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

606281
Bar Date Ref # 2-NVM-72061

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

0354653606281

Dimond Family Associates
3180 Delmar Dr
Salt Lake City UT 84109

Creditor Telephone Number ( )801-284-7242

☐ 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 TAX I D #	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
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
XX Other (describe briefly) (Rent & other amounts due under Lease)
☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed from _____ (date) to _____ (date)

2 DATE DEBT WAS INCURRED Lease dated 7/10/00

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE

$ See Sched A (unsecured)	$ ___ (secured)	$ ___ (unsecured priority)	$ See Sched. A (total)

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

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

5 SECURED CLAIM

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

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☐ Other

Value of collateral $

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

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business whichever is earlier 11 U S C § 507(a)(3)

☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)

☐ Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)

☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)

Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)

☐ Other Specify applicable paragraph of 11 U S C § 507(a) ___

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

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

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

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

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

BY MAIL TO
Bankruptcy Management Corporation
P O BOX 900
El Segundo, CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

DATE SIGNED	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)
Sept 12, 2003	Matthew G. Cooper Attorney at Law

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

THIS SPACE FOR COURT USE ONLY

FILED
SEP 15 2003

BMC
Fleming Companies Claim
12913

See Other Side For Instructions

Schedule A to Proof of Claim

Dimond Family Associates, L L C is entitled to unpaid future rents under that certain Shopping Center Lease with Fleming Companies, Inc , dated July 10, 2000 ("Lease"), in the amount of **$7,846,489 20**, plus unpaid present and future taxes, insurance, common area expenses, interest, attorney fees, costs and other amounts provided in the Lease, a copy of which is attached hereto

SHOPPING CENTER LEASE

THIS SHOPPING CENTER LEASE ("Lease" or "Agreement"), is entered into as of the 10th day of July 2000, by and between DIMOND FAMILY ASSOCIATES, L L C , a Utah limited liability company ("Landlord"), and FLEMING COMPANIES, INC , an Oklahoma corporation ("Tenant")

RECITALS

A Landlord is the owner of certain real property located in West Jordan, Salt Lake County, Utah, on which is located a retail shopping center Landlord also owns undeveloped land located adjacent to such shopping center

B Through various assignments, Tenant is the holder of a leasehold interest in a portion of the Real Property (defined below) that was created by that certain Shopping Center Lease, dated September 27, 1978 (the "Original Lease"), between Dimond Family Associates, a Utah partnership ("Original Landlord"), and Safeway Stores Incorporated, a Maryland corporation The Original Lease is evidenced, in part, by that certain Shopping Center Lease (Short Form), dated June 22, 1979 and recorded October 12, 1979 as Entry No 3349911 in Book 4963 at Page 649 of the official real estate records of Salt Lake County, Utah

C Landlord is the successor-in-interest to the Original Landlord with respect to the Original Lease and the Real Property

D The Original Lease, which has been modified several times, covers that portion of the Real Property on which is located an approximately 42,999 square foot building, as shown on the site plan attached as Exhibit "A-1" to this Lease (the "Existing Building") Since its construction, the Existing Building has (until recently) been used for the operation of a retail grocery supermarket The Existing Building, which has a street address of 2735 West 7800 South, West Jordan, Utah, is now vacant

E Tenant desires to (i) demolish the Existing Building, (ii) construct a new larger building (and certain other related improvements) at the general location of the Existing Building, and (iii) operate or cause to be operated a retail grocery supermarket on and from the Leased Space (defined below) to be located on the Real Property, all as more particularly provided in this Agreement

NOW, THEREFORE, in consideration of the above recitals (which are incorporated herein by this reference), the mutual covenants contained below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows

AGREEMENT

1 Definitions

1 1 Construction Costs "Construction Costs" shall have the meaning ascribed to such term in the Tenant Improvements Agreement referenced in Section 5 of this Lease

1 2 Improvements Allowance "Improvements Allowance" shall have the meaning ascribed to such term in the Tenant Improvements Agreement referenced in Section 5 of this Lease

1 3 Leased Space, Building "Leased Space" shall mean that certain retail store building space that includes approximately 50,120 ground floor square feet (as measured from the outside of the exterior walls) to be located on the Real Property and designated as "Supermarket" on the site plan attached as Exhibit "A-2" to this Lease (the "Site Plan") The building to be constructed by Tenant that will become the Leased Space is also referred to below as the "Building "

1 4 Lease Year "Lease Year" shall mean the period of twelve (12) consecutive months commencing with the Commencement Date, or any succeeding twelve (12) month period during the term of this Lease

1 5 Real Property "Real Property" shall mean that certain real property located in the City of West Jordan, Salt Lake County, Utah, and more particularly described on Exhibit "B-1" attached to this Lease The Real Property is that portion of the Shopping Center (defined below) to which Landlord has fee simple title

1 6 Shopping Center "Shopping Center" shall mean all the real property and improvements now or hereafter located on the Real Property and certain improved adjacent outparcels owned by third parties (the "Outparcel Properties"), and commonly known as the "Dimond Center " The Outparcel Properties are described on Exhibit "B-2" attached to this Lease

1 7 Shopping Center Expansion Area "Shopping Center Expansion Area" shall mean the parcel of underdeveloped land owned by Landlord and generally located west of the Shopping Center, as more particularly described on Exhibit "B-3" attached to this Lease Upon completion of the commercial improvements to all or any portion of the Shopping Center Expansion Area, such improved area shall be deemed a part of the Shopping Center for purposes of this Lease and otherwise

1 8 Proportionate Share "Proportionate Share" shall mean a fraction (expressed as a percentage), the numerator of which is the area of the Leased Space, as shown on the Site Plan, and the denominator of which is the leasable area of the Shopping Center (but excluding any portions owned by third parties), which shall not be less than as shown on the Site Plan regardless of whether the actual leasable area of the Shopping Center is less than

shown on the Site Plan Tenant's initial Proportionate Share shall be eighty-three percent (83%), subject to adjustment if the leasable area of the Shopping Center increases or if the size of the Building, as built, differs from that shown on the Site Plan Notwithstanding anything to the contrary contained in this Lease, Tenant's Proportionate Share for Common Area Maintenance Costs shall be reduced proportionately by the amount of any sums for such costs assessed to the owners of the Outparcel Properties by Landlord

2 Lease, Termination of Original Lease In consideration of and subject to the covenants and agreements set forth below, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Leased Space, together with non-exclusive rights to the easements, entrances, parking areas, approaches and exits appurtenant to the Leased Space Effective as of the Commencement Date (defined below), the Original Lease shall be deemed terminated and superceded by this Lease, and Landlord and Tenant agree to execute and deliver any other instruments or agreements reasonably necessary to evidence such termination

3 Term The Initial Term of this Lease shall run and extend for twenty (20) years from and after the Commencement Date, unless sooner terminated as herein provided (the "Initial Term")

3 1 Commencement Date The Initial Term of this Lease shall commence on the first day of the first month after Tenant (or its subtenant) makes its first retail sale in the Leased Space (the "Commencement Date"), provided, however, that notwithstanding any other term or condition hereof to the contrary, Tenant shall not be obligated to commence its transaction of business on the Leased Space or commence the Initial Term of this Lease (a) until Tenant shall have been provided with a final Certificate of Occupancy (or local equivalent) for the Leased Space, or (b) during the months of November, December, January or February

3 1 1 Commencement Date Acknowledgment When the Commencement Date of the Initial Term has been determined, it shall be set forth in a Commencement Date Acknowledgment substantially in the form of that attached as Exhibit "C" to this Lease, which shall be executed in the same manner as this Lease and shall be attached to this Lease as a part hereof

3 2 Tenant's Installation of Fixtures and Equipment, Responsibility for Utilities In connection with Tenant's construction of the Building, Tenant shall be permitted to store and/or install fixtures and equipment, receive merchandise and prepare for opening its store Upon the date that Tenant starts up its main refrigeration compressor system in the Leased Space, the utility meters in the Leased Space shall be read and after such reading the permanent utilities shall be changed into Tenant's name Once the utilities are changed into Tenant's name as provided herein, then Tenant's obligation to pay for utility services at the Leased Space shall commence Prior to such time, the cost of such utility services shall be included within the Construction Costs

3 3 Renewal of Lease This Lease shall be extended automatically under the same terms, conditions and covenants herein contained for four (4) separate additional terms of

five (5) years each ("Extended Terms"), each Extended Term to begin at the expiration of the preceding Initial Term or Extended Term, as the case may be, unless at least three (3) months prior to the expiration of the then current Initial Term or Extended Term, Tenant shall notify Landlord that it intends not to renew the Lease

3 3 1 Option for One Year Renewal Notwithstanding anything to the contrary contained herein, Tenant shall have the sole option to elect to restructure any of such Extended Terms into five (5) successive one (1) year Extended Terms The exercise of such option must be in writing and must be given no less than three (3) months prior to the end of the then current Initial Term or Extended Term, as the case may be In the event such option is exercised, the Minimum Rent for each such one (1) year Extended Term shall be one hundred and ten percent (110%) of the Minimum Rent set forth in Section 4 below The exercise of the option as set forth herein shall not affect the remaining number of Extended Terms, if any

4 Rent Tenant agrees to pay Landlord as rent for the Leased Space the following, which shall be payable monthly in advance beginning on the first day of the first month following the Commencement Date and continuing thereafter on the first day of each calendar month during the Initial Term and any Extended Term

4 1 During Initial Term During the Initial Term, a monthly minimum rent ("Minimum Rent") of (a) Nine Thousand One Hundred Sixty-six and 66/100 Dollars ($9,166 66), and (b) an amount necessary to fully amortize over the Initial Term the Construction Costs with interest on the monthly declining straight line balance thereof at a rate equal to Landlord's cost of funds to permanently finance Construction Costs (the "Financing Component") (For example, if rate of interest payable by Landlord for the permanent loan used to finance the Construction Costs (the "Permanent Loan") is eight percent (8%) per annum, then the Construction Costs will be amortized over the Initial Term using a factor of eight percent (8%) per annum) Once the Financing Component of the Minimum Rent is determined, Landlord and Tenant agree to execute an amendment to this Lease confirming the same and establishing the total monthly Minimum Rent payable by Tenant to Landlord during the Initial Term If Landlord chooses to refinance the debt incurred in financing the Construction Costs (to take advantage of lower interest rates), then the Financing Component of the Minimum Rent shall be decreased accordingly In no event shall the Financing Component of the Minimum Rent ever increase Notwithstanding any language to the contrary contained in this Section 4 1, if the actual Construction Costs exceed the amount of the Improvements Allowance, then Tenant may elect to either (a) pay the excess sum, or (b) request that Landlord use its best efforts to seek financing for the excess sum, and if such additional financing is obtained, then the excess sum will be amortized during the Initial Term in the same manner as provided in this Section 4 1 with respect to the Financing Component of the Minimum Rent

