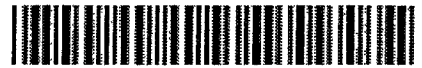


UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM



566188

Bar Date Ref # 2-NVM-24898

In re Fleming Companies, Inc et al

Case Number
03-10945(MFW)

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

0354653566188

Cushman & Wakefield
One Meadowlands Plaza Ste 1100
East Rutherford NJ 07073

☐ 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 ()

CREDITOR TAX ID #

13-2625361

ACCOUNT OR OTHER NUMBER BY WHICH
CREDITOR IDENTIFIES DEBTOR

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 (date) to (date)

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM
AS OF PETITION DATE

\$ 66,554.91 \$ (unsecured) \$ (secured) \$ (unsecured priority) \$ (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5 SECURED CLAIM

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral

- ☐ Real Estate
☐ Motor Vehicle
☐ Other

Value of collateral \$

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

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim.

Specify the priority of the claim

- ☐ Wages, salaries, or commissions (up to \$4,650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)
☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
☐ Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)
☐ Other: Specify applicable paragraph of 11 U.S.C. § 507(a)

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8 SUPPORTING DOCUMENTS Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

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

THIS SPACE FOR COURT

FILED

SEP 12 2003

BMC

Fleming Companies Claim



11051

DATE SIGNED

09/10/03

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).

Kenneth P. Singleton

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

Cushman & Wakefield of Arizona, Inc
1850 North Central Avenue, Suite 300
Phoenix, Arizona 85004
Phone (602) 229-5911
Fax (602) 229-5971



INVOICE

JANUARY 13, 2000

PAYOR
Fleming Companies, Inc
Attn Mel Willming
5701 North Shartel
Oklahoma City, OK, 73118

INVOICE #00-52001-0003

AMOUNT DUE

\$53,716 77

LANDLORD	FLEMING COMPANIES, INC
TENANT	GILDAN ACTIVEWEAR, INC <i>lease extension</i>
PROPERTY	3400 NW 74TH STREET MIAMI, FL Lease Extension From 2/1/00 through 1/31/01
AGGREGATE RENTAL	\$895,279 56 <i>12 months at \$74,606 63 per month</i>
COMMISSION RATE	6%
COMMISSION DUE	\$53,716 77
PAYMENT TERMS	100% DUE ON INVOICE

PLEASE SEND REMITTANCE AND REMITTANCE COPY OF THIS INVOICE TO

**CUSHMAN & WAKEFIELD OF ARIZONA, INC
ATTN CATHARINE TEETER, ADMINISTRATIVE MANAGER
1850 NORTH CENTRAL AVENUE, #300
PHOENIX, AZ 85004**

THANK YOU! WE APPRECIATE YOUR BUSINESS

FOR INQUIRIES CONTACT CATHY TEETER OR LEIGHTON FISK

**tion contained in this facsimile is intended for the use of the Addressee only If you have received this
please notify the sender by telephone This communication should not be copied or distributed and the
original should be destroyed Thank you*



CUSHMAN & WAKEFIELD OF FLORIDA, INC
601 BRICKELL KEY DRIVE
SUITE 600
MIAMI FL 33131

BK Page 1 of 2

Date 3/31/2002

FLEMING COMPANIES, INC
6301 WATERFOED BLVD
OKLAHOMA CITY OK 73126

Invoice No 02-42001-0035-001 000 Total Balance Due Now 53,716 77

RENEWAL LEASE

TENANT	GILDAN ACTIVEWARE, INC	Term	2/01/2000	1/31/2001
PROPERTY	3400 NW 74TH AVENUE	Sq Ft	210,654	

RENTAL CALCULATION

<u>DATES</u>		<u>BASE RENTAL</u>	
<u>From</u>	<u>To</u>	<u>Monthly Rental Rate</u>	<u>Aggregate Rent for Period</u>
2/01/2000	1/31/2001	74,606 63	895,279 56
TOTAL			895,279 56

COMMISSION CALCULATION

<u>YEARS</u>		<u>Rental for Period</u>	<u>Commission Rate</u>	<u>Amount</u>
<u>From</u>	<u>Thru</u>			
1	1	895,279 56	@ 6 0000%	= 53,716 77
				<u>53,716 77</u>

PAYMENT TERMS

<u>Payment Event</u>	<u>Date Due</u>	<u>Amount</u>
UPON EXECUTION	5/28/1998	53,716 77

BILLING & PAYMENT HISTORY

TOTAL COMMISSION		53,716 77
AMOUNT PREVIOUSLY BILLED		00
INSTALLMENT DUE	5/28/1998	<u>53,716 77</u>
LESS PAYMENTS TO DATE		<u>00</u>
TOTAL BALANCE DUE NOW		53,716 77

CUSHMAN & WAKEFIELD OF FLORIDA, INC
601 BRICKELL KEY DRIVE
SUITE 600
MIAMI FL 33131



Page 2 of 2

Date 3/31/2002

FLEMING COMPANIES, INC
6301 WATERFOED BLVD
OKLAHOMA CITY OK 73126

Invoice No 02-42001-0035-001 000

Total Balance Due Now 53,716 77

Please make check payable to CUSHMAN & WAKEFIELD OF FLORIDA, INC
Show invoice number(02-42001-0035-001 000) on check and send remittance copy along with payment to

CUSHMAN & WAKEFIELD, INC
P O BOX 9296
NEW YORK NY 10087 9296

For inquiries, contact the billing dept at (212) 709 0866 or your sales representative

COPY

INDUSTRIAL GROSS LEASE

By and Between

FLEMING COMPANIES, INC.
an Oklahoma Corporation
as "Lessor"

and

GILDAN ACTIVEWEAR, INC.
a Canadian Corporation
as "Lessee"

Dated May 28, 1998

④-10-

FLEMING COMPANIES, INC.

INDUSTRIAL GROSS LEASE

ARTICLE ONE: BASIC TERMS

This Article One contains the Basic Terms of this Lease between the Lessor and Lessee named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. Date of Lease

May 28, 1998

Section 1.02. Lessor

Fleming Companies, Inc., an Oklahoma Corporation

Address of Lessor

6301 Waterford Boulevard, P O Box 26647, Oklahoma City, Oklahoma, 73126

Section 1.03. Lessee

Gildan Activeware, Inc. a Canadian Corporation

Address of Lessee

725 Montee de Liesse, Ville Saint-Laurent, QC H4T 1P5 CANADA

Section 1.04. Property:

The Property is part of Lessor's property known as the Fleming Miami Facility located at 3400 NW 74th Avenue, Miami, Florida and described or depicted in Exhibit "A" (the "Project"). The Project includes the land, approximately 763,451 square feet of buildings and all other improvements located on the land, and the common areas described in Paragraph 4.05(a). The Property is defined as a portion of the Fleming Miami Facility consisting of approximately 210,654 square feet of warehouse space within the Project including currently installed racking systems (Property graphically identified in Exhibit 'A').

Section 1.05. Lease Term:

This Lease is for a period of nineteen (19) Months beginning on July 1, 1998, or such other date as is specified in this Lease, and ending on January 31, 2000, the "Lease Term".

Section 1.06. Permitted Uses: (See Article Five) Storage and distribution of garments

Section 1.07. Lessee's Guarantor

NONE

Section 1.08. Brokers (See Article Fourteen)

Lessor's Broker:

✓ CUSHMAN & WAKEFIELD of ARIZONA, INC., Mr. Leighton Fisk and
✓ CUSHMAN & WAKEFIELD of FLORIDA, INC., Mr. Ben Eisenberg

Lessee's Broker \ CUSHMAN & WAKEFIELD of FLORIDA, INC , Mr Wayne Ramoski

Section 1.09. Commission Payable to Brokers \$85,051 55

Section 1.10. Initial Security Deposit. (See Section 3 03) None

Section 1.11. Vehicle Parking Spaces Allocated to Lessee (See Section 4 05)

Unrestricted parking around the Property within the boundaries identified in Exhibit "A" and subject to the provisions of Section 4 05

Section 1.12. Rent and Other Charges Payable by Lessee

(a) **BASE RENT** Starting on the Rental Commencement Date, which is herein defined as August 1, 1998, Lessee shall pay Lessor, as provided in Section 3 01, base rent in the monthly amount of Seventy Four Thousand Six Hundred Six and 63/100 Dollars (\$74,606 63), ("Base Rent")

(b) **OTHER PERIODIC PAYMENTS** In addition to the foregoing Base Rent due in consideration for this Lease, Lessee shall pay

- (i) Utilities, other than electricity water and sewer service, paid directly to the appropriate supplier(See Section 4 03),
- (ii) Liability Insurance (See Section 4 04), and
- (iii) Maintenance, alterations & repairs pursuant to the terms of Article Six

Section 1.13. Lessor's Share of Profit on Assignment or Lease (See Section 9 05) Lessor's share of Profit on Assignment or Lease is one hundred percent (100 %) of the Profit (the "Lessor's Share")

Section 1.14. Riders

The following Riders are attached to and made a part of this Lease

Exhibit "A" - Site Plan

ARTICLE TWO: LEASE TERM

Section 2.01. Lease of Property For Lease Term

Lessor leases the Property to Lessee and Lessee leases the Property from Lessor for the Lease Term The Lease Term is for the period stated in Section 1 05 above and shall begin and end on the dates specified in Section 1 05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease The "Commencement Date" shall be the date specified in Section 1 05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease

Section 2.02. Delay in Commencement.

Lessor shall not be liable to Lessee if Lessor does not deliver possession of the Property to Lessee on the Commencement Date Lessor's non-delivery of the Property to Lessee on that

date shall not affect this Lease or the obligations of Lessee under this Lease, except that the Commencement Date shall be delayed until Lessor delivers possession of the Property to Lessee, and the Lease Term shall be extended for a period equal to the delay in delivery of possession of the Property to Lessee, plus the number of days necessary to end the Lease Term on the last day of a month. If Lessor does not deliver possession of the Property to Lessee within fifteen (15) days after the Commencement Date, Lessee may elect to cancel this Lease by giving written notice to Lessor within ten (10) days after the fifteen (15) day period ends. If Lessee gives such notice, the Lease shall be canceled and neither Lessor nor Lessee shall have any further obligations to the other. If Lessee does not give such notice, Lessee's right to cancel the Lease shall expire and the Lease Term shall commence upon the delivery of possession of the Property to Lessee. If delivery of possession of the Property to Lessee is delayed, Lessor and Lessee shall, upon such delivery, execute an amendment to this Lease, setting forth the actual Commencement Date and expiration date of the Lease. Failure to execute such amendment shall not affect the actual Commencement Date and expiration date of the Lease.

Section 2.03. Early Occupancy.

If Lessee occupies the Property prior to the Commencement Date, Lessee's occupancy of the Property shall be subject to all of the provisions of this Lease. Early occupancy of the Property shall not advance the expiration date of this Lease. Lessee shall not pay Base Rent or any other charges specified in this Lease for the early occupancy.

Section 2.04. Holding Over.

Lessee shall vacate the Property upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for and indemnify Lessor against actual damages which Lessor incurs from Lessee's delay in vacating the Property. If Lessee does not vacate the Property upon the expiration or earlier termination of the Lease, and Lessor hereafter accepts rent from Lessee, Lessee's occupancy of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by 25%.

ARTICLE THREE: BASE RENT

Section 3.01. Time and Manner of Payment.

Upon execution of this Lease, Lessee shall pay Lessor the Base Rent in the amount stated in Paragraph 1.12(a) above for August, 1998. On the first day of September, 1998 and each month thereafter, Lessee shall pay Lessor the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Lessor's Local Address identified in Section 1.02, above, or at such other place as Lessor may designate in writing.

Section 3.02. Termination - Advance Payments.

Upon termination of this Lease under Article Seven (Damage & Destruction), Article Eight (Condemnation) or any other termination not resulting from Lessee's default, and after Lessee has vacated the Property in the manner required by this Lease, Lessor shall refund or credit to Lessee (or Lessee's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Lessee to Lessor, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR: OTHER CHARGES PAYABLE BY LESSEE

Section 4 01. Additional Rent

All charges payable by Lessee other than Base Rent are called "Additional Rent " Unless this Lease provides otherwise, Lessee shall pay all Additional Rent then due with the next monthly installment of Base Rent The term "rent" shall mean Base Rent and Additional Rent

Section 4 02. Expenses

The purpose of this Section 4 02 is to ensure that Lessee bears the cost of all general maintenance to the Property and to the outside area surrounding the Property segregated from the Project for the purpose of Lessee's access, loading and parking Lessee shall perform the maintenance required of it by Article Six and pay directly to its chosen supplier the cost of such general maintenance and shall operate the Property in a first class manner In addition, Lessee shall pay all costs and expenses of maintaining liability insurance defined in Section 4 04 (a), below, directly to the appropriate insurance providor and the cost of any personal property taxes as defined below

Personal Property Taxes

- (i) Lessee shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Lessee Lessee shall try to have personal property taxed separately from the Property
- (ii) If any of Lessee's personal property is taxed with the Property, Lessee shall pay Lessor the taxes for the personal property within fifteen (15) days after Lessee receives a written statement from Lessor for such personal property taxes

Section 4.03 Utilities.

Water, sewer and electrical utility service to the dry warehouse area and the office area of the Project ("Reimbursable Utilities") are separately metered and paid by Lessor As the Property is a portion of the dry warehouse area, Lessee shall be responsible for reimbursing Lessor twenty six percent (26%) of Reimbursable Utilities within fifteen (15) days after receipt of Lessor's written statement In no event shall such reimbursements for Lessee's share of Reimbursable Utilities exceed ~~Ninety Thousand Dollars (\$90,000)~~ ^{\$73,500} per year during the Lease Term Lessee shall pay, directly to the appropriate supplier, the cost of all telephone, refuse disposal and other utilities and services supplied to the Property for Lessee's use

Section 4.04 Insurance Policies.

- (a) **Liability Insurance** During the Lease Term, Lessee shall maintain, at Lessee sole expense, a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Lessee against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property Lessee shall name Lessor as an additional insured under such policy The initial amount of such insurance shall be Two Million Dollars (\$2,000,000) per occurrence The liability insurance obtained by Lessee under this Paragraph 4 04(a) shall contain cross-liability endorsements, and insure

Lessor against Lessee's performance under Section 5 05, if the matters giving rise to the indemnity under Section 5 05 result from the negligence of Lessee. The amount and coverage of such insurance shall not limit Lessee's liability nor relieve Lessee of any other obligation under this Lease. Lessor may also obtain comprehensive public liability insurance in an amount and with coverage determined by Lessor insuring Lessor against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Lessor shall not be contributory and shall not provide primary insurance.

- (b) **Property Insurance** During the Lease Term, Lessor shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Lessor deems reasonably necessary. Lessor shall have the right to obtain flood and earthquake insurance if required by any lender holding a security interest in the Property. Lessor shall not obtain insurance for Lessee's fixtures or equipment or building improvements installed by Lessee on the Property. Lessee shall not do or permit anything to be done which invalidates any insurance policies.

(c) **General Insurance Provisions**

- (i) Any insurance which Lessee is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Lessor not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.
- (ii) If Lessee fails to deliver any insurance certificate to Lessor required under this Lease within the prescribed time period or if any such certificate or its underlying insurance policy is canceled or modified during the Lease Term without Lessor's consent, Lessor may obtain such insurance, in which case Lessee shall reimburse Lessor for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.
- (iii) Lessee shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-12 or better, as set forth in the most current issue of "Best Key Rating Guide". Lessee acknowledges that the insurance described in this Section 4 04 is for the primary benefit of Lessor. Lessor makes no representation as to the adequacy of such insurance to protect Lessor's or Lessee's interests. Therefore, Lessee shall obtain any such additional property or liability insurance which Lessee deems necessary to protect Lessor and Lessee.
- (iv) Unless prohibited under any applicable insurance policies maintained, Lessor and Lessee each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Lessor and Lessee shall give notice to the insurance carriers of this mutual waiver of subrogation.

