



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM	
In re <u>RECEIVED AUG 04 2003</u> Fleming Companies, Inc		Case Number 03-10945 (MFW)	
<small>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.</small>			
Name of Creditor and Address DC Taylor CO PO Box 97 Cedar Rapids IA 52406		0354653564543 <input type="checkbox"/> 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. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.	
Creditor Telephone Number (319) 363-2073		If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.	
CREDITOR TAX ID # 42-0839633	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR. 52682KS	Check here <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed claim dated _____.	
1 BASIS FOR CLAIM <input checked="" type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries and compensation (Fill out below) <input type="checkbox"/> Money loaned <input type="checkbox"/> Other (describe briefly) _____ Your social security number _____ Unpaid compensation for services performed from _____ to _____ (date) (date)			
2. DATE DEBT WAS INCURRED 3/21/03		3 IF COURT JUDGMENT, DATE OBTAINED	
4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ 120,959.55 (unsecured) plus (secured) interest @ 18% \$ 120,959.55 (unsecured priority) plus (total) interest @ 18%			
If all or part of your claim is secured or entitled to priority, also complete item 5 or 6 below. <input type="checkbox"/> 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 <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of collateral \$ more than \$4,000,000.00 Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____		6. UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> 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) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> 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) <input type="checkbox"/> Alimony, maintenance or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>* 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.</small>	
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 USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em;">SEP 15 2003</div> <div style="text-align: center; font-size: 0.8em;">  Fleming Companies Claim  12250 </div>	
BY MAIL TO: Bankruptcy Management Corporation P O BOX 900 El Segundo, CA 90245-0900		BY HAND OR OVERNIGHT DELIVERY TO: Bankruptcy Management Corporation 1330 East Franklin Avenue El Segundo, CA 90245	
DATE SIGNED 9/12/03		SIGNED and print the name and title of any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any). <u>David E. Shay, Attorney-In-Fact</u>	

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

MECHANIC'S LIEN STATEMENT

03ML225

D C Taylor Co ("Taylor") for the purposes of availing itself of the benefits and protections of the mechanic's lien laws of the State of Kansas, states

1 Taylor, the claimant herein, is an Iowa corporation authorized to do business in Kansas with its principal place of business located at 312 Twenty-Ninth St N E , P O Box 97, Cedar Rapids, Iowa 52406 The registered agent for Taylor is The Corporation Company, Inc , 515 S Kansas Ave , Topeka, Kansas 66603

2 Taylor has furnished materials and supplies used and consumed for the removal of the existing roof system and installation of a new roof system at a warehouse and other improvements upon real property located at 5300 Kansas Ave Wyandotte County, Kansas and more particularly described as follows

Lot 6, Block 4, SANTA FE LANDS FLAT, a subdivision of
land in Kansas City, Wyandotte County, Kansas

3 The real property, premises, appurtenances, and improvements described in Paragraph 2 were at all times material hereto, and still are, owned by Shadrall Associates a New York General Partnership with its principal place of business in Massachusetts The general partner of Shadrall Associates is Shadrall Corp , whose registered agent is CT Corporation System, 101 Federal St , Boston, Massachusetts 02110 and the President of Shadrall Corp is Joseph J Dempsey, Jr , 41 S Beach Rd , Hobe Sound, FL 33455 Further the real property, premises, appurtenances, and improvements described in Paragraph 2 were at all times material hereto, and still are leased by Fleming Companies, Inc pursuant to that lease referred to in the Memorandum of Lease filed in Wyandotte County, Kansas as document number 1164496, Book 3642, Page 76, an Oklahoma corporation authorized to do business in Kansas whose registered agent is The Corporation Company, Inc , 515 S Kansas Ave , Topeka, Kansas 66603

4 Taylor removed existing roof systems and installed a new roof systems, materials, supplies and labor at the request of and under a Purchase Order and one Change Order with Fleming Companies, Inc ("Fleming") in connection with the improvements and construction described in Paragraph 2 above

5 Fleming is the agent of Shadrall Associates because the premises were let for a specific purpose, the premises can not be used for that specific purpose without making the improvements provided by Taylor, Shadrall's knowledge and involvement in the construction of said improvements, the value and benefit of the improvements to Shadrall and Fleming was required to use the space for a specific purpose, and was responsible for constructing the improvements