Once Landlord obtains a written commitment for the Permanent Loan (the "Loan Commitment"), it shall provide Tenant with a copy of the same Tenant shall have fifteen (15) days from the receipt of the Loan Commitment to notify Landlord whether Tenant has

a source of capital on more favorable terms (including a lower interest rate) with which to fund the Permanent Loan If other, more favorable terms for the Permanent Loan are available, then Tenant shall provide Landlord with all reasonably available information respecting the same, and Landlord shall use its best efforts to obtain such financing

4 2 During Extended Terms At the beginning of each of the Extended Terms, the annual Minimum Rent (which then shall no longer include the Financing Component described above) shall increase as follows

Lease Years	Rental Increase
21-25	$ 50 per square foot
26-30	$ 50 per square foot
31-35	$ 50 per square foot
36-40	$ 50 per square foot

5 Construction of Building and Related Improvements Tenant shall retain licensed architects and engineers to prepare construction plans and specifications (collectively, the "Construction Documents") in accordance with Tenant's requirements for the Building (including plans for demolition of the Existing Building) and the other related improvements to be located on or adjacent to the Leased Space (the "Improvements") The Improvements shall be constructed by Tenant and financed by Landlord as provided in the Tenant Improvements Agreement attached as Exhibit "D" to this Agreement (the "Tenant Improvements Agreement") Landlord agrees to use its best efforts to assist Tenant in obtaining all necessary governmental approvals, licenses, and permits required for completion of the Improvements Not later than sixty (60) days prior to the Commencement Date, Landlord agrees, at its sole cost and expense, to pave with asphalt that portion of the Shopping Center located south of the Arby's pad site, as shown on the Site Plan ("Landlord's Paving Work") The specifications for Landlord's Paving Work shall be subject to Tenant's approval, which shall not be unreasonably withheld Landlord shall provide proper grade level and drainage for the area of Landlord's Paving Work, and shall install and maintain adequate surface (including striping) and lighting facilities for such area

6 Landlord's Covenants, Warranties, and Representations In addition to all other covenants and agreements by Landlord found in this Lease, Landlord hereby specifically covenants, warrants, and represents as follows

6 1 Zoning The Shopping Center is zoned for the type of business operation contemplated by Tenant and such zoning is appropriate for the Shopping Center

6 2 Flooding The Shopping Center is not susceptible to flooding and does not lie within a flood plain

6 3 Quiet Enjoyment Landlord has good and marketable indefeasible fee simple title to the Real Property, subject only to those easements, covenants, encumbrances and other title matters set forth on Exhibit "E" to this Lease, which Tenant has reviewed and approved (the "Permitted Encumbrances") Tenant acknowledges receipt from Landlord, at

Landlord's expense, of a commitment for an ALTA extended coverage leasehold title insurance policy (the "Commitment"), in the amount of Three and One-half Million Dollars ($3,500,000 00), and otherwise in a form acceptable to Tenant covering Tenant's interest in the Shopping Center, which binds the title insurance company to issue on the Commencement Date (or as soon thereafter as is practicable), at Landlord's sole cost and expense, an extended coverage leasehold title insurance policy to Tenant based on the Commitment, showing that Landlord has good and marketable indefeasible fee simple title to the Real Property and the Shopping Center Expansion Area, free and clear of any and all encumbrances or liens other than the Permitted Encumbrances (the "Leasehold Title Policy") In no event shall the cost of the Leasehold Title Policy be included within the Construction Costs Landlord has full authority to execute this Lease and further warrants to Tenant that Tenant shall have, hold and enjoy the Leased Space and its rights hereunder during the term hereof, free from any interference by Landlord or any parties claiming by or through Landlord Landlord agrees to reasonably cooperate with Tenant and join in a complaint, at Tenant's expense, filed in a court, or with a law enforcement agency, to prohibit individuals who may be trespassing, loitering, cruising, picketing, handbilling or distributing literature, from interfering with Tenant's conduct of business Landlord shall not permit the emanation of any undue noise, obnoxious fumes or odors, or any other nuisance from any property or building adjacent to or near the Leased Space that is owned or controlled by Landlord or any affiliated entity

6 4 Use of the Real Property and the Shopping Center Expansion Area The Real Property shall be used for the sole purpose of promoting and operating a retail shopping center There shall be no buildings or other improvements erected on the Real Property, nor any changes made to the Shopping Center except those shown on the Site Plan, unless required by governmental authorities having jurisdiction over the Real Property No portion of the Real Property or the Shopping Center Expansion Area, shall be used for a bowling alley, skating rink, theater, cafeteria (in contrast to a fast food or full-service restaurant, which are permitted uses), bingo parlor, flea market, billiard parlor, nightclub, or any operation selling alcohol for on-site consumption (except as incidental to a permitted restaurant use), video arcade, auto body or mechanical repair shop (as opposed to a gas station, lube and oil shop, tune-up shop, or tire, battery and accessory shop), medical center or clinic, training or educational center or facility No portion of the Real Property may be used for any other non-retail use unless approved in advance in writing by Tenant Without limiting Tenant's right to use the Leased Space as allowed by this Lease, the foregoing restrictions shall not be construed to prohibit Tenant from subleasing a portion of its store to a video rental store, pharmacy, in-store banking facility or any other in-store department With the sole exception of the existing retail grocery supermarket presently operated by Macey's, Inc , neither Landlord nor any person, firm, or other entity that directly or indirectly controls or is directly or indirectly controlled by Landlord or is connected or affiliated with Landlord, including without limitation, an affiliate, subsidiary, principal, partner, shareholder, employee, agent, officer, director, or investor (collectively, "Affiliates") shall, directly or indirectly, own, operate or grant any lease or permit any assignment or sublease for, a store (or any portion of a store) in the Shopping Center or on any real estate owned by Landlord or any Affiliates and located within two (2) miles of the Shopping Center (the

"Restricted Area"), that permits the sale or offering for sale of groceries, including, without limitation, food products, alcoholic beverages, dry groceries such as household products and paper goods, and other items typically sold in supermarkets (such as meats, poultry, seafood, dairy products, fruits, vegetables or baked goods), provided, however, that the foregoing shall not prohibit the operation of (a) either fast food or full-service restaurants, which may include the sale of alcoholic beverages for on-site consumption, or (b) a hardware or home improvement store, or (c) a drug or department store that sells a limited assortment of food products and dry groceries such as household products and paper goods, so long as (i) such products are those customarily and historically sold by the drug or department store, and (ii) the sales area for such products does not exceed eight percent (8%) of such store's selling space, or three thousand (3,000) square feet, whichever is less Such drug or department store's limited assortment of food products shall expressly exclude baked goods, seafood, dairy products, poultry, meat, fresh fruit and vegetables In the event of any violation of the terms of this Section 6 4, Tenant shall give written notice of such violation to Landlord and if such violation is not cured within thirty (30) days (or within such longer period of time so long as Landlord has commenced and is diligently prosecuting such cure within such thirty (30) day period), all rent obligations under this Lease shall be abated during the period of such violation, and Tenant shall not be in default for failure to pay any such rent allocated to such period Landlord agrees that the foregoing use restrictions (the "Restricted Area Use Limitation") will be included in all conveyances, leases, subleases, licenses and assignments affecting the Real Property, the Shopping Center Expansion Area, or other property within the Restricted Area Concurrently with the execution of this Lease (or as soon thereafter as is practicable), Landlord will execute and record in the real estate records of Salt Lake County, Utah, a Declaration of Restrictions and Easements in substantially the form of that attached as Exhibit "F" to this Lease (the "Declaration"), and a termination of that certain Declaration of Covenants and Restrictions [and] Grant of Easements, dated February 5, 1980 and recorded on February 5, 1980 as Entry No 3396632 in Book 5041 at Page 483, as amended by that certain First Amended to Declaration of Covenants and Restrictions [and] Grant of Easements, dated November 11, 1980 and recorded February 10, 1981 as Entry No 3532709 in Book 5211 at Page 1098 (collectively, the "Original Declaration") Concurrently with the above, Landlord shall also obtain any and all consents, in recordable form, needed to effect the termination of the Original Declaration The Declaration shall be recorded against the Real Property and the Shopping Center Expansion Area Landlord shall also execute and record a memorandum, in form acceptable to Tenant, containing the principal terms of the Restricted Area Use Limitation (the "Memorandum"), against any other real property within the Restricted Area presently owned by Landlord or any Affiliates or acquired by Landlord or any Affiliates after the date of this Lease The recording of the Memorandum with respect to presently owned property shall be performed concurrently with the recording of the Declaration Concurrently with or prior to the recording of the Declaration and the Memorandum, Landlord also agrees to obtain from any lender holding a prior security interest in the Real Property or the Shopping Center Expansion Area (or other property in the Restricted Area) an instrument, in recordable form, in which such lender consents to the Declaration and the Memorandum, as applicable, and agrees to subordinate its security interests in the Real Property or the Shopping Center Expansion Area (or other property in the Restricted Area) to the Declaration and Memorandum, as applicable (the

"Lender Consents") Concurrently with or prior to the recording of the Declaration and Memorandum, Landlord also agrees to obtain from any owner of a fee or leasehold interest in the Real Property or the Shopping Center Expansion Area an instrument, in recordable form, in which such party consents to the Declaration, and agrees to subordinate its interest in the Real Property or the Shopping Center Expansion Area to the Declaration (the "Other Consents") Landlord's failure to obtain the Lender Consents, the Other Consents, or those executed instruments necessary to terminate the Original Declaration, shall constitute a material breach of this Lease, for which Tenant may, at its option, elect to cancel and terminate this Lease by written notice to Landlord In the event of a termination as provided above, Tenant shall reimburse Landlord for all development costs reasonably, necessarily and actually incurred pursuant to this Lease, up to a maximum of Twenty-five Thousand Dollars ($25,000 00)

6 5 Site Plan The Site Plan is an accurate representation of the Shopping Center, the Leased Space, and the Shopping Center Expansion Area, and no changes shall be made to the Real Property portion of the Site Plan without first obtaining Tenant's written consent or approval, which may be withheld in its sole discretion, unless such change is required by governmental authorities having jurisdiction over the Real Property No building located in the Real Property portion of the Shopping Center, other than the Leased Space, shall exceed one (1) story in height or exceed the height of the Leased Space, whichever is less In the event of a violation of this Section 6 5, Tenant may, at its option, elect to cancel and terminate this Lease by written notice to Landlord

