

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law
WILLIAM A LICHTIG, ESQ (CA #107480)
DAWN M D BALZARANO, ESQ (CA #220982)
555 Capitol Mall, 9th Floor
Sacramento, CA 95814
Phone 916-444-3900
Fax 916-444-0707

Attorneys for Creditor
S D Deacon Corp of California

FILED
JAN 14 2004
BMC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Case No 03-10945 (MFW)
FLEMING COMPANIES, INC , et al ,)	WITHDRAWAL OF CLAIM
)	[No Hearing Required]
)	
)	
Debtors)	

S D Deacon Corp of California hereby withdraws the Proof of Claim it filed on September 15, 2003 in the amount of \$31,048 00, a copy of which, without exhibits, is attached hereto as Exhibit A

DATED January 12, 2004

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

By Dawn Balzarano
DAWN M D BALZARANO
Attorneys for Creditor
S D Deacon Corp of California

612184v1 32703/0027

MHA

McDonough Holland & Allen PC
Attorneys at Law

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM



564734

Bar Date Ref # 2-NVM-23428

In re Fleming Companies, Inc , et al	Case Number 03-10945 (MFW)
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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
S.D. Deacon Corp of California
c/o William A. Lichtig, Dawn M D Balzarano
McDonough Holland & Allen PC
555 Capitol Mall, Ninth Floor
Sacramento, CA 95814
0354653564734

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

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

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

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

Creditor Telephone Number (916) 969-0900

CREDITOR TAX ID # 94-3323231	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR Job #851	Check here <input type="checkbox"/> replaces or amends a previously filed claim dated _____
---------------------------------	---	---

1 BASIS FOR CLAIM

- ☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☒ Services performed ☐ Taxes ☐ Wages, salaries, and compensation (Fill out below)
☐ Money loaned ☐ Other (describe briefly)

Your social security number _____

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

2 DATE DEBT WAS INCURRED March 22, 2003

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ _____ (unsecured) \$ 31,201.10 (secured) \$ _____ (unsecured priority) \$ 31,201.10 (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 Mechanic's lien

Value of collateral \$ 31,048.00

Amount of arrearage and other charges at time case filed included in secured claim above: if any \$ 153.10

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 09/12/2003	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). By Dawn Balzarano Attorney for Creditor <i>Dawn Balzarano</i>
---------------------------	--

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



12972

See Other Side For Instructions

1 CASE TITLE In re Fleming Companies, Inc , et al

2 COURT UNITED STATES BANKRUPTCY COURT /DISTRICT OF DELAWARE
3 CASE NO 0310945

4 **PROOF OF SERVICE**

5 I am employed in the County of Sacramento, my business address is
6 555 Capitol Mall, 9th Floor, Sacramento, California I am over the age of eighteen
7 years and not a party to the foregoing action

8 On January 13, 2004, I served the within

9 **WITHDRAWAL OF CLAIM**

10 ☒ (by mail) on all parties in said action by placing a true copy thereof enclosed in a
11 sealed envelope in a designated area for outgoing mail, addressed as set forth
12 below At McDonough Holland & Allen PC, mail placed in that designated area
13 is given the correct amount of postage and is deposited that same day, in the
14 ordinary course of business, in a United States mailbox in the City of Sacramento,
15 California

16 ☐ (by personal delivery) by personally delivering a true copy thereof to the
17 person(s) and at the address(es) set forth below

18 ☐ (by overnight delivery) on the following party(ies) in said action by placing a
19 true copy thereof enclosed in a sealed envelope, with delivery fees paid or
20 provided for, in a designated area for outgoing overnight mail, addressed as set
21 forth below In the ordinary course of business at McDonough Holland &
22 Allen PC, mail placed in that designated area is picked up that same day for
23 delivery the following business day

24 ☐ (by facsimile) by transmitting a true copy thereof to the persons at the following
25 telecopier numbers and obtaining electronic confirmation that the transmissions
26 have been received

27 SEE ATTACHED LIST

28 I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct

Executed on January 13, 2004, at Sacramento, California


JUDI SARNER

SERVICE LIST

Debtor

Fleming Companies, Inc
1945 Lakepoint Drive
Lewisville, TX 75039

Co-Counsel for the Debtor

KIRKLAND & ELLIS
James H M Sprayregen
Richard L Wynne
Geoffrey A Richards
Shirley Cho
Marjon Ghasemi
777 South Figueroa Street
Los Angeles, CA 90017

PACHULSKI, STANG, ZIEHL, YOUNG,
JONES & WEINTRAUB
Laura Davis Jones
Ira D Kharasch
Scotta E McFarland
Christopher J Lhulier
919 North Market Street, 16th Floor
P O Box 8705
Wilmington, Delaware 19899-87005

Trustee

Dana B Geyer
125 S Howes Street, #910
Fort Collins, CO 80521



McDonough Holland & Allen PC
Attorneys at Law

Enclosure Memo

Dawn M D Balzarano
Attorney at Law

Sacramento Office
916 444 3900 tel
916 444 0707 fax
dbalzarano@mhalaw.com

DATE January 13, 2004

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

FROM Dawn M D Balzarano

RE In re FLEMING COMPANIES, INC , et al
United States Bankruptcy Court Case No 03-10945 (MFW)

The following document(s) regarding the above-referenced matter is/are enclosed for the action checked below

WITHDRAWAL OF CLAIM

- | | |
|--|--|
| <input type="checkbox"/> Please expedite | <input type="checkbox"/> Please obtain judge's signature and return conformed copy(ies) |
| <input type="checkbox"/> For your information No action on your part is required | <input type="checkbox"/> A check in the amount of \$_____ is enclosed as payment for _____ |
| <input type="checkbox"/> Pursuant to your request | <input checked="" type="checkbox"/> A postage paid return envelope is provided |
| <input type="checkbox"/> As a reminder We have had no response to the enclosed letter Please contact _____ | <input type="checkbox"/> Please review, sign and date where indicated, and return to this office |
| <input checked="" type="checkbox"/> Please file original(s) and return endorsed copy(ies) | <input type="checkbox"/> Other For further instructions, see below |

Sacramento
555 Capitol Mall
9th Floor
Sacramento CA
95814 4692
tel 916 444 3900
fax 916 444 8334

Oakland
1999 Harrison Street
Suite 1300
Oakland CA
94612 3582
tel 510 273 8780
fax 510 839 9104

Yuba City
422 Century Park Drive
Suite A
Yuba City CA
95991 5729
tel 530 674 9761
fax 530 671 0990

www.mhalaw.com

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM



564734

Bar Date Ref # 2-NVM-23428

In re Fleming Companies, Inc , et al	Case Number 03-10945 (MFW)
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Name of Creditor and Address S D Deacon Corp of California c/o William A Lichtig, Dawn M.D. Balzarano McDonough Holland & Allen PC 555 Capitol Mall, Ninth Floor Sacramento, CA 95814 0354653564734	Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.
Creditor Telephone Number (916) 969-0900	

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CREDITOR TAX ID # 94-3323231	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR Job #851	Check here if this claim <input type="checkbox"/> replaces or amends a previously filed claim dated _____.
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1 BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) <input type="checkbox"/> Money loaned <input type="checkbox"/> Other (describe briefly)		
Your social security number: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		

2 DATE DEBT WAS INCURRED March 22, 2003	3 IF COURT JUDGMENT, DATE OBTAINED
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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 <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: Real Estate _____ Motor Vehicle _____ <input checked="" type="checkbox"/> Other Mechanic's lien Value of collateral \$ 31,048.00 Amount of arrearage and other charges at time case filed included in secured claim above if any \$ 153.10	6 UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other. Specify applicable paragraph of 11 U.S.C. § 507(a) _____. <small>Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
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Bankruptcy Management Corporation
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El Segundo, CA 90245

DATE SIGNED 09/12/2003	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). By Dawn Balzarano Attorney for Creditor <i>Dawn Balzarano</i>
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THIS SPACE FOR COURT
FILED

SEP 15 2003

BMC

Fleming Companies Claim



12972

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See Other Side For Instructions

66-112-13 (NIK)

LEASE

Section 1. Parties and Date THIS LEASE is executed on July 12, 1982, between Twain Harte Custom Builders, Inc., a California corporation ("Landlord"), and United Fairway, a California corporation ("Tenant").

