVRL	CAVALIER	1G1JF5241 27186635
98001230	1998	FORDX	E150 ECONOLI	1FTRE1423WHA53165
99000924	1999	DODGE	RAM VAN 1500	2B7HB11X8XK517571
99000927	1999	DODGE	RAM VAN 1500	2B7HB11X6XK517570
99001027	1999	GMCXX	S/T SONOMA R	1GTCS14X0X8501132
99001028	1999	GMCXX	S/T SONOMA R	1GTCS14X7X8500883

Hart, Michael (CAP, FLEET)

To Rylance, Bob (CAP, FLEET), BK/Lit Transfer
Subject Transferred to BK/lit

Fleming Companies 98309197 62 3 7 VA Mar-00

Banko, keith Has info

McCULLAGH

HT  A Unit of GE Capital Fleet Services

MASTER LEASE AGREEMENT (Regional Open End)

Customer # 95083-000

This Lease Agreement (herein the "Agreement") is made and entered into by and between Gelco Corporation, a Minnesota corporation with its administrative offices in Eden Prairie, Minnesota, doing business as **McCullagh Leasing** (herein the LESSOR) and The Miller & Hartman Companies, Inc., a/an Pennsylvania corporation (herein the "LESSEE")

(1) LEASE OF VEHICLES

(a) **Lease** LESSOR hereby agrees to lease to LESSEE and LESSEE hereby agrees to lease from LESSOR certain automobiles, trucks, trailers, motor vehicles or equipment (herein "Vehicle(s)") from time to time during the term of this Agreement.

(b) **New Vehicle Order** LESSEE shall evidence its agreement to lease a Vehicle hereunder by executing a written or electronic New Vehicle Order for such Vehicle on the form from time to time established by LESSOR. The New Vehicle Order shall set forth complete specifications as to each Vehicle including all equipment necessary to its lawful operation and the place and desired date of delivery. In addition to (all capitalized terms identified below are set forth in the New Vehicle Order and are hereinafter the same):

- (i) The Lease Term of the Vehicle
- (ii) The Base Rental Figure and the monthly factors to apply thereon, including but not limited to the Monthly Depreciation
- (iii) The Monthly Rental and
- (iv) The Early Termination Charge, if any

In the event any New Vehicle Order is canceled by LESSEE, LESSEE agrees to reimburse LESSOR for any expenses or losses incurred as a result of such cancellation.

(c) **Acceptance and Delivery** LESSEE's execution of a New Vehicle Order shall obligate LESSEE to lease the Vehicle specified therein effective upon its delivery to LESSEE. At the time of delivery of such Vehicle, such New Vehicle Order together with the Delivery Receipt for such Vehicle shall become a part of this Agreement. The Delivery Receipt shall be on the form from time to time established by LESSOR. LESSEE's acceptance of a Vehicle shall constitute a warranty by LESSEE that the party accepting such Vehicle has the authority to do so on behalf of LESSEE and that the Vehicle conforms to the New Vehicle Order. Upon acceptance of each Vehicle, LESSEE agrees that LESSEE's obligation to pay rent and other amounts hereunder with respect to such Vehicle shall be unconditional and LESSEE shall not be entitled to any reduction of or set-off against such amounts whatsoever nor shall this Agreement terminate or the obligations of LESSEE be affected by reason of any defect in, damage to or loss of possession, use or destruction of any Vehicle from whatsoever cause, unless such obligations have been terminated pursuant to the express terms hereof. In those cases where a Vehicle is available for delivery, LESSEE shall take delivery within five (5) business days of notice.

(2) TERM

(a) **Term of Agreement** The term of this Agreement shall be indefinite, commencing on the date hereof and continuing until canceled in the manner set forth in this Agreement or until either party hereto terminates the same upon thirty (30) days' written notice to the other. Even after the cancellation or termination of this Agreement, all Vehicles then leased by LESSEE shall continue to be subject to the terms, conditions and covenants contained in this Agreement, until each of such terms, conditions and covenants has been fulfilled and no such cancellation or termination shall affect any rights or obligations in existence prior to the effective date of such cancellation or termination. Vehicles for which New Vehicle Orders have been signed or electronically submitted by LESSEE but which Vehicles have not been delivered to LESSEE as of the effective date of such cancellation or termination at the option of LESSOR shall be deemed leased hereunder.