6 Taylor delivered all materials, supplies and labor and performed all obligations required of it by the said contract with Fleming

7 The materials and supplies which Taylor provided in accordance with the terms and conditions of said contract and agreement with Fleming were in fact used or consumed in the

building, appurtenances, improvements and real estate described in Paragraph 2 above and became a part thereof

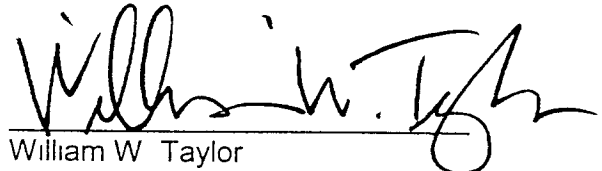
8 Taylor last provided materials and supplies on the above-described premises on February 26, 2003

9 There is now due and owing from Fleming to Taylor the principal sum of \$120,959.55, together with interest at the contractual rate of 1 5% per month, from and after the due date of each invoice referred to herein, after deduction of all just credits and setoffs. A reasonably itemized statement of the amount of Taylor's claim is attached hereto as **Exhibit 1** which is incorporated herein by this reference as if fully set forth herein. All of the items of said account were furnished under one arrangement and constituted one continuous running account. Each and every item of said account was furnished for the building and construction on real estate described in Paragraph 2 above and did actually enter into the construction and improvement of said buildings, appurtenances, improvements and real estate.

10 This statement is filed by Taylor with a view to obtaining the benefits of the mechanic's lien law of the State of Kansas so that the amounts owed Taylor shall constitute a lien upon the buildings, appurtenances, improvements, premises, lot, tract and real estate described in Paragraph 2.

D C Taylor Co

By


William W Taylor
Chairman & Chief Executive Officer

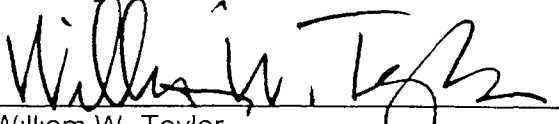
STATE OF IOWA)
) ss
COUNTY OF LINN)

William W Taylor states that he is the Chairman and CEO of D C Taylor Co , and as such is duly authorized to make this oath, and for and in D C Taylor Co 's behalf and upon being duly sworn, on his oath, states that he has full knowledge and information of and concerning the matters and things in this and the foregoing statement and account contained herein, that the matters and things therein set forth are true and correct and that the foregoing is a just, true and reasonably itemized statement of the demand due D C Taylor Co for materials and supplies furnished by D C Taylor Co upon, to and for the buildings, appurtenances, improvements, premises, lot, tract and real estate hereinbefore described after all just credits have been given, that said materials, supplies and equipment furnished upon, to and for said buildings, appurtenances, improvements, premises, lot, tract and real estate by D C Taylor Co at the insistence and request of and under contract with Fleming, that the foregoing description is a true description of the property upon, to and for which said materials, supplies and equipment were furnished and to which this lien is intended to apply, or so near as to identify the same, that Shadrall Associates at the time of furnishing said materials, supplies

and labor was and still is owner of the above-described buildings, appurtenances, improvements, premises, lot tract and real estate thereon as described above which said buildings, appurtenances, improvements premises, lot, tract and real estate are intended to be charged with this lien, and that the foregoing contains the true and correct name and address sufficient for service of process of claimant Taylor

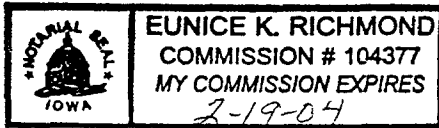
D C Taylor Co

By


William W Taylor
Chairman & Chief Executive Officer

On June 5, 2003, before me, a Notary public in and for the State of Iowa, personally appeared William W Taylor to me known to be the Chairman and CEO of D C Taylor Co , an Iowa corporation, and who upon his oath states that he is the Chairman and CEO of Taylor, that he has personal knowledge of the matters contained in this Mechanic's Lien Statement, that, the matters contained in this Mechanic's Lien Statement are true and correct and that the amount therein claimed is justly due the claimant