Section 2. Premises.

2.1 Leased Premises. Landlord hereby lease to Tenant and Tenant leases from Landlord: (a) that real property in the City of Twain Harte, County of Tuolumne, State of California, delineated in red on the plat attached hereto as Exhibit A, together with the building to be constructed thereon in accordance with Section 3 hereof (the "Building"), and (b) the parking, access and similar rights and easements set forth herein or appurtenant to said real property, all of which property is herein referred to as the "Premises." Should the Building encroach on any property surrounding the same, then the dimensions of the Premises will be automatically deemed to have been amended to include the dimensions of the real property upon which the Building is constructed.

2.2 Title. Landlord covenants that, except as set forth on the Exceptions Schedule attached hereto as Exhibit C (the "Exceptions Schedule"), Landlord has a valid, fee-simple

absolute estate in the Premises, and that the same is subject to no encumbrances, liens or defects in title (including, without limitation, construction and permanent financing) affecting the Premises or the rights granted Tenant in this Lease, other than those specifically referred to in the Exceptions Schedule, and that Landlord has full right and authority to enter into this Lease. Landlord further covenants that Tenant, upon paying the rent and performing the covenants herein undertaken on its part, may quietly and peaceably have, enjoy and hold the Premises and rights made appurtenant hereto hereunder for the full term hereof without let or hinderance. Landlord further agrees to indemnify Tenant for and against any and all loss or damage of whatsoever kind that may result to Tenant on account of any failure in Landlord's right to make and execute this Lease or that may result in disturbance of quiet possession by Tenant, by persons deriving title from Landlord by reason of liens or encumbrances incurred or suffered by Landlord, other than in this Lease provided, or by reason of title paramount to Landlord.

2 3 Premises Part of Shopping Center. The Premises are part of a larger parcel of real property owned or controlled by Landlord, which is outlined in green on Exhibit A hereto and is legally described in Exhibit B hereto, hereinafter sometimes called the "Shopping Center."

Section 3 Construction of Building.

3 1 Plans

(a) Final Plans Landlord represents and warrants that final plans ("Final Plans") have been prepared by Landlord for the construction of the Building and related improvements, including, without limitation, the common area referred to in Section 9 hereof (the "Construction"), which Final Plans have been approved by the Tuolumne County Building Department for the leased premises and delivered to Tenant. Landlord also represents and warrants that Landlord has obtained a building permit to construct the leased premises.

(b) Fixturization Plans. Within ninety (90) days after the execution hereof (or at such other time as the parties may agree in writing), Tenant shall furnish to Landlord such plans and drawings as may be necessary to depict Tenant's proposed fixturization of the Premises, including the placement of display shelves, cash registers and any other fixtures and equipment which Tenant proposes to install and for which Landlord must make accommodations in the Construction (the "Fixturization Plans").

(c) Delivery of Final Plans. Landlord shall deliver to Tenant a full and complete set of the Final Plans incorporating any changes necessitated by the Fixturization Plans within one hundred fifty (150) days of the date hereof, including a plot plan, showing all contemplated construction details of the Building, proposed dimensions of the Building,

exterior elevations showing architectural style and finish, construction type, locations of exterior structural supports, common area configuration and general improvements, parking and loading layouts and vehicular and pedestrian routings; provided, however, that no changes shall be made to the exterior walls and elevations on the Final Plans as approved by the Tuolumne County Building Department.

(d) Tenant's Approval of Submitted Final Plans. Tenant shall have fifteen (15) days after submission of the Final Plans or after the date of this Lease, whichever is later, in which to approve, reject or order changes in the same, which shall not become final until Tenant approves them or fails to reject them as set forth herein. Tenant's approval of the Final Plans shall be evidenced by a document identifying them in detail signed by an officer of Tenant. Tenant shall not unreasonably reject the Final Plans, and Tenant must predicate any rejection of the Final Plans upon substantial reasons. Failure of Tenant to reject or request changes in the Final Plans in writing within said fifteen (15) day period shall be deemed to be an approval by Tenant of the Final Plans

(e) Landlord's Failure to Submit Final Plans
In the event that the Final Plans are not submitted by Landlord to Tenant within one hundred fifty (150) days hereafter (or at such other time as the parties may agree in

writing) as required by Section 3 1(c) hereof or are rejected by Tenant pursuant to Section 3 1(d) hereof, then Tenant may elect to terminate this Lease forthwith, in which event all obligations of Tenant hereunder shall terminate without liability or obligation

(f) Changes Tenant shall have the right at any time or times either prior to or during the progress of the Construction to change the Fixturization Plans and thereby possibly require the elimination of any item or detail contained in the Final Plans or to substitute or add other items or details not shown in the Final Plans, provided, however, that no changes shall be made to the exterior walls and elevations on the Final Plans. In such event Landlord shall make such changes, and if Landlord fails to do so, Tenant shall have the right, as Landlord's agent, to issue change orders covering such changes to the contractor or contractors doing the work. All such above change orders must be requested by Tenant in writing, and any change in the cost of the Premises resulting therefrom shall be for the account of Tenant and such changes shall be paid for within thirty (30) days of the completion of such work (unless the change orders are related to applicable governmental regulations, in which case the cost change shall be for the account of Landlord). Tenant shall not be financially responsible for any other change order whatsoever. The Final Plans shall not be changed by Landlord

in any respect or detail except with the written consent of Tenant (which approval shall not be unreasonably withheld), and Landlord agrees to so instruct its architect, building designers and contractors accordingly.

3.2 Construction and Completion.

(a) Construction Landlord, at its sole expense, will diligently proceed toward Completion (as "Completion" is defined under Section 3.2(d) hereof) of the Construction in a good and workmanlike manner substantially in accordance with the terms of the Final Plans and in accordance with all laws, ordinances and regulations applicable thereto

(b) Building Schedule. Upon commencement of the Construction, Landlord shall require the general contractor to deliver to Tenant or any subtenant hereunder a building schedule, followed by weekly progress reports. During the course of the Construction, Tenant may enter upon the Premises to inspect the Construction in progress to assure itself that the work is proceeding according to the Final Plans. If, during such interim inspections, Tenant shall discover that substantial deviations from the Final Plans are occurring in the Construction, Tenant shall promptly notify Landlord of same, specifying in detail the deviations observed. Landlord shall cause such deviations to be remedied within a reasonable time.

(c) Completion Deadline. Landlord agrees to complete Construction and deliver possession to Tenant on or

before January 1, 1983, provided, however, that Landlord shall suffer no penalty for failure to complete the Construction by June 1, 1983, (except that Tenant shall have the right to defer possession, the term and rent until such time as the Construction has been completed) if such failure is the result of a delay encountered by Landlord in the Construction caused by inclement weather, fire, earthquake or other acts of God, acts of a public enemy, riot, insurrection, regulation of or by any governmental entity or agency affecting the Construction, governmental regulation of the sales of materials and supplies or the transportation thereof, or strikes directly affecting the Construction, or shortages of materials or labor resulting directly from governmental controls or diversion. Landlord's failure to complete the Construction (i) on or before January 1, 1983 for any reason whatsoever other than those listed in the immediately preceding sentence hereof, or (ii) on or before June 1, 1983 for any reason (including, without limitation, those listed in the immediately preceding sentence hereof) shall entitle Tenant, at its option, to cancel this Lease without any further obligation. Tenant shall exercise such option within sixty (60) days thereafter, by serving notice to Landlord by certified mail, return receipt requested.