(b) **Vehicle Lease Term** The Lease Term for each Vehicle shall be set forth in the respective New Vehicle Order. With respect to any Vehicle leased pursuant to this Agreement, the minimum non-cancelable term of lease for such Vehicle shall be twelve (12) months, commencing on the date of delivery of such Vehicle to LESSEE and thereafter the term of lease shall be on a month-to-month basis. Unless a different Lease Term is set forth in the New Vehicle Order, the term of lease for each Vehicle shall not extend beyond a maximum of fifty (50) months for automobiles, seventy-two (72) months for light trucks and ninety-six (96) months for medium and heavy duty trucks. In no event shall LESSEE keep any Vehicle beyond the Lease Term of the Vehicle set forth in the New Vehicle Order for such Vehicle or if a Lease Term is for any reason not so specified beyond the maximum term of lease provided herein.

(3) **LESSEE'S OPERATION OF VEHICLES** LESSEE shall use the Vehicles primarily in the United States for business purposes and in a safe and lawful manner and shall comply with all federal, state, county and municipal statutes, ordinances and regulations which may be applicable to the leasing, use or operation of the Vehicles. In addition, LESSEE shall prepare and furnish to LESSOR all documents, returns or forms legally required to be prepared by LESSEE. LESSEE shall be solely responsible for any fines or penalties assessed for violations of any statute, ordinance, by-law or regulation of any duly constituted governmental authority as a result of the use or operation of the Vehicles by any of LESSEE's employees, agents, sublessees or subcontractors and shall keep the Vehicles free from any

liens and encumbrances LESSEE agrees to operate only those Vehicles which have insurance coverage as provided herein and to comply with all conditions of insurance related to the Vehicles to maintain the Vehicles and all accessories and equipment thereof in safe and good mechanical condition and running order at all times during the term of this Agreement and to furnish all supplies accessories and other essentials required for the use or operation of the Vehicles LESSEE shall comply and shall cause all persons operating the Vehicles to comply with such instructions covering the operation and maintenance of the Vehicles as LESSOR may furnish from time to time and with the manufacturers operating procedures and warranty requirements LESSEE shall not make any addition alteration or improvement to a Vehicle without the prior written consent of LESSOR which shall not be unreasonably withheld All repairs replacement parts additions alterations or improvements made to a Vehicle become the property of LESSOR and shall be surrendered with the Vehicle at the termination or cancellation of that Vehicles Lease Term In no event will the Vehicles be used to transport any hazardous substances or for the transportation of persons for hire

(4) ASSIGNMENT OF MANUFACTURER'S WARRANTIES LESSOR hereby assigns to LESSEE for and during the Lease Term of a Vehicle any warranty of the manufacturer express or implied issued on such Vehicle and hereby authorizes LESSEE to obtain the customary service furnished by the manufacturer in connection therewith at LESSEE's expense LESSEE ACKNOWLEDGES AND AGREES LESSOR IS NOT THE MANUFACTURER DESIGNER OR A DISTRIBUTOR OF THE VEHICLES AND THAT EACH VEHICLE IS OF A SIZE DESIGN CAPACITY AND MANUFACTURE SELECTED BY LESSEE AND SUITABLE FOR ITS PURPOSES

(5) LESSOR DISCLAIMER THERE ARE NO WARRANTIES OR OTHER RIGHTS PROVIDED BY LESSOR OR THE MANUFACTURER OTHER THAN THE MANUFACTURER'S WARRANTIES ASSIGNED TO LESSEE COPIES OF WHICH LESSEE ACKNOWLEDGES HAVING PREVIOUSLY RECEIVED LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, BUT NOT LIMITED TO THE MERCHANTABILITY OF A VEHICLE OR ITS FITNESS FOR A PARTICULAR PURPOSE, THE DESIGN, QUALITY OR CAPACITY OF A VEHICLE, COMPLIANCE OF A VEHICLE WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, IT BEING AGREED THAT THE VEHICLES ARE LEASED "AS IS" WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE TO LESSEE, ITS CUSTOMERS, OR THIRD PARTIES FOR ANY DEFECTS, EITHER LATENT OR PATENT, IN ANY VEHICLE, OR FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY VEHICLE, OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR NEGLIGENCE, OR FOR ANY LOSS OF USE OF ANY VEHICLE, OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS BY ITS INABILITY TO USE ANY VEHICLE FOR ANY REASON WHATSOEVER LESSOR SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY FAILURE OF OR DELAY IN DELIVERY OF THE VEHICLES OR FOR THE BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY THE MANUFACTURER LESSOR MAKES NO REPRESENTATION AS TO THE TREATMENT BY LESSEE OF THIS AGREEMENT FOR FINANCIAL STATEMENT OR TAX PURPOSES