Section 4 05 Lessee's Access, Security, and Use of the Parking Areas

Lessee shall have use of the land surrounding the Property roughly identified on the site plan incorporated as Exhibit "A" for purposes of vehicular parking and delivery maneuvering room

Section 4 06. Late Charges.

Lessee's failure to pay rent promptly may cause Lessor to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Lessor by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Lessor does not receive any rent payment within ten (10) days after it becomes due, Lessee shall pay Lessor a late charge equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment.

Section 4.07. Interest on Past Due Obligations

Any amount owed by Lessee to Lessor which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Lessee under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Lessee under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

ARTICLE FIVE: USE OF PROPERTY

Section 5 01 Permitted Uses.


Lessee may use the Property only for the Permitted Uses set forth in Section 1 06 above.

Section 5 02 Manner of Use

Lessee shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of Lessor or other users of the Property, or which constitutes a nuisance or waste. Lessee shall obtain and pay for all permits, including a Certificate of Occupancy, required for Lessee's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Lessee of the Property including the Occupational Safety and Health Act as well as all applicable statutes, ordinances, rules, regulations, orders and requirements requiring alterations or improvements to the Property (such as the Americans with Disabilities Act), the requirement for compliance with which arises by reason of (a) the Lessee's use of the Property (other than requirements applicable to warehousing usage of the Property), or (b) improvements, alterations or additions to the Property made by Lessee.

Section 5 03. Hazardous Materials.

As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation



petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons Lessee shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Project by Lessee, its agents, employees, contractors, subtenants or invitees without the prior written consent of Lessor Lessor shall be entitled to take into account such other factors or facts as Lessor may reasonably determine to be relevant in determining whether to grant or withhold consent to Lessee's proposed activity with respect to Hazardous Materials In no event, however, shall Lessor be required to consent to the installation or use of any storage tanks on the Property

Section 5 04. Signs and Auctions.

Lessee shall not place any signs on the Property without Lessor's prior written consent, which consent will not be unreasonably withheld Lessee shall not conduct or permit any auctions or sheriff's sales at the Property

Section 5 05. Indemnity

Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, liabilities, actions, causes of action, costs and expenses arising from, in connection with or in any way related to (i) Lessee's use of the Property, (ii) the conduct of Lessee's business or anything else done in or about the Property, including any contamination of the Property or any other property resulting from the presence or use of Hazardous Material caused or permitted by Lessee, (iii) any breach or default in the performance of Lessee's obligations under this Lease, (iv) any misrepresentation or breach of warranty by Lessee under this Lease, or (v) other acts or omissions of Lessee Lessee shall defend Lessor against any such cost, claim or liability at Lessee's expense with counsel reasonably acceptable to Lessor or, at Lessor's election, Lessee shall reimburse Lessor for any legal fees or costs incurred by Lessor in connection with any such claim As a material part of the consideration to Lessor, Lessee assumes all risk of damage to property or injury to persons in or about the Property arising from any cause other than Lessor's negligence or willful misconduct, and Lessee hereby waives all claims in respect thereof against Lessor, except for any claim arising out of Lessor's negligence or willful misconduct As used in this Section, the term "Lessee" shall include Lessee's employees, agents, contractors and invitees, if applicable

Section 5 06. Lessor's Access.

Lessor or its agents may, upon providing Lessee with prior notice, enter the Property at all reasonable times show the Property to potential buyers, investors or lessees or other parties, to do any other act or to inspect and conduct tests in order to monitor Lessee's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material, or for any other purpose Lessor deems necessary Lessor shall give Lessee prior notice of such entry, except in the case of an emergency Lessor may place customary "For Sale" or "For Lease" signs on the Property

Section 5 07. Quiet Possession.

If Lessee pays the rent and complies with all other terms of this Lease, Lessee may occupy and enjoy the Property for the full Lease Term, subject to the provisions of this Lease

ARTICLE SIX: CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6 01. Existing Conditions.

In order to accommodate Lessee's use of the Property, Lessor agrees to make the following repairs and alterations prior to the Lease Commencement Date, at Lessor's sole expense

- 2) Install two double-occupant restrooms in the warehouse area,
- 3) Block all wall openings between the Property and the Project with drywall and framing studs, and
- 4) Install new fencing along the northern boundary of the property line in order to separate Lessee's and Lessor's truck traffic

In addition to the foregoing specific repairs, the Property will be delivered to Lessee upon Lease Commencement broom-cleaned with all mechanical and lighting systems in good working order. With the exception of the foregoing improvements Lessor is required to make, Lessee accepts the Property in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation as to the condition of the Property or the suitability of the Property for Lessee's intended use. Lessee represents and warrants that Lessee has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Lessor or any Broker with respect thereto.

Lessor does not represent or warrant to Lessee that the Property is in compliance with the Americans with Disabilities Act of 1990, as amended ("ADA") although Lessor will undertake any alterations or improvements hereafter required by appropriate authority to bring the Property into compliance except to the extent Lessee is required to undertake the same under Section 5 02.

Section 6 02. Exemption of Lessor from Liability.

Lessor shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from (a) fire, steam, electricity, water, gas or rain, (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause, (c) conditions arising in or about the Property or upon other portions of the Property, or from other sources or places, or (d) any act or omission of any other lessee of the Property. Lessor shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Lessee. The provisions of this Section 6 02 shall not, however, exempt Lessor from liability for Lessor's negligence or willful misconduct.

Section 6 03. Lessor's Obligations.

- (a) Except as provided in Article Seven (Damage or Destruction) and Article Eight (Condemnation), Lessor shall keep the following in good order, condition and repair: the foundations, exterior walls and roof of the Property. However, Lessor shall not be

obligated to maintain or repair windows, doors, plate glass or the interior surfaces of exterior walls. Lessor shall make repairs under this Section 6 03 within a reasonable time after receipt of written notice from Lessee of the need for such repairs.

- (b) Lessee waives the benefit of any statute in effect now or in the future which might give Lessee the right to make repairs at Lessor's expense or terminate this Lease due to Lessor's failure to keep the Property in good order, condition and repair.

Section 6 04. Lessee's Obligations.

- (a) Except as provided in Section 6 03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Lessee shall keep all portions of the Property (including non-structural, interior, systems and equipment) in good order, condition and repair, excepting latent defects. If any portion of the Property any system or equipment in the Property which Lessee is obligated to repair cannot be fully repaired or restored, Lessee shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term, but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Lessee shall be liable only for that portion of the cost which is applicable to the Lease Term (as extended). Lessee shall maintain a preventative maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor. If any part of the Property is damaged by any act or omission of Lessee, Lessee shall pay Lessor the cost of repairing or replacing such damaged property, whether or not Lessor would otherwise be obligated to pay the cost of maintaining or repairing such property.
- (b) Lessee shall fulfill all of Lessee's obligations under this Section 6 04 at Lessee's sole expense. If Lessee fails to maintain, repair or replace the Property as required by this Section 6 04, Lessor may, upon ten (10) days' prior notice to Lessee (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Lessee. In such case, Lessee shall reimburse Lessor for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6 05. Alterations, Additions, Improvements

Lessee shall not make any alterations, additions, or improvements to the Property without Lessor's prior written consent, except for non-structural alterations which do not exceed Ten Thousand Dollars (\$10,000) in cost cumulatively over the Lease Term and which are not visible from the outside of any building of which the Property is part. Lessor may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Lessor. Lessee shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6 05(a) upon Lessor's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Lessor, which approval will not be unreasonably withheld. Upon completion of any such work, Lessee shall provide Lessor with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

For any improvements made to the Property, Lessee shall pay when due all claims for labor and material furnished to the Property. Lessee shall give Lessor at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Lessor's consent to such work is required. Lessor may elect to record and post notices of non-responsibility on the Property.

Section 6 06. Condition upon Termination

Upon the termination of the Lease, Lessee shall surrender the Property to Lessor, broom clean and in the same condition as received except for ordinary wear and tear which Lessee was not otherwise obligated to remedy under any provision of this Lease. Specifically, Lessee shall be obligated to restore the racking system to its original configuration delivered at the time of Lease Commencement. In addition, to the extent Lessor requires Lessee to remove any alterations, additions or improvements (whether or not made with Lessor's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, Lessee shall do so at Lessee's expense. All alterations, additions and improvements which Lessor has not required Lessee to remove shall become Lessor's property and shall be surrendered to Lessor upon the expiration or earlier termination of the Lease, except that Lessee may remove any of Lessee's machinery or equipment which can be removed without material damage to the Property. Lessee shall repair, at Lessee's expense, any damage to the Property caused by the removal of any such machinery or equipment. In no event, however, shall Lessee remove any of the following materials or equipment (which shall be deemed Lessor's property) without Lessor's prior written consent: any power wiring or power panels, lighting or lighting fixtures, wall coverings, drapes, blinds or other window coverings, carpets or other floor coverings, heaters, air conditioners or any other heating or air conditioning equipment, fencing or security gates, or other similar building operating equipment and decorations.

ARTICLE SEVEN: DAMAGE OR DESTRUCTION

Section 7 01. Partial Damage to Property.

- (a) Lessee shall notify Lessor in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than fifty percent (50%) of the Property is untenable as a result of such damage or less than fifty percent (50%) of Lessee's operations are materially impaired) and if the proceeds received by Lessor from the insurance policies described in Paragraph 4 04(b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Lessor shall repair the damage as soon as reasonably possible. Lessor may elect (but is not required) to repair any damage to Lessee's fixtures, equipment, or improvements.
- (b) If the insurance proceeds received by Lessor are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which Lessor maintains under Paragraph 4 04(b), Lessor may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Lessor shall notify Lessee within thirty (30) days after receipt of notice of the occurrence of the damage whether Lessor elects to repair the damage or terminate the Lease. If Lessor elects to repair the damage and the damage was due to an act or omission of Lessee, or Lessee's employees, agents, contractors or invitees, Lessee shall pay Lessor the

"deductible amount" (if any) under Lessor's insurance policies. Furthermore, if the damage was due to an act or omission of Lessee, or Lessee's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Lessor. If Lessor elects to terminate the Lease, Lessee may elect to continue this Lease in full force and effect, in which case Lessee shall repair any damage to the Property. Lessee shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Lessor shall deliver to Lessee any insurance proceeds received by Lessor for the damage repaired by Lessee. Lessee shall give Lessor written notice of such election within ten (10) days after receiving Lessor's termination notice.

- (c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Lessor or Lessee may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Lessee's notice to Lessor of the occurrence of the damage.

Section 7 02. Substantial or Total Destruction.

If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7 01), and regardless of whether Lessor receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred. If the Property can be rebuilt within thirty (30) days after the date of destruction, Lessor may elect to rebuild the Property at Lessor's own expense, in which case this Lease shall remain in full force and effect. Lessor shall notify Lessee of such election within thirty (30) days after Lessee's notice of the occurrence of total or substantial destruction. If Lessor so elects, Lessor shall rebuild the Property at Lessor's sole expense, except that if the destruction was caused by an act or omission of Lessee, Lessee shall pay Lessor the difference between the actual cost of rebuilding and any insurance proceeds received by Lessor.

Section 7 03. Temporary Reduction of Rent.

If the Property is destroyed or damaged and Lessor repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Lessee's use of the Property is impaired. However, the reduction shall not exceed the sum of one year's payment of Base Rent. Except for such possible reduction in Base Rent, Lessee shall not be entitled to any compensation, reduction, or reimbursement from Lessor as a result of any damage, destruction, repair, or restoration of or to the Property.

Section 7 04. Waiver.

Lessee waives the protection of any statute, code or judicial provision which grants a Lessee the right to terminate a lease in the event of the substantial or total destruction of the leased property. Lessee agrees that the provisions of Article Seven shall govern the rights and obligations of Lessor and Lessee in the event of any substantial or total destruction to the Property.

ARTICLE EIGHT: CONDEMNATION

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the Property is taken, either Lessor or Lessee may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Lessor nor Lessee terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground Lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property, (b) second, to Lessee, only the amount of any award specifically designated for loss of or damage to Lessee's trade fixtures or removable personal property, and (c) third, to Lessor, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Lessor shall repair any damage to the Property caused by the Condemnation, except that Lessor shall not be obligated to repair any damage for which Lessee has been reimbursed by the condemning authority. If the severance damages received by Lessor are not sufficient to pay for such repair, Lessor shall have the right to either terminate this Lease or make such repair at Lessor's expense.

ARTICLE NINE: ASSIGNMENT AND SUBLETTING

Section 9.01. Lessor's Consent Required.

No portion of the Property or of Lessee's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, lease, transfer, operation of law, or act of Lessee, without Lessor's prior written consent, except as provided in Section 9.02 below. Lessor has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease.

Section 9.02. Lessee Affiliate.

Lessee may assign this Lease or Lease the Property, 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 of or consolidation with Lessee ("Lessee's Affiliate").

Section 9.03. No Release of Lessee.

No transfer permitted by this Article Nine, whether with or without Lessor's consent, shall release Lessee or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Lease. Lessor's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Lessee's transferee defaults under this Lease, Lessor may proceed directly against Lessee without pursuing remedies against the transferee. Lessor may consent to subsequent assignments or modifications of this Lease by Lessee's transferee, without notifying Lessee or

obtaining its consent. Such action shall not relieve Lessee's liability under this Lease.

Section 9.04. Offer to Terminate.

If Lessee desires to assign the Lease or sublease the Property, Lessee shall have the right to offer, in writing, to terminate the Lease as of a date specified in the offer. If Lessor elects in writing to accept the offer to terminate within twenty (20) days after notice of the offer, the Lease shall terminate as of the date specified and all the terms and provisions of the Lease governing termination shall apply. If Lessor does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05. Lessor's Consent

- (a) Lessee's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Lessor deems relevant. Lessor shall have the right to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use of the Property, (ii) the net worth and financial reputation of the proposed assignee or subtenant, (iii) Lessee's compliance with all of its obligations under the Lease, and (iv) such other factors as Lessor may reasonably deem relevant. If Lessor objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Lessee may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.
- (b) If Lessee assigns or subleases, the following shall apply:
 - (i) Lessee shall pay to Lessor as Additional Rent under the Lease the Lessor's Share (stated in Section 1.13) of the Profit (defined below) on such transaction as and when received by Lessee, unless Lessor gives written notice to Lessee and the assignee or subtenant that Lessor's Share shall be paid by the assignee or subtenant to Lessor directly. The "Profit" means (A) all amounts paid to Lessee for such assignment or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less (B) costs and expenses directly incurred by Lessee in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of improvements required under such assignment or sublease and rent paid by Lessee hereunder. Lessee is entitled to recover such costs and expenses before Lessee is obligated to pay the Lessor's Share to Lessor. The Profit in the case of a sublease of less than all the Property shall be determined with references to the rent allocable to the subleased space as a percentage on a square footage basis.
 - (ii) Lessee shall provide Lessor a written statement certifying all amounts to be paid

from any assignment or sublease of the Property within thirty (30) days after the transaction documentation is signed, and Lessor may inspect Lessee's books and records to verify the accuracy of such statement. On written request, Lessee shall promptly furnish to Lessor copies of all the transaction documentation, all of which shall be certified by Lessee to be complete, true and correct. Lessor's receipt of Lessor's Share shall not be a consent to any further assignment or subletting. The breach of Lessee's obligation under this Paragraph 9 05(b) shall be a material default of the Lease.

Section 9 06. No Merger.

No merger shall result from Lessee's Lease of the Property under this Article Nine, Lessee's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Lessor may terminate any or all subtenancies or succeed to the interest of Lessee as sublandlord under any or all subtenancies.