(d) Definition of "Completion" Completion of the Construction (the "Completion") shall be deemed to have occurred on the date when the same shall be completed in sub-

stantial conformity with the Final Plans, and when Landlord shall have furnished to Tenant an engineer's certificate of completion and certificate of occupancy or the equivalent, if required by any public authority. Delivery of the Premises to Tenant shall be deemed to take place upon the Completion thereof unless Landlord withholds possession thereof or obstructs Tenant's entry therein, in which case Landlord's delivery of the Premises shall be on the date when unobstructed entry and possession of the Premises are tendered to Tenant subject to the terms of this Lease. Landlord shall maintain the unobstructed nature of entry thereafter.

(e) Construction Guaranty If at any time within twelve (12) months after Tenant has accepted possession of the Premises, there shall appear substantial deviations from the Final Plans or defects due to faulty architecture, engineering, materials or workmanship, Landlord shall promptly correct the same at its sole expense. Landlord shall have a reasonable time to promptly correct such deviations or defects, depending on whether such deviations or defects are routine or emergency in nature. If Landlord fails to correct such deviations or defects promptly after written notice thereof from Tenant, Tenant shall have the right, but not the obligation, to perform any necessary work to correct any such deviations or defects. Any cost or expense incurred by Tenant in correcting any such deviations or defects may be deducted

by Tenant from any percentage rentals due or becoming due under this Lease. Tenant shall give prompt notice to Landlord of any such defects or deviations which Tenant may observe during said twelve-month period. Landlord agrees to assign to Tenant, and Tenant shall have the benefit of any guaranty or warranty to which Landlord is entitled under any construction contract, and the Tenant shall have the right to call upon the contractor to make such adjustments, replacements or repairs which are required to be made by the contractor under such contract, and, if such adjustments, replacements or repairs are not remedied within thirty (30) days, Tenant shall have the right to call upon the subcontractors to make such adjustments, replacements or repairs.

(f) Qualification of Building for Fully-Sprinklered Fire Insurance Rate Landlord covenants that all buildings adjacent to the Building shall be fully sprinklered and so constructed and maintained that the Building can qualify for the fully-sprinklered fire insurance rate under standards of the Insurance Services Office. If the Building cannot so qualify, Landlord will reimburse Tenant for any additional premium required

~~3.3 Financing Landlord shall not be obligated to proceed with the construction of the leased premises unless and until financing acceptable to Landlord is obtained. Should such financing not be obtainable within six (6) months~~

DELETE
Entire
Section
3.3

PGS
4 p 2

~~from the date of this Lease, Landlord may so notify Tenant in writing, and this Lease shall thereupon cease and terminate and each of the parties hereto shall be relieved and discharged from any and all liability and responsibility hereunder. If Landlord can obtain financing only upon the basis of modifications of the terms and provisions of this Lease, Landlord shall have the right to cancel this Lease if Tenant refuses to approve in writing any such modification within thirty (30) days after Landlord's request therefor, which request may not be made after delivery of possession. If such right to cancel is exercised, this Lease shall be null and void, and any money or security deposited hereunder shall be returned to Tenant, and neither party shall have any liability to the other by reason of such cancellation.~~

Per
y.p.f.

Section 4 Early Entry and Fixturation

4 1 Early Entry. At any time prior to the commencement of the term hereof, Tenant, at its risk, may enter upon the Premises and store such property and install such fixtures, equipment and furniture in the Premises as it may elect; provided, however, that such storage and installation shall not interfere with the Construction and the same shall not be construed as an acceptance of the Premises by Tenant or as a waiver of any of the provisions hereof.

4 2 Fixtures All fixtures, equipment, furniture and property installed by or at the expense of Tenant shall

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

Section 5. Term.

5.1 Beginning of Term The initial term of this Lease (the "Initial Term") shall commence, subject to the provisions of Section 5.3 hereof, on whichever date (the "Commencement Date") shall first occur.

(a) Upon the date when Tenant opens for business in the Premises; or

(b) The thirtieth (30th) day following Completion of the Construction

5.2 End of Term The Initial Term shall end, subject to the provisions of Section 6 hereof, on the last day of the month of February next succeeding the twentieth (20th) anniversary of the Commencement Date

5.3 Early Termination. If on the date six (6) months after the Commencement Date fewer than six (6) co-tenants have opened for business in the Shopping Center, Tenant shall have the right to terminate this Lease in writing to Landlord, in which event all obligations of Tenant hereunder shall terminate without liability or obligation

Section 6 Option to Extend

6.1 Option Term Landlord hereby grants to Tenant the right and option to extend and renew this Lease upon the same terms and conditions, except the Minimum Rent (as defined in Section 7.1 hereof), for one (1) additional period of ten (10) years (the "Option Term") following the expiration of the initial term hereof, by giving Landlord written notice of extension at least six (6) months prior to the date of expiration of the Initial Term. The Minimum Rent for the Option Term shall be equal to seventy percent (70%) of the highest 'Minimum Rent plus Percentage Rent' paid during the last five years of the Initial Term, but in no event less than ~~forty two cents (42¢)~~ per square foot per month

thirty four cents (34¢)

PS 4 P.L.

6 2 Special Notice Provision. Notwithstanding anything to the contrary contained herein, in the event of damage or destruction of the Premises subject to the provisions of Section 22 3(a) hereof within four (4) years prior to the end of the then current term, Tenant may within thirty (30) days after such damage or destruction, extend said term for any Option Term to which Tenant may then be entitled under Section 6 1 hereof

Section 7 Rental.

7.1 Minimum Rent Tenant agrees to pay to Landlord without deduction or offset, at P.O. Box 829, Twain Harte, California 95383, monthly in advance by the tenth (10th) day of each calendar month, minimum rent ("Minimum Rent") in the amount of thirty-four cents (34¢) per square foot per month, ~~until the Lease Year after the first Lease Year when Gross Sales (as hereinafter defined) exceed Five Million Dollars (\$5,000,000) and then forty two cents (42¢) per square foot per month throughout the Initial Term hereof~~

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7.2 Prorated Minimum Rent. If the Commencement Date occurs on a day other than the first (1st) day of a calendar month, the Minimum Rent at the monthly rate shall be prorated upon the basis which the number of days of the term of this Lease in such month bears to the total number of days in such month, and as so prorated shall be paid forthwith upon the Commencement Date

for credit, and whether or not sales or credit are paid for, reduced, however (to the extent included in computation of sales), by the following.

(a) all credits and refunds made to customers for merchandise returned or exchanged,

(b) amounts collected from kiddie rides, weighing machines, lockers, stamp machines, public telephones and money orders

(c) sums and credits received in settlement of claims for loss or damage to merchandise, and for the return of unsold merchandise to the supplier;

(d) all taxes charged to or collected by Tenant upon merchandise or upon the receipt or purchase of merchandise by Tenant, and all taxes upon or based upon the receipts of Tenant or upon the sale or sales price of merchandise and which must be paid by Tenant whether or not the same may be commonly known as a "sales tax", all taxes levied upon Tenant based upon the manner of its doing business, such as so-called "chain store" taxes, but not to include personal property taxes or state or federal taxes based on net income, and

(e) amounts collected from vending machines, provided, however, that if amounts collected from vending machines are equal to or greater than one percent (1%) of Gross Sales as calculated in this Section 7.5 but inclusive of

7 3 Percentage Rent If an amount equal to one and one-half percent (1 5%) of Gross Sales (as defined in Section 7 5 hereof) during any Lease Year (as defined in Section 7.4 hereof) of the term hereof exceeds the total amount of Minimum Rent paid by Tenant during such Lease Year, Tenant agrees, as additional rent and in addition to said Minimum Rent, to pay to Landlord the amount of such excess for such Lease Year (the "Percentage Rent")

7 4 Definition of "Lease Year". The term "Lease Year" as used herein shall refer to

(a) a period from the Commencement Date to and including December 31 of the first full calendar year following the Commencement Date,

(b) each successive twelve-month period thereafter during the term hereof,

(c) the portion of the calendar year before the date on which this Lease terminates pursuant to Section 5 2 hereof.