IN WITNESS WHEREOF, the Affidavit was subscribed and sworn to me, and I have hereunto set my hand and affixed my seal the day and year last above written




Notary Public-State of Iowa

EXHIBIT 1
REASONABLY ITEMIZED STATEMENT OF CLAIM

A The Work

On September 12, 2002, Fleming issued a Purchase Order to Taylor under which Taylor was to remove existing roof systems and install a new roof system over Sections C,F,I,J,K and L of the warehouse located at 5300 Kansas Avenue, Kansas City, Kansas 66106 (the "Purchase Order") The Purchase Order referenced and incorporated Taylor's proposal to Fleming dated February 13, 2002 The Purchase Order and Taylor's February 13, 2002 proposal are attached hereto as **Exhibit A** and made a part hereof Taylor's February 13, 2002, proposal, including Attachment D to the proposal outlined the work Taylor performed The amount Fleming agreed to pay Taylor for the work set forth in the Purchase Order and the reasonable value of such work was \$790,635 00 Such amount was paid by Fleming

On March 21, 2003, the Purchase Order was amended by Change Order #1 Under Change Order #1, Taylor was authorized and directed to replace roof deck of approximately 2,300 square feet and install approximately 39,300 square feet of deck overlay This work was in addition to the work set forth in the Purchase Order A copy of Change Order #1 is attached hereto as **Exhibit B** and made a part hereof Taylor performed work set forth in Change Order #1 and the reasonable value of such work is \$120,959 55 A copy of Taylor's invoice for the work set forth in Change Order #1 is attached hereto as **Exhibit C** Fleming failed to pay Taylor for this work

B Amounts Due Taylor

1	Principal Amount of Purchase Order Work	790,635 00
2	Principal Amount of Change Order #1	120,959 55
3	Payments	<u>(790,635 00)</u>
4	Subtotal (Principal Due)	120,959 55

Interest on the abovesaid principal sum due from May 1, 2003 to June 5, 2003 at the contractual rate of 1 5% per month totals 2,087 75 Interest on the unpaid principal sum continues to accrue at the rate of \$59 65 per day

RECEIVED SEP 20 2002

Fleming

Purchase Order No:

S - 20020132

12-Sep-02

12-Sep-02

TERMS AND CONDITIONS Purchase Order Number must be shown on all Invoices, Shipping Papers and Freight Bill

Bill of lading must be itemized as to quantity, size, and description. Shipment must be tendered to carrier, sorted and segregated as to quantity, size, and description and bill of lading must carry certification of the same signed by carrier representative. Delivery terms of sale require driver unloading at our dock. It is the responsibility of the contractor to supervise their employees while on Fleming property.

** Failure to Comply with Above May Result in Refusal Of This Shipment

D C Taylor

312 Twenty-Ninth St. N E PO Box 97
Cedar Rapids, IA 52406

DC Taylor, Stein

FLEMING - KC - Kansas Ave

5150 Kansas Ave

Kansas City, KS 66106

Attn: Cliff Whitford

Fleming Companies
Facilities Department
1945 Lakepointe Drive
Lewisville, TX 75057
Attn: Daniel Apodaca

607386

Item	Description	Material	Labor	Subtotal
1	Furnish labor and material per your proposal dated February 13, 2002 to remove existing roof systems. Install new insulated Stevens Hypalon roof system over sections C,F,I,J,K and L of dry goods warehouse. Copy of proposal attached	\$790,635 00	\$0 00	\$790,635 00
SubTotal		\$790,635 00	\$0 00	\$790,635 00
Freight				\$0 00
Tax		6.90%	Included	\$0 00
Total Purchase Order Amount				\$790,635 00

**IMPORTANT
SIGN & RETURN WHEN
WORK IS COMPLETE**

All Work and/or Deliveries must be coordinated with

Bob Roller

913-281-8200

INSURANCE CERTIFICATIONS REFERRING TO PO# ARE REQUIRED PRIOR TO STARTING WORK.
FLEMING'S LOCKOUT TAGOUT PROCEDURE WILL BE STRICTLY ADHERED TO