ARTICLE TEN: DEFAULTS; REMEDIES

Section 10.01 Covenants and Conditions

Lessee's performance of each of Lessee's obligations under this Lease is a condition as well as a covenant. Lessee's right to continue in possession of the Property is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10 02. Defaults

Lessee shall be in material default under this Lease

- (a) If Lessee's vacation of the Property results in the cancellation of any insurance described in Section 4 04,
- (b) If Lessee fails to pay rent or any other charge when due,
- (c) If Lessee fails to perform any of Lessee's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Lessor, provided that if more than thirty (30) days are required to complete such performance, Lessee shall not be in default if Lessee commences such performance within the thirty (30)-day period and thereafter diligently pursues its completion. However, Lessor shall not be required to give such notice if Lessee's failure to perform constitutes a non-curable breach of this Lease. The notice required by this Paragraph is intended to satisfy any and all notice requirements imposed by law on Lessor and is not in addition to any such requirement.
- (d) (i) If Lessee makes a general assignment or general arrangement for the benefit of creditors, (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Lessee and is not dismissed within thirty (30) days, (iii) if a trustee or receiver is appointed to take possession of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease and possession is not restored to Lessee within thirty (30) days, or (iv) if substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a

court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession) and such trustee or Lessee transfers Lessee's interest hereunder or subleases all or a portion of the Property, then Lessor shall receive, as Additional Rent, the excess if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Lessee under this Lease

- (e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Lessee's obligations under the Lease Unless otherwise expressly provided, no guaranty of the Lease is revocable

Section 10.03. Remedies

On the occurrence of any material default 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

- (a) Terminate Lessee's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Property 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 (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Lessor had earned at the time of the termination (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Lessor would have earned after termination until the time of the award exceeds the amount of such rental loss that Lessee proves Lessor could have reasonably avoided, (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Lessee would have paid for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Lessee proves Lessor could have reasonably avoided, and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Lessor incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of releasing, including necessary renovation or alteration of the Property, Lessor's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%) If Lessee has abandoned the Property, Lessor shall have the option of (i) retaking possession of the Property and recovering from Lessee the amount specified in this Paragraph 10 03(a), or (ii) proceeding under Paragraph 10 03(b),
- (b) Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee has abandoned the Property 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,

- (c) Terminate this Lease or pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state in which the Property is located

Section 10.04. Automatic Termination

Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Lessor's intention to terminate the Lease as provided in Section 10.03 hereof. On such termination, Lessor's damages for default shall include all costs and fees, including reasonable attorneys' fees that Lessor incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Lessee, or the pursuing of any action with respect to Lessor's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Lessor prior to assumption of the Lease by Lessee or any successor to Lessee in any bankruptcy or other proceeding.

Section 10.05. Cumulative Remedies.

Lessor's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

ARTICLE ELEVEN: PROTECTION OF LENDERS

Section 11.01. Subordination.

Lessor shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Lessee shall cooperate with Lessor and any lender which is acquiring a security interest in the Property or the Lease. Lessee shall execute such further documents and assurances as such lender may require, provided that Lessee's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Lessee shall not be deprived of its rights under this Lease. Lessee's right to quiet possession of the Property during the Lease Term shall not be disturbed if Lessee pays the rent and performs all of Lessee's obligations under this Lease and is not otherwise in default. If any ground Lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Lessee, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Any subordination document prepared and presented to Lessee for execution pursuant to this Section 11.01 shall contain non disturbance and attornment provisions which are consistent with the terms of this Section.

Section 11 02. Attornment

If Lessor's interest in the Property is acquired by any ground Lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Lessee shall attorn to the transferee of or successor to Lessor's interest in the Property and recognize such transferee or successor as Lessor under this Lease. Lessee waives the protection of any statute or rule of law which gives or purports to give Lessee any right to terminate this Lease or surrender possession of the Property upon the transfer of Lessor's interest.

Section 11 03. Signing of Documents.

Lessee shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so. If Lessee fails to do so within ten (10) days after written request, Lessee shall be in material default of this Lease.

Section 11 04. Estoppel Certificates

- (a) Upon Lessor's written request, Lessee shall execute, acknowledge and deliver to Lessor a written statement certifying (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed), (ii) that this Lease has not been canceled or terminated, (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment, (iv) that Lessor is not in default under this Lease (or, if Lessor is claimed to be in default, stating why), and (v) such other representations or information with respect to Lessee or the Lease as Lessor may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Lessee shall deliver such statement to Lessor within ten (10) days after Lessor's request. Lessor may give any such statement by Lessee to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.
- (b) If Lessee does not deliver such statement to Lessor within such ten (10)-day period, Lessor, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Lessor, (ii) that this Lease has not been canceled or terminated except as otherwise represented by Lessor, (iii) that not more than one month's Base Rent or other charges have been paid in advance, and (iv) that Lessor is not in default under the Lease. In such event, Lessee shall be estopped from denying the truth of such facts.

ARTICLE TWELVE: LEGAL COSTS

Section 12.01. Legal Proceedings.

If Lessee or Lessor shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Non defaulting Party") upon demand for any costs or expenses that the Non defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights of otherwise. Furthermore, if any action for breach of, or to enforce the provisions of

this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys fees and costs. The losing party in such action shall pay such attorneys fees and costs. Lessee shall also indemnify Lessor against and hold Lessor harmless from all costs, expenses, demands and liability Lessor may incur if Lessor becomes or is made a party to any claim or action (a) instituted by Lessee against any third party, or by any third party against Lessee, or by or against any person holding any interest under or using the Property by license of or agreement with Lessee, (b) for foreclosure of any lien for labor or material furnished to or for Lessee or such other person, (c) otherwise arising out of or resulting from any act or transaction of Lessee or such other person, or (d) necessary to protect Lessor's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Lessee shall defend Lessor against any such claim or action at Lessee's expense with counsel reasonably acceptable to Lessor or, at Lessor's election, Lessee shall reimburse Lessor for any legal fees or costs Lessor incurs in any such claim or action.

Section 12 02 Lessor's Consent

Lessee shall pay Lessor's reasonable attorneys fees incurred in connection with Lessee's request for Lessor's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Lessee proposes to do and which requires Lessor's consent.

ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13 01. Non-Discrimination.

Lessee promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

Section 13 02. Lessor's Liability, certain Duties.

- (a) As used in this Lease, the term Lessor means only the current owner or owners of the fee title to the Property or Property or the leasehold estate under a ground lease of the Property or Property at the time in question. Each Lessor is obligated to perform the obligations of Lessor under this Lease only during the time such Lessor owns such interest or title. Any Lessor who transfers its title or interest is relieved of all liability with respect to the obligations of Lessor under this Lease to be performed on or after the date of transfer. However, each Lessor shall deliver to its transferee all funds that Lessee previously paid if such funds have not yet been applied under the terms of this Lease.
- (b) Lessee shall give written notice of any failure by Lessor to perform any of its obligations under this Lease to Lessor and to any ground Lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Lessee in writing. Lessor shall not be in default under this Lease unless Lessor (or such ground Lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Lessee's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Lessor shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter.

diligently pursued to completion

- (c) Notwithstanding any term or provision herein to the contrary, the liability of Lessor for the performance of its duties and obligations under this Lease is limited to Lessor's interest in the Property, and neither the Lessor nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease

Section 13.03. Severability.

A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect

Section 13.04. Interpretation.

The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Lessee, the term "Lessee" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Property with Lessee's expressed or implied permission.

Section 13.05. Incorporation of Prior Agreements; Modifications

This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06. Notices.

All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid. Notices to Lessee shall be delivered to the address specified in Section 1.03 above, except that upon Lessee's taking possession of the Property, the Property shall be Lessee's address for notice purposes. In addition to the foregoing, notice to Lessee shall require delivery to the following addresses:

- | | |
|-----|--|
| 1 | Hart, St. Pierre
c/o Gino Martel
1 Place Ville Marie
Montreal, Quebec |
| AND | |
| 2 | Leonard Rosenberg, Esq
Sandler, Travis & Rosenberg
5200 Blue Lagoon Drive
Miami, FL 33126 |

Notices to Lessor shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. Waivers.

All waivers must be in writing and signed by the waiving party. Lessor's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Lessor from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Lessee or in a letter accompanying a payment check shall be binding on Lessor. Lessor may, with or without notice to Lessee, negotiate such check without being bound to the conditions of such statement.

Section 13.08. No Recordation.

Lessee shall not record this Lease without prior written consent from Lessor. However, either Lessor or Lessee may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. Binding Effect; Choice of Law.

This Lease binds any party who legally acquires any rights or interest in this Lease from Lessor or Lessee. However, Lessor shall have no obligation to Lessee's successor unless the rights or interests of Lessee's successor are acquired in accordance with the terms of this Lease. The laws of the State of Florida shall govern this Lease.

Section 13.10. Authority.

Lessee is a corporation, and each person signing this Lease on behalf of Lessee represents and warrants that he has full authority to do so and that this Lease binds the Lessee. Lessee agrees to provide Lessor evidence of the Lessee's power and authority to enter into this Lease as reasonably requested by Lessor.

Section 13.11. Force Majeure.

If Lessor or Lessee cannot perform any of its obligations due to events beyond Lessor's or Lessee's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Lessor's or Lessee's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

Section 13.12. Execution of Lease.

This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Lessor's delivery of this Lease to Lessee shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.13. Survival.

All representations and warranties of Lessor and Lessee shall survive the termination of this Lease.



ARTICLE FOURTEEN: BROKERS

Section 14.01. Broker's Fee.

When this Lease is signed by and delivered to both Lessor and Lessee, Lessor shall pay a real estate commission to Lessor's Broker named in Section 1 08 above, if any, as provided in the written agreement between Lessor and Lessor's Broker. Lessor shall pay Lessor's Broker a commission if Lessee exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Lessor may grant to Lessee, or if Lessor's Broker is the procuring cause of any other lease or sale entered into between Lessor and Lessee covering the Property. Such commission shall be the amount set forth in Lessor's Broker's commission schedule in effect as of the execution of this Lease. If a Lessee's Broker is named in Section 1 08 above, Lessor's Broker shall pay an appropriate portion of its commission to Lessee's Broker if so provided in any agreement between Lessor's Broker and Lessee's Broker. Nothing contained in this Lease shall impose any obligation on Lessor to pay a commission or fee to any party other than Lessor's Broker.

Section 14.02. Protection of Brokers.

If Lessor sells the Property, or assigns Lessor's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Lessor's Broker thereafter required of Lessor under this Article Fourteen. Lessor's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Lessor's Broker.

Section 14.03. Agency Disclosure; No Other Brokers; Transaction Brokerage

Lessor and Lessee each warrant that they have dealt with no other real estate broker(s) in connection with this transaction except CUSHMAN & WAKEFIELD OF ARIZONA, INC , Mr Leighton Fisk and CUSHMAN & WAKEFIELD OF FLORIDA, INC , Mr Ben Eisenberg who both represent Lessor under a certain National Agreement "Lessor's Broker" and CUSHMAN & WAKEFIELD OF FLORIDA, INC , Mr Wayne Ramoski who represents the Lessee, "Lessee's Broker"

Lessor and Lessee acknowledge that Cushman and Wakefield represents both Lessor and Lessee and hereby consent to such intermediary representation. Furthermore, Lessor and Lessee understand and accept this representation creates a situation of transaction brokerage.

ARTICLE FIFTEEN: EXTENSION OPTION

In the event Lessee is not in default of any terms and conditions of this Lease, Lessee may extend this Lease for two periods of six (6) months each, the first from February 1, 2000 through July 31, 2000 and the second from August 1, 2000 through January 31, 2001. Each extension option shall be granted to Lessee provided Lessor has received ninety (90) - days' prior written notice of Lessee's intention to extend. During such extended term, the terms and conditions of this Lease shall remain the same.

Handwritten signature and initials in the bottom right corner of the page.

Lessor and Lessee have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or Incorporated by reference in this Lease

"Lessor"

Signed on June 5, 19 98

at Oklahoma City, Oklahoma

Witness [Signature]

Fleming Companies Inc, an
Oklahoma Corporation

By [Signature]
Tom Myers

Its Vice President Logistics

"Lessee"

Signed on June 1st, 19 98

at Minneapolis, Minnesota

Witness [Signature]

Gildan Activeware, a Canadian
Corporation

By [Signature]

Its Chairman + Chief Executive Officer

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS. ADDITIONALLY, IT IS RECOMMENDED THAT YOU CONSULT WITH YOUR LEGAL COUNSEL REGARDING THE TERMS AND CONDITIONS OF THIS LEASE

[Signature]
6-8-98

**CUSHMAN & WAKEFIELD OF FLORIDA, INC.
EASTERN REGION**

REVENUE TRANSMITTAL DOCUMENT CHECK LIST - LEASE
--

_____	RTD (both sides completed)
_____	Fully Executed Lease
_____	Fully Executed Commission Agreement
_____	Evaluation Form
_____	Client Feedback Letter
_____	Disclosure Statement
_____	Check Attached

*****NOTE***** In lieu of Commission Agreement, explanation in memo and/or letter form is necessary Check must also be attached in order to process deal

REVENUE TRANSMITTAL DOCUMENT CHECKLIST - SALE
--

_____	RTD (both sides completed)
_____	Fully executed contract
_____	Fully executed closing statement
_____	Commission Agreement
_____	Check
_____	Copy of Invoice (if manual)
_____	Evaluation Form
_____	Client Feedback Letter
_____	Disclosure Statement
_____	FSG deal sheet (if applicable)

MAR 15 2002

Signature



RTD CHECKLIST

Broker Name(s): _____

Date: _____

RTD # _____

Tenant/Buyer: _____

Landlord/Seller: _____

Check with broker:

- | | | |
|--|--------|---------------------------------------|
| Does Cost Recovery apply to this deal? | Yes/No | |
| . Four-page property flyers? | Yes/No | (Property Flyer Fee? _____) |
| . Is this an Exclusive Listing? | Yes/No | (for file to be pulled if applicable) |
| Is there signage that needs removed? | Yes/No | (if yes, prepare Sign Removal Form) |

Lease Transaction

- _____ RTD - fully completed and initialed by broker
- _____ Lease Agreement - "Fully" Executed copy (Always needed)
- _____ Commission Agreement - "Fully" Executed copy (Always needed)
- _____ Outside Broker Agreement (If Applicable) - "Fully" Executed copy
- _____ Transaction Summary Form with Client Feedback name/address
- _____ Remove listing from LoopNet, CoStar, Black's Guide
- _____ Add Tenant and/or broker to Greeting Card List and Pinnacle List
- _____ Complete Closed Transactions form on-line at www.fgcar.org
- _____ Other 2001deal xls spreadsheet (all tabs), Update StkPln (xls & qxd),
- _____ Flyers, ExclList qxd, LseExp xls, Resume

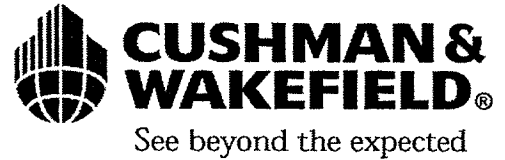
Sale Transaction

- _____ RTD - fully completed and initialed by broker
- _____ Commission Check or Wire Transfer (Always needed)
- _____ Closing Statement - "Fully" Executed copy (Always needed)
- _____ Sales Contract - "Fully" Executed copy (Always needed)
- _____ Commission Agreement or Listing Agreement - "Fully" Executed copy
(with Extensions if applicable) (Always needed)
- _____ Outside Broker Agreement (If Applicable) - "Fully" Executed copy
- _____ Transaction Summary Form with Client Feedback name/address
- _____ Remove listing from LoopNet, CoStar, Black's Guide
- _____ Add Tenant and/or broker to Greeting Card List and Pinnacle List
- _____ Complete Closed Transactions form on-line at www.fgcar.org
- _____ Other 2001deal xls spreadsheet (all tabs), Update StkPln (xls & qxd),
- _____ Flyers, ExclList qxd, LseExp xls, Resume

MAR 29 2002

Note: RTD's will not be processed without the above completed documentation
Where certain documentation is not available - need memo explaining why it is missing