7 5 Definition of "Gross Sales". Subject to the exceptions contained in Section 7 6 hereof, the term "Gross Sales" means the money or its equivalent received by Tenant, its concessionaires and subtenants, from the sale of merchandise or for services, including repairs and alterations, by or through the operation upon the Premises of any form of business, whether at wholesale or retail or whether for cash or

all amounts collected from vending machines, then all of such amounts collected from vending machines over such one percent (1%) shall be included in Gross Sales

7.6 Exceptions. Notwithstanding the provisions of Section 7.5 hereof, neither (i) the transfer of merchandise from the Premises to another location owned or controlled by Tenant, including distribution of goods to and from any warehouse, nor (ii) the sale of Tenant's fixtures or equipment, nor (iii) all or substantially all of its stock-in-trade or merchandise at a sale other than at retail shall be deemed part of Gross Sales.

Section 8. Accounting.

8.1 Tenant's Statement of Gross Sales Within forty-five (45) days after the end of each calendar quarter, Tenant shall furnish Landlord a statement of the total Gross Sales for the current Lease Year, to and including the end of such calendar quarter. Upon request of Landlord, the statement shall be certified as correct by a certified public accountant or by an officer of Tenant. Concurrently with the statement for the fourth calendar quarter, Tenant shall pay any Percentage Rent payable for the full Lease Year

8.2 Tenant's Gross Sales Account. Tenant agrees to keep full, complete and proper accounts of all Gross Sales, cash and credit, which books and accounts shall be at all reasonable times open to inspection or audit by Landlord or

its auditors or other authorized representatives or agents. Acceptance by Landlord of any monies paid by Tenant in accordance with such statement shall not be an admission of the accuracy of any statement or the sufficiency of the amount of such additional Percentage Rent, but Landlord shall be entitled at any time within two (2) years after receipt of such statement to question the sufficiency thereof or the accuracy of such statement. Tenant shall accordingly, for a period of two (2) years after furnishing such statement, keep safe and intact all of its books, records and accounts required to establish in detail its Gross Sales and any authorized deductions therefrom. If Landlord does not question the amount of any such Percentage Rent so paid by Tenant by giving Tenant written demand for an audit within said two-year period and proceeding therewith within sixty (60) days after the end of such period, Landlord shall be deemed finally and conclusively to have accepted the amount paid by Tenant as full performance of Tenant's obligations for Percentage Rent for the Lease Year involved.

8.3 Confidentiality of Accounts Any information obtained by Landlord pursuant to the provisions of this Section 8 shall be treated as confidential, except in any litigation or arbitration proceedings between the parties, and except further that Landlord may divulge such information to a prospective buyer or encumbrancer of the Premises

8 4 Expense of Audit of Accounts Any audit made by Landlord pursuant to Section 8 2 hereof shall be at the expense of Landlord, except that if Landlord makes any such audit for any year and if the Gross Sales shown by Tenant's statement (including statements of any subtenants, concessionaries or licensees) for such year are found to be understated by more than two percent (2%), Tenant shall pay to Landlord the reasonable expense of such audit.

Section 9 Common Area

9 1 Definition of "Common Area". All of the parking area, roadways, walkways, landscaped areas, malls and service areas outlined in orange in Exhibit A are herein referred to as the "Common Area."

9.2 Covenants and Restrictions Regarding the Common Area For the express benefit of the Premises, Landlord agrees on behalf of itself and any and all successive owners of the Shopping Center, that during the entire term of this Lease and any extension of such terms.

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

(b) Landlord shall at all times maintain a ratio of not less than three (3) square feet of Common Area within the Shopping Center to each square foot of leaseable floor space of all buildings in the Shopping Center and any extension or enlargement of the Shopping Center.

(c) If Landlord shall sell or otherwise convey any part of the Common Area, Landlord shall impose or cause to be imposed in the documents of transfer a covenant preventing and prohibiting the grantee or any future owner thereof from violation of the foregoing restrictions and covenants

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

(e) No business endeavors and no structures (including kiosks and signs) shall be allowed on any of the Common Area (including without limitation the mall areas) except where shown in Exhibit A or except where and when specifically approved in writing by an officer of Tenant. Such approval shall not be unreasonably withheld.

(f) Landlord shall make, change and enforce the rules and regulations which shall be reasonable and necessary for the proper operation and maintenance of the Common Area. Such rules shall include at the reasonable request of Tenant the restricting of the parking of employees and tenants of the various stores in the Shopping Center to a limited designated area or the complete exclusion of such employee and tenant parking in the Shopping Center, and such rules shall exclude from the Common Area all persons who are not tenants, customers, business invitees or employees of the Landlord or of the various tenants in the Shopping Center. Landlord shall install permanent signs at all entrances to the Common Area reading "RIGHT TO PASS BY PERMISSION, AND SUBJECT TO CONTROL OF OWNER. SECTION 1008, CIVIL CODE "

(g) In the event that Landlord now owns or has the right to occupy or at any time during the term of this Lease acquires ownership or or the right to occupy any real property contiguous to the Premises or the real property described in Exhibit A, including property which is contiguous except for intervening public streets, alleys or sidewalks, which real property or any portion thereof is developed as a retail store or a group of retail stores, or shopping center, or a portion of the Shopping Center, Landlord covenants that the ratio of common area provided in connection therewith (the "Other Common Area") to the leasable floor space of any build-

ing or buildings constructed on said real property shall be the same as the ratio of the Common Area to Building Floor Space (as that term is defined in Section 10.2 hereof) and all covenants and restrictions set forth herein with respect to the Common Area shown in Exhibit A shall be applicable to any such Other Common Area, except that Tenant shall have no obligation to pay any maintenance or other costs with respect to any such Other Common Area. Prior to the Commencement Date, Landlord shall cause all of the Common Area to be graded, paved, drained, lighted, stripped and landscaped for vehicular and pedestrian ingress, egress and parking purposes.

9.3 Landlord's Duty to Maintain Common Area Landlord shall maintain or cause to be maintained all of the Common Area (including paving, lighting, draining, stripping, landscaping and signing thereof) in good condition for its intended use during the entire term of this Lease and any extension thereof.

Section 10 Cost of Common Area Maintenance

10.1 Allocation of Cost In addition to any rent payable hereunder, Tenant shall pay to Landlord the portion of the latter's cost of maintenance of the Common Area which bears the same relation to Landlord's cost as the square footage of Building Floor Space (as that term is defined in Section 10.2 hereof) leased to Tenant bears to the square footage of Building Floor Space in the Shopping Center

10 2 Definition of "Building Floor Space" "Building Floor Space" as used in this Section 10 shall include all building floor space in the Shopping Center as shown in Exhibit A or as extended or enlarged, whether actually built on or not. By the Commencement Date, the parties hereto will establish the square footages to be used in the above calculation and will attach them hereto, along with Tenant's proportionate share expressed as a percentage, as Exhibit E.

10 3 Scope of "Cost of Maintenance" Cost of maintenance of the Common Area shall not include any cost or expense which relates to the original construction or installation of the Common Area or which is properly chargeable to capital account under generally accepted accounting principles, or any real property taxes or assessments, but as used herein, shall be construed to include only the costs (to the extent each such cost is reasonable) of (i) cleaning, inspecting, policing, painting and lighting of the Common Area, (ii) water, refuse collecting and sewage disposal therefor; (iii) renewing and replacing any pavement, curbs, walkways, landscaping, drainage and lighting facilities thereof, (iv) a reasonable allowance for depreciation of any maintenance equipment used for such purposes, public liability insurance required under Section 19 hereof; and (v) any other appropriate charges approved by Tenant in writing, but specifically excluding any management, bookkeeping or administra-

tion charges in an amount in excess of ten percent (10%) of the Cost of Maintenance of the Common Area exclusive of all such management, bookkeeping or administration charges. If requested by Tenant, Landlord agrees to furnish sufficient receipts or other proof of the expenditures made for Common Area maintenance under this Section prior to Tenant's being required to reimburse Landlord its proportionate share. Landlord shall not pay more than standard rates for services rendered, and standard prices for equipment and materials used and Landlord shall, upon written request of Tenant, but not more than once during any Lease Year, furnish Tenant with a certified statement setting forth all Common Area maintenance costs. Tenant shall be entitled to recommend alternative sources for the purchasing of suitable equipment and materials and to have substituted other qualified personnel recommended by it, if such alternative sources can supply suitable equipment and materials or equivalent services and such other qualified personnel can perform the required services at materially less cost than the sources chosen and personnel employed by Landlord.