This purchase order is issued in compliance with Executive Order #11246

Date Received

By

Buyer

9/10/02

Exhibit A

AGREEMENT BETWEEN OWNER AND CONTRACTOR

Construction Contract

D. C Taylor Co Proposal # 0202-078-15-061-KS

Proposal Date February 13, 2002

Owner Fleming Companies, Inc

Attn Mr Danny Apodaka

Address 1945 Lakepointe Drive
Lewisville, TX 75057

Submitted by _____
Larry Stein
Authorized Representative
D C TAYLOR CO

Project Name Sections C, F, I, J, K, and L of Dry Goods Warehouse

Address: 5300 Kansas Avenue, Kansas City, Kansas 66106

State License No. N/A

D C Taylor Co proposes and agrees to perform the following work on the above named project for the price stated herein, provided that this proposal and the price offered will expire if not accepted within ten (10) days. This proposal incorporates all of the following terms and conditions, including those stated on pages 2 and 3, and attachments A through D

DESCRIPTION OF PROJECT. Sections C, F, I, J, K, and L of Dry Goods Warehouse
(See roof plan) (Approximately 183,600 Square Feet)

SUMMARY OF WORK Remove existing roof systems Install new insulated Stevens hypalon roof system See Attachment "D "

CONSTRUCTION PRICE _____ \$764,268 00

ADD KANSAS SALES TAX _____ \$26,367 00

TOTAL PRICE _____ \$790,635 00**

***The contract price is based on Worker's Compensation Rates in effect as of the proposal date for the project location. Due to an anticipated increase in these insurance rates taking effect April 1, 2002, our contract price may increase in accordance with the new rates ***

Owner accepts total price of \$ _____ and terms and conditions of this contract on
_____, 20____
(Date)

OWNER _____

By _____

(Contracting Authority)

D C TAYLOR CO

By _____

(Contractor)

Type or Print Name _____

Phone Number _____

Owner designates _____, to execute
change orders, field changes, to act for and on behalf of
Owner, and to accept completed work.

D. C. Taylor Co

312 29th St NE

P O Box 97

Cedar Rapids, IA 52406-0097

Phone 319-363-2073

Fax 319-363-8311

Owner Please Initial _____

Contractor Please Initial _____

GENERAL CONDITIONS

- 1.1 Each sentence or paragraph of the General Conditions and the Contract Conditions shall be construed as an express term or condition of this contract
- 1.2 In performing its work under this contract, Contractor shall comply with Federal, State and Local laws
- 1.3 Any claim against contractor alleging any breach of this contract or negligence by contractor must be initiated no later than one (1) year after Contract Completion
- 1.4 Contract Completion shall be the date on which Contractor's work is finished, as distinguished from the date of Owner's Acceptance thereof
- 1.5 Issuance of a Purchase Order or other communication by Owner authorizing Contractor to perform the Scope of Work identified with the price stated herein will constitute acceptance of each and every term and condition of this contract. Any additional terms or conditions stated in Owner's purchase order, or other communication accepting this contract, or by alteration by Owner of this contract form, shall not be valid under any circumstances, unless specifically adopted or approved by written response of Contractor. Failure to respond by Contractor shall be deemed a denial of any additional terms or conditions stated in Owner's acceptance
- 1.6 Contractor will have Worker's Compensation Insurance in limits required by state law. Contractor carries General Liability insurance. Contractor will furnish appropriate insurance certificates if requested. Owner agrees that Contractor's total liability to the Owner for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Project or the Contract, from any cause or causes, including but not limited to, Contractor's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or indemnity liability shall not exceed the total amount recoverable from such insurance
- 1.7 Contractor shall not be responsible for protection of owner's property, except to provide that protection which is specifically called for under the Scope of Work on this form
- 1.8 Contractor accepts no liability to indemnify or hold Owner harmless for claims or damages to persons or property, except to the extent that such damages occur during performance of Contractor's work, and are the direct result of Contractor's negligent error or omission. Contractor shall not be responsible for damages from leaks through any area of the building upon which Contractor's work has not been completed. Owner understands and agrees that Contractor shall have no responsibility at any time after Contract Completion for damages of any kind to persons or property
- 1.9 Owner agrees that contractor does not provide structural engineering, roof consulting or architectural services, and this proposal and contract shall not be construed as contracting to provide any such "professional services." Contractor assumes no responsibility for design, structural adequacy or compliance of the structure with building codes. If design services are required, owner shall be responsible for the results of such services, whether or not such services are provided in relation to this contract or work
- 1.10 Nothing contained in this contract shall be construed to require Contractor to determine the presence or absence of any hazardous materials (HAZMAT) or asbestos-containing materials (ACM) affecting the work or to require Contractor to remove or protect such materials. Any roof survey to determine presence of HAZMAT or ACM and the necessity of any abatement procedures required, shall be the sole responsibility of Owner. In the event that Contractor learns of the presence of such materials at the work site, Contractor reserves the right to immediately stop work and negotiate a change order for such additional work as may be required
- 1.11 If Contractor claims it is required by Owner, for any reason, to change the method, manner or sequence of construction, Contractor shall notify the Owner in writing of such claim within seven (7) days of the first occurrence of the event from which such claim arises. Contractor shall provide owner with a brief written report and Contractor reserves the right to negotiate a change order for costs or work associated with such changes
- 1.12 This proposal is based upon the use of Contractor's own craftsmen. If strict adherence to local union guidelines is required, and provided an acceptable project-only agreement with the local union can be executed, the proposal price may change due to different labor costs and work rules