(6) COSTS, EXPENSES, FEES AND CHARGES LESSEE covenants that it will pay all costs expenses fees charges and taxes (other than federal income or state income taxes) incurred in connection with the titling registration delivery purchase sale rental installation use or operation of the Vehicles during the term of this Agreement in addition to the rental herein provided If LESSOR incurs or is compelled to pay any of such costs LESSEE shall upon demand from LESSOR promptly reimburse LESSOR for the same If LESSOR pays any fines tickets penalties or other charges related to a violation by LESSEE of any local state or federal law or regulation or if LESSOR is served with any legal process LESSEE shall upon demand from LESSOR promptly reimburse LESSOR for the same and pay the then current administrative charge assessed by LESSOR for processing each fine ticket, penalty or other such charge on behalf of LESSEE

(7) REGISTRATION PLATES, ETC LESSEE shall at its own expense obtain in the name of LESSOR all registration plates and other plates permits inspections or licenses required to be obtained in connection with the Vehicles except for the initial registration plates which LESSOR shall obtain at LESSEE's expense LESSOR shall issue to LESSEE for such purpose powers of attorney and/or other necessary authority Both LESSOR and LESSEE covenant and agree to cooperate and to furnish any and all information or documentation which may be reasonably necessary to enable compliance with the provisions of this Section or of any local state or federal law or regulation LESSEE shall not without LESSOR's written consent permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling and/or registration laws of such other state

(8) RENTAL CHARGES

(a) Monthly Rental LESSEE will pay LESSOR and LESSOR will accept as payment from LESSEE as rental for each Vehicle the Monthly Rental set forth in the New Vehicle Order plus all other rental charges provided for in this Agreement Monthly Rental shall be paid as follows

(i) The payment of Monthly Rentals for each Vehicle shall begin on the first (1st) day of the calendar month in which the Vehicle is delivered to LESSEE if delivered on or before the fifteenth (15th) day of the month or on the first (1st) day of the next succeeding calendar month if delivered on or after the sixteenth (16th) day of the month

(ii) The payment of Monthly Rentals for each Vehicle shall end on the last day of the calendar month in which the Vehicle is surrendered if the surrender occurs on or after the sixteenth (16th) day of the month or on the last day of the immediately preceding calendar month if the surrender occurs on or before the fifteenth (15th) day of the month

(iii) Monthly Rentals shall be paid on the first (1st) day of each calendar month during the rental payment period with respect to each Vehicle If a Vehicle is delivered to Lessee on or before the fifteenth (15th) day of a month the first month's rental shall be paid on the first (1st) day of the next succeeding calendar month together with the rental payment for such next succeeding calendar month

LESSEE acknowledges that the Monthly Rental has been established based on a presumed after tax return to LESSOR If any changes in federal or state tax laws or regulations cause LESSOR's after tax return to be reduced LESSOR may in compensation prospectively adjust the Monthly Rental

(b) Invoices LESSOR shall render to LESSEE each month an invoice for Monthly Rentals due that month for all Vehicles together with a statement of all miscellaneous fees taxes costs expenses and charges due to LESSOR from LESSEE Time is of the essence All charges are due and payable upon receipt of an invoice LESSEE shall pay to LESSOR a late payment charge in the amount of one and one-half percent (1½%) or the highest legal interest rate whichever is less per month or fraction thereof on any invoice the payment of which is not in the possession of LESSOR on or before the tenth (10th) day from the date of such invoice (or if such 10th day falls on a weekend or holiday then the immediately preceding business day) LESSEE agrees to carefully review each invoice or other statement provided by LESSOR All invoices and statements rendered by LESSOR shall be presumed correct and accurate and constitute an account stated between LESSOR and LESSEE unless within thirty (30) days after receipt thereof LESSEE shall deliver written objection thereto specifying any errors in the invoice or statement In such event, LESSOR's sole liability and LESSEE's exclusive remedy shall be to make appropriate adjustments in LESSEE's account All charges are based upon LESSOR's standard operating routines computer systems capabilities and existing business policy and are subject to change upon notice Additional services and special handling required by LESSEE will be subject to separate negotiation Nothing contained in this Agreement shall prevent LESSOR from obtaining compensation from manufacturers suppliers or other vendors

(9) SURRENDER AND DISPOSITION OF VEHICLES

(a) Early Termination So long as LESSEE is not in default LESSEE may at any time after the minimum non-cancelable term of lease of twelve (12) months terminate the Lease Term of any Vehicle by giving LESSOR written notice of surrender as provided below If LESSEE surrenders a Vehicle prior to the end of the Lease Term LESSEE shall pay the Early Termination charges provided for in the respective New Vehicle Order if any