10.4 [Intentionally Omitted]

10 5 Notice of Repairs to Common Area. Landlord will cooperate with and give written notice to Tenant's Store Manager at least ten (10) days prior to any repairs being done to the Common Area that will necessitate the closing off of

any part of the Common Area, except in emergency, during Tenant's normal business hours

Section 11 Prohibition Against Waste

Tenant shall not keep, use, sell or offer for sale at the Premises any articles which may be prohibited by the standard form of fire insurance policies. Tenant shall not commit or suffer to be committed any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any occupant of nearby premises.

Section 12 Use of Premises.

Tenant may use the Premises for the purpose of conducting therein a general retail store dealing principally in food and beverages for off-premises consumption, tobacco and candy, or for any other purpose. Tenant's failure to occupy or continuously use the Premises shall not be deemed a breach hereof.

Section 13 Exclusive Features.

13 1 Tenant's Exclusive Right to Sell Food Landlord now owns or controls all the property delineated in green in Exhibit A and described in Exhibit B hereto. With respect to all of said property, with respect to any additional real property which may be described in Exhibit D attached hereto, and with respect to any real property which hereafter Landlord may develop in common with or add to the Shopping Center, Landlord covenants that it will not (except as to the Pre-

mises) construct or lease a building thereon or sell or lease any of such property or permit the use of any such property for the conduct of any store or business (whether separately or as part of another entity) which principally sells to the public food and/or beverages for off-premises consumption, except for a restaurant, delicatessen, fast food operation, specialty food stores, and liquor stores.

13 2 Exclusive Right Runs with the Land. The covenants, conditions and restrictions contained in this Section 13 are for the benefit of the Premises, its easements and appurtenances, and shall run with the land and inure to and pass with the said property, and are intended to be binding on any and all successors of the land herein restricted, during the term of this Lease. Landlord covenants that in the event of a breach of the foregoing provisions, it will make good and reasonable efforts to enforce the same. Landlord hereby authorizes Tenant to file suit on Landlord's behalf and obtain a court injunction against any such breach, in which event Landlord shall reimburse Tenant for court costs, reasonable attorneys' fees, premiums for surety bonds, fees of expert witnesses and other expenses of litigation if Tenant is successful in said litigation. Tenant's right to such reimbursement is in addition to the right to reimbursement contained in Section 38 hereof.

13 3 Remedy for Violation of Exclusive Right. In the event violation of any of the restrictive covenants hereinabove set forth in this Section 13 continues for more than one hundred eighty (180) days, Tenant, in addition to any other right or remedy it may have as a result of such violation, shall have and is hereby granted an option to terminate this Lease upon ten (10) days' written notice to Landlord.

Section 14. Assignment and Subletting.

Landlord agrees that Tenant may sublet all or any part of the Premises or assign this Lease or any interest therein to any person by first obtaining the consent of Landlord. Such consent shall not be unreasonably withheld. Consent is hereby given for the sublease of the Premises to Twain Harte Grocery Inc. Tenant without the consent of Landlord may assign this Lease or any interest therein to a parent corporation, subsidiary corporation or affiliate of Tenant as herein defined, or any corporation with which Tenant may merge or consolidate, provided, however, such assignee shall assume and agree in writing delivered to Landlord to perform the covenants of Tenant contained in this Lease. The terms "parent," "subsidiary" or "affiliate corporation" refer to any parent, subsidiary or affiliate corporation of the Tenant, provided such parent, subsidiary or affiliate corporation controls or is controlled by Tenant or by persons or entities controlling or controlled by Tenant. The term "control" refers

to ownership of at least a majority of the voting stock of the corporation controlled or, if there is no voting stock, the power to effect decisions or a substantial equivalence of ownership. No assignment or subletting shall release Tenant from its liabilities and responsibilities assumed under the provisions of this Lease, and Tenant shall remain primarily liable hereunder. Consent to one assignment or subletting will not waive the provisions of this Section 14 requiring consent to any additional assignment or subletting.

Section 15 Utilities and Personal Property Taxes

15.1 Utilities Landlord at its expense will provide adequate sewer, water, electric and gas lines, pipes and separate meters for the purpose of measuring all utilities to be paid for by Tenant, and Tenant shall pay, throughout the term of the Lease and before delinquency, for all heat, water, light, gas, power and other services supplied to the Building. Tenant shall not be liable for any utility costs incurred before the Commencement Date.

15.2 Personal Property Taxes Tenant shall also pay prior to delinquency any and all taxes and assessments levied or assessed, and becoming payable during the term hereof, upon Tenant's personal property located upon the Premises.

Section 16 Realty Taxes

16.1 Landlord's Duty to Pay Property Taxes. Landlord agrees to pay all real property taxes and assessments on

the entire Shopping Center and all improvements, thereon, with reimbursement by Tenant of a portion thereof as hereinafter provided

16.2 Tenant's Duty to Reimburse Landlord For Property Taxes Tenant agrees to reimburse Landlord for any and all real property taxes and assessments levied or assessed during the term of this Lease

(a) on the Building,

(b) on Tenant's proportionate share of the land comprising the entire Shopping Center, and

(c) on Tenant's proportionate share of the Common Area; provided, however, that if the real property taxes and assessments are increased because of the sale or transfer of all or a portion of the Shopping Center or the lease for thirty-five (35) years or more (including renewal options) of all or a portion of the Shopping Center, Tenant may, at Tenant's option, elect to pay as taxes not more than the amount which would have been the property tax on the Premises in the absence of such a sale, transfer or lease

16.3 Tenant's Share of Property Taxes Tenant's liability under Section 16.2 hereof with respect to the official bills for real property taxes and assessments for Tenant's proportionate share of the land comprising the entire Shopping Center and Common Area shall be computed on the basis of the relationship to the whole of such taxes and assessments

as the square footage of the Building Floor Space leased to Tenant bears to the square footage of the Building Floor Space of all buildings in the Shopping Center as shown in Exhibit A, whether or not actually built on Before the Commencement Date, the parties hereto will establish the square footage to be used in the above calculation and will attach them hereto, along with Tenant's proportionate share expressed as a percentage, as Exhibit E.

16.4 Property Taxes for Periods Beyond Term of Lease Any tax or assessment relating to a fiscal period, a part of which is not included within the term of this Lease, shall be prorated so that Tenant shall pay only that portion thereof which relates to the tax period included within the term of this Lease In the event any assessment may be paid in periodic installments, Tenant shall be responsible only for those installments relating to the period included within the term of this Lease.

16.5 Tenant's Right to Contest Taxes Tenant may contest the amount or validity of any tax or assessment which it is required to pay under the terms of this Lease and may for such purpose institute proceedings in the name of the Landlord and Landlord covenants and agrees to execute any documents necessary to perfect the Tenant's right of contest herein contained, provided, however, such proceedings shall be at Tenant's sole cost and expense, and provided further, that

Tenant shall hold Landlord and the Premises harmless from the consequence thereof. In the event Tenant obtains a refund, such refund, less Tenant's costs in contesting such tax, shall be distributed to all tenants in proportion to the amount of the tax paid by each.