6 6 Use of Common Areas of Shopping Center The access areas, parking area and all common areas and facilities of the Shopping Center ("Common Areas") shall remain as shown on the Site Plan throughout the Initial Term and any Extended Terms, and Tenant and its employees, agents, officers, invitees and customers shall have unrestricted access thereto and to any additional access areas, parking areas and other common areas now or hereafter located on the Real Property or the Shopping Center Expansion Area, in common only with other owners and tenants of the Shopping Center, and their employees, agents, customers, and invitees Without limiting the generality of the foregoing, Tenant specifically shall have the right to locate vending machines on the sidewalks adjoining the Leased Space, locate shopping cart corrals within the parking area of the Shopping Center, use the parking areas adjoining the Leased Space for seasonal promotions, and use the sidewalks adjoining the Leased Space for the display and sale of merchandise Landlord reserves the right to use or authorize the use of a portion of the Common Areas for seasonal sales or promotions not exceeding sixty (60) days in any twelve-month period Such seasonal sales shall be limited to that area shown on the Site Plan as "Landlord's Seasonal Sales Area", provided, however, that in no event shall any use of Landlord's Seasonal Sales Area obstruct the view of the Leased Space from 7800 South Street Landlord represents and covenants that upon completion of the Improvements, and throughout the term of this Lease, the number, size and configuration of striped parking spaces in the Shopping Center shall be as shown on the Site Plan, unless altered with Tenant's prior written consent, which may be withheld in its sole discretion, unless such alteration is required by governmental authorities having jurisdiction over the Real Property or the Shopping Center Expansion Area No other parties shall be

allowed access to, from or across the Real Property or use of the parking area shown on the Site Plan, or any other parking area hereafter added to the Shopping Center, without the prior written consent of Tenant, which consent shall not be granted until reciprocal access and parking agreements have been effected in a manner satisfactory to Tenant Landlord shall keep the parking lot lights and other Common Area lights on each day from dusk until at least one (1) hour after Tenant closes for business (or continuously if Tenant is open for business twenty-four (24) hours a day), provided that this covenant shall not be construed as giving Landlord the right to govern Tenant's business hours

6 7 Utilities Landlord shall furnish, install and maintain adequate utility lines and services to serve the Leased Space, which utilities (including the electrical service for the parking lot lights adjacent to the Leased Space) shall be separately metered to the Leased Space The costs related to this provision of utility services by Landlord may be included in the Construction Costs Tenant shall pay for the utility services which it uses at the Leased Space, consistent with the terms of Section 3 2 above

6 8 Compliance With Laws Landlord agrees to make, at Landlord's cost and expense, all necessary changes, additions, alterations and improvements to the Shopping Center and appurtenances thereto (including structural changes), that may be required at any time during the term hereof to make the Shopping Center and the Leased Space comply with all laws, ordinances, rules and regulations of all duly constituted city, county, state or federal authorities ("Applicable Law") Notwithstanding the foregoing, Tenant agrees to make, at Tenant's cost and expense, any changes to the Leased Space required by such Applicable Law due to Tenant's supermarket operations

6 9 Taxes At all times during the term hereof, all ad valorem taxes, real estate taxes and similar taxes, Special Assessments (defined below) and any other taxes levied or assessed against the Shopping Center or any part thereof by reason of the ownership thereof shall be paid and discharged by Landlord before becoming delinquent Tenant shall pay to Landlord its Proportionate Share of all such taxes that are due and payable during any calendar year containing any portion of a Lease Year as provided herein At Tenant's option and request, Landlord shall endeavor to have the Leased Space and the improvements thereon separately assessed for general property taxes If such separate assessment is made, Tenant shall pay such taxes directly to the taxing authority All such taxes for which Tenant is liable hereunder for the calendar years of commencement and termination of this Lease shall be prorated from the Commencement Date and to the termination date of the term of the Lease Unless paid directly by Tenant as provided above, Tenant's Proportionate Share of such taxes shall be paid in equal monthly installments on the first (1st) day of each month, the amount to be reasonably estimated by Landlord Within thirty (30) days following Landlord's receipt of the tax bill or notice of assessment relating to the Leased Space or the Shopping Center, Landlord shall immediately (and in any event, within ten (10) business days) provide Tenant with a copy of the same Within fifteen days thereafter, Tenant shall pay to Landlord or Landlord shall credit against Tenant's next rent payment (or refund to Tenant if the Lease has terminated), as the case may be, the difference between the estimated amounts paid by Tenant and the actual amount of Tenant's Proportionate Share of such taxes

This Section 6 9 shall not be deemed or construed to require Tenant to pay or discharge any tax which may be levied upon the income, profits or business of Landlord or any personal property, franchise, inheritance or estate taxes which may be levied against Landlord or any tax of the same nature as any tax heretofore mentioned in this sentence, even though such taxes may become a lien against the Shopping Center In regard to any Special Assessments or other taxes payable in installments, Landlord shall elect to pay such Special Assessments or taxes over the maximum allowable term

6 9 1 Special Assessments "Special Assessments" as used herein shall mean amounts authorized to be levied, assessed or imposed under applicable law and which are made by any county, city, sanitary and improvement district or other political subdivision for the costs of the construction of any public improvements specially benefitting the Shopping Center such as, by way of example and not of limitation, sidewalks, public roads, streets and sewers, but excluding connection fees payable for sewer and water connections, which fees shall be included within the Construction Costs Notwithstanding the above Section 6 9, Tenant shall not be required to pay any portion of (i) any Special Assessments that have been levied or assessed prior to the Commencement Date, (ii) any Special Assessments which result from Landlord's activity in developing or remodeling the Shopping Center or Leased Space, regardless of when such assessments are ultimately assessed, or (iii) any installments of Special Assessments due and payable after the expiration of the Initial Term or any Extended Term of this Lease In addition, in the case of any Special Assessments payable only in a lump sum, Tenant shall only be responsible for its Proportionate Share of the amount of such assessment multiplied by a fraction, the numerator of which is the number of years remaining in the then current term of the Lease and the denominator of which is the useful life of the improvement against which the Special Assessment is made Within thirty (30) days after the commencement of any Extended Term(s), Tenant shall pay its Proportionate Share for the portion of such Extended Term(s) falling within the useful life of the improvement against which the Special Assessment is made Such useful life shall be determined in accordance with generally accepted accounting principles

6 9 2 Tax Dispute In the event Tenant disputes in good faith the computation or allocation of any taxes, Tenant shall have no obligation to pay such taxes until such dispute is resolved Landlord shall cooperate with Tenant in any such dispute It is agreed, however, that Tenant, at its sole cost and expense, may dispute and contest such taxes, in its name or in the name of Landlord, or in the name of both, as it may deem appropriate, and in such case the disputed charge need not be paid until finally adjudged to be valid At the conclusion of such contest, Tenant will pay the charge contested to the extent it is held valid, together with all attorney's fees, court costs, interest, penalties and other expenses relating thereto Should any dispute result in a reduction or a refund of any taxes, Tenant shall first be entitled to receive its expenses incurred in such contest and Tenant shall then be entitled to receive its proportionate share of any refund Upon receipt of any tax bill or notice of assessment relating to the Leased Space or the Shopping Center, Landlord shall

immediately (and in any event, within ten (10) business days) provide Tenant with a copy of the same, so that Tenant may timely elect whether to contest the taxes and/or the valuation of the subject property

6 10 Survey Landlord agrees, at its expense, prior to or within thirty (30) days after the date of this Lease, to furnish Tenant an ALTA/ACSM Land Title Survey of the Shopping Center satisfactory to Tenant, showing a metes and bounds (not a lot and block) legal description of the Shopping Center, including the Real Property, and the location of any rights of way, easements, encroachments or flood plains, if any The legal description of the Real Property shall be in detail sufficient to allow for the tracking of the boundary of the Real Property The cost of this survey may be included within the Construction Costs

6 10 1 As-Built Survey Within thirty (30) days after the date of completion of the Improvements, Landlord (at its expense) shall furnish Tenant an as-built ALTA/ACSM Land Title Survey of the Shopping Center satisfactory to Tenant, showing the exact location of all buildings, driveways, easements, striped parking, rights of way, underground utility lines and storm water drainage systems or flood plains, if any The cost of this survey may be included within the Construction Costs

6 11 Responsibility for Hazardous Material and Underground Storage Tanks

6 11 1 Definitions As used in this Section 6 11, the following terms shall have the following meanings

a "Hazardous Material" means any substance, material or waste which is reasonably considered by Tenant to pose an actual or potential threat to health or safety or which is or at any time hereafter becomes regulated as "hazardous," "toxic" or under any other similar designation by any local, state, or federal government authority Such term includes, without limitation, (i) asbestos, (ii) any petroleum products, (iii) any material, substance or waste defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U S C § 6901, et seq), (iv) any material, substance, or waste defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U S C § 9601, et seq) or (v) any material, substance or waste defined as a "regulated substance" pursuant to Subchapter IX of the Solid Waste Disposal Act (42 U S C § 6991, et seq)

b "Indemnified Person" means Tenant, any sublessee holding an interest in the Leased Space or any portion thereof, any director, officer, employee, or agent of Tenant or of any such sublessee, and any person claiming under or through Tenant or any such sublessee

6 11 2 Representations and Warranties Landlord represents and warrants to Tenant that to the best of its knowledge and belief (i) no handling, transportation, storage, treatment or usage of Hazardous Material has occurred on the Shopping Center, (ii) no leak, spill, release, discharge, emission or disposal of any Hazardous Material has occurred on or affected the Shopping Center, (iii) the Shopping Center is free of any Hazardous Material and will be free of any Hazardous Material throughout the term of this Lease, and (iv) there are no underground storage tanks located on the Shopping Center, and there will be no underground storage tanks located on the Shopping Center during the term of this Lease The foregoing representations and warranties shall survive the termination of this Lease

6 11 3 Indemnification by Landlord Landlord hereby agrees to indemnify, defend and hold each Indemnified Person harmless from and against any and all loss, cost, damage and expense that arises during or after the term of this Lease as a result of (i) the presence, suspected presence or release at any time of any Hazardous Material in, on or from the Shopping Center, regardless of the source of such Hazardous Material (except as set forth below), (ii) the presence at any time of any underground storage tank on the Shopping Center, or (iii) the inaccuracy or breach of any of the representations or warranties set forth in this Section 6 11 The costs covered by Landlord's indemnification include, without limitation, costs incurred in the investigation of site conditions, fees of attorneys, engineers and other consultants, costs and expenses incurred by Tenant in exercising any of its rights under this Section 6 11 and any damages suffered as a result of any termination of this Lease in accordance with Section 6 11 6 below Excluded from the Landlord's indemnification shall be any loss, cost, damage or expense resulting from the presence of any Hazardous Material introduced onto the Shopping Center by any Indemnified Person

6 11 4 Notices Landlord and Tenant agree to promptly notify the other in the event such party becomes aware of the presence of any Hazardous Material or any underground storage tank on the Shopping Center