(b) Notice of Surrender At the end of the Lease Term or in the event of early termination as provided above LESSEE shall provide LESSOR written notice of its desire to surrender a Vehicle LESSOR shall use its best efforts to pick up or to cause a Vehicle to be picked up within thirty (30) days of the date of such notice In such notice LESSEE may designate the date upon which it desires a Vehicle to be picked up and LESSOR shall endeavor to accommodate such request Vehicles shall continue to be subject to the terms and conditions of this Agreement through the date of surrender which shall be the date LESSOR takes actual possession of the respective Vehicle

(c) Surrender Each Vehicle shall be surrendered in good and safe operating condition to LESSOR where it was originally received by LESSEE or at such other place as LESSOR and LESSEE may agree upon in writing At that time LESSEE shall complete sign and deliver to LESSOR a Used Vehicle Condition Report form supplied by LESSOR with respect to such Vehicle Such surrender shall include all license plates registration certificates documents of title and odometer certifications and other documentation necessary to effect the sale or other disposition of the Vehicle LESSEE shall remove any personal property prior to surrender Any personal property left in a Vehicle after surrender shall be deemed abandoned and may be disposed of by LESSOR without liability LESSOR shall sell each Vehicle within a reasonable time after the date of surrender LESSEE shall pay LESSOR a sales fee of One hundred fifty dollars (\$ 150.00) in connection with each Vehicle sold by LESSOR provided however if LESSEE obtains through its own efforts an offer for the purchase of a Vehicle which is accepted by LESSOR the sales fee shall be Twenty-five dollars (\$ 25.00) Any time after the first anniversary of the date of execution of this Agreement, LESSOR may upon thirty (30) days notice to LESSEE increase such sales fee

(d) Pickup Charge If LESSEE surrenders a Vehicle at a point that is more than two hundred (200) miles more distant from LESSOR's place of business than the original point of delivery and said Vehicle is not being replaced hereunder then in such event LESSEE shall be liable to LESSOR for a pickup charge in accordance with LESSOR's then current charges as notified by LESSOR to LESSEE from time to time

(e) Disposition of Vehicles LESSOR shall and LESSEE may solicit from prospective purchasers in the wholesale vehicle market cash bids for surrendered Vehicles on an AS IS WHERE IS BASIS WITHOUT RECOURSE OR WARRANTY Such Vehicles shall be sold in a commercially reasonable manner for cash payable in full upon delivery If repairs to a Vehicle surrendered by LESSEE shall be deemed advisable by LESSOR before sale LESSEE shall pay for such repair costs If LESSEE and LESSOR fail to agree on the extent of the repairs to be performed before sale LESSOR shall offer the Vehicle for sale in AS IS condition as provided above Without limiting the generality of the foregoing LESSOR shall have the right to sell Vehicles to any dealer or broker or any other party including to or through companies affiliated with LESSOR

(f) Terminal Rental Adjustment From the proceeds realized from any such sale of a surrendered Vehicle there shall first be deducted all direct expenses paid or incurred by LESSOR in connection with such Vehicle and its sale from time of surrender through date of sale the balance remaining to constitute the net proceeds (herein the "Net Proceeds") The Net Proceeds from the sale of any such Vehicle shall be payable to LESSOR

(i) If the Net Proceeds exceed the amount equal to the Base Rental figure of such Vehicle reduced by an amount equal to the aggregate of the Monthly Depreciation paid on such Vehicle (herein the "Unamortized Book Value") LESSOR shall retain an amount equal to the Unamortized Book Value on the Vehicle sold plus zero percent (0 %) of the remaining excess and LESSEE shall receive One hundred percent (100 %) of such remaining excess as a refund of rental, provided however if LESSEE is in default hereunder LESSEE's portion if any of such remaining excess shall be applied to reduce the amount of default

(ii) If the Net Proceeds are less than the Unamortized Book Value of the Vehicle sold, LESSEE shall pay LESSOR in cash as a rental charge adjustment, the amount of such deficiency

(10) INSURANCE

(a) Coverages LESSEE shall at LESSEE's expense procure from a responsible insurance company acceptable to LESSOR prior to delivery of each Vehicle and shall maintain until final disposition or sale of each Vehicle by LESSOR the following insurance coverage

(i) Public liability and property damage insurance (comprehensive automobile liability) insuring LESSOR and its assigns if any LESSEE and any person having possession of or using a Vehicle against liability for death bodily injury and property damage resulting from ownership maintenance use or operation of a Vehicle with limits of coverage as LESSOR may require but in no event less than one million dollars (\$1 000 000 00) combined single limit per occurrence

(ii) Comprehensive and collision insurance insuring LESSOR and its assigns if any against loss and/or damage to each Vehicle arising out of any risk covered by such insurance (including without limitation fire theft casualty malicious mischief falling objects missiles glass breakage smoke not or civil commotion) with limits of coverage as LESSOR may require but in no event less than actual cash value of each Vehicle subject to a One thousand dollar (\$ 1000 00) deductible LESSEE agrees to immediately reimburse LESSOR the amount of the deductible hereunder without regard to who is responsible for the loss or damage to the Vehicle