CONTRACT CONDITIONS

2 DUTIES AND RESPONSIBILITIES OF CONTRACTOR.

- 2.1 Contractor's price includes furnishing labor, tradeswork, supervision, equipment, and materials necessary to perform the contract uninterrupted, subject only to latent conditions of the area of work, which could not be reasonably anticipated by visually examining the roof by roofing tradespersons. If such latent conditions cause delay or require unanticipated services, work or rework in the performance of the contract, Contractor shall promptly notify Owner of such condition. Contractor shall charge for such additional services or rework, and be compensated as if authorized as by a change order to this contract (unless the parties agree to a lump-sum price for such additional work, without causing cessation of activity)
- 2.2 Contractor will remove from premises rubbish and debris caused by its work
- 2.3 Contractor shall advise Owner promptly upon completion of work and submit the same for Owner's inspection. Contractor conditioned upon Owner's prompt inspection and notification to Contractor of any omitted work, or other discrepancies, will correct the same when required by the scope of work stated in the contract.
- 2.4 Contract price is based on Worker's Compensation Rate in effect as of the proposal date. Should rates change, contract price may increase or decrease in accordance with the new rates.

D. C. Taylor Co
312 29th St. NE
P O Box 97
Cedar Rapids, IA 52406-0097

Phone 319-363-2073
Fax 319-363-8311

Owner Please Initial _____
Contractor Please Initial _____

3 DUTIES AND RESPONSIBILITIES OF OWNER.

- 3 1 If Owner is represented by an Architect or Engineer or Representative in a similar capacity, and if contractor's work is to be inspected by such person, inspections shall be performed in sequence with Contractor's work progress, so as not to cause delay
- 3 2 Owner shall promptly inspect Contractor's work upon notice of Contract Completion and shall either accept the work, or give prompt, written notice to Contractor of work not meeting the requirements of this contract. If Owner fails to give such notice to Contractor within seventy-two (72) hours from notice of Contract Completion Contractor's performance shall be deemed to be completed for purposes of final payment
- 3 3 Owner represents to Contractor that the building and the roof deck on which the installation is to be made is in a sound, load-bearing condition sufficient for the project conditions in and on which contractor is to work, and that all surfaces to be utilized by Contractor for storing, hoisting, installing, fastening, adhering, or in any way attaching the roofing system will be adequate for the installation or the work to be performed Prior to commencement of Contractor's work, Owner will inform Contractor, in writing, of any structural or building (including latent) condition(s) which could fail to meet its expected function
- 3 4 Owner shall provide Contractor with reasonable access to the work area for the duration of the contract, shall not impede the efficiency of the Contractor's work, shall not restrict Contractor's work hours, and shall be responsible if any interruption of Contractor's work occurs from Owner's failure to provide reasonable access, or due to the acts or negligence of others not under the contractor's direction All surfaces shall be dry and free of debris Contractor shall not be responsible for damages arising from delay due to inclement weather, strikes, fires, accidents, delays in shipment or delivery of materials or any causes beyond its reasonable control
- 3 5 Owner will manage and be responsible for protection of vehicles and property exposed to damage by Contractor's work.
- 3 6 Owner will furnish at its expense, a convenient, secure, enclosure, in which to store Contractor's materials and equipment, and shall provide for restroom facilities and adequate water service Owner shall furnish at its expense, single-phase, 220-volt, 50-amp electrical service on the roof
- 3 7 If required, permits to be obtained by the owner
- 3 8 If a performance bond is required, please request a separate price from Contractor