6 11 5 Development of Remedial Plan If, at any time during the term of this Lease, Tenant becomes aware of the presence, suspected presence or release of any Hazardous Material in, on, or from the Shopping Center or becomes aware of any pendency or threatened action by any federal, state or local governmental authority with respect thereto, Tenant may so notify Landlord and request that Landlord institute remedial action Tenant and Landlord shall confer on what remedial action may be appropriate and within twenty (20) days of Landlord's receipt of such notice, Landlord shall deliver to Tenant a written plan describing in detail the proposed remedial action If, at any time during the term of this Lease, Tenant becomes aware of any underground storage tank located on the Shopping Center, Tenant may so notify Landlord and request that Landlord institute remedial action Tenant and Landlord shall confer on what remedial action may be appropriate, and within twenty (20) days of Landlord's receipt of such notice Landlord shall deliver to Tenant a

written plan describing in detail the remedial action which is necessary to (i) remove any risk of any present or future leakage of substances from the tank, and (ii) eliminate the possibility that the presence of such tank may, at anytime during the term of this Lease, pose a threat to health or safety or may, at any time during the term of this Lease, require such maintenance, repair or other work so as to interfere with the conduct of business in the Leased Space Any plan developed pursuant to this Section 6 11 5 shall, without limitation of the foregoing, cause the Shopping Center to comply with all applicable federal, state and local laws, ordinances and regulations and shall be sufficient to abate any pending or threatened action with respect to the Shopping Center by any federal, state or local governmental authority

6 11 6 Termination If (i) any plan required by Section 6 11 5 above is not delivered to Tenant within the time prescribed, (ii) any such plan is not acceptable to Tenant in all respects or (iii) Tenant determines that the actual or suspected presence of Hazardous Material or any underground storage tank has had or may have a material adverse effect on the business conducted from the Leased Space or that the implementation of such plan may have such an effect, Tenant may, by notice to Landlord within twenty (20) days of Tenant's receipt of such plan (or, if Landlord fails to provide such plan, within twenty (20) days of the expiration of the time for Landlord to provide such plan) terminate this Lease, such termination to be effective as of the date to be specified in such notice

6 11 7 Implementation of Plan If Landlord delivers the plan required hereunder within the specified time and Tenant does not terminate this Lease as provided herein, then, within ten (10) days of Tenant's notice to Landlord that the plan is acceptable (or Tenant's failure to terminate this Lease prior to the expiration of the time for Tenant to do so), Landlord will commence action necessary to implement the plan and diligently pursue such action to completion Any work required hereunder will be at Landlord's sole expense without any reimbursement from any Indemnified Person and will be performed strictly in accordance with the plan and in accordance with all applicable laws, ordinances and regulations governing such work

6 11 8 Performance by Tenant If Landlord fails to deliver a plan for remedial action within the time prescribed above and Tenant does not terminate this Lease, or if Landlord fails to undertake such work as is required hereunder and diligently pursue such work to completion, Tenant may, but shall not be required to, take such remedial action as it deems necessary and Landlord shall promptly reimburse Tenant for all costs incurred in such action

6 11 9 Termination Notwithstanding any other provision herein, in the event of any breach of Landlord's representations and warranties set forth above or in the event Landlord fails to undertake remedial or maintenance work required of it hereunder and diligently pursue such work to completion, Tenant may, by notice to Landlord, terminate this Lease as of the date to be specified in such notice

6 11 10 Offset Tenant shall be entitled to offset against rent payable hereunder any loss, cost, damage or expense covered by the Landlord's indemnification set forth in Section 6 11 3 above

6 11 11 Nonexclusive Remedies Tenant shall be under no obligation to exercise any remedy which may be provided hereunder and no failure to exercise any such remedy shall prejudice any other remedy available hereunder or under law The remedies provided herein shall not be considered exclusive or preclude any claim for damages or any other remedy which may be available under this Lease or under law

6 11 12 Environmental Studies and Reports Landlord represents to Tenant that it has heretofore provided to Tenant full, accurate and complete copies of any and all reports, studies, and other information in its possession relating to the issue of the presence or suspected presence of any Hazardous Material on the Shopping Center and agrees that it will, promptly following its receipt thereof, furnish to Tenant full, accurate and complete copies of any such reports, studies and other information hereafter obtained by Landlord Without limitation of the foregoing, Landlord represents and warrants to Tenant that it has received and reviewed Tenant's environmental site assessment guidelines and that it has provided Tenant with an environmental report (and any necessary soils report and asbestos survey) complying with such guidelines (collectively, the "Site Reports") The cost of the Site Reports, including the costs associated with Landlord's review of the same, may be included in the Construction Costs

7 Maintenance Responsibility Landlord and Tenant shall have the following responsibilities for maintenance of the Shopping Center, provided that any obligation or liability not specifically covered by the terms of this Lease shall be considered an obligation of Landlord

7 1 Maintenance and Replacements by Landlord Landlord, at its sole cost and expense and without charging Tenant any direct or indirect management fees or charges of any nature whatsoever, shall keep in repair and shall replace as necessary the roof, foundation, and the other structural components of the Leased Space, such as the exterior load-bearing walls and the floor slab Landlord shall be entitled to all warranties in effect on the Improvements constructed by Tenant, to the extent such warranties are assignable Landlord's maintenance obligation shall also include the underground plumbing serving the Leased Space, up to the point that such plumbing enters the Leased Space

As between Landlord and Tenant, Landlord shall also be responsible (without charging Tenant any direct or indirect management fees or charges of any nature whatsoever) for all maintenance of, and repairs and replacements to the other buildings in the Shopping Center (i e , other than the Leased Space)

Landlord shall also be responsible for all maintenance of, and repairs and replacements to, the Common Areas, including, without limitation, the following keeping

the parking area repaired, adequately drained, lighted to a minimum level of four (4) foot candles throughout the Common Areas (the parties acknowledge that the cost of upgrading the existing parking lot lighting to this standard may be included in the Construction Costs), striped, cleaned and free of all debris, ice, snow and/or repaired and replaced as necessary and available at all times as a free parking lot for all customers of the Shopping Center, keeping the landscaping on the Shopping Center and all other Common Areas clean, lighted and in good repair, and keeping all sidewalks and Common Areas clean and free of all debris, ice and snow Tenant shall be responsible for its Proportionate Share of the following Common Area costs only ("Common Area Maintenance Costs") costs of cleaning, lighting, repairing and maintaining (but not replacing) all Common Area improvements (except to the extent proceeds of insurance or condemnation awards or other reimbursements are available therefor), snow removal, removal of litter, parking lot striping, parking lot patching and sealing, landscaping, common area liability insurance, operating equipment rental and repairs, and the cost of those utilities servicing the Shopping Center Common Areas only which are not directly metered into the Leased Space and separately billed and paid for by Tenant pursuant to Section 6 7 above Common Area Maintenance Costs shall only include those costs actually and necessarily incurred by Landlord, shall be reasonable, and shall not include (i) any direct or indirect management or administrative fees or charges, (ii) any charge for Landlord's overhead or profit, (iii) depreciation, (iv) employee benefits of maintenance personnel, (v) any environmental clean-up, (vi) any expenses related to off-site maintenance or managerial personnel or facilities, or (vii) any charge for any item of equipment or any repair or improvement that is considered a capital expense under generally accepted accounting principles Tenant's Proportionate Share of Common Area Maintenance Costs shall be paid in monthly installments on the first (1st) day of each month, the amount to be reasonably estimated by Landlord Within sixty (60) days following the end of the period used by Landlord in estimating Landlord's costs, Landlord shall furnish to Tenant a detailed certified statement of the actual amount of such Common Area Maintenance Costs for such period supported by reasonably detailed statements, along with invoices or such other documentation supporting such costs as Tenant requests Within fifteen (15) days thereafter, Tenant shall pay to Landlord or Landlord shall credit against Tenant's next rent payment (or refund to Tenant if the Lease has terminated), as the case may be, the difference between the estimated amounts paid by Tenant and the actual amount of Tenant's Common Area Maintenance Costs for such period as shown by such statement Notwithstanding anything contained in this Section 7 1 to the contrary, Tenant shall have no obligation to make any such payment pursuant to this Section 7 1 (or pursuant to Section 6 9 above) the statement for which shall have been received by Tenant more than one hundred and twenty (120) days after the end of the Lease Year Tenant, or its duly authorized representatives, shall have access to Landlord's records regarding Common Area Maintenance Costs at all reasonable times for the purpose of examining and, if Tenant so elects, auditing the same Tenant shall have the right to withhold payment of any Common Area Maintenance Charges that are disputed in good faith by Tenant pending resolution of such dispute Although a capital improvement item not otherwise considered a Common Area Maintenance Cost, Tenant has agreed to pay its Proportionate Share of the actual, necessary, and reasonable costs of repaving the parking areas of the Common Areas (the "Parking Lot Repaving"), provided, however, that Tenant's Proportionate Share of any such cost that exceeds the sum

of Twenty-five Thousand Dollars ($25,000 00) may, at Tenant's option, be paid by Tenant over a period not to exceed three (3) years from the time of completion For purposes of this Section 7, the Parking Lot Repaving shall be considered a Common Area Maintenance Cost In the event Tenant elects to pay its Proportionate Share of the cost of the Parking Lot Repaving over such three (3)-year period, such costs shall include Landlord's actual, reasonable, and necessary cost of funds

In the event Tenant is able to locate liability insurance coverage on the Shopping Center comparable to the insurance maintained by Landlord at a lower rate than the rate charged by the Landlord, Tenant shall provide to Landlord reasonable data supporting the availability of such insurance, and Landlord shall use its best efforts to secure such insurance at such lower rate If so obtained by Landlord, then Tenant's Proportionate Share of liability insurance under this Section 7 1 shall be based upon such lower rate

7 2 Maintenance by Tenant Tenant, at its cost, shall keep the interior of the Leased Space (and all other components of the Leased Space not described in the first paragraph of Section 7 1 above as being Landlord's responsibility) in repair, including exposed plumbing, heating and air conditioning units exclusively serving the Leased Space, doors and door closers, except for reasonable wear and tear, damage by fire and the elements and casualty, provided, that Tenant shall be entitled to all parts and service guaranties and any warranties in effect on equipment which it is responsible for maintaining under the terms hereof, to the extent the same are assignable or transferable to Tenant Consistent with the above, Tenant agrees, at its cost, to keep the nonstructural components of the exterior of the Leased Space in repair, specifically including, but not limited to, the downspouts, gutters, plate glass of outside windows and doors

7 3 Remodeling at Tenant's Expense During the term hereof, or any extension thereof, Tenant and its successors and assigns, shall have the right and the privilege to perform nonstructural redecoration and remodeling to the interior and exterior of the Leased Space (including, but not limited to canopies, awnings, and loading areas) from time to time as it shall see fit and to install lights, partitions, fixtures, signs and other improvements in, upon and about the Leased Space as in Tenant's judgment may be necessary or desirable in the conduct of its business and to change the same in its sole discretion Tenant shall also have the right to construct structural improvements and alterations to the Leased Space after obtaining Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed Tenant shall not be required to remove any such alterations or additions or to restore the Leased Space to its original condition at the termination of this Lease