The above insurance shall also include the following in amounts not less than the applicable minimum legal requirements (i) uninsured/underinsured motorist coverage and (ii) no fault protection LESSEE shall in addition provide general liability insurance covering LESSEE's indemnification responsibilities hereunder

(b) Conditions LESSOR shall be named as an additional insured on the liability and property damage insurance required under 10(a)(i) and as the loss payee on the collision and comprehensive damage insurance required under 10(a)(ii) All insurance policies required hereunder shall provide for thirty (30) days prior written notice to LESSOR and its assigns if any of any cancellation or reduction in coverage LESSEE shall deliver to LESSOR prior to the commencement of the Lease Term with respect to any Vehicle or prior to the effective date of any cancellation or expiration of such insurance as the case may be the insurance policy a certificate or other satisfactory evidence of the maintenance of the insurance required hereunder LESSOR shall be under no duty to examine such policies certificates or other evidence of insurance or to advise LESSEE in the event that its insurance is not in compliance with this Agreement LESSEE in the event of default, hereby appoints LESSOR as LESSEE's attorney-in-fact to receive payment of and endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if LESSEE fails to do so Any expense of LESSOR in adjusting or collecting insurance shall be borne by LESSEE

(c) Cooperation LESSEE its drivers servants and agents shall cooperate fully with LESSOR and the insurance carriers insuring the hazards enumerated herein in the investigation defense and prosecution of any and all claims or suits arising from the operation of the Vehicles If any claim is made or action commenced for death personal injury or property damage resulting from the ownership maintenance use or operation of any Vehicle LESSEE shall promptly notify LESSOR thereof and forward to LESSOR a copy of every demand notice summons or other process received in connection therewith LESSEE shall furnish to LESSOR a report of any accident involving a Vehicle (on the form furnished by the insurer) within three (3) days of such accident

(11) INDEMNIFICATION BY LESSEE LESSEE COVENANTS AND AGREES TO INDEMNIFY, SAVE HARMLESS AND DEFEND LESSOR, ANY EMPLOYEE OF LESSOR, AND ANY PARENT, SUBSIDIARY OR AFFILIATE OF LESSOR, AGAINST ANY AND ALL LIABILITY, CLAIMS FOR LOSS, DAMAGE, OR INJURY AND FROM AND AGAINST ANY SUITS, ACTIONS, OR LEGAL PROCEEDINGS OF ANY KIND BROUGHT AGAINST LESSOR FOR OR ON ACCOUNT OF ANY PERSON(S) OR LEGAL ENTITY, OR ON ACCOUNT OF ANY INJURIES RECEIVED OR SUSTAINED BY ANY PERSON(S) OR LEGAL ENTITY IN ANY MANNER, DIRECTLY OR INDIRECTLY CAUSED BY, INCIDENT TO, OR GROWING OUT OF, WHOLLY OR IN PART, THE OWNERSHIP, LEASING, MAINTENANCE, USE, CONDITION (INCLUDING, BUT NOT LIMITED TO, PATENT OR LATENT DEFECTS WHETHER OR NOT DISCOVERABLE BY LESSOR OR LESSEE, PRODUCT LIABILITY CLAIMS, AND THE CONDITION OF ANY VEHICLE UPON SALE OR OTHER DISPOSITION), OPERATION, RETURN, SURRENDER, SALE OR OTHER DISPOSITION OF ANY VEHICLE, OR THE BREACH BY LESSEE OF ANY COVENANT OR CONDITION OF THIS AGREEMENT IN THE EVENT LESSOR SELLS ANY VEHICLE TO LESSEE, TO ANY EMPLOYEE OF LESSEE OR TO ANY PURCHASER FROM WHOM LESSEE OBTAINS AN OFFER, LESSEE'S COVENANTS OF INDEMNITY SHALL CONTINUE LESSEE FURTHER AGREES TO TAKE UPON ITSELF THE SETTLEMENT OF ALL SUCH CLAIMS AND THE DEFENSE OF ANY SUIT OR SUITS, OR LEGAL PROCEEDINGS OF ANY KIND BROUGHT TO ENFORCE SUCH CLAIM OR CLAIMS, AND TO PAY ALL JUDGMENTS ENTERED INTO SUCH SUIT OR SUITS AND ALL COSTS, ATTORNEYS' FEES OR OTHER EXPENSES IN ANY INSTANCE WHERE SAID CLAIMS IN ANY WAY AFFECT LESSOR'S INTERESTS UNDER THIS AGREEMENT, LESSEE SHALL NOT CONSUMMATE ANY SETTLEMENT WITHOUT LESSOR'S PRIOR WRITTEN CONSENT