4 PAYMENT

- 4 1 Contractor shall invoice upon commencement and at approximately 30-day intervals thereafter until project completion Based upon Contractor's estimate of the work completed during that period progress payments will be made by Owner on Contractor's invoices, Owner shall make payment promptly, and in no case later than ten (10) days after the invoice date Contractor's initial invoice shall be for one-hundred percent (100)% of the Contractor's estimate of its cost of the materials, freight, fabrication, and project set-up expenses, including overhead, when the same are delivered to the job site, or if stored at a suitable location agreed to by the Owner The remaining balance due under this contract shall be payable ten (10) days after receipt of final invoice and that Contractor may charge interest (at the daily rate of .05 percent, unless a lesser percentage is required by law) on any sum due under this contract which is not paid on its due date
- 4 2 The failure by Owner to make prompt payment shall entitle Contractor, on seventy-two (72) hours written notice to stop work The contract price shall be increased by Contractor's reasonable costs to stop the project and resume work
- 4 3 Should Contractor be required to initiate legal proceedings to collect any balance due under this agreement, Owner agrees to pay reasonable attorney's fees and costs incurred in such collection

5 WARRANTY EXCLUSIONS

- 5 1 Contractor makes no warranty respecting the structural characteristics (including wind or drainage) of the installed roof system Owner shall rely upon the original architect, engineer or designer of the building regarding any structural capacity of the building
- 5 2 Contractor shall not be responsible for latent defects in materials and accessories supplied Contractor shall not be responsible for rework required as a result of the acts or errors of others
- 5 3 Not all products or services provided hereunder are covered by the Manufacturer's warranty described in Attachment "B" Owner will rely exclusively upon the warranty, if any of the Manufacturer of any materials which are not specifically described and included in the Manufacturer's warranty

6 CONTRACT INSTRUMENT COMPLETE

- 6 1 This contract signed by both parties constitutes a final written expression of all of the terms of this agreement and is a complete and exclusive statement of those terms, except as modified by written change orders agreed to by each party to this agreement
- 6.2 Should this contract conflict with project specifications, the contract shall govern Should the scope of work conflict with the Manufacturer's specifications the scope of work shall govern Should drawings prepared by Contractor conflict with Manufacturer's standard details, the Contractor's drawings shall govern

D C Taylor Co
312 29th St. NE
P O Box 97
Cedar Rapids, IA 52406-0097

Phone 319-363-2073
Fax 319-363-8311

Owner Please Initial _____
Contractor Please Initial _____

ATTACHMENT "A"

Enumerated Contract Documents

The Contract Documents consist of the following, in addition to the DESCRIPTION OF PROJECT, SUMMARY OF WORK, GENERAL CONDITIONS, WARRANTIES, DUTIES AND RESPONSIBILITIES OF CONTRACTOR, DUTIES AND RESPONSIBILITIES OF OWNER, PAYMENT, and CONTRACT INSTRUMENT COMPLETE

- 1 Attachment "B" the Warranty of the Manufacturer
- 2 Attachment "C" the Warranty of D C Taylor Co
- 3 Attachment "D" the Scope of Work

D C. Taylor Co
312 29th St. NE
P O Box 97
Cedar Rapids, IA 52406-0097

Phone 319-363-2073
Fax 319-363-8311

Owner Please Initial _____
Contractor Please Initial _____

D. C. TAYLOR CO. WARRANTY

ATTACHMENT "C"

Owner enters into this Contract principally to obtain the roof trade labor and craft work of the D C Taylor Co construction service

Contractor warrants that the materials and accessories supplied will be those specified for this Contract and will be new and of recent manufacture and free from obvious defects. All materials and work shall be furnished in accordance with normal industry tolerances for color, variation, thickness, size, weight, amount, spacing, finish, texture and performance standards. Proposed quantities are intended to represent an average over the entire roof area.