7 4 Landlord's Failure to Make Repairs If Tenant notifies Landlord in writing of any needed repair(s) for which Landlord is responsible hereunder, Landlord shall complete said repair(s) within ten (10) days from the date of said notice If such repair(s) cannot be reasonably completed within said ten (10) day period, Landlord shall promptly commence said repair(s) and diligently pursue such repair(s) to completion. In the event of emergency repairs ("emergency" being defined as an imminent danger to Tenant, to Tenant's property or to Tenant's business or to the general public), Tenant may immediately make such

emergency repairs without written notice to Landlord, so long as Tenant has used reasonable efforts to contact Landlord or Landlord's representatives by telephone at telephone numbers designated in writing by Landlord Tenant shall have the right to make non-emergency repairs if Landlord has failed to make such repairs or failed to commence and diligently pursue such repairs within ten (10) days from the date of Tenant's notice to Landlord (Landlord agrees that in the event Landlord has not entered into a contract to cause repairs to be made within ten (10) days from the date of Tenant's notice that this shall be deemed to be a failure to commence and diligently pursue a repair obligation to Landlord) Upon Tenant's completion of any of Landlord's repair obligations, Tenant shall send to Landlord statements setting forth the cost of such repairs and Landlord shall pay said statement within fifteen (15) days after receipt of the same If Landlord fails to pay such statement within said fifteen (15) day period, Tenant shall have the right to pay such statement and to deduct the amount of such statement from the next following rent payment or payments and from any other amounts due under this Lease plus eighteen percent (18%) per annum interest thereon until reimbursed in full

8 Advertising Signs Immediately after execution of this Lease, Landlord shall erect a sign on the Shopping Center announcing the future opening of Tenant's store, and the cost of such sign may be included in the Construction Costs Such sign shall be placed in a conspicuous place on the Shopping Center acceptable to Tenant and shall be constructed pursuant to Tenant's specifications and satisfaction Tenant may erect its standard signs on the exterior of its Leased Space in a manner and location satisfactory to Tenant Should Landlord allow any other tenants in the Shopping Center to erect signs in the parking area or other common areas, it shall also allow Tenant the same privilege Tenant shall install its signs at its own expense and may remove them at the termination of this Lease Any damage to the building as a result of the removal of Tenant's signs shall be repaired at the expense of Tenant

8 1 No Other Signs on Leased Space Landlord shall not erect, nor permit to be erected, any signs on the Leased Space other than those of Tenant

8 2 Shopping Center Sign Landlord agrees to furnish within the Shopping Center one or more signs advertising the entire Shopping Center, and said signs shall be kept in good order and repair and lighted during the evening hours of Tenant's operation, during the Initial Term and each Extended Term of this Lease The size of such signs shall be the maximum permitted by applicable law Landlord may not place or permit to be placed on any such sign the names of other tenants in the Shopping Center unless Tenant's name is also placed thereon The prominence of position and size of Tenant's placement shall be based on the size of the Leased Space in relation to other leasable space in the Shopping Center The initial cost of furnishing the signs described in this Section 8 2 may be included in the Construction Costs, provided, however, that the cost of maintaining and operating (including power costs) the signs shall be included within the Common Area Maintenance Costs

8 3 Special Sales Promotions Notwithstanding any provisions in this Lease to the contrary, Tenant may, from time to time, place special sales promotion signs on the

parking area light poles and may string pennants and streamers around the Real Property portion of the Shopping Center's parking area

9 Eminent Domain, Restriction of Access, Casualty Loss Landlord and Tenant agree as follows

9 1 Eminent Domain Affecting Leased Space In the event any part of the Leased Space should be taken by any public authority under the power of eminent domain or by transfer in lieu thereof, then the terms of this Lease shall cease on that part on the date of condemnation or transfer in lieu thereof, and the rent shall be paid up to that day, and from that day the Minimum Rent shall be reduced in proportion to the amount of the Leased Space taken, provided, however, that should five percent (5%) or more of the Leased Space be taken by the power of eminent domain or by transfer in lieu thereof (and such taking shall have a materially adverse impact on the conduct of business from the Leased Space), Landlord shall give Tenant immediate written notice thereof and Tenant shall have the option, to be exercised within sixty (60) days after receipt of written notice, to cancel this Lease and declare the same null and void effective on the date such option is exercised If Tenant should not elect to cancel this Lease, Landlord shall, at its sole cost, build on the new building line a wall, or front, similar to the one removed It is understood and agreed that any and all condemnation awards or payments shall be paid to and retained by Landlord, except that Tenant shall be entitled to any award or payment made for damage to fixtures, equipment and merchandise owned by Tenant (including costs of removal of same), loss of Tenant's business and moving expenses

9 2 Eminent Domain Affecting Shopping Center and Parking Area In the event (i) ten percent (10%) or more of the Shopping Center, (ii) any portion of the parking area, or (iii) ten percent (10%) or more of any other common area of the Shopping Center should be taken by the power of eminent domain or transfer in lieu thereof, Landlord shall give Tenant immediate written notice thereof and Tenant shall have the option to cancel this Lease and declare the same null and void effective thirty (30) days after such notice

9 3 Restriction of Access If any public roadway abutting the Shopping Center is not completed or closed so that access to the Leased Space is substantially and materially limited, restricted or prohibited for a period in excess of two (2) days, Landlord shall use its best efforts to alleviate such condition

9 4 Destruction of Leased Space In the event less than fifty percent (50%) of the floor area of the Leased Space should be rendered unusable (as reasonably determined by Tenant) as a result of fire or other casualty, regardless of the cause, Landlord shall, at its sole cost and expense, promptly, and in any event within thirty (30) days, commence to rebuild or replace the same in as good condition as prior to such casualty, which rebuilding or replacement shall be completed within six (6) months following such casualty In the event fifty percent (50%) or more of the floor area of the Leased Space should be rendered unusable (as reasonably determined by Tenant) as a result of fire or other casualty, regardless of the cause, or if the Leased Space should be rendered untenable and unfit for occupancy,

Tenant may, at Tenant's sole option, expressed to Landlord in writing within fifteen (15) days of such occurrence, (i) require Landlord to promptly, and in any event within thirty (30) days of such notice from Tenant, commence to rebuild or replace the same as aforesaid, which rebuilding and replacement shall be completed within six (6) months following such casualty, or (ii) terminate this Lease, effective on the date of such casualty Monthly Minimum Rents shall abate proportionately to the loss of use during the period of repair Landlord shall have no interest or claim to any portion of the proceeds of any insurance carried by Tenant on Tenant's personal property Tenant shall have no interest in or claim to any portion of the proceeds of any fire and extended insurance policy or policies carried by Landlord

9 5 Destruction of Shopping Center In the event all or any part of the Shopping Center (other than the Leased Space) should be destroyed partially or substantially as a result of fire or other casualty, regardless of cause, and Landlord should fail to begin restoration within two (2) months after the date of such destruction, or fail to have the same fully repaired or rebuilt to the condition existing before such damage within eight (8) months from the date of such destruction, Landlord shall be in default, and Tenant shall have the right, so long as this default shall continue, to discontinue the payment of Minimum Rent At any time after Minimum Rent shall have been discontinued for sixty (60) days, and while Landlord shall remain in default, Tenant may cancel this Lease by a thirty (30) day written notice to Landlord

9 6 Destruction After Three-quarters of the Lease Term Anything herein contained to the contrary notwithstanding, if such damage, loss or destruction as described in Sections 9 4 or 9 5 above shall take place after three-quarters (3/4) of the Initial Term or any Extended Term of this Lease shall have expired, Tenant shall have an option to declare this Lease ended and terminated, and notice of this election shall be given in writing by Tenant to Landlord within thirty (30) days from the date of such loss or destruction

10 Fire and Casualty Insurance

10 1 Landlord's Insurance At all times during the term of this Lease, Landlord shall insure the Shopping Center against any loss or damage due to fire or other casualty or occurrence in an amount sufficient to prevent any coinsurance and in any event not less than the Full Insurable Value of the Shopping Center as determined from time to time Such insurance shall be written by a financially responsible insurer duly authorized to do business in the State of Utah Tenant shall pay to Landlord its Proportionate Share of such premiums as provided herein All insurance premiums for which Tenant is liable hereunder for the calendar years of commencement and termination of this Lease shall be prorated from the commencement date and to the termination date of the term of the Lease Such insurance premiums shall be paid to Landlord within sixty (60) days after Tenant's receipt of paid receipts for such premiums, which receipts shall be obtained and delivered by Landlord Notwithstanding anything contained in this Section 10 1 to the contrary, Tenant shall have no obligation to pay any insurance premiums under this Section 10 1, the statement for which shall have been received by Tenant more than one hundred and twenty (120) days after the

insurance premiums shown on such statement have become due Landlord shall provide Tenant with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Tenant In the event Tenant is able to locate insurance coverage on the Shopping Center comparable to the insurance maintained by Landlord at a lower rate than the rate charged by Landlord, Tenant shall provide to Landlord reasonable data supporting the availability of such insurance and Tenant's obligation under this Section 10 1 shall be based upon such lower rate

10 1 1 Full Insurable Value The term Full Insurable Value shall mean actual replacement cost (exclusive of the cost of excavation, foundations and footings below the basement floor) without deduction for fiscal depreciation

10 1 2 Failure of Landlord to Insure If Landlord shall fail, refuse or neglect to obtain such insurance or to maintain the same, and furnish Tenant with proof of the same upon demand, Tenant shall have the right to procure such insurance and to deduct the cost thereof from any rent or other sums payable under this Lease, and the amount thereof shall be payable to Tenant on demand together with interest at the rate of eighteen percent (18%) per annum

10 1 3 Notice From Insurance Company The insurance company will agree that Landlord and Tenant will be given ten (10) days advance written notice of any cancellation or reduction of insurance under such policy and that copies of all endorsements and notices issued after the date of such policy will be forwarded to Tenant

10 1 4 Other Tenants' Uses Landlord agrees it shall not, and shall not allow any other tenant(s) in the Shopping Center, to keep anything within their leased premises or in the Shopping Center, or use their leased premises or the Shopping Center for any purpose that will cause an increase in the insurance premium cost or invalidate any insurance policy(s) carried on the Shopping Center or its contents by Landlord or Tenant

10 2 Tenant's Insurance Tenant, at its own cost and expense, shall insure its fixtures, equipment and merchandise in the Leased Space against any loss or damage caused by fire or other casualty or occurrence Such insurance shall be written by a financially responsible insurer authorized to do business in the State of Utah Tenant shall provide Landlord with satisfactory evidence that its insurance policy contains an adequate waiver of subrogation clause in favor of Landlord Tenant's obligation to maintain the insurance coverage described in this Section 10 2 may be provided within the coverage of any "blanket" policy or policies of insurance carried and maintained by Tenant Tenant, in its sole discretion, shall have the right to self-insure its fixtures, equipment, merchandise and other personal property in the Leased Space against any loss or damage caused by fire or other casualty or occurrence, and in that event, shall, in lieu of providing evidence of insurance coverage to Landlord, notify Landlord in writing of such self insurance