Cushman & Wakefield of Arizona, Inc.
2525 East Camelback Road, Suite 1000
Phoenix, Arizona 85016
Phone (602) 229-5911
Fax (602) 229-5971



INVOICE

March 25, 2003

PAYOR:

Progressive Realty, Inc
6440 Avondale Drive, Suite 206
Oklahoma City, OK 73116
Attn Mr Greg Downs

INVOICE #03-52001-0087

AMOUNT CURRENTLY DUE \$ 8,870.40

SUBLESSEE	Kenco Logistics, Inc
SUBLESSOR	Fleming Companies, Inc
PROPERTY	2250 West Bridger Road, Salt Lake City, UT
SQUARE FOOTAGE	35000 square feet
AGGREGATE ADD'L RENT	\$ 184,800 00
COMMISSION RATE	4 80% <i>Net of Progressive Fee Sharing</i>
COMMISSION DUE C&W	\$ 8,870 40
PAYMENT TERMS	Due on Invoice

PLEASE SEND REMITTANCE AND REMITTANCE COPY OF THIS INVOICE TO

**CUSHMAN & WAKEFIELD OF ARIZONA, INC
ATTN R LEIGHTON FISK
2525 East Camelback Road, Suite 1000
Phoenix, AZ 85016**

THANK YOU! WE APPRECIATE YOUR BUSINESS
FOR INQUIRIES CONTACT CATHY OR LEIGHTON AT 602/253-7900

SUBLEASE AGREEMENT

THIS SUBLEASE is entered into as of the 3rd day of March, 2003, by and between **FLEMING COMPANIES, INC**, an Oklahoma corporation (hereinafter referred to as "Sublandlord"), and **KENCO LOGISTICS, INC.**, a Tennessee corporation (hereinafter referred to as "Subtenant")

RECITALS

Sublandlord is the tenant of certain premises located at 1836 South Fremont Drive, Salt Lake City, Utah (the "Leased Premises") under a lease currently between Sublandlord and State Investment Co (the "Prime Landlord"), dated November 1, 1974, as amended April 14, 1975, April 23, 1975 and May 29, 1975 (the "Lease") A copy of the Lease is attached hereto as Exhibit A. Subtenant has agreed to sublease from Sublandlord that portion of the Leased Premises consisting of approximately 35,000 square feet as shown on attached Exhibit B (the "Premises")

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

1 **Premises.**

(a) Sublandlord hereby subleases to Subtenant, and Subtenant subleases from Sublandlord, the Premises, together with the non-exclusive right to use, to the extent reasonably required in connection with the use of the Premises, those parking areas, access areas and other Common Areas (as defined in the Lease) serving the Leased Premises, subject to all the terms and conditions contained in the Lease, except for the term, rental, assignment, subletting, use, renewal, discontinuance of operations, right of first refusal and option to purchase provisions of the Lease, if any, and except as otherwise set forth herein. In addition, in no event shall Subtenant have the right to receive any payments due from Prime Landlord under the Lease. To the extent not inconsistent with this Sublease, the terms of the Lease are hereby incorporated into this Sublease by reference. Sublandlord shall have all of the rights of Prime Landlord under the Lease.

(b) Provided such space is then available and this Sublease is then in effect, and provided further that Subtenant has not been in default hereunder, Subtenant shall have the option to sublease that space consisting of approximately 17,728 square feet adjoining the Premises and described on Exhibit B as the "Expansion Space" at any time during the Term. Subtenant may exercise its option to sublease half the Expansion Space (8,864 SF) and shall retain the right to sublease the balance of the Expansion Space. If Subtenant desires to exercise its option to sublease the Expansion Space, it shall give Sublandlord written notice of such exercise at least ten (10) days, but not more than thirty (30) days, prior to the proposed effective date of such expansion. On such effective date, possession of the Expansion Space shall be delivered to Subtenant and thereafter such space shall be deemed part of the Premises and shall be subleased to Subtenant for the balance of the Term on the terms and conditions contained herein.

2 **Term.** The term of this Sublease shall be for the period beginning December 1, 2002 (the "Commencement Date") and ending at 11 59 p m on December 31, 2004 (the "Term") Notwithstanding any provision herein to the contrary, this Sublease shall automatically terminate upon the expiration or termination of the Lease for any reason. In no event shall Subtenant have the right to exercise any options to extend the term of the Lease that may be available to Sublandlord under the Lease

3 **Rent, Additional Rent.**

(a) Commencing on January 1, 2003, Subtenant shall pay to Sublandlord as minimum rent for the Premises the sum of Seven Thousand Seven Hundred Dollars (\$7,700) per month In the event Subtenant exercises its option to sublease any of the Expansion Space as provided herein, on the effective date of the subleasing of the Expansion Space, the monthly minimum rent shall be increased to Nine Thousand Six Hundred Fifty Dollars (\$9,650) per month if half of the additional space is taken and Eleven Thousand Six Hundred Dollars (\$11,600) per month if the entire space is subleased

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

(c) Minimum rent shall include real estate taxes, common area maintenance charges and the cost of insuring the Premises payable under the Lease and Subtenant is not assuming Sublandlord's obligation for such charges Subtenant shall pay when due the cost of all utilities used at the Premises to the extent the same are separately metered to the Premises In the case of any utilities not separately metered to the Premises, Subtenant shall pay its proportionate share of the cost thereof Such amount shall be payable within ten (10) days after receipt by Subtenant of an appropriate invoice from Sublandlord Subtenant's proportionate share shall be equal to a fraction, the numerator of which is the square footage of the Premises, including the Expansion Space if Subtenant exercises its option to sublease such space, and the denominator of which shall be 122,028

4 **Assumption Agreement and Covenants** As to the Premises, except for those obligations not being assumed by Subtenant as set forth in Section 3 (c) hereof, Subtenant hereby assumes and shall faithfully and promptly perform all obligations and duties imposed on Sublandlord as lessee under the Lease, including without limitation, any obligations to maintain and repair the Premises, not to use the Premises for any unlawful purposes, and, at the termination of this Sublease, to surrender the Premises in good condition, reasonable wear and tear excepted and in the condition required by the Lease Any and all payments required under the Lease and this Sublease to be made by Subtenant as aforementioned shall be made in a timely manner directly to Sublandlord

5 **Default** Upon nonpayment by Subtenant of any rentals or other payments when due, or any failure of Subtenant to perform any of its other covenants required to be performed by Subtenant under this Sublease, or any default by Subtenant or any affiliate of Subtenant in the payment or performance of any obligation under any other indenture, agreement, note or

undertaking with Sublandlord, after five (5) days written notice of any default in regard to rent or other indebtedness and after twenty-one (21) days written notice of any other item of default, Sublandlord shall have all remedies available at law or in equity, including, without limitation, the right, at its option, to re-enter the Premises without terminating this Sublease, remove Subtenant and all persons holding under Subtenant from the Premises, accelerate all rentals due hereunder for the entire term of this Sublease, and/or to terminate this Sublease and re-enter and repossess the Premises, provided, however, that such re-entry, repossession and/or termination shall not constitute an acceptance or surrender of this Sublease or a waiver of any of Sublandlord's rights or remedies, including without limitation, the right to re-let the Premises, or any part thereof, for the benefit of Subtenant and to recover damages for Subtenant's default.

6. **Indemnity; Waiver of Subrogation** Subtenant shall defend, indemnify and hold Sublandlord harmless from any and all damages, costs, losses and expenses (including reasonable attorney fees) resulting in any way from Subtenant's occupancy and/or use of the Premises or the surrounding area, or the breach of any obligation of Subtenant as set out in the Sublease. Sublandlord shall defend, indemnify and hold Subtenant harmless from any and all damages, costs, losses and expenses (including reasonable attorney fees) resulting in any way from Sublandlord's occupancy and/or use of the Premises or the surrounding area, or the breach of any obligation of Sublandlord as set out in the Sublease. Subtenant shall carry, at Subtenant's expense, public liability insurance on the Premises with an insurance company having a BEST rating of at least A XIV and licensed to issue such insurance within the state wherein the Premises are located, which insurance shall stipulate a combined single limit of not less than Three Million Dollars (\$3,000,000) for personal injury, death and property damage. Subtenant shall also insure its fixtures, equipment, inventory and other personal property located in the Premises in an amount at least equal to the full replacement value thereof. No later than the Commencement Date and thereafter on each anniversary of the Commencement Date, Subtenant shall provide Sublandlord with certificates evidencing such insurance naming the Prime Landlord and Sublandlord as additional named insureds, which certificate shall require the insurance carrier to give Sublandlord thirty (30) days written notice of any cancellation or material amendment to such insurance.

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

7. **Use; Compliance with Law**

(a) The Premises shall be continuously occupied and used by Subtenant only for the purposes of handling, storing and distributing _____ products for clients served by Subtenant and for no other purpose.

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

8 **Assignment and Subletting.** Subtenant shall not assign its interest in the Sublease voluntarily or by operation of law and shall not sublet or license all or any portion of the Premises without the prior written consent of Sublandlord (and Prime Landlord if such consent is required by the Lease), which consent or approval shall not be unreasonably withheld or delayed. The transfer of fifty percent (50%) or more of the voting stock of Subtenant, whether in one or a series of transactions, shall be considered an assignment requiring Sublandlord's prior written consent. Any purported or attempted assignment or subletting, without Sublandlord's prior written consent, shall be null and void. Any permitted assignee or sublessee of Subtenant shall expressly assume Subtenant's liabilities and obligations under this Sublease. No assignment, subleasing or licensing shall release Subtenant from any of its obligations hereunder. Subtenant shall not mortgage or otherwise encumber its leasehold interest hereunder without the prior written consent of Sublandlord. This Sublease shall not be construed as an assignment of Sublandlord's interest in the Lease, and Subtenant shall not negotiate, modify or amend the Lease.

9 **Inspection; Alterations** As soon as reasonably practicable following the Commencement Date, Sublandlord shall substantially complete those items set forth on attached Exhibit C (the "Sublandlord's Work"). Subtenant shall reimburse Sublandlord one-half (1/2) of the cost incurred by Sublandlord in increasing the height of the dock door as part of Sublandlord's Work. Such amount shall be due within fifteen (15) days following receipt by Subtenant of an appropriate invoice from Sublandlord, together with reasonable supporting documentation. Subject to the completion of Sublandlord's Work, Subtenant has inspected the Premises, and is satisfied that the same is acceptable to Subtenant for all of its purposes and uses, and accepts the same and any included trade fixtures and equipment in "AS IS" condition, without any warranties, representations or obligation on Sublandlord's part to make any repairs, replacements, alterations, additions, installations or improvements whatsoever. Subtenant shall not expand or make or install any additions, renovations, alterations, improvements, or changes in or to the Premises, or any part thereof without Sublandlord's prior written consent. Any work shall be performed in a good and workmanlike manner at the sole expense of Subtenant. Subtenant shall not permit, create, incur or impose or cause or suffer others to permit, create, incur or impose any lien or other obligation against the Premises or any interest therein by reason of any work upon the Premises, and Subtenant shall indemnify and hold Sublandlord harmless of and from any and all claims or demands by any contractor, subcontractor, materialman, laborer or any other third person against the Premises, Subtenant's interest in the Premises or any interest therein relating to or arising because of any work thereon. As between Sublandlord and Subtenant, any improvements or additions upon the Premises at the expiration of this Sublease shall be deemed a part of the Premises.

10 **Termination** Notwithstanding anything contained herein to the contrary, the existence of this Sublease is dependent and conditioned upon the existence of the Lease, and in the event of the cancellation or termination of the Lease for any reason, this Sublease, at Sublandlord's option, shall thereupon be terminated without the need for further action and without liability to Sublandlord. If Subtenant is not in default under the terms and conditions hereof, any such termination shall be without liability between Sublandlord and Subtenant, except for such liability theretofore accruing or as otherwise provided herein, however, if Subtenant is in default, the provisions hereof including those of default shall control as to Subtenant's liability.

11 **Sublandlord's Obligations** Sublandlord shall have no duty to perform any obligations of Prime Landlord under the Lease and shall under no circumstances be responsible for or liable to Subtenant for any default, failure or delay on the part of Prime Landlord in the performance of any obligations under the Lease. No such default of Prime Landlord shall affect this Sublease or waive or defer the performance of any of Subtenant's obligations hereunder, provided, however, that in the event of such default or failure, Sublandlord agrees, upon notice from Subtenant, and at Subtenant's expense, to make demand upon Prime Landlord to perform its obligations under the Lease.

12 **Costs and Expenses** Subtenant shall pay all costs and expenses, including reasonable attorneys' fees that may be incurred by Sublandlord in enforcing the provisions of this Sublease or in enforcing Prime Landlord's obligations under the Lease if requested to do so by Subtenant. In the event any amounts due from Subtenant hereunder are not paid when due, such amounts shall bear interest from and after the date thereof to the date of payment at an annual rate of the prime rate of interest as published in The Wall Street Journal, plus six (6) percentage points.

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

Sublandlord Fleming Companies, Inc
1945 Lakepointe Drive
Lewisville, TX 75057
Attention Lease Manager

Subtenant Kenco Logistics, Inc

Attention _____

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

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

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

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

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

19 **Non-Waiver.** Any assent, expressed or implied, by Sublandlord to any breach of any covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally or of any subsequent breach thereof

20 **Relationship of Parties** Nothing contained herein shall be deemed or construed to create a joint venture or partnership relationship between Sublandlord and Subtenant

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

22 **Prime Landlord's Consent.** The effectiveness of this Sublease is conditioned upon the consent of the Prime Landlord on or before the Commencement Date

23 **Loss of Business** Subtenant is a third party logistics company providing services to Nestlé's Foods from the Premises. If Subtenant no longer provides such services to Nestlé's

Food from the Premises, Subtenant may terminate this Sublease by providing Sublandlord written notice of termination specifying a termination date at least sixty (60) days after the date of such notice. This Sublease shall then terminate upon such specified date. If Subtenant cancels the Lease, Subtenant shall pay Sublandlord the sum of Three Thousand Dollars (\$3,000) to partially reimburse Sublandlord for the brokerage commission paid by Sublandlord in regard to this Sublease.

24 **Additional Costs.** Subtenant shall not be responsible for any costs related to Prime Landlord or Sublandlord's responsibility to comply with the Americans with Disabilities Act or any cost related to environmental remediation of the Premises, provided that neither such compliance nor remediation is necessitated by the acts or omissions of Subtenant.

25 **Structural/Utilities** Except to the extent any of the following maintenance, repairs or replacements are necessitated by the negligence of Subtenant, Subtenant shall not be responsible for any maintenance, repairs, and/or replacement that is required to maintain the structural integrity of the foundation slab, building structure, walls, roof and lead-in lines for utilities.

26 **Agency/Commission** Sublandlord acknowledges that Kneel Robinson of NAI Utah Commercial Real Estate represents the Subtenant and Greg Hunter of Colliers represents the Sublandlord. Such brokers are referred to herein as the "Brokers." A fee of \$11,088 shall be due upon the execution of this Sublease, which shall be split equally between the Brokers and shall be paid by Sublandlord. If Subtenant exercises its option to sublease the Expansion Space in accordance with Section 3(a), Sublandlord shall pay Brokers an additional commission equal to the following: (i) the increased monthly minimum rent in effect following the effective date of the subleasing of the Expansion Space (the "Effective Date") less the minimum monthly rent in effect immediately prior to the Effective Date, multiplied by (ii) the number of months remaining in the Term as of the Effective Date, multiplied by (iii) six percent (6%). Such amount shall be due upon the receipt by Sublandlord of the first installment of minimum monthly rent for the Expansion Space and shall be divided equally between the Brokers.

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

"SUBLANDLORD".