THE FOREGOING LESSEE'S COVENANTS OF INDEMNITY DO NOT ENCOMPASS ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY LESSOR, BUT ARE OTHERWISE ABSOLUTE AND UNCONDITIONAL AND SHALL CONTINUE IN FULL FORCE AND EFFECT REGARDLESS OF WHERE, HOW OR BY WHOM ANY VEHICLE IS OPERATED, AND NOTWITHSTANDING ANY INSURANCE COVERAGE THAT LESSEE MAY CARRY OR THE TERMINATION OR CANCELLATION OF THIS AGREEMENT

THE PROVISIONS OF THIS SECTION COMPREHEND, BUT WITHOUT LIMITATION, LIABILITY AND CLAIMS, HOWSOEVER ARISING, WHETHER BY REASON OF NEGLIGENCE, BREACH OF WARRANTY, DEFECT IN MANUFACTURE OR MAINTENANCE OR OTHERWISE, AND EVEN THOUGH STRICT LIABILITY BE CLAIMED

(12) LESSOR-LESSEE RELATIONSHIP THE PARTIES INTEND THAT THIS AGREEMENT BE A TRUE LEASE The parties agree that this is not an agreement of partnership or employment of LESSOR or of any of LESSOR's employees by LESSEE and that LESSOR is an independent contractor Except as may be specifically provided in an executed Power of Attorney neither LESSEE nor any employee of LESSEE shall have any authority to act on behalf of LESSOR or be deemed to be the agent, servant or employee of LESSOR Nothing herein contained shall give or convey to LESSEE any right, title or interest in and to any Vehicle leased hereunder except as LESSEE and LESSEE shall have no option to purchase any Vehicle LESSOR shall have the right at any time to mark the Vehicle stating its interest as owner and LESSEE will execute such statements as LESSOR may request confirming LESSOR's ownership In the event that contrary to the intention of the parties hereto this Agreement is deemed to be other than a lease LESSEE hereby grants LESSOR a security interest in the Vehicles and all proceeds accessions documents instruments accounts chattel paper equipment and general intangibles related thereto to secure all of LESSEE's obligations hereunder At LESSOR's request, LESSEE agrees to execute any financing statements or other instruments necessary or expedient for filing recording or perfecting the interest and title of LESSOR A photostatic copy or other reproduction of this Agreement shall be sufficient as a financing statement

(13) STATEMENTS AND RIGHTS OF INSPECTION LESSOR shall have the right to inspect any Vehicle and the records of LESSEE pertaining to the Vehicles at any reasonable time upon reasonable notice The creditworthiness of LESSEE and any guarantor is a material condition to this Agreement LESSEE shall provide LESSOR with LESSEE's financial statements and any other information as LESSOR may require from time to time during the term of this Agreement

(14) DEFAULT

(a) Event of Default In the event LESSEE shall fail to make the payments as herein provided or after ten (10) days' written notice shall fail to perform any of its covenants under this Agreement or in the event LESSEE or any guarantor shall (i) make an assignment for the benefit of creditors or suffer a receiver or trustee to be appointed or file or suffer to be filed any petition under any bankruptcy or insolvency law of any jurisdiction, or (ii) suspend business or commit any act amounting to a business failure or (iii) suffer an attachment or tax lien against any of its property or (iv) make a voluntary assignment or transfer of any Vehicle or of any or all of its interest hereunder (in a manner or to a person not permitted by the terms hereof) or of all or substantially all of its property or (v) die (if an individual) or its corporate or partnership existence (as the case may be) shall cease or terminate or (vi) commit or omit any act which LESSOR reasonably determines impairs LESSEE's prospect of making payments or performing any of the other covenants required by LESSEE hereunder or (vii) be in default under any other Agreement it may have with LESSOR or any parent subsidiary or affiliate of LESSOR or (viii) suffer a material adverse change in operating or financial condition which impairs LESSEE's ability to perform its obligations hereunder or LESSOR's title to or rights in the Vehicles or (ix) deliver or make any representation or warranty herein or in any document delivered to LESSOR in connection herewith which shall prove to be false or misleading in any material respect or (x) fail to complete an odometer disclosure form or make a false statement on an odometer disclosure form then in such event LESSEE shall be in default under this Agreement and LESSOR shall have the rights and remedies hereinafter specified together with all other remedies available at law or in equity