10 3 Mutual Waiver Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss or damage to the Shopping Center, Leased Space or the contents contained therein 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 Landlord, Tenant or their respective employees, agents, assigns or sublessees

11 Assignment, Subletting and Discontinuance of Operations

11 1 Assignment and Subletting Tenant shall have the right to assign this Lease or to sublease the Leased Space or any part thereof without the consent of Landlord, provided that Tenant shall remain liable hereunder unless specifically released by Landlord Regardless of any assignment or subletting by Tenant, Landlord shall not change, modify or amend this Lease without the prior written consent of Tenant

11 2 Discontinuance of Operations Tenant shall not be obligated to commence operations in the Leased Space If Tenant does commence operations, Tenant shall have the continuing right to discontinue its operations in the Leased Space without the consent of Landlord Notwithstanding the above, if Tenant discontinues its operations from the Leased Space for one hundred eighty (180) consecutive days or more (other than for remodel, repair, or renovation), then Landlord shall have the right to terminate this Agreement and recapture the Leased Space following not less than sixty (60) days' prior written notice to Tenant Upon such termination, Tenant shall have no further rights or obligations under this Agreement

12 Indemnity and Public Liability Insurance Subject to the waiver of subrogation provisions of Section 10 above, Landlord and Tenant shall provide the following indemnification

12 1 Landlord's Indemnity Landlord agrees to defend and indemnify and shall hold Tenant harmless against all claims, judgments, demands and expenses (including reasonable attorneys' fees) of any person or persons whomsoever on account of injuries or accidents occurring in, on or about the Shopping Center as a result of willful or negligent acts or omissions of Landlord, its employees, agents or representatives, and Landlord shall carry, at its expense (subject to reimbursement to the extent provided under Section 7 1 above), public liability insurance on the Shopping Center stipulating limits of not less than Three Million Dollars ($3,000,000) for each occurrence for injury or death and One Million Dollars ($1,000,000) for property damage Certificates of such insurance shall be furnished to Tenant, and Landlord shall have all such policies of insurance name Tenant as an additional insured

12 2 Tenant's Indemnity Tenant agrees to indemnify and shall hold Landlord harmless against all claims, judgments, demands and expenses (including reasonable attorneys' fees) of any person or persons whomsoever on account of any injuries or accidents

occurring in the Leased Space as a result of willful or negligent acts or omissions of Tenant, its employees, agents or representatives, and Tenant shall carry public liability insurance on the Leased Space stipulating limits of not less than Three Million Dollars ($3,000,000) for each occurrence for injury or death and One Million Dollars ($1,000,000) for property damage Certificates of such insurance shall be furnished to Landlord, and Tenant shall have all such policies of insurance name Landlord as an additional insured

13 Default

13 1 Tenant's Default In the event Tenant should default in payment of rent and other amounts due under this Lease, Landlord shall give Tenant written notice of such default by certified mail, and Tenant shall have fifteen (15) days from the date of receiving such notice to correct same Should Tenant fail to correct such default in said fifteen (15) day period, Landlord shall then give Tenant a second written notice by certified mail and, if such default is not cured within five (5) days from the receipt of such second notice, Landlord may, in addition to all other rights available to Landlord under the laws of the state in which the Shopping Center is located, other than acceleration of future rent, which remedy shall not be available to Landlord, terminate this Lease In the event Tenant should fail to comply with any other of its obligations under this Lease, Landlord shall give Tenant written notice of such default by certified mail Should such default continue to exist at the expiration of sixty (60) days from the date of receipt of such notice, and Tenant is not then engaged in prudent efforts to cure such default, Landlord shall then give Tenant a second written notice by certified mail, and, if such default is not cured within five (5) days from the receipt of such second notice, Landlord may, in addition to all other rights available to Landlord under the laws of the state in which the Shopping Center is located, other than acceleration of future rent, which remedy shall not be available to Landlord, terminate this Lease Notwithstanding the foregoing, Landlord shall not have the right to repossess the Leased Space in the event of a bona fide dispute regarding Tenant's liability, if any, to make repairs to the Leased Space until after such liability has been finally judicially determined While such judicial determination is pending, if Tenant has not made such repairs, then Landlord may, at its option, make the repairs, and if it is thereafter judicially determined that such repairs were Tenant's responsibility, then Tenant shall reimburse Landlord for the reasonable cost of such repairs with interest at a rate of eighteen percent (18%) per annum until paid in full Should Tenant correct its default within the time provided or correct such default by action commenced during such time period and prudently pursued thereafter, then Tenant's rights hereunder shall be re-established as though said default had not occurred In the event of a default by Tenant, Landlord shall have the affirmative obligation to mitigate its damages to the fullest extent reasonably possible

13 2 Landlord's Default In the event Landlord should default in fulfillment of any of its obligations under this Lease, Tenant shall give Landlord written notice of such default and Landlord shall have forty-five (45) days from receipt of such written notice from Tenant (except for failure to make repairs as set forth in Section 7 4 above, which shall not require forty-five (45) days written notice), to correct the same Should Landlord fail to correct such default within such forty-five (45) day period, then Tenant shall give Landlord a second

written notice, and if such default is not cured within fifteen (15) days from the receipt of such second notice, then Tenant, at its option, may (i) correct such default and deduct any and all cost as a result of such correction, together with interest at the rate of eighteen percent (18%) per annum, from rent due or becoming due until Tenant shall be reimbursed in full for the cost of such correction, or (ii) Tenant shall have the right, so long as default shall continue, to terminate this Lease In the event of any dispute between the parties as to the right of Tenant to such deduction as provided above, Landlord covenants and agrees that Tenant will not be in default hereunder unless Tenant shall fail to pay to Landlord the amount of any such deduction within ten (10) days after receipt of notice by Tenant of a final and unappealable judgment with respect thereto in favor of Landlord

14 Redelivery of Leased Space Tenant shall, at the termination of this Lease or any extension thereof, peacefully quit, surrender and deliver up to Landlord, its successors or assigns, the Leased Space in the condition required by Section 7 2 above, with the exception of usual wear and tear, fire, the elements, civil riot, war or other casualty In regard to such redelivery, Tenant shall not be required to restore or alter the Leased Space to allow for any particular use

15 Holding Over In the event Tenant should remain in possession of the Leased Space after expiration of this Lease, without the execution of a new Lease, Tenant shall be deemed to be occupying the Leased Space as a tenant from month to month, terminable upon one hundred twenty (120) days' written notice by either party, subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy

16 Removals by Tenant All trade fixtures, equipment, machinery, merchandise, counters, shelving, light fixtures, signs and other personal property owned by Tenant shall remain the property of Tenant without regard to the means by which the same is installed, fastened or attached to the Leased Space or elsewhere in the Shopping Center Tenant shall have the right at any time (but not the obligation) prior to or upon termination or expiration of this Lease to remove any and all of its merchandise, machinery, equipment, counters, shelving, light fixtures, signs and other trade fixtures (regardless of the manner in which any of said items have been attached or fastened to the Leased Space) which it owns and has placed in, upon and about the Shopping Center, as well as any and all personal property located in the Leased Space and owned by Tenant at such time Any structural damage resulting from such removal shall be repaired at the expense of Tenant It is understood that a bona fide dispute between Landlord and Tenant as to rent claimed to be due shall not operate to prevent removal of property by Tenant pursuant to this Section 16, but in such event Tenant shall have the right to remove the same as if no rent were then due Landlord hereby waives all claims, rights, including without limitation security interests or any landlord's lien, whether by statute or common law, in any of Tenant's personal property

17 Notices Except as otherwise specifically provided herein, all notices required under this Lease shall be given in writing, and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, or (ii) sent by receipted overnight delivery service, or (iii) personally delivered to the address hereinafter identified Except as herein otherwise specifically provided to the contrary, the effective date of such notice or exercise of any option shall be the date which is stamped by the United States Postal Service on the envelope enclosing same, the date of

the receipt for the overnight delivery or the date on which personal delivery is made The parties hereto shall not refuse to accept delivery of said notices

17 1 Addresses Until changed by written notice from the appropriate party to the other, the addresses of the parties are and shall be

LANDLORD	Dimond Family Associates, L L C c/o R Fred Healy 3180 Del Mar Drive Salt Lake City, Utah 84109
COPY TO	Matthew G Cooper 1192 Crystal River Dr Murray, Utah 84123
TENANT	Fleming Companies, Inc. 6301 Waterford Boulevard Oklahoma City, OK 73118
Attention	Manager of Lease Administration
COPY TO	Fleming Companies, Inc. 6301 Waterford Blvd Oklahoma City, OK 73118
Attention	Associate General Counsel

17 2 Rent Payment Address Until appropriately changed by thirty (30) days written notice to Tenant, rent payments hereunder shall be made to Landlord either by mail or otherwise to the address noted above for Landlord In the event the rent payment address is changed in connection with the transfer of beneficial interest in the Shopping Center, Tenant shall not be required to comply with such notice unless the same is accompanied by evidence satisfactory to Tenant of such change of ownership, and any payments made by Tenant prior to receiving such satisfactory evidence shall be deemed properly paid

18 Authority Each party hereto affirms and states that it has full right and authority to enter into and perform this Lease

19 Memorandum of Lease Landlord agrees that it will not record this Lease, but concurrently with its execution of this Lease, shall execute a Memorandum of Lease substantially in the form of that attached as Exhibit "G" to this Lease, which will set forth a legal description of the Real Property, the term of the Lease and any other provisions hereof as Tenant may request, and which shall be recorded in the real property records of Salt Lake County, Utah

20 Subordination and Non-Disturbance Tenant agrees that it will obtain execution of a Subordination and Non-Disturbance Agreement, substantially in the form of that attached as

Exhibit "H" to this Lease, which will subordinate Tenant's interest hereunder to the interest of any beneficiary of a deed of trust or mortgagee holding a lien on the Shopping Center, if such lender requires such a subordination, provided, however, such subordination shall be subject to the non-disturbance provisions contained therein Prior to or within ten (10) days of the execution of this Lease, Landlord shall provide to Tenant a fully executed Non-Disturbance Agreement from each existing beneficiary of a deed of trust or mortgagee of the Shopping Center, which Non-Disturbance Agreement shall be substantially in the form of that attached as Exhibit "I" to this Lease

21 Miscellaneous

21 1 Modifications to Lease Landlord and Tenant agree that no alterations, changes or modifications of this Lease shall be effective unless made in writing and executed in the same manner as is this present instrument and specifically agree that no verbal or oral changes are effective

21 2 Partial Invalidity Should any clause or provision of this Lease be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain in full force and effect

21 3 Descriptive Headings The descriptive headings of the sections of this Lease are for convenience only and shall not be used in the construction of the contents hereof