16 6 Notice of Assessment Districts Landlord shall immediately upon receipt of notice thereof notify Tenant of any proposed assessment district which will affect the Shopping Center. Landlord hereby appoints Tenant as its agent to contest the formation of any such assessment district and agrees to do all that is reasonably requested of him by Tenant to effectuate such contest. If Landlord fails to give Tenant written notice of any such officially proposed assessment district within thirty (30) calendar days of Landlord's receipt of such notice, then Tenant shall not be required to pay any assessments that may be charged under such district.

16 7 Notice of Tax Assessments. Tenant shall reimburse Landlord for real property taxes and assessments required to be reimbursed by Tenant under Section 16 2 hereof prior to delinquency and after receipt by Tenant from Landlord of official copies of the tax bills in question, along with Landlord's calculations pursuant to Section 16.2 and 16 3 hereof detailing Tenant's proportionate share of said taxes and assessments. Landlord will then send Tenant copies of the tax sheets, marked as paid by the proper authorities.

Section 17 Right of Inspection

Landlord shall have the right to enter upon the Premises for the purposes of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances or regulations, protecting the Premises, or any other lawful purpose. Landlord shall exercise such rights reasonably, during ordinary business hours, and in such manner as not to interfere unreasonably with the business of Tenant.

Section 18 Tenant's Liability Insurance

18.1 Amount and Type During the entire term of this Lease, Tenant shall obtain and maintain and pay all premiums for a policy or policies of comprehensive liability insurance in the per occurrence amount of not less than One Million Dollars (\$1,000,000.00) for any occurrence within the Building resulting in bodily injury to or death of one or more persons and consequential damages arising therefrom (but excepting from the policy coverage, injuries or damage to persons or property resulting from the negligence of Landlord or from breach of Landlord's covenants in this Lease). Tenant will periodically increase the amount of coverage based on the reasonable advice of its insurance brokers. With respect to any insurance effective for a term extending beyond the end of the term of this Lease, Tenant shall be obligated to pay only such proportion of the premium upon such insurance as that

portion of the term of the policy lapsing prior to the expiration of the term of this Lease bears to the entire term of the policy.

18 2 Additional Insureds. Tenant shall cause all such policies to name Landlord (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) as an additional insured with respect to the operations and activities of Tenant in or in connection with the Building (but excepting from the policy coverage injuries or damage to persons or property resulting from the negligence of Landlord or from Landlord's breach of any of Landlord's covenants in this Lease)

18 3 Notice of Cancellation of Policies Tenant shall cause each such policy to include an undertaking by the insurer to give Landlord (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) thirty (30) days' prior written notice of any cancellation or change in scope or amount of coverage of such policy. Tenant shall furnish Landlord (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) with an endorsement to the insurance policies evidencing Tenant's compliance with the requirements of this Section 18.3.

Section 19. Landlord's Liability Insurance

19.1 Amount and Type During the entire term of this Lease, Landlord shall obtain and maintain and pay all

premiums for a policy or policies of comprehensive liability insurance including contractual liability in the per occurrence amount of not less than One Million Dollars (\$1,000,000.00) for any occurrence on or about the Common Area resulting in bodily injury to or death of one or more persons, consequential damages arising therefrom, and for any occurrence resulting in property damage thereon. Landlord will periodically increase the amount of coverage based on the reasonable advice of its insurance broker.

19 2 Additional Insured. Landlord shall cause all such policies to name Tenant and any subtenant or assignee as additional insureds with respect to any operations and activities in connection with the Common Area.

19.3 Reimbursement Pursuant to Section 10 hereof, Tenant shall reimburse Landlord the cost of premiums for the insurance to be provided by Landlord under Section 19.1 hereof as a cost of maintenance of the Common Area

19 4 Notice of Cancellation of Policies Landlord shall cause each such policy of insurance to include an undertaking by the insurer to give Tenant thirty (30) days' prior written notice of any cancellation or change in scope or amount of coverage of such policies, and Landlord shall furnish Tenant with an endorsement to such insurance policies evidencing Landlord's compliance with the requirements of this Section 19 4

Section 20 Tenant's Building Insurance

20 1 Amount and Type At all times during the term of this Lease or any extension thereof, Tenant shall cause to be effected upon the Building (including any additions or improvements made by Landlord or Tenant and any fixtures or equipment installed by Tenant) fire insurance, special extended coverage or all risk coverage insurance with the customary exclusions, sprinkler leakage and earthquake sprinkler leakage insurance and vandalism and malicious mischief insurance in the amount of one hundred percent (100%) of the full replacement value of the Building. Said policy shall contain a replacement cost endorsement and a stipulated amount endorsement. The replacement cost value of the Building shall be determined initially from an estimate of value completed by a recognized appraisal firm, the cost of which shall be paid by Landlord, and which shall be increased annually thereafter based on factors supplied by such an appraisal firm. With respect to any insurance effective for a term extending beyond the term of this Lease, Tenant shall be obligated to pay only such proportion of the premium upon such insurance as that portion of the term of the policy lapsing prior to the expiration of the term of this Lease bears to the entire term of the policy.

20 2 Additional Insureds Tenant shall cause Landlord (and the holder of any first mortgage on the Premises and

any master ground lessor under any sale and lease-back) to be named as an additional insured in any policy above provided for, and the loss under any such policy, if any, to be payable to Landlord and Tenant jointly for the primary purpose of the repair and restoration of the Building, subject to the provisions of Section 22.3 hereof. If by reason of the provisions of any mortgage or deed of trust executed by Landlord on the Premises, fire insurance is required to be made payable to the lien holder and/or the policies of insurance placed in its custody, Tenant hereby consents thereto, provided that the lienholder in question shall first agree in writing with the Landlord to make the proceeds of said insurance available for the repair and restoration of the Building.

20 3 Notice of Cancellation of Policies Tenant shall cause each such policy to include an undertaking by the insurer to give Landlord (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) thirty (30) days' prior written notice of any cancellation or change in scope or amount of coverage of such policy. Tenant shall furnish Landlord (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) with a certified copy of the endorsement to the insurance policies evidencing Tenant's compliance with the requirements of this Section 20

20 4 [Intentionally Omitted]

20 5 Failure of Tenant to Obtain Insurance In the event that Tenant fails to effect said insurance in the names herein called for, or to pay the premiums therefor, or to deliver said policies or a certificate of insurance unto Landlord, Landlord itself may effect said insurance and pay the requisite premiums therefor, which premiums Tenant shall repay unto Landlord with the next installment of rent due hereunder.

Section 21 Landlord's Building Insurance

21 1 Amount and Type. At all times during the term of this Lease or any extension thereof, Landlord shall maintain (or cause to be maintained) in effect with a responsible insurance company or companies, policies of fire and special extended coverage, including sprinkler leakage and earthquake sprinkler leakage insurance covering all of the other buildings and improvements in the Shopping Center (including, without limitation the Common Area), providing protection to the extent of not less than one hundred percent (100%) of the replacement value thereof

21.2 Notice of Cancellation of Policies Landlord shall cause each such policy of insurance to include an undertaking by the insurer to give Tenant (and the holder of any first mortgage on the Premises and any master ground lessor under any sale and lease-back) thirty (30) days' prior written notice of any cancellation or change in scope or amount of coverage of such policy Landlord shall furnish Tenant (and

the holder of any first mortgage on the Premises under any sale and lease-back and any master ground lessor) with an endorsement to such insurance policies evidencing Landlord's compliance with the requirements of this Section 21.2.