FLEMING COMPANIES, INC.,
An Oklahoma Corporation

By  Charles L. Hall
Senior Vice President

"SUBTENANT"

KENCO LOGISTICS, INC
a Tennessee corporation

7 By 

FROM PROGRESSIVE REALTY INC

FAX NO 4058423636

Mar 06 2003 11 17AM P9/11

EXHIBIT A

LEASE

FROM PROGRESSIVE REALTY INC

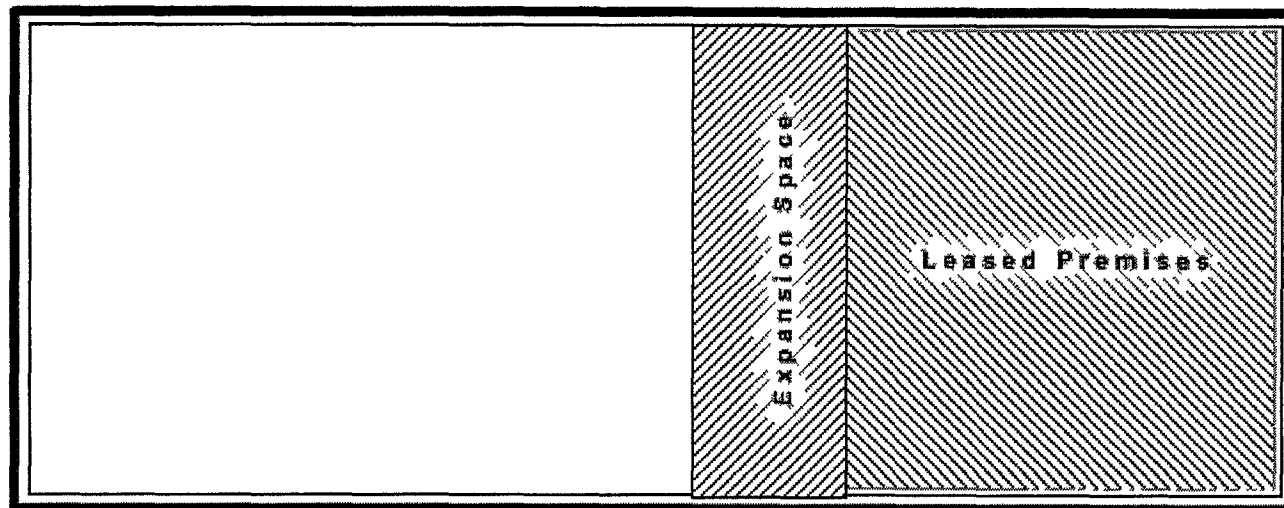
FAX NO 4058423636

Mar 06 2003 11 17AM P10/11

EXHIBIT B

PREMISES

Exhibit 'B' - The Premises



2250 West Bridger Road
122 028 Sq Ft

West Bridger Road

Freemont Drive

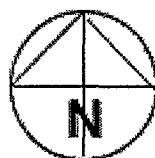


EXHIBIT C

SUBLANDLORD'S WORK

- 1) Increase the height of a dock door serving the Premises to a standard height of _____ feet. The cost of this improvement shall be split equally between Fleming and Kenco. Kenco shall have access to one of the larger doors on the West end of the building until the door can be enlarged and is considered usable.
- 2) Remove items not required by Subtenant from the Premises.
- 3) Seal the openings between east and west sections of the Premises, caulk the outside walls as required and repair all loading doors so that the same are flush with the floor.
- 4) Finish replacing any fluorescent lights that are not working and upgrade them to shatter shield. Fleming will pay \$4.00 towards any lights that need to be replaced, and Kenco will pay the balance. Any lights that need replacing in the future shall be the responsibility of Kenco.

Ans 252

JMA PROPERTIES, INC.
5150 EL CAMINO REAL, STE D-21
LOS ALTOS, CA 94022
Tel (650) 526-2400, Fax (650) 988-6824

SUBJECT PROPERTY Telecom Center - Phoenix LLC
C/o JMA Properties, Inc
LOCATION OF PROPERTY _____

The THE INTERNAL REVENUE SERVICE requires us to report on for 1099 all payments of \$600 00 dollars or more in a calendar year to any person or entity that is unincorporated **YOU ARE REQUIRED BY LAW TO PROVIDE US WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER (EMPLOYER E I N / S S N) FOR INCLUSION ON FORM 1099 FAILURE TO PROVIDE THIS INFORMATION WILL REQUIRE US TO WITHHOLD 20% OF ANY PAYMENT MADE TO YOU**

PLEASE COMPLETE THE SECTION BELOW AND RETURN THIS LETTER TO US WITHIN 15 DAYS OF RECEIPT OF THIS LETTER TO JMA Properties, Inc , Attn A/P Department, 5150 El Camino Real, Ste D-21, Los Altos, CA 94022

THANK YOU IN ADVANCE FOR YOUR COOPERATION

Under penalties of perjury, I certify that

- 1 The number shown on this form is my correct taxpayer number (or I am waiting for a number to be issued to me), and
2 I am no subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or © the IRS has notified me that I am no longer subject to backup withholding

Certification Instructions You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you failed to report all interest and dividends on your tax return For real estate transactions, item 2 does not apply For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your TIN

	<u>SS NUMBER</u>	<u>FED TAX ID#</u>
1) _____ CORPORATION	_____	_____
2) _____ INDIVIDUAL	_____	_____
3) _____ PARTNERSHIP	_____	_____
4) _____ OTHER-PLS EXPLAIN	_____	_____

BUSINESS NAME Cushman + Wakefield of Arizona, Inc.

IF doing business as Individual, please print name of owner(s) _____

MAILING ADDRESS _____

SIGNATURE _____ PRINT NAME _____

TITLE _____ DATE _____

**THIRD AMENDMENT TO
NATIONAL AGREEMENT**

COPY

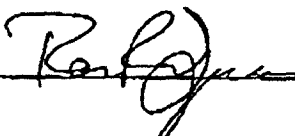
This AMENDMENT to that NATIONAL AGREEMENT (the Agreement) which commenced effective on JANUARY 30, 1995, between CUSHMAN& WAKEFIELD, INC (C&W) and FLEMING COMPANIES, INC , (Fleming) is entered into this 12th day of January, 1999

- 1 Paragraph 1 of the Agreement is amended in that the term is extended so that the Agreement will expire at midnight December 31, 1999
- 2 In all other respects, the terms of the Agreement, as previously amended, are ratified and confirmed, and will continue in full force and effect

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above

FLEMING COMPANIES, INC

CUSHMAN & WAKEFIELD, INC

By 

By _____

Name Ron R. Spencer

Name _____

Title VP Logistics

Title _____

Mw 1/22/99

Cushman & Wakefield of Arizona, Inc
 1850 North Central Avenue, Suite 300
 Phoenix, AZ 85004
 Tel (602) 253-7900
 Fax (602) 253-0528

CUSHMAN & WAKEFIELD®
 Improving your place
 in the world™

November 16, 1998

Via Facsimile Transmission 612-948-9641

Mr Mark Evenson
 Managing Director
 Cushman & Wakefield, Inc
 1650 West 82nd Street #680
 Bloomington, MN 55431

**Re. Fleming Gateway Hopkins 8000 Excelsior Boulevard Facility; 46,000 sq.ft
 Distribution Center Sublease Assignment**

Dear Mark

Mel and I have been working with, John Mueller and Lou Suski on the marketing of a portion of the Hopkins warehouse that Rainbow is no longer using, specifically the Perishable areas of approximately 46,000 square feet. John and Lou have toured the facility and are working on a short-term proposal to Liberty Carton, the user we put in the building two years ago. Aside from working with Liberty, Fleming has requested we market the space for sublease.

John and Lou have advised of an asking rental rate for the sublease of \$5.00 per square foot, gross. In addition, they have requested that Fleming would pay a commission of 6% of the gross rent secured under sublease where no tenant-rep broker exists and 8% over the gross rent in the event that an outside broker is involved. These marketing parameters have been accepted by Fleming.

Our National Agreement with Fleming provides that specific projects are assigned by Mel Willming, the Fleming Director of Properties in Oklahoma City, and such assignments constitute at-will listings under the National Agreement. The Agreement with Fleming provides that, after splits with outside brokers, 20% of any commission payable to the listing side is to the account of Fleming. Of the remainder after the Fleming split, the Minneapolis & Phoenix offices will split the fee 60% to Minneapolis and 40% to Phoenix. We do all of the billing and commission allocations out of our offices.

If you could please countersign this letter in the space provided below to indicate your acknowledgment of the commission rate and allocation and fax this letter back to me, it would be greatly appreciated. My fax number is 602-253-1107.



Independent Members
 Cushman & Wakefield Worldwide

Royal LePage

C&W / OCI

Healey & Baker

C&W / SPINCO

Mackenzie Hill

C&W / ASIA

Argentina
 Austria
 Belgium
 Brazil
 Canada

Channel Islands
 Chile
 China
 Czech Republic
 Denmark

England
 Finland
 France
 Germany
 Greece

Hungary
 India
 Ireland
 Israel
 Italy

Japan
 Kuwait
 Lebanon
 Mexico
 The Netherlands
 Northern Ireland

Peru
 Poland
 Portugal
 Romania
 Russia

Scotland
 Singapore
 Slovakia
 South Africa
 Spain

Sweden
 Switzerland
 Thailand
 Turkey
 United States

Mr. Mark Evenson

16-Nov-98

Page 2

Thank you again, Mark for your office's continued assistance in Minneapolis. Should you have any questions regarding the foregoing, please advise.

Sincerely,


R. Leighton Fisk

cc Mel Willmington - Fleming via E-mail

ACKNOWLEDGED AND ACCEPTED
Cushman & Wakefield of Minneapolis, Inc

By Mark E. Evans
Its Managing Director
Date 11/16/98

**SECOND AMENDMENT TO
NATIONAL AGREEMENT**

This AMENDMENT to that NATIONAL AGREEMENT (the Agreement) which commenced effective on JANUARY 30, 1995, between CUSHMAN & WAKEFIELD, INC (C&W) and FLEMING COMPANIES, INC , (Fleming) is entered into this 19th day of December, 1997

- 1 Paragraph 1 of the Agreement is amended in that the term is extended so that the Agreement will expire at midnight December 31, 1998
- 2 With regard to the client revenue sharing provisions of the Agreement, said client revenue sharing formula shall be reduced from forty percent (40%) to twenty percent (20%) of net revenue generated on transactions pursuant to the Agreement for the term of this Amendment
- 3 In all other respects, the terms of the Agreement are ratified and confirmed, and will continue in full force and effect

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above

FLEMING COMPANIES, INC

CUSHMAN & WAKEFIELD, INC

By Tom MYERS

By [Signature]

Name Tom Myers

Name JOHN S RENARD

Title VP DIST.

Title Executive managing Direct

Cushman & Wakefield of Arizona, Inc.
1850 North Central Avenue, Suite 300
Phoenix Arizona 85004
Tel (602) 253-7900
Fax (602) 253-0528

*File
w/ Fleming*

**CUSHMAN &
WAKEFIELD®**

Improving your place
in the world

November 13, 1996

Via Facsimile Transmission: 215-568-2604

Mr Francis J Mahoney IV
Cushman & Wakefield of Pennsylvania, Inc
Two Logan Square, 20th Floor
Philadelphia, PA 19103

Re: Listing of Fleming Thriftrack Property; 201 W. Church, King of Prussia

Dear Fran

Pursuant to our discussion yesterday, Sid Harvey Industries is set to vacate the 34,234 square foot Thriftrack building at the end of January, 1997. Fleming occupies under master lease this and the larger Thriftrack Eastern Region Office, which master lease runs through March 31, 2001 with three remaining five-year options to extend. A lease summary of the Fleming master lease and the Sid Harvey lease is attached for your review.

Fleming has requested that we seek to find a new subtenant for the 34,234 square foot property to occupy through the expiration of the master lease. Our National Agreement with Fleming provides that specific projects are assigned by Mel Willming, the Fleming Director of Properties in Oklahoma City, and such verbal assignments constitute listings under the National Agreement. The Agreement with Fleming provides that, after splits with outside brokers, 40% of any commission payable to C&W is to the account of Fleming. Of the remainder to C&W, 60% will be paid to C&W, Philadelphia and 40% will be paid to C&W, Arizona.

The National Agreement provides that customary local commission rates be applied to any transaction which we are able to consummate. As I mentioned in our conversation, Fleming gives us a certain degree of latitude in setting this rate, but on leases it has typically been 6% for the entire term, including any options. We have the Fleming approved lease forms on disk (which are basically SIOR lease forms) and will handle all sublease documentation out of our offices. We are also prepared to perform all of the lease negotiations if you want to limit your activity to prospecting and showing, but this is your election.

With regards to reporting we typically try to discuss projects verbally every couple of weeks. We provide and produce all of the written reports required by Fleming.

Mr. Fran Mahoney
13-November-96
Page 2

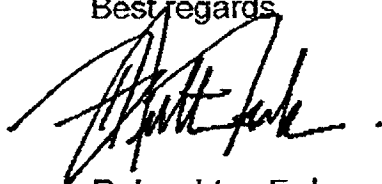
The only written report that you need to prepare is a letter to me which outlines your plan for marketing on the front end of the project

Your contact at Fleming is John Traub, who apparently was previously a Division President and now works in some capacity with Fleming Store Development at the Philadelphia Division. John can be reached at 610-935-5000. Mel and I tried to reach John to inform him that you will be calling, but as of yet we are waiting for a return call from him. I will let you know when John is lined up for you to call. All decisions relative to any proposed sublease will be made by Mel Willming out of Oklahoma City, but John can coordinate showings and provide any property-specific information.

Please acknowledge your understanding and acceptance of this arrangement by signing in the space provided below and returning a copy of this letter to our offices at 602-253-1107. Jim Harrison and I look forward to working with you on this sublease.

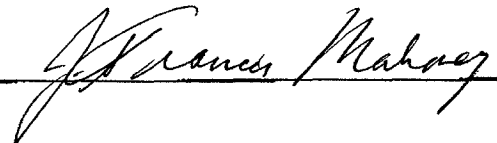
Thank you very much, Fran

Best regards



R. Leighton Fisk
602-229-5911

AGREED AND ACCEPTED

By 

Date 11-14-96

cc Jim Wentworth - Managing Director, C&W Phoenix
Mel Willming - Fleming

FACILITY LEASE SUMMARY SHEET

FLS NO.	FORMER FLS NO.	PSC NAME	PSC NO.	DATE REVISED
PA-826F		PHILADELPHIA	009	09/30/1996

UPDATED BY: PLJ
 FACILITY NAME : THRIFTRACK AND EASTERN REGION OFFICE
 ADDRESS : 201 W. CHURCH RD.
 CITY : KING OF PRUSSIA
 SUBLEASE : FACILITY SIZE: 385,469 ST : PA ZIP : 19406
 COMMENTS : NEW PAYEE ADDRESS. SQ. FT

SUBLESSOR:

CONTACT :

SUBLESSEE:

ADDRESS :

PHONE :

FAX :

LEASE

PRIMARY TERM : 25 + 5 + 5

COMMENCES
04/01/1996EXPIRES
03/31/2001

RENT - LEASE YEARS RENT P.S.F. WEEKLY MONTHLY YEARLY
 04/01/1996 TO 03/31/2001 \$ 0.17
 BASE RENT DUE : 1ST OF EACH APRIL, JULY, OCTOBER & JANUARY \$ 63,650.98

RENEWAL OPTIONS : 2 @ 5YRS. PG. 6 SECTION 2.02 1 YR. AUTO: NO

LEASE OPTION	RENEWAL	RENEWAL RENT	RENEWAL RENT	RENEWAL RENT
RENEWAL DATES	NOTICE DATE	P.S.F.	WEEKLY	MONTHLY YEARLY
04/01/1996 TO 03/31/2001		\$ 0.17		\$ 63,650.98
04/01/2001 TO 03/31/2006	03/31/2000	\$ 0.17		\$ 63,650.98
04/01/2006 TO 03/31/2011	03/31/2005	\$ 0.13		\$ 50,920.79
04/01/2011 TO 03/31/2016	03/31/2010	\$ 0.13		\$ 50,920.79

NOTICES : PG. 5 SECTION 1.02

-----NOTICE ADDRESSES-----
 LESSOR : MORGAN GUARANTY TRUST COMPANY
 ADDRESS : P.O. BOX 1389, CHURCH STREET STATION
 NEW YORK, NY 10008
 PHONE : 212/837-1754
 CONTACT : CAROL PERKINS

 PAYEE : THE BANK OF NEW YORK JP MORGAN/MORGAN GUARANTY
 ADDRESS : P.O. BOX 19266
 NEWARK, NJ 07195
 PHONE :
 CONTACT :

 LESSEE : FLEMING COMPANIES, INC. AS SUCCESSOR
 ADDRESS : THROUGH MERGER WITH THRIFTWAY FOODS, INC.
 PHONE :
 CONTACT :

LESSOR MORTGAGEE :
 ADDRESS :
 PHONE :
 COMMENTS :
 CONTACT :
 FAX :

MORTGAGEE RIGHTS : PG. PAR.