21 4 Binding Effect It is agreed between the parties hereto that all covenants and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the parties hereto The covenants and agreements contained herein shall run with the land and continue for the term of this Lease and any extension thereof

21 5 Non-Waiver Any assents, expressed or implied, by Landlord or Tenant to any breach of any specific covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally, or of any subsequent breach thereof

21 6 Tenant's Use, Fuel Facility Tenant may use the Leased Space for any lawful purpose Without limiting the generality of the foregoing, which permits use of the Leased Space for any lawful purpose, Tenant may construct and operate an automobile fuel facility (the "Fuel Facility") anywhere in the Real Property portion of the Shopping Center's Common Area shown on the attached Site Plan, in accordance with the following

21 6 1 Construction of Fuel Facility The Fuel Facility will be constructed by Tenant, at Tenant's cost without reimbursement by Landlord, in accordance with plans and specifications prepared by Tenant and approved in writing by both Landlord and Tenant, with such approval by Landlord being not unreasonably withheld, conditioned or delayed

21 6 2 Environmental and Other Governmental Matters Tenant agrees that Tenant's construction and operation of the Fuel Facility will at all times be conducted in accordance with the regulations of the applicable state authority and all other applicable governmental and regulatory requirements Tenant will carry pollution liability coverage with limits of not less than Three Million Dollars ($3,000,000 00) per occurrence with respect to any environmental contamination

21 6 3 Maintenance and Removal of Fuel Facility Landlord will have no repair, maintenance, replacement or insurance obligations whatsoever with respect to the Fuel Facility At Landlord's option, Tenant will, no later than forty-five (45) days following the expiration or termination of this Lease, remove the Fuel Facility in its entirety, including underground storage tanks, remediate any pollution or contamination in accordance with the applicable requirements of all applicable regulatory authorities, and complete and/or restore the area affected by the Fuel Facility to its previous condition Tenant shall not commence construction of the Fuel Facility without first entering into a written agreement containing the above provisions and such other indemnification provisions as may be acceptable to Landlord and Tenant

21 7 Choice of Law This Lease shall be governed by and construed in accordance with the laws of the State of Utah

21 8 Remedies Cumulative No remedy conferred under this Lease shall be exclusive of any other remedy, and each remedy shall be cumulative and in addition to every other remedy provided or now or hereafter existing at law, in equity, herein or otherwise The election of any one or more remedies by a party hereto shall not be deemed, and shall not constitute a waiver of that party's right to pursue any other available remedy or remedies

21 9 Multiple Originals This Shopping Center Lease is executed simultaneously in multiple originals, each of which shall be deemed an original, without the production of the other such originals

21 10 Mechanic's or Materialmen's Liens If any mechanic's or materialmen's lien is filed against the Shopping Center or Leased Space by reason of any work, labor, services or materials performed at or furnished on the Shopping Center or Leased Space at the request of Landlord, Landlord shall cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, but Landlord shall have the right to contest any and all such liens If any mechanic's or materialmen's lien is filed against the Leased Space by reason of any work, labor, services or materials performed at or furnished on the Leased Space at the request of Tenant, Tenant shall cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, but Tenant shall have the right to contest any and all such liens

21 11 Entry by Landlord Landlord shall have the right to enter the Leased Space at any reasonable time after reasonable notice for the purpose of inspecting the same or for

the purpose of performing any act that may be required of Landlord hereunder In addition, during the last six (6) months of the term of this Lease, Landlord may enter the Leased Space at all reasonable times after reasonable notice for the purpose of showing the same to a prospective tenant No entry by Landlord shall materially interfere with the operation of Tenant's business in the Leased Space

21 12 Relationship of Parties Nothing contained herein shall be deemed or construed to create a joint venture or partnership relationship between Landlord and Tenant

21 13 Submission of Lease The submission of this Lease for examination does not constitute a reservation of, or option for, the Leased Space, and this Lease shall become effective only upon execution, delivery and receipt thereof by Landlord and Tenant

21 14 Trash Removal Each tenant in the Shopping Center shall pay for the removal of the trash generated by such tenant in the operation of its business, and such cost shall not be included in Common Area Maintenance Costs Landlord shall ensure that all such trash is secured in appropriate containers behind the Shopping Center

21 15 Landlord's Mortgages All mortgage payments or other charges required to discharge any lien or encumbrance that may affect the Shopping Center and for which Landlord is responsible shall be paid by Landlord as the same shall become due

21 16 Additional Costs In the event that a request is made by or on behalf of either party hereto that the other review and execute any documents (such as estoppel certificates or subordination agreements, but excluding the Construction Documents), whether such documents are for the benefit of the party making such request, or are for the benefit of a third party, the party making such request shall pay to the other all reasonable counsel fees and other costs and expenses incurred by the reviewing party in connection therewith, up to a maximum amount of One Thousand Five Hundred and no/100 Dollars ($1,500 00) per request

21 17 Interpretation This Lease shall be interpreted in a fair and impartial manner without regard to such factors as the party that drafted this Lease or the relative bargaining power of the parties

21 18 Legal Expense If any action, arbitration or other legal or quasi-legal proceeding (including any appeal thereof) is brought by Landlord or Tenant (whether or not such action is prosecuted to judgment) to enforce its respective rights under this Lease or to enforce a judgment (collectively, "Action"), then (i) the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees and costs, and (ii) as a separate right, severable from any other right set forth in this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing any judgment against the unsuccessful party, which right to recover such post-judgment attorneys' fees and costs shall be included in any such judgment The right to recover post-judgment attorneys' fees shall not be deemed waived if not included in any judgment, shall

survive the final judgment in any Action, and shall not be deemed merged into such judgment The rights and obligations of the parties under this Section 21 18 shall survive the termination of this Lease

21 19 Automatic Termination Notwithstanding anything in this Lease to the contrary, if this Lease has not previously been terminated and the Initial Term of this Lease has not commenced within two (2) years following the date of this Lease, this Lease and the Original Lease shall automatically terminate

21 20 No Brokers Landlord and Tenant warrant and represent that no broker was involved on either's behalf in negotiating or consummating this Lease, and each agrees to defend, indemnify, and hold the other harmless from and against all claims for brokerage commissions arising out of any communications or negotiations had by either party with any broker regarding the Leased Space or the consummation of this Lease

21 21 Entire Agreement This Agreement, including all exhibits attached hereto, which are incorporated herein by this reference, and all other documents referred to herein, contains the entire agreement and understanding of the parties with respect to the subject matter contained herein This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease on the date first written above

LANDLORD

DIMOND FAMILY ASSOCIATES, L L C ,
a Utah limited liability company

By _____
Roger B Dimond
Its Co-manager

By _____
Kenneth A Dimond
Its Co-manager

TENANT

FLEMING COMPANIES, INC ,
an Oklahoma corporation

By _____
Its Charles L Hall, Senior Vice President

STATE OF UTAH)
ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 10th day of July, 2000, by Roger B Dimond and Kenneth A Dimond, as co-managers of Dimond Family Associates, L L C , a Utah limited liability company

Notary Public
Residing at

My Commission Expires

MATTHEW G COOPER
NOTARY PUBLIC • STATE of UTAH
5236 SOUTH 320 WEST A 116
MURRAY UT 84 07
COMM EXP 09-13 2002

STATE OF TEXAS)
ss
COUNTY OF DENTON)

The foregoing instrument was acknowledged before me this 11th day of July, 2000, by Charles L Hall, as Senior Vice President of Fleming Companies, Inc , an Oklahoma corporation

J Renee' Sharpe
Notary Public 426 Oakview Dr
Residing at Grand Prairie, TX 75050

My Commission Expires
6-24-02

J RENEE SHARPE
NOTARY PUBLIC
STATE OF TEXAS
My Comm Exp 6-24 2002

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made as of the 23 day of October 2001, by and between DIMOND FAMILY ASSOCIATES, L L C , a Utah limited liability company ("Landlord"), and FLEMING COMPANIES, INC , an Oklahoma corporation ("Tenant")

RECITALS

A Landlord and Tenant entered into that certain Shopping Center Lease, dated July 10, 2000 (the "Lease"), under which Landlord leased to Tenant and Tenant leased from Landlord certain premises which now consist of an approximately 52,104 square foot building from which Tenant operates a retail grocery supermarket (the "Leased Space ") in a shopping center commonly known as the "Dimond Center" located at 2735 West 7800 South, West Jordan, Utah The undefined capitalized terms used in this First Amendment shall have the same meanings ascribed to such terms in the Lease

B The commencement and expiration dates, respectively, of the Initial Term of the Lease are April 11, 2001 and April 10, 2021

C Landlord and Tenant desire to amend the Lease as more particularly set forth below

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants contained below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows

AGREEMENT

1 Recitals The above recitals are an integral part of the agreement and understanding of Landlord and Tenant and are incorporated into this First Amendment by this reference

2 Specific Lease Amendments Effective as of the date of this First Amendment, the terms of the Lease are amended as follows

a Financing Component Consistent with Section 4 1 of the Lease, the Financing Component of the monthly Minimum Rent is the amount of Twenty-six Thousand Four Hundred Ninety-nine and 20/100 Dollars ($26,499 20) When added to the "land component" of the monthly Minimum Rent, which is the amount of Nine Thousand One Hundred Sixty-six and 66/100 Dollars ($9,166 66), the total monthly Minimum Rent payable by Tenant to Landlord during the Initial Term of the Lease is the amount of Thirty-five Thousand Six Hundred Sixty-five and 86/100 Dollars ($35,665 86)

b Notices All notices to be provided Tenant pursuant to Section 17 of the Lease shall be addressed as follows

Fleming Companies, Inc
5701 N Shartel Avenue
Oklahoma City, OK 73118
Attention Manager of Lease Administration

and

Fleming Companies, Inc
1945 Lakepointe Drive
Lewisville, TX 75057
Attention Legal Department

3 Effect of Amendment Except as expressly modified in this First Amendment, all of the terms and conditions of the Lease shall remain in full force and effect In the event of a conflict between the terms of the Lease and this First Amendment, this First Amendment shall control

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

LANDLORD

DIMOND FAMILY ASSOCIATES, L L C ,
a Utah limited liability company

By _____
Roger B Dimond
Its Co-manager

By _____
Kenneth A Dimond
Its Co-manager

TENANT

FLEMING COMPANIES, INC ,
an Oklahoma corporation

By _____
Its William C. Mee
Vice President, Shared Services-Real Estate

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DOCUMENTS APPENDED TO CLAIM

On January 12, 2006, document(s) were appended to Claim Number **12913** for the following reason(s)

☐ Stipulation and Settlement Order

☐ Proof of Payment

☐ Change of Address Update

☒ Stipulation re 45th Omnibus Objection

☒ Other Docket Number 12409 EOD 1/11/06

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
Fleming Companies, Inc , et al ,[1]	)	Case No 03-10945 (MFW)
	)	(Jointly Administered)
Debtors	)	
	)	**Re: Docket Nos 12017**
	)	