21.3 Failure of Landlord to Obtain Insurance. In the event that Landlord fails to effect the insurance called for in Section 21.1, or to pay the premiums therefor, Tenant itself may effect said insurance and pay the requisite premiums therefor which premiums Tenant may deduct from any installments of rent or other payments to Landlord from Tenant due or to become due hereunder

Section 22 Casualty

22.1 Landlord's Duty to Restore Damaged Premises

Unless this Lease be terminated as provided in Section 22.3 hereof, if the Premises or the Common Area or any of the buildings identified in Exhibit A shall be damaged or destroyed by any casualty during the term of this Lease, Landlord diligently shall restore the same substantially to the condition thereof immediately prior to such damage or destruction. Landlord shall be entitled to the use of any insurance proceeds awarded in connection with such casualty in effecting such restoration, except that all insurance proceeds awarded or paid by reason of damage to or destruction of Tenant's signs, trade fixtures, equipment or any property owned by Tenant hereunder shall be paid to Tenant. Materials used in

repair shall be as nearly like original materials as may then be reasonably procured in regular channels of supply.

22 2 Abatement of Rent Pending Restoration. The Minimum Rent shall be abated (prorated as of the date of occurrence of a casualty) until restoration is completed in the proportion that the Gross Sales from the Premises during the period from the casualty to completion of the restoration bears to the Gross Sales from the Premises during the most comparable period of the immediately preceding calendar year. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Percentage Rent shall remain in full force and effect. Except for the abatement of Minimum Rent hereinabove provided, Tenant shall not be entitled hereunder to any compensation for damages for loss of business or for any inconvenience or annoyance occasioned by any damage, destruction, repair or restoration. There shall be no recapture of abated rent upon reconstruction or repair of the Premises and full resumption of business by Tenant or its sublessee.

22 3 Serious Casualty. If

(a) An event of casualty occurring within the last four (4) years of the then current term hereof damages the Premises, the Common Area or any other building which Landlord is obligated to restore by Section 22 1 hereof to the

extent of ten percent (10%) or more of the then replacement cost thereof, and Tenant shall not have exercised prior to said event or within thirty (30) days thereafter an option to extend this Lease for an Optional Term of ten (10) years to which Tenant is then entitled under by Section 6.2 hereof, or

(b) The casualty causing such damage or destruction is one not covered by the insurance policies required to be obtained under Sections 20 1 and 21 1 hereof and the Premises, the Common Area or any other building which Landlord is obligated to restore under Section 21 1 hereof shall be damaged or destroyed to the extent of at least fifty percent (50%) of the then replacement cost thereof, then, and in either such event, unless Landlord within thirty (30) days after such event of casualty elects, commences and continues diligently to rebuild and restore such damage or destruction and thereafter is able to complete the same within ninety (90) days after the date of such casualty (in which case this Lease shall continue in full force and effect), Tenant may (i) terminate this Lease by giving written notice to Landlord or (ii) supply Landlord with one-half the cost of restoration of the damaged Premises, Common Area or other Building, in which event this Lease shall continue in full force and effect and Tenant may recapture such costs plus interest thereon at the rate of ten percent (10%) per annum by crediting such costs against any rent due or to become due under this Lease

Section 23 Waiver of Subrogation Rights.

Landlord and Tenant shall each, forthwith after the execution of this Lease, procure from each of the insurers under all policies of insurance, including but not limited to liability, fire and property, now or hereafter during the term hereof existing and purchased by either Landlord or Tenant or both insuring or covering the Premises or the Shopping Center, a waiver of all rights of subrogation which the insurer under said policies might otherwise, if at all, have as against the other hereto, said waiver to be in writing and for the express benefit of the other

Section 24 Worker's Compensation Insurance Each of the parties hereto agrees to maintain and keep in force, during the term hereof, all employees compensation insurance required under applicable Worker's Compensation Acts

Section 25 Tenant's Default. Should Tenant at any time be in default hereunder with respect to any rental payments or other charges payable by Tenant hereunder, and should such default continue for a period of fifteen (15) days after written notice from Landlord to Tenant; or should Tenant be in default in the prompt and full performance of any other of its promises, covenants, or agreements herein contained and should such default or breach of performance continue for more than a reasonable time (in no event to exceed thirty (30) days after written notice thereof from Landlord to Tenant specifying the

particulars of such default or breach of performance); or should Tenant vacate or abandon the Premises, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and, in addition to any and all other rights or remedies of Landlord hereunder and by the law provided, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person.

A. The right of Landlord to declare the term hereof ended and to reenter the Premises and take possession hereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder, or

B. The right of Landlord without declaring this Lease ended to reenter the Premises and occupy the whole or any part thereof for and on account of Tenant to collect said rent and any other rent that may thereafter become payable; or

C. The right of Landlord, even though it may have reentered the Premises, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

Should Landlord have reentered the Premises under the provisions of paragraph B above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay rent thereafter to accrue, or Tenant's liability

for damages under any of the provisions hereof, by any such reentry or by any action in unlawful detainer, or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State where the Shopping Center is situated and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owner or owners thereof.

Should Landlord elect to terminate this Lease under the provisions of paragraph A or C above, Landlord may recover from Tenant as damages

1 The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

2 The worth at the time of award of the amount by which the unpaid rent which would have been earned

after termination until time of the award exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, plus

3. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

4 Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any cost or expenses incurred by Landlord (a) in retaking possession of the Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Premises after such default, (c) preparing the Premises for reletting to a new tenant, including repairs or alterations of the Premises for such reletting, (d) leasing commissions, or (e) any other costs necessary or appropriate to relet the Premises, plus

5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of this State

For purposes of this Lease, the term "rent" shall be deemed to be all sums required to be paid by Tenant pursuant to the terms of this Lease.

Notwithstanding any other provisions of this article, Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if the Tenant within such period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

The remedies given to Landlord in this article shall be in addition and supplemental to all other rights or remedies which the Landlord may have under the law as it then exists.

Section 26. Landlord's Default. Should Landlord default in the performance of any covenant or agreement herein, and such default continue for thirty (30) days after receipt by Landlord of written notice thereof from Tenant (except as otherwise provided herein), or if the default of Landlord is of a type which is not reasonably possible to cure within thirty (30) days, if Landlord has not commenced to cure said default within said thirty (30) day period and does not thereafter diligently prosecute the curing of said default to completion (except as otherwise provided herein), in the event

Landlord's default is of a type which can be cured by the payment of money, Tenant may pay any sums necessary to perform any obligation of Landlord hereunder, provided, however, that in the event that as of the time Tenant gives written notice to Landlord of Landlord's default, there is a first deed of trust on the Premises and Tenant has received written notice of the name and address of the beneficiary of said deed of trust, Tenant shall send a copy of the notice of default sent to Landlord to the beneficiary of said deed of trust concurrently with the sending of such notice to Landlord and, in the event Landlord does not cure Landlord's default as hereinabove provided, Tenant shall not exercise any of its remedies in the event of Landlord's default unless said beneficiary has not cured the default of Landlord within thirty (30) days of said beneficiary's receipt of a copy of the notice of Landlord's default, or, if the default of Landlord is of a type which is not reasonably possible to secure within said thirty (30) day period and does not thereafter diligently prosecute the curing of such default to completion.

Section 27. Exercise of Eminent Domain.

27.1 Definition of a "Taking" An appropriation or taking under the power of eminent domain of all, or a portion, of the Shopping Center or the sale by private sale by Landlord of all or a portion of the Shopping Center in lieu thereof, is hereinafter called a "taking "

27 2 Major Taking In the event of the taking of

(a) twenty-five percent (25%) or more of the Premises, or twenty-five percent (25%) or more of the Common Area;

(b) any portion of the Premises so that the remainder thereof is not one undivided parcel of property;

(c) any part of the Premises so that the remainder thereof is not reasonably adapted to the profitable conduct of the Tenant's business thereon;

(d) any portion of the Common Area so that a portion of the parking area on the demised premises is so separated from the premises that in Tenant's reasonable opinion the parking area available to customers of Tenant is so limited that Tenant's continued operation in the Premises is impracticable or unprofitable; or

(e) access, whether by a taking or otherwise, of the Premises or the Shopping Center adjoining thoroughfares, is so limited and reduced that, in Tenant's reasonable opinion, the continued operation of Tenant's business on the Premises will become impracticable or unprofitable, then and in any such event, Tenant shall have the right to terminate the Lease as of the date of the taking of actual physical possession of such portion of the Premises or the Common Area or such access by the condemnor or purchaser, and if Tenant so elects, the parties hereto shall thereupon be

released from any and all further liability hereunder. In any such event, Tenant shall be entitled to participate in any condemnation award or in the sale price paid so as to be compensated for the cost of the removal and decrease in value, as a result of any taking, of Tenant's fixtures, equipment and stock-in-trade located in the Building and the value of the leasehold of which it is deprived for the remainder of the term hereof, provided that nothing contained in this Section 27 shall be construed as a waiver by Landlord of any rights of Landlord to recover damages from a condemnor for the taking of its right, title and interest in the Shopping Center. Tenant shall exercise its right to terminate this Lease under this Section 27.2 by written notice to Landlord.