 ----- ADDITIONAL -----
 ALTERATIONS/EXPANSION : PG. 14 SECTION 4 03

ASSIGNMENT & SUBLETTING : PG. 38 SECTION 7.04 NO CONSENT REQUIRED

FACILITY LEASE SUMMARY SHEET

FLS NO.	FORMER FLS NO.	PSC NAME	PSC NO.	DATE REVISED
PA-826F		PHILADELPHIA	009	09/30/1996

COMMON AREA MAINTENANCE : N/A

EXTENDED HOUR LIGHTING :

CONTINUOUS OPERATION : PG. PAR.

PUBLIC LIAB & PROP DAMAGE INS : PG. 20 SECTION 5.01(C)
COMMON AREAS :

PREMISES :

FIRE & EXTENDED COVERAGE INS : PG 20 SECTION 5.01(A)

DAMAGE & DESTRUCTION : PG. 24 SECTION 5.04

CONDEMNATION : PG. 32 ARTICLE VI

LANDLORD REPAIRS & MAINTENANCE : N/A

TENANT REPAIRS & MAINTENANCE : PG. 14 ARTICLE IV

TAXES/ASSESSMENTS : PG 9 SECTION 3.02

USE : PG. PAR

UTILITIES : PG. PAR.

MISCELLANEOUS : (1) OPTION FOR 4/1/1996 TO 3/31/2001 EXERCISED BY 2/3/1995 LTR.
COPY IN LEASE FILE.

FACILITY LEASE SUMMARY SHEET

FLS NO.	FORMER FLS NO.	PSC NAME	PSC NO.	DATE REVISED
PA-826F.a		PHILADELPHIA	009	04/22/1996

UPDATED BY: SCK

CONTACT :

FACILITY NAME : THRIFTRACK PROPERTY - SID HARVEY SUBLEASE

ADDRESS : 210 CHURCH ROAD

CITY : KING OF PRUSSIA

ST : PA

ZIP : 19406

SUBLEASE : X FACILITY SIZE: 34,234

SQ FT.

COMMENTS : TENANT TERMINATING SUBLEASE 1/31/1997 SEE LETTER IN FILE.

SUBLESSOR: FLEMING COMPANIES, INC.

CONTACT : DONALD DETWILER,

PRES.

SUBLESSEE: SID HARVEY INDUSTRIES, INC.

ADDRESS : 410 S. HENDERSON RD., P.O BOX 1313

KING OF PRUSSIA, PA 19406

PHONE :

FAX :

LEASE

COMMENCES

EXPIRES

PRIMARY TERM : 3 YRS. PG. 2 SECTION 2.01

02/01/1990

01/31/1997

RENT - LEASE YEARS

RENT P.S.F. WEEKLY

MONTHLY

YEARLY

02/01/1995 TO 01/31/1996 \$ 3.50

\$ 9,984.92 \$ 119,819.04

02/01/1996 TO 01/31/1997 \$ 3.61

\$ 10,284.50 \$ 123,414.00

BASE RENT DUE : 1ST OF EACH MONTH IN ADVANCE

RENEWAL OPTIONS : 1 @ 2YRS. 2ND AMENDMENT 180 DAYS

AUTO: NO

LEASE OPTION

RENEWAL

RENEWAL RENT

RENEWAL DATES

NOTICE DATE

P.S.F.

WEEKLY

MONTHLY

YEARLY

02/01/1997

\$ 3.61

\$ 10,284.50 \$ 123,414.00

NOTICES : PG 15 SECTION 21 01 CERTIFIED OR REGISTERED MAIL

-----NOTICE ADDRESSES-----

LESSOR :

CONTACT :

ADDRESS :

PHONE :

FAX :

PAYEE : FLEMING COMPANIES, INC. C/O THE

CONTACT :

ADDRESS : BINSWANGER COMPANY, SEVEN PENN CENTER, 1635 MARKET STREET,

PHILADELPHIA, PA

PHONE :

FAX :

LESSEE :

CONTACT :

ADDRESS :

PHONE :

FAX :

LESSOR MORTGAGEE :

CONTACT :

ADDRESS :

PHONE :

FAX :

COMMENTS :

MORTGAGEE RIGHTS : PG. PAR.

----- ADDITIONAL -----

ALTERATIONS/EXPANSION : PG. 3 SECTION 4 01

ASSIGNMENT & SUBLETTING : PG. 10 ARTICLE 13 MUST HAVE PRIOR WRITTEN CONSENT

COMMON AREA MAINTENANCE : PG. PAR.

FACILITY LEASE SUMMARY SHEET

FLS NO.	FORMER FLS NO.	PSC NAME	PSC NO.	DATE REVISED
PA-826F.a		PHILADELPHIA	009	04/22/1996

EXTENDED HOUR LIGHTING : SILENT

CONTINUOUS OPERATION : SILENT

PUBLIC LIAB & PROP DAMAGE INS : PG. 7 SECTION 9.02
COMMON AREAS :

PREMISES :

FIRE & EXTENDED COVERAGE INS : PG. 8 SECTION 10.01

DAMAGE & DESTRUCTION : PG 4 PAR. 5.01; PG. 8 SECTION 11.01

CONDEMNATION : PG. 8 ARTICLE 12

LANDLORD REPAIRS & MAINTENANCE : PG. 4 SECTION 5 02 & 5.03

TENANT REPAIRS & MAINTENANCE : N/A

TAXES/ASSESSMENTS : PG. 5 ARTICLE 8

USE : PG. 4 SECTION 6 01 ONLY FOR THE WHOLESALE DISTRIBUTION AND WAREHOUSING OF HEATING, AIR CONDITIONING AND REFRIGERATION PARTS & EQUIPMENT.

UTILITIES : PG. 5 SECTION 8.01

MISCELLANEOUS : (1) 2ND AMENDMENT TO LEASE EXERCISED OPTION PERIOD FOR 02/01/1996 TO 1/31/1997, GAVE OPTION FOR ANOTHER TWO YR. TERM AND SET RENT FOR THE OPTION PERIODS. (3) NOTICES TO LANDLORD SHOULD ALSO BE SENT TO C/O THE BINSWANGER COMPANY, SEVEN PENN CENTER, 1635 MARKET STREET, PHILADELPHIA, PA 19103 ATTN: VICE PRESIDENT AND GENERAL COUNSEL

Cushman & Wakefield, Inc.
51 West 52nd Street
New York, NY 10019-6178
(212) 841-7500

4211
**CUSHMAN &
WAKEFIELD**
A ROCKEFELLER GROUP COMPANY

As of January 30, 1995

FLEMING COMPANIES, INC.
6301 Waterford Boulevard
P.O. Box 26647
Oklahoma City, Oklahoma 73126

Attention: Gary Capshaw
Director of Distribution

Re: National Agreement between Cushman & Wakefield, Inc. ("C&W")
and Fleming Companies, Inc. ("Fleming") dated January 30, 1995
(the "Contract")

Gentlemen:

This letter shall confirm our agreement that, with respect to any transaction in which C&W performs services pursuant to Paragraph 2(b) of the Contract, at Fleming's direction and in Fleming's sole discretion, C&W shall, with respect to such transaction, either (i) request the landlord or seller to reduce the commission payable to C&W by 40% and to cause such reduction to be reflected in the transaction to the benefit of Fleming (e.g., by increasing a rent-free period or the amount of work to be provided by the landlord, by reducing the rent payable by Fleming under the lease or the purchase price payable by Fleming under the purchase agreement, etc.) or (ii) credit Fleming with an amount equal to 40% of the commission payable to C&W for such transaction which credit may be utilized by Fleming to pay for C&W services contemplated by Paragraph 5(e) of the Contract or which credit Fleming may direct C&W to pay to an affiliate or subsidiary of Fleming duly licensed as a real estate broker.

If the foregoing accurately reflects our agreement, please execute this letter where indicated.

Very truly

CUSHMAN & WAKEFIELD, INC.

By: 

Name: Stevan A. Sandberg
Title: General Counsel & Secretary

AGREED:

FLEMING COMPANIES, INC.

By: 

Name: Gary Capshaw
Title: V.P. Logistics & Quality Service

National Agreement

FLEMING COMPANIES, INC. ("Fleming") hereby appoints CUSHMAN & WAKEFIELD, INC. ("C&W") as its exclusive real estate consultant, agent and broker to represent Fleming on transactions/assignments pertaining to its distribution and warehouse facilities throughout the United States and which representation is authorized by Fleming pursuant to letters of authorization substantially in the form of Exhibit A ("Authorization Letter") attached hereto and made a part hereof and which representation shall be exclusive with respect to the subject matter of the Authorization Letter.

1. The term of this Agreement begins on the date hereof and continues in effect for a period of one year, subject to termination by either party on 30 days' prior written notice.

2. C&W shall.

- (a) From time to time, review with Fleming its entire portfolio of leases, subleases and owned properties, including office and distribution facilities, to determine, if possible, ways and means to lower overall occupancy costs, commensurate with company objectives.
- (b) Subject to the issuance of an Authorization Letter, locate suitable locations for lease, purchase or other acquisition by Fleming and negotiate such transactions subject to Fleming's review and final approval. C&W shall assist Fleming in the negotiation of the renewal, extension or expansion of any lease at any present or future Fleming location. With regard to the acquisition of space, C&W shall perform the following additional services:
 - (i) Help define objectives and requirements for present and future needs;
 - (ii) Assist in securing a space planner/architect whenever required.
 - (iii) Obtain details on available locations in the areas selected by Fleming and expeditiously report its findings and recommendations;
 - (iv) Prepare and submit analyses of new locations and if appropriate a comparison of new locations to present premises;
 - (v) Arrange and coordinate the inspection of possible locations, at times convenient to Fleming.
 - (vi) Endeavor through negotiation to secure for Fleming the most favorable purchase price, rent, terms and

conditions commensurate with current market conditions taking advantage of C&W's knowledge of real estate values and rentals and the terms of the numerous sale and lease transactions previously negotiated by C&W

- (c) Subject to the issuance of an Authorization Letter, negotiate lease termination agreements and/or secure satisfactory tenants, subtenants, assignees or purchasers for those properties either leased or owned by Fleming (a "Fleming Property") which Fleming notifies C&W it desires to lease, sell, sublease, assign, barter, terminate or otherwise convey. All negotiations shall be subject to Fleming's final approval, in its sole and absolute discretion.
- (d) Remain available to advise, recommend and consult with Fleming regarding general real estate activities, and assist the representatives of Fleming whenever possible to successfully conclude all transactions covered by this Agreement.

3. Should C&W deem it necessary or advisable or should local laws require, C&W shall have the right to solicit the cooperation of local licensed real estate brokers. C&W shall have the right to utilize its subsidiary and affiliated corporations in the performance of its services hereunder, and the term "C&W" whenever used in this Agreement shall be deemed to include such subsidiary and affiliated corporations. If requested by Fleming, C&W shall advertise and promote Fleming Properties, at Fleming's expense, pursuant to a budget and program to be submitted by C&W and approved in writing by Fleming; however, C&W at its expense, shall place its standard sign on Fleming Properties which become subject to this Agreement and shall prepare and distribute a standard brokerage flyer on each such Fleming Property.

4. All offerings, inquiries, proposals and solicitations received by Fleming from brokers, prospective purchasers, tenants, landlords or sellers, or any other party, concerning the subject matter of this Agreement, shall be referred to C&W.

5. (a) In consideration for its services to be performed pursuant to Paragraph 2(b) hereof, C&W shall be paid in accordance with the following:

- (1) In the event that at any time during the term of this Agreement or within six (6) months thereafter (subject to the provisions of subparagraph (11) below), a location submitted by C&W or by Fleming or by anyone else during the term hereof is leased or otherwise acquired by Fleming or in the event C&W assists Fleming in the negotiation of any renewal, extension and/or lease of other or additional space at any of its present locations,

C&W will look to the landlord or seller, as the situation may be, for payment of C&W's brokerage commission. C&W agrees to promptly notify Fleming when any landlord or seller refuses to pay any Standard Commissions so that Fleming can decide if negotiations are to be pursued at that location.

- (ii) Within thirty (30) days after the expiration or termination of this Agreement, C&W shall deliver to Fleming a list of locations submitted by C&W or by Fleming or by anyone else during the term hereof and a list of those locations where C&W was assisting in the negotiation of a renewal, extension and/or lease of other or additional space at any of Fleming's locations. Fleming will recognize C&W as Fleming's exclusive broker on any transaction involving any location appearing on such list(s) and which transaction is consummated within six (6) months after the expiration or termination hereof.

(b) In compensation for C&W's services to be rendered in accordance with Paragraph 2(c) hereof, C&W shall be paid in accordance with the following

(1) In the event that at any time during the term of this Agreement or within six (6) months thereafter, a sale, lease, sublease or other transaction covering a Fleming Property is consummated, with a party to whom the property was submitted by C&W, or by Fleming, or by any other person during the term of this Agreement, Fleming shall pay to C&W 60% of a full commission calculated in accordance with C&W's standard commission rates and conditions for the area in which the property is located ("Standard Commissions"); provided, that in the event the transaction is procured by a C&W broker who is not on the "listing team," Fleming shall pay 80% of the Standard Commissions to C&W. In the event any such transaction (other than a sale for which it is usually customary practice to pay one full commission) is procured by a real estate broker other than C&W then Fleming will pay to C&W 80% of the Standard Commissions (and/or such other or additional compensation as may be customary in the area in which the property is located) out of which C&W will pay to such other broker 50% of the Standard Commissions and retain the balance as C&W's compensation. If the other broker will not agree to accept, as its compensation, 50% of the Standard Commission, then Fleming's approval will be necessary if the proposal is to be further negotiated. In no event shall C&W be liable for the failure to obtain such other broker's agreement to accept, as its compensation, 50% of the Standard Commissions. Prior to C&W performing any services under Paragraph 2(c) above with respect to any location, C&W will advise Fleming as to the Standard Commissions for such location. Commissions on lease transactions shall be payable in full on the execution and delivery of the lease or sublease agreement, commissions on sales transactions

shall be payable in full on the closing of title or escrow or, in the case of an installment sale, upon execution and delivery of the installment sale contract.

(11) Within thirty (30) days after the expiration or termination of this Agreement, C&W shall deliver to Fleming a list of parties who have toured facilities subject to the provisions of Paragraph 2(c) hereof. Fleming will recognize C&W as Fleming's exclusive broker on any transaction involving any party appearing on such list(s) and, if the transaction is a lease or sublease, such lease or sublease is consummated within six (6) months after the expiration or termination hereof and, if the transaction is a sale or assignment, such contract of sale or assignment document is executed within six (6) months after the expiration or termination hereof.

(c) The six (6) month period referred to in clauses (a)(1) and (11) and (b)(1) and (11) above shall be extended for so long as negotiations of a particular transaction continue.