(b) Remedies Upon an event of default, LESSOR may at its option

(i) Cancel this Agreement with respect to any or all of the Vehicles hereunder in which event any and all such Vehicles shall immediately be delivered at LESSEE's cost and expense to a location or locations specified by LESSOR and LESSEE shall pay to LESSOR all unpaid rentals and other charges due through the date of such cancellation together with all costs and expenses including reasonable attorneys fees incurred by LESSOR in the enforcement of its rights under the provisions of this Agreement or

(ii) Repossess any and all Vehicles hereunder wherever they may be found (and for that purpose LESSOR or its agents may enter upon any premises of or under the control of LESSEE or any other person) without canceling this Agreement and charge LESSEE with any deficiency between the amount due from LESSEE and the amount realized by leasing or selling such Vehicles to another party while retaining its right to collect the full rental and other charges due for the period prior to such sale or lease of the Vehicles and all expenses incurred in repossessing said Vehicles including reasonable attorneys fees for enforcement of LESSOR's rights

In addition LESSOR shall be entitled to recover the Unamortized Book Value of the Vehicles and the applicable Early Termination Charge if any

(c) Compliance In case of failure by LESSEE to comply with any provision of this Agreement, LESSOR shall have the right, but not the obligation at its option to effect such compliance as in LESSOR's sole discretion is appropriate in whole or in part, and all expenses of LESSOR incurred in effecting such compliance plus LESSOR's then standard handling fee shall be immediately due and payable LESSOR's effecting such compliance shall not in any way be deemed to constitute a waiver of any default by LESSEE

(15) FORCE MAJEURE AND NO CONSEQUENTIAL DAMAGES LESSOR shall not be liable for any failure or delay in delivering any Vehicle for any reason or for any failure to perform any provisions hereof resulting from fire other casualty not strike or other labor difficulty governmental regulation or restriction or any cause beyond LESSOR's control In no event shall LESSOR be liable for any loss of profits or other consequential damages or any inconveniences resulting from any theft, damage to loss of defect in or failure of any Vehicle or the time consumed in recovering repairing adjusting servicing or replacing the same and there shall be no abatement or apportionment of rental during such time LESSEE AGREES THAT LESSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY MATTER OR CAUSE OF ACTION RELATED DIRECTLY OR INDIRECTLY TO ANY BREACH BY LESSOR OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN LESSEE AND LESSOR SHALL BE A CAUSE OF ACTION SOUNDING IN CONTRACT AND WITH DAMAGES LIMITED TO ACTUAL AND DIRECT DAMAGES INCURRED

(16) ASSIGNMENTS LESSOR may from time to time assign all or any part of its right title and interest in this Agreement including all moneys and claims for moneys due and to become due hereunder, provided however that LESSEE may remain in possession of any Vehicle until expiration of its respective Lease Term as long as LESSEE shall not be in default

LESSEE SHALL NOT ASSIGN, SUBLET, LIEN, ENCUMBER, OR TRANSFER ANY INTEREST IN ANY OF THE VEHICLES OR ANY INTEREST IN THIS AGREEMENT TO ANY PARTY WITHOUT THE WRITTEN CONSENT OF LESSOR ANY SUCH CONSENT BY LESSOR SHALL NOT RELIEVE LESSEE OF ITS OBLIGATIONS AND LIABILITIES HEREUNDER

(17) SUBSIDIARIES, PARENTS AND AFFILIATES Any Vehicles leased by LESSOR to present or future subsidiaries parents or affiliates of LESSEE shall be within the terms and conditions of this Agreement, unless covered by a separate lease agreement with such subsidiary parent or affiliate and LESSEE agrees that, in the event such subsidiary parent or affiliate does not perform according to the terms and conditions of the Agreement LESSEE will upon fifteen (15) days notice of any default perform according to the tenor of this Agreement regarding the Vehicles on lease to such subsidiary parent or affiliate Such performance shall be absolute and unconditional and with respect to amounts owing constitute a guaranty of payment

(18) EXECUTION AND GOVERNING LAW THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF LESSOR IN EDEN PRAIRIE MINNESOTA. THE LAWS OF THE STATE OF MINNESOTA SHALL GOVERN ALL QUESTIONS OR DISPUTES WHETHER SOUNDING IN TORT OR CONTRACT RELATING TO THE INTERPRETATION PERFORMANCE VALIDITY ENFORCEMENT OR EFFECT OF THIS AGREEMENT WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES THEREOF WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL VEHICLES LEASED HEREUNDER SHALL BE SUBJECT TO MINNESOTA STATUTES SECTION 168A.17 SUBD 1A