Should leaks occur after Contract Completion, inspections and/or repairs performed by Contractor shall be treated as warranty matters, and such circumstances shall not be grounds for withholding any payments.

During any interval between Contract Completion and Owner's Acceptance of the work and the issuance of the Manufacturer's warranty, Contractor, for a period of up to 120 days from Contract Completion, will repair defects in its work, subject to the terms, limitations and conditions of this contract and the Manufacturer's warranty, the terms of which shall apply during said period, provided that Owner has paid Contractor's invoices.

A sample copy of the warranty of the Manufacturer of the roof product or membrane to be installed, is attached to this contract and incorporated herein by this reference, and if not, is the standard warranty issued by the Manufacturer for the roof product or membrane installed under this contract. Acceptance of this contract by Owner shall constitute acceptance of and reliance upon the terms, conditions and limitations of said warranty. Upon Contract Completion and acceptance of Contractor's work and upon issuance of the Manufacturer's Warranty to Owner, all rights and remedies of Owner respecting Contractor for the work performed under this contract, including latent defects and implied or statutory warranty obligations, shall merge in said Manufacturer's warranty, which shall be the sole and exclusive remedy of Owner hereunder.

THE MANUFACTURER'S WARRANTY DESCRIBED IN PARAGRAPH ABOVE SHALL BE IN LIEU OF ANY OTHER WARRANTY OF CONTRACTOR, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHER STATUTORY WARRANTY, THE PROVISIONS OF WHICH THE OWNER HEREBY WAIVES.

D C Taylor Co
312 29th St. NE
P O Box 97
Cedar Rapids, IA 52406-0097

Phone. 319-363-2073
Fax 319-363-8311

Owner Please Initial _____
Contractor Please Initial _____

ATTACHMENT "D"

*Sections C, F, I, J, K, and L of Dry Goods Warehouse
Kansas City, Kansas*

SCOPE OF WORK:

- 1 Erect and maintain D C Taylor Co fall protection system as per OSHA requirements
- 2 Tear off and dispose of polyurethane foam roof, built-up roof membrane and fiberglass insulation down to deck.
- 3 Furnish and install one layer of 1 5" isocyanurate insulation ("R" = 10), mechanically fastened at the rate of six (6) fasteners per 4' x 8' board
- 4 Furnish and install Stevens hypalon 45-mil roof membrane system, mechanically fastened per Factory Mutual 1-60 requirements
- 5 Furnish and install Stevens flashing system at perimeter and projections
- 6 Furnish and install membrane coated gravel stop fascia at roof edge
- 7 Furnish and install new counterflashings at roof-mounted equipment as required
- 8 Upon completion, deliver Manufacturer's 15-year, labor-and-material warranty
- 9 This scope of work includes and incorporates all the terms and conditions of this contract
- 10 This proposal incorporates only those elements of the Manufacturer's specifications and recommendations appropriate to this scope of work and method of construction as defined by it
- 11 No deck repair or replacement is included.

CONSTRUCTION PRICE-----\$764,268 00

ADD KANSAS SALES TAX-----\$26,367 00

TOTAL PRICE-----\$790,635 00**

*****The contract price is based on Worker's Compensation Rates in effect as of the proposal date for the project location. Due to an anticipated increase in these insurance rates taking effect April 1, 2002, our contract price may increase in accordance with the new rates. *****

D C Taylor Co
312 29th St. NE
P O Box 97
Cedar Rapids, IA 52406-0097

Phone 319-363-2073
Fax 319-363-8311

Owner Please Initial_____
Contractor Please Initial_____



CHANGE ORDER PROPOSAL #1

FROM	D C Taylor Co 312 29th Street NE P O Box 97 Cedar Rapids, IA 52406	Project	Dry Warehouse Kansas City, KS
TO	Danny Apodaka Fleming Companies 1945 Lakepointe Drive Lewisville, TX 75057	P O #	S - 20020132
DATE	March 17, 2003	DCT Job #	52682KS

Proposal submitted for the following changes in the contract.