STIPULATION BY AND BETWEEN THE POST-CONFIRMATION TRUST AND FUCMT 2001-C4 WEST JORDAN LLC RESOLVING FORTY-FIFTH OMNIBUS OBJECTION TO CLAIMS (SUBSTANTIVE) AND ALLOWING CLAIM IN REDUCED AMOUNT

The Post-Confirmation Trust (the "PCT") of the above-captioned post-confirmation debtors (the "Debtors") together with FUCMT 2001-C4 West Jordan LLC ("Claimant"), by and through their undersigned counsel, hereby Stipulate to Resolve PCT's Forty-Fifth Omnibus Objection To Claims (Substantive) (D I 12017) (the "Claims Objection"), with respect to Claim No 12913 (the "Claim"), and allowing the Claim in a reduced amount (the "Stipulation"), and PCT and Claimant stipulate as follows

WHEREAS, on April 1, 2003, the above-captioned Debtors, including Fleming Companies, Inc ("Fleming"), filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code,

WHEREAS, on July 27, 2004, this court entered an order confirming the Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc and its Filing Subsidiaries under Chapter 11 of the United States Bankruptcy Code (the "Plan"), which Plan became effective on August 23, 2004,

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[1] The former Debtors whose cases are still open are Core-Mark International, Inc , Fleming Companies, Inc , ASI Office Automation, Inc , C/M Products, Inc , Core-Mark Interrelated Companies, Inc , Core-Mark Mid-Continent, Inc , General Acceptance Corporation, Head Distributing Company Marquise Ventures Company, Inc , and Minter-Weisman Co

Docket # 12409 eod 1-11-06

whereupon, the cash and other assets of the Debtors and their estates were transferred to the PCT, the RCT, or the Reorganized Debtors, as applicable,

WHEREAS, during the Debtors' main cases, Dimond Family Associates filed its Claim in the amount of $7,846,489 20, which was assigned Claim No 12913 by the Debtors' claims agent, and

WHEREAS, as set forth in that certain Notice of Transfer of Claim Pursuant to F R.B P Rule 3001(e)(2) dated March 31, 2004 (D I 7462), Claimant was substituted as the holder of the Claim, and

WHEREAS, on or about October 31, 2005, PCT filed the Claim Objection, and

WHEREAS, pursuant to the Claims Objection, PCT sought an Order from this Court reducing the Claim to $1,669,549 52 and allowing such Claim as a general unsecured claim, and

WHEREAS, subsequent to filing the Claims Objection, PCT and Claimant, through their respective professionals, entered into negotiations respecting the Claim

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, plus additional valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PCT and Claimant hereby stipulate as follows

1 The Claims Objection is hereby withdrawn, solely to the extent that it relates to the Claim

2 The Claim shall be allowed as a general, unsecured claim in the amount of $1,669,549 52, and shall be treated as an Allowed Class 6(A) Claim under the Plan

3 Neither this Stipulation, nor any other documents or filings related hereto, shall have any effect on the Claim Objection, except as described in decretal paragraphs 1 through 2 hereof

Dated January 11, 2006
Wilmington, DE

PEPPER HAMILTON LLP

David M Fournier (No 2812)
James C Carignan (No 4230)
Hercules Plaza, Suite 5100
1313 Market Street
P O Box 1709
Wilmington, DE 19899-1709
(302) 777-6500

Counsel to PCT

LANDIS RATH & COBB LLP

Adam G Landis (No 3407)
919 Market Street, Suite 600
P O Box 2087
Wilmington, DE 19899-2087
(302) 467-4410

Counsel to FUCMT 2001-C4 West Jordan LLC

CERTIFICATE OF SERVICE

I, James C Carignan, hereby certify that on January 11, 2006, I caused to be served the Stipulation By And Between The Post-Confirmation Trust And FUCMT 2001-C4 West Jordan LLC Resolving Forty-Fifth Omnibus Objection To Claims (Substantive) And Allowing Claim In Reduced Amount, upon the following entity via regular, first-class mail

Adam G Landis, Esq
Landis, Rath & Cobb LLP
919 Market Street, Suite 600
P O Box 2087
Wilmington, DE 19899-2087

Dated January 11, 2006
Wilmington, DE

James C Carignan (No 4230)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DOCUMENTS APPENDED TO CLAIM

On April 20, 2006, document(s) were appended to Claim Number **12913** for the following reason(s)

- ☐ Stipulation and Omni Withdrawal
- ☐ Proof of Payment
- ☐ Change of Address request
- ☒ Notice of Transfer of Claim, related to Docket Number 12496
- ☐ Other

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	Case No 03-10945(MFW)
Fleming Companies, Inc , *et al* ,[1]	)	
	)	Jointly Administered
Debtors	)	

NOTICE OF TRANSFER RE DOCKET 12496

TO FUCMT 2001-C4 WEST JORDAN LLC
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

Pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure, you are advised that there has been filed with the United States Bankruptcy Court for the District of Delaware, a Transfer to **SPCP GROUP** of your **Claim No 12913** in the amount of **$1,669,549 52**

If you do not object to this Transfer on or before twenty (20) days from the date of the mailing of this Notice (*i e* , **February 22, 2006**), by filing a written objection with the Office of the Clerk, United States Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, and serving a copy of the objection on the Official Claims and Noticing Agent listed below, **SPCP GROUP** will be substituted in your place as the original claimant

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

DATED February 2, 2006

THE BMC GROUP, INC F/K/A BANKRUPTCY MANAGEMENT CORPORATION
1330 East Franklin Avenue
El Segundo, California 90245-4306

Official Claims and Noticing Agent for the Clerk of the Court in the Fleming Companies, Inc , et al Cases

PROOF OF SERVICE

I, Lisa Ruppaner, am over the age of eighteen years and not a party to the within action I am employed by The BMC Group, Inc f/k/a Bankruptcy Management Corporation, the Official Claims and Noticing Agent for the Clerk of the Court, whose business address is 1330 East Franklin Avenue, El Segundo, California 90245-4306 On February 2, 2006, I served a copy of the "**Notice of Transfer re Docket 12496**" upon the following parties

FUCMT 2001-C4 WEST JORDAN LLC
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

SPCP GROUP
ATTN BRIAN JARMAIN
2 GREENWICH PLAZA
1ST FLOOR
GREENWICH, CT 06830

MAURA I RUSSELL, ESQ
655 THIRD AVE, 21ST FL
NEW YORK, NY 10017

by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully pre-paid, and deposited in the mail in El Segundo, California

I declare under penalty of perjury that the foregoing is true and correct

DATED February 2, 2006

/s/Lisa Ruppaner
LISA RUPPANER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	Case No 03-10945(MFW)
Fleming Companies, Inc , *et al* ,[1]	)	
	)	Jointly Administered
Debtors	)	

NOTICE OF TRANSFER RE DOCKET 12497

TO JPMC 2002-CIBC4 GARDEN CITY
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

Pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure, you are advised that there has been filed with the United States Bankruptcy Court for the District of Delaware, a Transfer to **SPCP GROUP** of your **Claim No 12646** in the amount of **$1,957,877 00**

If you do not object to this Transfer on or before twenty (20) days from the date of the mailing of this Notice (*i e* , **February 22, 2006**), by filing a written objection with the Office of the Clerk, United States Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, and serving a copy of the objection on the Official Claims and Noticing Agent listed below, **SPCP GROUP** will be substituted in your place as the original claimant

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

DATED January 2, 1900

THE BMC GROUP, INC F/K/A BANKRUPTCY MANAGEMENT CORPORATION
1330 East Franklin Avenue
El Segundo, California 90245-4306

Official Claims and Noticing Agent for the Clerk of the Court in the Fleming Companies, Inc , et al Cases

PROOF OF SERVICE

I, Lisa Ruppaner, am over the age of eighteen years and not a party to the within action I am employed by The BMC Group, Inc f/k/a Bankruptcy Management Corporation, the Official Claims and Noticing Agent for the Clerk of the Court, whose business address is 1330 East Franklin Avenue, El Segundo, California 90245-4306 On January 2, 1900, I served a copy of the "**Notice of Transfer re Docket 12497**" upon the following parties

JPMC 2002-CIBC4 GARDEN CITY
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

SPCP GROUP
ATTN BRIAN JARMAIN
2 GREENWICH PLAZA
1ST FLOOR
GREENWICH, CT 06830

MAURA I RUSSELL, ESQ
655 THIRD AVE, 21ST FL
NEW YORK, NY 10017

by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully pre-paid, and deposited in the mail in El Segundo, California

I declare under penalty of perjury that the foregoing is true and correct

DATED January 2, 1900

/s/Lisa Ruppaner
LISA RUPPANER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	Case No 03-10945(MFW)
Fleming Companies, Inc , *et al* ,[1]	)	
	)	Jointly Administered
Debtors	)	

NOTICE OF TRANSFER RE DOCKET 12498

TO MSCI 1998-CF1 MOBERLY, LLC
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

Pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure, you are advised that there has been filed with the United States Bankruptcy Court for the District of Delaware, a Transfer to **SPCP GROUP** of your **Claim No 14928** in the amount of **$182,246 64**

If you do not object to this Transfer on or before twenty (20) days from the date of the mailing of this Notice (*i e* , **February 22, 2006**), by filing a written objection with the Office of the Clerk, United States Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, and serving a copy of the objection on the Official Claims and Noticing Agent listed below, **SPCP GROUP** will be substituted in your place as the original claimant

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

DATED February 2, 2006

THE BMC GROUP, INC F/K/A BANKRUPTCY MANAGEMENT CORPORATION
1330 East Franklin Avenue
El Segundo, California 90245-4306

Official Claims and Noticing Agent for the Clerk of the Court in the Fleming Companies, Inc , et al Cases

PROOF OF SERVICE

I, Lisa Ruppaner, am over the age of eighteen years and not a party to the within action I am employed by The BMC Group, Inc f/k/a Bankruptcy Management Corporation, the Official Claims and Noticing Agent for the Clerk of the Court, whose business address is 1330 East Franklin Avenue, El Segundo, California 90245-4306 On February 2, 2006, I served a copy of the "**Notice of Transfer re Docket 12498**" upon the following parties

MSCI 1998-CF1 MOBERLY, LLC
LENNAR PARTNERS
1601 WASHINGTON AVE STE 700
MIAMI BEACH, FL 33139

SPCP GROUP
ATTN BRIAN JARMAIN
2 GREENWICH PLAZA
1ST FLOOR
GREENWICH, CT 06830

MAURA I RUSSELL, ESQ
655 THIRD AVE, 21ST FL
NEW YORK, NY 10017

by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully pre-paid, and deposited in the mail in El Segundo, California

I declare under penalty of perjury that the foregoing is true and correct

DATED February 2, 2006

/s/Lisa Ruppaner
LISA RUPPANER