(19) SEVERABILITY If any portion of this Agreement shall be found to be illegal invalid or contrary to public policy the same may be modified or stricken by a Court of competent jurisdiction to the extent necessary to allow the Court to enforce such provision in a manner which is as consistent with the original intent of the provision as possible The striking or modification by the Court of any provision shall not have the effect of invalidating the Agreement as a whole

(20) WAIVER OF JURY TRIAL BOTH PARTIES TO THIS AGREEMENT HEREBY WAIVE ANY AND ALL RIGHT TO ANY TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING DIRECTLY OR INDIRECTLY HEREUNDER

(21) MISCELLANEOUS This Agreement is for the benefit of and may be enforced by the respective parties and their successors and permitted assignees and is not for the benefit of and may not be enforced by any third party This Agreement is the product of negotiations between the parties Each provision hereof shall be read and interpreted in accordance with its common and ordinary meaning and no ambiguity in language shall be read or interpreted in favor or against either party

(22) ODOMETER DISCLOSURE STATEMENT Federal law (and state law if applicable) requires that LESSEE disclose and LESSEE shall disclose the mileage of each Vehicle to LESSOR in connection with the transfer of ownership of the Vehicle Failure to complete an odometer disclosure form or making a false statement may result in fines and/or imprisonment

(23) LOSS OF OR DAMAGE TO VEHICLES

(a) Risk of Loss LESSEE shall bear all risk of loss damage or destruction to any Vehicle however caused and including without limitation collision fire theft, flood or conversion abandonment or unauthorized sale or concealment by agents or employees of LESSEE or any other cause or combination of causes which may occur after the moment of delivery of the Vehicle to the moment of surrender to or repossession by LESSOR or its agent LESSEE shall advise LESSOR of any loss destruction or damage to a Vehicle within three (3) days from the occurrence thereof

(b) Damages In the event a Vehicle suffers total loss destruction or irreparable damage LESSEE shall pay to LESSOR the Unamortized Book Value for such Vehicle upon receipt of an invoice for the same If such total loss destruction or irreparable damage shall occur during the period when LESSEE would be required by the respective New Vehicle Order to pay an Early Termination Charge then LESSEE shall additionally pay the Early Termination Charge LESSEE's obligation to pay rental and other expenses shall continue during any period of repairs and in the case of total loss or irreparable damage until LESSOR's receipt of payment therefor LESSEE understands that such Unamortized Book Value plus Early Termination Charge if any may exceed the actual cash value of the Vehicle as determined by the insurer of the Vehicle and that LESSEE shall be required to pay such excess to LESSOR

(24) MODIFICATIONS This Agreement, all Exhibits and addenda and each respective New Vehicle Order and Delivery Receipt contain the entire understanding of the parties and merge all oral understandings Any modifications changes or amendments may be made only in writing subscribed by LESSEE and LESSOR Failure of either party to enforce any right granted herein shall not be deemed a waiver of such right

Initials
JMD
C.H.

Initials
JMD
C.H.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized representatives

McCULLAGH LEASING (LESSOR)

Address 30803 Little Mack Avenue
Roseville MI 48066-1787

Regional Office Representative

By

Title

Date

Eden Prairie MN Representative

By

Date

The Miller & Hartman Companies, Inc. (LESSEE)

Principal Place of Business and
Mailing Address 180 Greenfield Road

Lancaster PA 17604

By

Title

Date

LESSEE Certification
Pursuant to Internal Revenue Code As Amended

Customer # 95083 - 000

The undersigned (LESSEE) hereby acknowledges that all Vehicles subject to that certain Lease Agreement by and between LESSEE and Gelco Corporation dba McCullagh Leasing (LESSOR) are included in this Certification

- 1 LESSEE certifies under penalty of perjury that it intends the Vehicles leased pursuant to the Lease Agreement to be used more than fifty percent (50%) in the trade or business of the LESSEE and
- 2 **LESSEE has been advised by LESSOR that, LESSOR and not LESSEE, will be treated as the owner of the property subject to the Lease Agreement for Federal Income Tax purposes**

The Miller & Hartman Companies, Inc. (LESSEE)

By George M. Dwyer
Title Controller
Date 11-21-91



GE Fleet Services

Three Capital Drive Eden Prairie MN 55344

September 10 2003

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo CA 90245

RE Fleming Companies Inc
Chapter 11 Bankruptcy Case # 03-10945
Proof of Claim

Dear Madam or Sir

You will find two copies of our Proof of Claim referencing the subject bankruptcy case. Please time stamp one copy and return it to me in the enclosed self-addressed stamped envelope.

Call me with any questions.

Regards

A handwritten signature in black ink, appearing to read 'Keith Bergquist', with a long horizontal line extending to the right.

Keith Bergquist
Bankruptcy/Litigation Manager
(952) 828-1461