(d) Fleming shall reimburse C&W for all reasonable out-of-pocket expenses (e.g., out-of-town transportation, lodging, meals, and the like) incurred by C&W in connection with the performance of non-commissionable services provided hereunder or services provided hereunder in which C&W earns less than \$10,000, in each such instance reimbursement shall be subject to Fleming's prior written approval and authorization.

(e) C&W can make available to Fleming technical support in the areas of appraisal, strategic space programming, development consulting, property management and financial services ("Technical Support Services") At Fleming's request, C&W will furnish Fleming with a proposed fee structure and a detailed proposal for any such Technical Support Services. If Fleming accepts the proposal, C&W will perform the services selected by Fleming on the terms set forth in the proposal.

6. Fleming acknowledges that C&W may represent potential owners, landlords, tenants, subtenants, assignees or purchasers. C&W shall inform Fleming of any such dual agency. Thereafter, Fleming may consent to such dual agency or request that C&W not represent Fleming in any such transaction.

7. With respect to premises which are under Fleming's control, Fleming authorizes C&W to convey any environmental information it possesses on such premises to prospective tenants, subtenants, assignees, or purchasers

8. Fleming acknowledges that it is solely responsible for determining the presence of toxic, contaminated, or hazardous substances or conditions at property to be purchased or leased by Fleming. C&W, however, will inquire of owners or landlords of properties of interest to Fleming as to the presence of such

substances or conditions and will advise Fleming of the response in each instance.

9 If during the course of performing its services hereunder, C&W will have access to confidential information about Fleming. C&W will treat as confidential all such information and will not disclose any such information to other parties other than as is necessary to carry out the provisions of this agreement or as required by legal process.

10. The term Fleming as used in this agreement shall be deemed to include any subsidiaries, affiliates, successors, nominees or assigns of which may be involved in a transaction covered under this agreement.

11. Any notice or communication which either party may be required or shall desire to give hereunder shall be deemed to be sufficiently given if in writing and sent by (1) United States mail postage prepaid addressed to the respective party's address set forth herein or to such other address as designated by the party in a written notice or (11) telecopier, and if to Fleming, at telecopier number _____ and, if to C&W, at telecopier 602-253-0528, Attention: James Harrison, with a copy of the telecopy to telecopier number (212) 841-7715, Attention: General Counsel.

12. Any dispute arising out of this Agreement shall be submitted to binding arbitration by the American Arbitration Association pursuant to the Commercial Arbitration Rules of the American Arbitration Association and the Federal Arbitration Act, where applicable. Any arbitration decision and analysis shall be memorialized by a writing. In any such arbitration, each party shall pay its own attorney's fees.

13. This agreement constitutes the entire agreement between Fleming and C&W and supersedes all prior discussions. Any modifications of this Agreement shall not be effective unless made in writing and signed by both Fleming and C&W.

CUSHMAN & WAKEFIELD, INC.

By K. P. Singleton
Kenneth P. Singleton
Managing Counsel

Address 51 West 52nd Street
New York, New York 10019

Dated. January 30, 1995

FLEMING COMPANIES, INC.

By Gary Capshaw
Gary Capshaw
Director of Distribution

Address 6301 Waterford Boulevard
P.O. Box 26647
Oklahoma City, Oklahoma
73126-0647

FLEMING COMPANIES, INC
1945 Lakepointe Drive
Lewisville, TX 75057
Attn Daniel Apodaca

INVOICE 03-03

For services rendered at 2626 South 7th Street, Phoenix, Arizona
pursuant to the management agreement dated October 4 2002

October 23-31, 2002	\$ 217 74
November, 2002	750 00
December, 2002	750 00
January, 2003	750 00
February, 2003	750 00
March, 2003	750 00
Total	\$ 3,967 74

TOTAL INVOICE AMOUNT

\$ 3,967 74

Please Submit payment to

Cushman & Wakefield
2525 East Camelback Road Suite 1000
Phoenix AZ 85016
Attn Aaron Brady

Prepared by Aaron Brady -

Reviewed by _____

MANAGEMENT AGREEMENT

Between

FLEMING COMPANIES, INC.

and

CUSHMAN & WAKEFIELD OF ARIZONA, INC

Dated October 4, 2002

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT ("**Agreement**") is entered into as of the 4th day of October, 2002, between Fleming Companies, Inc , ("**Owner**"), and CUSHMAN & WAKEFIELD OF ARIZONA, INC ("**Manager**")

RECITALS

WHEREAS, Owner represents that it has a leasehold interest the land and building commonly known as 2626 South 7th Street, Phoenix, Arizona (the "**Property**"), and

WHEREAS, Owner desires to engage Manager to manage the Property and Manager is willing to accept such appointment,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Owner and Manager hereby agreed as follows

AGREEMENT

ARTICLE I - APPOINTMENT AND TERM

1 01 **Appointment** Owner hereby appoints Manager as the sole and exclusive managing agent for the Property and Manager hereby accepts such appointment, all subject to the terms and conditions as hereinafter set forth

1 02 **Term** The term of this Agreement shall commence on ^{10/23/02} ~~the date hereof~~ (the "**Commencement Date**") and, subject to the earlier termination or renewal thereof as provided in **Article VI** below, shall end on October 31, 2003, (the "**Expiration Date**")

ARTICLE II - MANAGER'S MANAGEMENT DUTIES

Manager is hereby authorized to perform the following services in respect of the Property

2 01 **Property Management** Manager agrees to use diligent efforts to operate, manage and maintain the Property in accordance with industry standards and the provisions of this Agreement

2 02 **Operating Expenses** Manager will prepare, forward or otherwise submit to Owner for prompt payment all expenses reasonably incurred in connection with the Property, including, without limitation, utilities, real estate taxes, waste removal, repairs and maintenance, professional fees, cleaning, elevator maintenance and security The parties expressly acknowledge and agree that Manager shall have no obligation to pay such expenses or vendors Without limiting the foregoing, Owner agrees to pay a \$300 00 start up fee for a call center, and \$6 00 per call, for after hour emergencies

2 03 **Financial Reports** Manager shall render statements to Owner relating to the Property as follows On or before the tenth day after the end of each calendar month

during the term commencing with the tenth day of the second full calendar month following the Commencement Date, Manager shall furnish to Owner a report containing the items set forth below in this Section, which shall be in form and substance satisfactory to Owner

(a) An operating statement on a cash basis for the applicable period and the year-to-date,

(b) Cash disbursements journal for the period, and

(c) Schedule of any capital expenditures for the period, and update of the status of all Capital Projects

2 04 Collection of Rents and Other Income Unless otherwise expressly agreed in writing by Manager, Manager shall have no obligation to collect rent, electric and utility charges, cleaning charges, heating, ventilating and air-conditioning charges, or any other sums payable by tenants under subleases and other agreements, or any other sums payable to Owner

2 05 Intentionally Deleted

2 06 Intentionally Deleted

2 07 Enforcement of Subleases Unless otherwise expressly agreed to in writing by Manager, Manager shall have no obligation to take any action to enforce the rights and remedies of Owner under any subleases

2 08 Management Generally

(a) Subject to the limitations imposed by Owner in this Agreement or otherwise, Manager shall cause the Property (other than tenant areas) to be kept in a safe, clean and sightly condition and shall make or cause to be made all repairs, alterations and decorating, shall purchase all supplies, materials, tools and equipment necessary for the proper operation of the Property (making available to Owner the benefit of all discounts and rebates available from third-party vendors), and shall comply with the Requirements, it being understood that Manager (or an affiliate) may furnish any such supplies, materials, tools or equipment and that Owner shall pay the reasonable charges therefor. Manager shall from time to time as it deems appropriate submit to Owner recommendations as to required repairs, replacements and alterations to the Property

(b) The management and operation of the Property shall include (1) causing to be performed exterior cleaning, painting, decorating, plumbing, carpentry, landscaping, roofing, maintenance of heating, ventilating and air-conditioning systems and such other normal maintenance, repair work, and minor construction as may be necessary or required by Owner, (2) investigating all necessary preventative maintenance programs, submitting to Owner recommendations and proposals for such programs and performing such necessary or desirable preventative maintenance as shall be approved by Owner,

(3) purchasing supplies, materials and services, and (4) regularly inspecting and testing, in accordance with existing inspection and testing programs at the Property, the physical condition of the Property, including [i] periodic testing of the systems to ensure their reliability, with such tests to be scheduled and coordinated with occupants of the Property to minimize risk to the business operations and [ii] any additional inspections that will improve the appearance, operation and life-safety aspects of the Property, as determined by Owner or Manager in accordance with applicable local law. Owner's prior written approval must be obtained for any item of repair or maintenance involving an expenditure in excess of One Thousand Dollars (\$1,000) which has not already been approved in the Budget, provided, however, emergency repairs, immediately necessary for the preservation or safety of the Property or for the safety of the tenants or other persons or required to avoid the suspension of any necessary service to the Property may be made by Manager at Owner's expense without the prior written approval of Owner, and provided, further, that Owner agrees to approve any ordinary or customary expenditure hereunder necessary to prevent Owner or Manager from being exposed to liability to third parties. Manager shall not be obligated to make or supervise any major capital improvements pursuant to this **Section 2.08**

(c) Manager shall contract, on behalf of and in the name of Owner, for janitorial services, security services, rubbish removal, interior and exterior landscape maintenance, vermin extermination and such other services as are required, in Manager's reasonable judgment, for the operation of the Property and which are included in the Operating Budget. All such contracts, and any modifications thereof, shall be on forms provided by Owner or provided by Manager and approved by Owner's legal counsel. In the event that Owner has not prescribed or approved a relevant form, contracts shall be on forms that (i) are cancelable without cause and without charge or penalty by Manager or Owner on not more than thirty (30) days prior written notice, (ii) are freely assignable by Manager or by Owner, and (iii) contain the insurance requirements set forth in "(d)" below. Manager shall use its diligent efforts to obtain contracts, agreements and other arrangements possessing the terms and conditions which satisfy the requirements of this Section. If Manager is not able to obtain such terms and conditions it shall so notify Owner and Owner may accept or reject, at its sole option, such contracts, agreements and other arrangements as Manager has been able to negotiate.

(d) Contracts for services performed by contractors pursuant to the terms of this Agreement shall include a provision that the contractor, at the contractor's sole cost and expense, shall procure and maintain during the term of the contract, workers' compensation insurance in statutory amounts and employer's liability coverage with limits of liability of not less than \$500,000, (i) commercial general liability insurance on an occurrence form covering the contractor's obligations under the contract, in the amount of \$1,000,000 per location aggregate, naming Owner and Manager as additional insureds, and (ii) business automobile liability insurance covering any vehicle including owned, non-owned and hired vehicles operated by or on behalf of the contractor, in the amount of \$1,000,000 combined single limit for bodily injury and/or property damage. Manager must obtain Owner's prior approval to deviate from any of the

above requirements Manager shall diligently seek to obtain from such contractors certificates of insurance evidencing compliance with the insurance requirements set forth above

(e) Manager shall do and perform any and all things in and about the Property pertaining to the management, maintenance and operation thereof customarily performed by managing agents of buildings similar in type and quality to the Property and located in the same market area as the Property

2 09 Insurance Matters Manager agrees to make a timely written report to Owner's insurance carrier concerning all accidents and claims for damage relating to the ownership, operation, or maintenance of the Property that it is made aware of, and shall prepare any reports reasonably required by Owner's insurance carrier in connection therewith. A copy of any such reports shall also be delivered to Owner. Manager shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without the prior written consent of Owner

2 10 Requirements Manager shall promptly give notice to Owner (accompanied by copies of supporting papers) of Manager's actual knowledge of any violation or notice of violation of any laws, ordinances, rules, regulations, orders or determinations of governmental authorities having jurisdiction over the Property and of insurers, insurance rating organizations, Boards of Fire Underwriters or similar bodies which relate to the Property (collectively, "**Requirements**") At Owner's expense, Manager shall use all reasonable efforts to cause all such acts and things to be done in and about the Property as Owner or Manager shall deem necessary or desirable to comply with the Requirements and, in each case, shall use all reasonable efforts to cure or remove any violations thereof As and when directed by and at the expense of Owner, Manager shall institute in the name of Owner, using counsel selected or approved by Owner, appropriate actions or proceedings to contest any Requirement

2 11 Intentionally Deleted

2 12 Construction Projects

(a) With respect to each Owner Project and each Tenant Project (each as hereinafter defined and, collectively, a "**Project**"), Manager shall make available to Owner the advice and consultation of Manager's technical staff. Manager shall furnish such information, estimates and judgments as may be reasonably requested by Owner to assist Owner in the evaluation of the feasibility of the Project and, in the case of a Tenant Project, its conformity with the structure and systems of the Property and the provisions of the relevant Lease. Manager will act as Owner's representative with respect to an Owner Project and agrees to (i) place for bid with contractors, tenant improvement and/or capital improvement work required to be completed in connection with the leasing of space or renovations at the Property, (ii) negotiate and enter into, in your name, contracts for design, architectural and construction services, (iii) oversee the administration of the construction contracts, including the disbursement process, lien-waiver collection and financial reporting, and (iv) approve the work, perform final walk-through and prepare punch-list items if applicable

Notwithstanding the foregoing, if a Project is of a specialized nature or involves extraordinary repairs or extensive reconstruction or renovation of the Property, or if Manager is otherwise called upon to perform services beyond the scope of supervisory duties normally performed by professional managing agents of similar class properties, such services may be performed, at the expense of Owner, by Manager and/or by independent contractors, and Manager shall promptly notify Owner of such facts. Owner acknowledges that Manager shall not perform professional architectural or engineering services.

(b) **"Owner Project"** means any work in the nature of an alteration, addition, repair or replacement to the Property which at any time during the term of this Agreement is to be undertaken for or on behalf of Owner, including (i) work specified in the Capital Budget, (ii) work not specified in the Capital Budget which Owner may from time to time decide to undertake or which Manager is authorized under the terms of this Agreement to undertake on behalf of Owner and (iii) all work specified in any Lease to be undertaken by Owner. **"Tenant Project"** means any work in the nature of an alteration, addition, repair or replacement which at any time during the term of this Agreement is to be undertaken by a tenant or other occupant of the Building in respect of its premises as permitted under the relevant Lease or as approved by Owner or by Manager pursuant to an authorization given by Owner to Manager.

(c) Owner hereby authorizes Manager to consent to any Tenant Project not provided for in a Lease which (i) is to be performed at a tenant's expense, (ii) does not materially adversely affect the structure or systems of the Property or interfere with the provision of services to other tenants and (iii) is of a nature compatible with the use of the subject premises and complies with requirements.

2.13 Confidentiality Subject to applicable law and governmental regulation, Manager shall use all reasonable efforts to keep confidential the results of the operation of the Property and all other information with respect to the Property customarily kept confidential by managing agents of similar class properties in the area.

2.14 Consultation Generally Manager shall generally confer and advise fully and freely with Owner and such representatives and designees as Owner shall identify, in the performance by Manager of its duties herein specified and all matters relating thereto.

ARTICLE III – INTENTIONALLY DELETED

ARTICLE IV - OWNER'S DUTIES

Owner's duties shall be as follows:

4.01 Plans and Specifications Owner shall make available to Manager not later than the Commencement Date, plans and specifications of the Property so that Manager may be advised with respect to the layout, construction, location, character, plan and operation of the elevators, escalators, lighting, heating, air conditioning, plumbing, electrical and other mechanical equipment in the Property in order to facilitate efficient management, maintenance and operation of the Property by Manager.

4 02 Property Agreements Owner shall make available to Manager not later than the Commencement Date, copies of all service contracts, guarantees given by contractors or subcontractors in connection with the construction or alteration of the Property, copies of all leases and subleases of space in the Property ("**Leases**"), and copies of all contracts relating to the maintenance and operation of the Property. Owner's failure to timely deliver such documents shall excuse Manager from any default that may arise due to Manager's inability to review and comply with such documents.