Total Deck Replacement	2,300 sq ft @ \$3 75	\$8,625 00
Deck Overlay	39,300 sq ft @ \$2 75	\$108,075 00
Kansas Tax		\$4,260 00
	Total Cost of Deck Replacement	\$120,960 00

Total Change Order Cost \$120,960 00

Note The same conditions of the contract apply to this change order

SUBMITTED BY

Signed

Contractor D C Taylor Co

Date 3-17-2003

APPROVED BY

Signed

Owner's Rep Daniel M. Apodaka

Date 3/21/03



Thank you for your business.

Mail payments to D C Taylor Co • P.O. Box 97 • Cedar Rapids, IA 52406

Terms of payment Interest in the amount of 1 5% per month (18% per annum) or the maximum permitted by applicable law — whichever is less — will be charged from 30 days after the date of the invoice

Contractor warrants that materials delivered to job site are new and free from defects unless otherwise stated

To **FLEMING COMPANIES**
DANNY APODAKA
1945 LAKEPOINTE DRIVE
LEWISVILLE, TX 75057

Invoice # **52682-3**

Date **3/26/2003**

Customer Order # **S-20020132**

Contract **52682KS-** **FLEMING COMPANIES-KANSAS CITY**

Application is made for payment, as shown below, in connection with the contract

	Contract Amount	% Complete	Total To Date
Deck Replacment	116,700 00	100 00%	116 700 00
	<u>116,700.00</u>		<u>116,700 00</u>
			Total To Date 116,700 00
			Plus Sales Tax 4,259 55
			Less Retainage 0.00
			Less Previous Applications 0.00
			Total Due This Invoice <u>120,959.55</u>
			BALANCE TO FINISH <u>930</u>

DUE UPON RECEIPT

319-363-2073 • Toll Free 800-878-8348 • Fax. 319-363-8311 • www.dctaylorco.com

Exhibit C

I N V O I C E

SEIGFREID, BINGHAM, LEVY, SELZER & GEE

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
911 MAIN STREET
SUITE 2800
KANSAS CITY, MISSOURI 64105
816 421 4460
FACSIMILE 816 474 3447

JAMES T SEIGFREID
LARRY J BINGHAM
ALLAN W STOPPERAN
GARY J BROUILLETTE
GORDON D GEE
ROBERT C LEVY
KENNETH W SPAIN
GARY V FULGHUM
DUANE J FOX
JACK R SELZER
FRED BELLEMERE, III
MARK H GILGUS
MARK R THOMPSON
LYNNE C KAISER
PAUL G SCHEPERS
CINDY A McCLANNAHAN
ROBERT J BJERG
JAMES C TILDEN
GREGORY S GERSTNER
LORI A BEAM

DAVID E SHAY
STEPHEN M KYLE
RACHEL H BAKER
TIMOTHY J FISHER
DOUGLAS K ANNING
ROD L EISENHAEUER
LANCE J FORMWALT
JOHN M NEYENS
KARLA KERSCHEN SHEPARD
ANDREA GOULD McCARTHY
JANE L WILLIAMS
RYAN T SHASSERRE
JOHN R WALTER

ROBERT J MANN
H BOONE PORTER III
OF COUNSEL

WILLIAM J BURRELL
1921 1994

September 12, 2003

Via Federal Express

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

Re Fleming Companies, Inc
Proof of Claim for D C Taylor Co

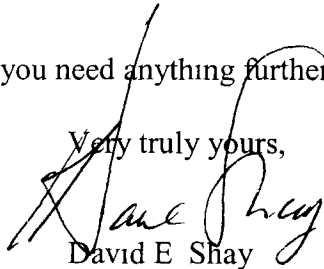
Dear Sir

Enclosed please find a Proof of Claim for the above-referenced creditor of Fleming Companies, Inc

As per the instructions, we are enclosing the original and one (1) copy of the claim form with supporting documents. We are also enclosing a copy of just the form which we ask that you use to send us a date-stamped copy. We have enclosed a self-addressed stamped envelope for returning the acknowledgement to us.

Thank you for your assistance. Should you need anything further, please let me know.

Very truly yours,


David E Shay

DES /des