4 03 Intentionally Deleted

4 04 Owner's Insurance Owner shall maintain all-risk form of property damage insurance including without limitation coverage against allied perils, vandalism, malicious mischief, sprinkler leakage and plate glass, in the amount of full replacement cost without coinsurance and containing such additional coverages, if any, as are customarily obtained in connection with the ownership and management of property similar to the Property but in no event in an amount or containing coverages less than or of lesser quality or extent than that required by the terms of any mortgage or trust deed encumbering the Property. In addition, Owner agrees to carry comprehensive general liability insurance on an occurrence form with a minimum limit of at least \$1,000,000 per occurrence, \$2,000,000 per location aggregate and at least \$5,000,000 umbrella coverage, including contractual liability, elevator liability, steamboiler and such other insurance as may be necessary or appropriate for the protection of the interests of Owner and Manager. Owner agrees to designate Manager and its subsidiaries and affiliates, who are performing services under this Agreement, as parties insured with Owner on the Comprehensive General and Umbrella Liability policies. This insurance shall be primary for Owner and Manager with respect to the Property. The public liability, elevator liability, and contractual liability insurance must contain a severability of interest clause and coverage for Personal Injury Insurance. Each of Owner's insurance policies shall be written with an insurance company or companies licensed to do business in the state where the Property is located and who have a minimum Best Key rating of no less than A-VIII. A certificate of each policy issued by the carrier shall be delivered by Owner to Manager concurrently with Owner's execution and delivery of this Agreement. Each policy shall provide that it will not be canceled or materially modified without at least ten (10) days prior written notice from the insurer to both Owner and Manager in the event of cancellation for non-payment, and at least thirty (30) days prior written notice from the insurer to both Owner and Manager in any other event. Each policy for fire or extended coverage insurance and all other forms of property damage insurance covering the Property or personal property, fixtures or equipment located thereon shall contain an appropriate clause or endorsement whereby the insurer waives subrogation or consents to a waiver of the right of recovery against Manager, and Owner hereby agrees that it will not make any claim against Manager for any loss or damage to property of the type covered by such insurance.

4 05 Obligation to Pay Expenses On a timely basis, Owner shall meet all obligations as the same become due in respect of the operation and maintenance of the Property. Owner shall reimburse Manager upon demand for the principal amount of any monies (together with interest thereon from the date of advance to the date of reimbursement at the rate of 12% per annum) which Manager may elect to advance for the account of Owner which shall exist for more than three (3) days after Manager shall

give notice thereof to Owner, it being understood that Manager shall have no obligation to make any such advance

4 06 Owner's Representative Owner shall designate one person to serve as Owner's Representative in all dealings hereunder. Whenever the approval, consent or other action of Owner is called for hereunder, such approval, consent or action shall be binding on Owner if such is given by Owner's Representative. Owner's Representative may be changed at any time during the term in Owner's sole discretion. The appointment of any subsequent representative, however, shall not be effective until Manager has received written notice of the change.

4 07 Hazardous Material Owner shall defend, indemnify and hold harmless Manager from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and reasonable attorneys' fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against, Manager for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property into or upon any land, the atmosphere, or any water course, body of water or wetland of any Hazardous Material which exists on, under or at the Property at any time during the term of this Agreement, and from time to time (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Statutes), and the foregoing provisions of the undertakings and indemnifications set out shall survive the termination of this Agreement forever. For purposes of this Agreement, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminate defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulations, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively, the "Statutes"), or any other hazardous, toxic or dangerous waste, substance or material.

ARTICLE V COMPENSATION

5 01 Compensation

(a) Owner shall pay Manager as compensation for the management services to be provided by Manager pursuant to this Agreement, a monthly fee (the "**Management Fee**"), payable monthly concurrently with the rendering by Manager of its monthly statements to Owner. The Management Fee shall be as set forth on **Schedule I** attached hereto and made a part hereof. The Management Fee shall be prorated for any partial month, and shall be subject to annual review and adjustment (if this Agreement remains in effect more than one year) but in no event shall the Management Fee be less than the initial annual Management Fee.

(b) Owner shall pay Manager for the construction supervisory services to be provided by Manager pursuant to **Section 2.12** hereof, a fee (the "**Construction Management Fee**") payable at the rates and in accordance with

the terms and conditions set forth on **Schedule II** attached hereto and made a part hereof. The Construction Management Fee shall be paid periodically as any of the work is done, at the same time or times as payments for work are made to contractors, subcontractors, or others to whom payments are made for such work. Manager is hereby authorized to pay any Construction Management Fee, when due, from the Operating Account and/or, as applicable, from any escrow or construction account administered by Manager which is established for the payment of any of the work, but the obligation of Owner to pay any Construction Management Fee shall not be limited by or to the sums in any such account.

ARTICLE VI RENEWAL/TERMINATION

6 01 **Renewal** This Agreement shall renew automatically for successive one (1) year periods upon the same terms and conditions as in effect on the last day of the prior term unless Owner or Manager has notified the other not less than thirty (30) days prior to the then Expiration Date of its intent not to renew this Agreement.

6 02 **Termination** (a) If Manager shall default in the performance of any of its material obligations hereunder, or if Owner shall default in the performance of any of its material obligations hereunder, then the other party may give to the defaulting party written notice specifying such default and if, at the expiration of 15 days after the giving of such notice or after the determination of the arbitrators in accordance with **Section 7 05** hereof, as the case may be, such default shall continue to exist (or in case such default cannot with due diligence be cured within said 15-period, if the defaulting party fails to proceed promptly after the giving of such notice or after such determination, as the case may be, and with all due diligence to cure the same, it being intended that, in connection with a default not susceptible of being cured with due diligence within said period, the time of the defaulting party within which to cure the same shall be extended for such period as may be reasonably necessary to cure the same with all due diligence), the other party may give to the defaulting party a notice of intention to end the term of this Agreement at the expiration of five (5) days from the date of the giving of such second notice, and at the expiration of said five (5) days, this Agreement shall terminate. If the other party gives written notice of a default by the defaulting party as aforesaid and if the defaulting party disputes the existence of such default and gives the other party, within ten (10) days after the giving of such notice by the other party, a written notice requesting that the matter be arbitrated, then, anything herein to the contrary notwithstanding, this Agreement shall continue in full force and effect and such matter shall be determined by arbitration in accordance with **Section 7.05** hereof. If the arbitrators shall determine that the defaulting party is so in default, the defaulting party shall have an opportunity to cure such default within the 15-day period hereinabove provided therefor.

(b) If Owner shall fail to make timely payments concerning the Property as required herein or otherwise to make any payment due to Manager hereunder and such failure shall continue for three (3) business days after notice thereof shall have been given to Owner, Manager may terminate this Agreement by giving notice to such effect to Owner.

(c) If a petition is filed by or against either party hereto under the Federal Bankruptcy Code or under the provisions of any law of like import and such petition is

not dismissed within 90 days thereafter, or if either party shall make an assignment for the benefit of creditors or take advantage of any insolvency law, the other party may terminate this Agreement by giving to such first party notice to such effect

(d) In the case of any foreclosure sale or other disposition of the Property pursuant to the terms of any mortgage thereon, Owner (or its successor) and Manager shall each have the right to terminate this Agreement in its sole discretion. Such right shall be exercisable by giving notice to such effect to the other party, which notice shall specify a date for such termination (which date shall not be less than 90 nor more than 180 days after the date of the giving of such notice) and, if such notice be given, this Agreement shall terminate on the specified date

(e) Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement without cause at the end of any calendar month by giving the other party not less than thirty (30) days' prior written notice. Owner may designate a termination date earlier than thirty (30) days, provided Manager shall remain entitled to its Management Fee for the remainder of such thirty (30) days

6 03 Survival of Obligations Termination of this Agreement under any of the foregoing provisions shall not release either party from liability for failure to perform any of the duties or obligations as expressed herein and required to be performed by such party for the period prior to such termination

6 04 Actions Upon Termination Upon expiration or termination of the term of this Agreement Manager shall (i) turn over to Owner the books of record and account referred to in **Section 2.03** hereof, (ii) to the extent that Manager has any of the same in its possession, turn over to Owner the plans and specifications referred to in **Section 4 01** hereof and the copies of the agreements and guarantees and Leases referred to in **Section 4 02** hereof, and (iii) turn over or assign to Owner any money, supplies, materials and equipment belonging to Owner and then held by Manager, and

ARTICLE VII MISCELLANEOUS

7 01 Intentionally Deleted

7 02 Intentionally Deleted

7 03 Indemnification Owner shall, to the maximum extent permitted by law, indemnify, defend and save harmless Manager and its affiliates, and its and their respective officers, directors and employees (collectively, the "**Indemnified Parties**") from and against all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, interest and expenses (including reasonable counsel fees and disbursements) to which an Indemnified Party may be subject or suffer, whether by reason of, or by reason of any claim for, any injury to or death of any person or damage to property (including any loss of use thereof) or otherwise, based upon, arising out of, or in connection with, any act or omission (alleged or otherwise) of an Indemnified Party in connection with or related to the management, leasing, maintenance, operation, condition or use of the Property or the performance of any obligation of Manager under this Agreement or the carrying out of any express or implied instructions of Owner, except for and to the extent of the gross negligence or willful misconduct on the part of

an Indemnified Party The provisions of this Section shall survive the termination of this Agreement

7 04 Limitation on Assignment This Agreement may not be assigned by either party hereto without the prior written consent of the other, except that Manager may assign this Agreement or delegate its duties hereunder, without such consent, to any corporation, partnership or other entity controlling, controlled by or under common control with Cushman & Wakefield, Inc

7 05 Arbitration If either party shall notify the other that any matter is to be determined by arbitration as provided in **Section 6.02** hereof, then (a) within fifteen (15) business days after the giving of such notice, each party shall appoint an arbitrator by notice to the other party, (b) if either party shall fail to make such appointment within the time prescribed, then the arbitrator appointed by the party not so failing shall appoint, on behalf of the party so failing, one other arbitrator, (c) the arbitrators so appointed shall meet within ten (10) business days after the second arbitrator is appointed and shall, if possible, determine such matter within thirty (30) days after the second arbitrator is appointed, and their determination shall be binding and conclusive on the parties, (d) if the two arbitrators fail to determine within said 30-day period, they shall appoint a third arbitrator, and in the event of their failure to agree upon such third arbitrator within ten (10) days after the time aforesaid, either party on behalf of both may apply to any court of competent jurisdiction for the appointment of such third arbitrator, and the other party shall not raise any question as to the court's power and jurisdiction to entertain the application and make the appointment, and (e) the determination of any two of the three arbitrators shall be given within thirty (30) days (or as soon thereafter as is possible) after the appointment of the third arbitrator and shall in all cases be binding and conclusive upon the parties Each arbitrator shall be duly sworn to determine fairly and impartially the matter or matters submitted for arbitration If any arbitrator shall die, be disqualified or incapacitated, or shall fail or refuse to act, before any matter shall have been determined, a replacement arbitrator shall be promptly appointed in the same manner as the arbitrator being replaced Each party shall pay the fees and expenses of the arbitrator appointed by or on behalf of such party and one-half of the fees and expenses of the third arbitrator, if any

7 06 Notices Any notice, request, approval, consent or other communication hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, in a postpaid envelope addressed to the party at its address above set forth or at such other address as such party shall furnish by notice in writing to the other party Each notice shall be deemed effective on the date when personally delivered or on the third day after the same shall have been duly deposited in the mails, addressed as aforesaid

7 07 Property Information Report Owner represents that it has no knowledge of toxic, contaminated or hazardous substances or conditions at the Property except as Owner has informed Manager in writing Owner will complete the Property Information Report attached Owner authorizes Manager to transmit such information to prospective tenants in a manner mutually agreed to

7 08 Dual Representation Owner acknowledges that Manager may represent potential subtenants and hereby consents to such dual representation

7 09 Amendments No provision hereof shall be waived, amended or modified except by an agreement in writing signed by the party against whom the waiver, amendment, modification or discharge is sought to be enforced

7 10 Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located


7 11 Successors This Agreement shall bind and inure to the benefit of Owner and Manager and, subject to the provisions of **Section 7.04** hereof, their respective successors and assigns

IN WITNESS WHEREOF, Owner and Manager have entered into this Agreement as of the day and year first above written

FLEMING COMPANIES, INC

**CUSHMAN & WAKEFIELD
Of ARIZONA, INC.**

By _____
Name _____
Title _____

By 
Name JAMES WENTWORTH
Title SR MANAGING DIRECTOR

Report attached. Owner authorizes Manager to transmit such information to prospective tenants in a manner mutually agreed to

7 08 Dual Representation Owner acknowledges that Manager may represent potential subtenants and hereby consents to such dual representation

7 09 Amendments No provision hereof shall be waived, amended or modified except by an agreement in writing signed by the party against whom the waiver, amendment, modification or discharge is sought to be enforced

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IN WITNESS WHEREOF, Owner and Manager have entered into this Agreement as of the day and year first above written

FLEMING COMPANIES, INC.

**CUSHMAN & WAKEFIELD
OF ARIZONA, INC.**

By 

Name

Paul DiPinto

Title

Vice President

10/23/02

By 

Name

JAMES WENTWORTH

Title

SR MANAGING DIRECTOR

SCHEDULE I

\$750.00 Per Month

SCHEDULE II

Construction Management Fee Schedule

<u>Total Cost of the Work</u>	<u>% Fee</u>
First \$100,000	4%
Next \$100,000	3%
Next \$100,000	2%
Amount Over \$300,000	1%

Example The total fee on a project of \$350,000 is \$9,500

<u>Total Cost of the Work</u>	<u>%</u>	<u>Fee</u>
First \$100,000	4%	\$4,000
Next \$100,000	3%	\$3,000
Next \$100,000	2%	\$2,000
<u>Final \$50,000</u>	1%	<u>\$ 500</u>
Total \$350,000		\$9,500

PROPERTY INFORMATION REPORT

This Property Information Report is attached to and made a part of the Management Agreement, dated October 4, 2002, between Fleming Companies, Inc ("Owner") and Cushman & Wakefield of Arizona, Inc ("Manager") relating to the land and building located at 2626 South 7th Street, Phoenix, Arizona (the "Property")

Owner hereby advises Manager as follows with respect to its knowledge of the presence of the following substances and/or items listed below in, on or about the Property

<u>Substance Item</u>	<u>No Knowledge</u>	<u>Not Present</u>	<u>Present</u>	<u>Location</u>
1 Asbestos	_____	_____	_____	
2 Industrial, Radioactive or Chemical Waste	_____	_____	_____	
3 Urea-Formaldehyde Insulation	_____	_____	_____	
4 Lead Based Paints	_____	_____	_____	
5 Radon Gas	_____	_____	_____	
6 PCBs and PCB containing Electrical Transformers, Capacitors or other Equipment	_____	_____	_____	
7 Underground Storage Tanks	_____	_____	_____	
8 Waste Disposal Areas (e g , former waste dump)	_____	_____	_____	
9 Other Toxic, Hazardous or Contaminated Substances (or present or past use thereof at the Property) identify	_____	_____	_____	

Owner agrees (i) to disclose to Manager and all prospective tenants all information in its possession regarding the presence at the Property of the substances or items listed above, (ii) to make available to Manager and all prospective tenants all inspection reports pertaining to the presence or absence of such substances or items, and (iii) that Manager is hereby authorized to disclose to any prospective tenant any information regarding the presence of such substances or items

Owner

Diana J Williams
Paralegal



Cushman & Wakefield, Inc
51 West 52nd Street
New York NY 10019 6178
(212) 841 7548 Tel
(212) 841 7715 Fax
Diana_Williams@cushwake.com

September 11, 2003

Via Federal Express

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

Re Fleming Companies, Inc et al Case # 03-10945 (MFW)

Dear Sir/Madame,

Enclosed please find Proof of Claim of Cushman & Wakefield, Inc for the referenced bankruptcy Also enclosed is a copy to be stamped and returned in the self addressed , stamped envelope for our files

Sincerely,


Diana Williams
Legal Assistant

Encl