27.3 Minor Taking. Except as hereinabove in this Section provided, this Lease shall remain in full force and effect in the event of the taking of any portion of the Shopping Center. Unless this Lease is terminated under Section 27.2 hereof by virtue of a taking followed by Tenant's election to terminate, Landlord shall forthwith, at its expense, make all repairs and alterations to the Premises and/or the Common Area necessitated by such taking or sale. In such event, Tenant shall continue to utilize the Premises for the operation of its business to the extent that it may be practicable to do so from the standpoint of prudent business management. In such event, if Tenant continues doing business in the Premises prior to the completion of the repair and restor-

ation work by Landlord called for in the preceding sentence hereof, the Minimum Rent payable by Tenant shall be equitably abated in the proportion that the unusable part of the Premises bears to the whole thereof. In such event, rent payable subsequent to the time Tenant completely resumes business in the Premises as diminished by any taking or sale shall be reduced in the proportion which the area taken or sold bears to the total area of the Premises. In such event, if Tenant does not continue doing business in the Premises prior to the completion of such repair or restoration work by Landlord, the Minimum Rent shall abate from the time of the actual taking or any disturbance of Tenant's possession of the Premises, until completion of such repair and restoration work by Landlord, and the expiration of such further reasonable time as shall be necessary to enable Tenant to resume doing business on the Premises.

27.4 Notice of Condemnation. Upon service on either party hereto of any legal process in connection with any condemnation proceedings, the party so served shall give immediate notice thereof to the other party hereto.

Section 28. Alterations. Tenant will not without the prior written consent of Landlord, make or suffer to be made any alterations, improvements or additions which will affect the structural portions of the Premises, and Landlord agrees that it will not unreasonably withhold consent to the making of such alterations, improvements or additions. Tenant may,

however, from time to time, and at its own expense, make such non-structural alterations, improvements, repairs and additions to and upon the Premises and install therein such fixtures, equipment, furniture and property as it may consider advisable for the conduct of its business, all without the prior written consent of the Landlord. In the event it shall be necessary to apply for and secure from any governmental agency or authority any permits or licenses required in connection with the making of any alterations, improvements, repairs or additions, the Landlord agrees upon request by Tenant to execute or join in the execution of any application for such permits and licenses. Tenant shall not be obligated to remove, alter or change any alterations, improvements, repairs or additions, or to restore the Premises to their prior condition at the expiration of term hereof, or prior termination of this Lease, except as expressly herein provided. Any and all alterations, repairs, additions and improvements made by Tenant other than movable partitions, trade fixtures, equipment and furniture shall immediately form and become part of the Premises.

Section 29 Required Alterations. In the event that during the term hereof any alteration, addition or change be required by law, regulation, rule or the requirements of any insurance company (as a condition to the issuance or continuation of insurance coverage) to be made to the Premises, or any portion thereof, then and in that event

(a) If such alteration, addition or change be required by reason of the omission or lack of care or maintenance of portions of the Premises which Tenant is by the terms hereof required to care for and maintain, or is required by reason of a change in the manner or mode of use of the Premises by Tenant, then said alteration, addition or change shall be made and paid for by Tenant,

(b) If such alteration, addition or change be required by reason of the existence of anything a part of the Premises at the time of the execution hereof, or by reason of any defect in the structural portions of the Building, said defect not being caused by the manner or mode of use of any portion of the Premises, or if such be required as to any portion of the Premises which Landlord has expressly agreed herein or elsewhere to care for or maintain, then said alteration, addition or change shall be made and paid for by Landlord.

Section 30. Repairs and Maintenance

30.1 Tenant's Duty to Maintain Premises Excepting only matters to be repaired or replaced by Landlord as herein provided, Tenant during the entire term of this Lease and any extension thereof shall keep and maintain the Premises and every part thereof in good order, condition and repair, and upon termination of this Lease by lapse of time or otherwise, Tenant shall deliver up the Premises in good condition and repair, ordinary wear and tear thereof from reasonable and

normal use and damage from casualty excepted. Should Tenant after notice from Landlord fail to make with reasonable promptness any repairs which are the obligation of Tenant hereunder, Landlord may (but shall not be required to so do) enter the Premises and put the same in good order, condition and repair; and the reasonable cost thereof shall become due and payable by Tenant to Landlord upon demand. When Landlord makes such demand for payment, Landlord shall furnish Tenant with an itemized statement of the repairs and charges at the time such demand is made and thereafter shall substantiate such demand by proper invoices

30 Landlord's Duty to Repair Premises If any repairs become necessary to the Premises' structural elements, exterior walls, foundations, roof, floors, (excluding floor covering), concealed plumbing or wiring, or glazing and plate glass during the term of this Lease, then upon written notice by Tenant to Landlord stating the necessity therefor and the nature thereof, Landlord with reasonable promptness (depending on the nature of the required repairs) shall make such repairs as are necessary. Should Landlord fail to commence the making of such repairs or the performance of such maintenance in a timely manner as it is obligated to do by the terms hereof but in no event later than within thirty (30) days after notice, Tenant may but shall not be obligated to cause such repairs to be made or such maintenance to be performed, and upon demand

by Tenant, Landlord shall promptly pay to Tenant the reasonable cost and expense thereof, and should Landlord fail to promptly pay such reasonable cost and expense. Upon making such demand for payment, Tenant shall furnish Landlord with an itemized statement of the repairs and charges at the time such demand is made and thereafter shall substantiate such demand by proper invoices.

30.3 Emergency Repairs. Notwithstanding any contrary provision of Sections 29 and 30, if any repair or maintenance for which Landlord is obligated be of an emergency nature which if not attended to immediately will or might result in injury or damage to persons or property, or interfere with the conduct of Tenant's business on the Premises, then Tenant without prior notice to Landlord may make such emergency repairs or perform such maintenance as is necessary to meet the emergency. Landlord shall reimburse Tenant based on an itemized statement of such repairs.

Section 31. Mechanics' Liens. Tenant will not permit any liens to stand against the Premises for any labor or material furnished in connection with any work performed by or at the direction of Tenant, and Landlord will not permit any liens to stand against the Premises for any labor or materials furnished in connection with any work performed by or at the direction of Landlord including, without limitation, the Construction. The party at whose direction it is asserted labor

and material were furnished may contest the validity or amount of any such lien, but such party shall cause the property to be released from said lien, by the posting of bond or depositing of the amount of the lien into escrow, within twenty (20) days after knowledge of the lien

Section 32. Subordination

32.1 Lease to be Superior to Other Liens Except for a mortgage or deed of trust under which the interest of Tenant has been recognized, in accordance with Section 32.2 hereof, Landlord will take all necessary action to make this Lease superior to any and all deeds of trust, mortgages, liens or other encumbrances on the Premises and the Common Area, excepting current taxes not delinquent. If on the Commencement Date Landlord had failed to take such action, Tenant shall have the right to cancel this Lease upon thirty (30) days' written notice to Landlord. Landlord shall not at any time during the term hereof create or suffer to be created any lien or encumbrance upon or affecting the Premises or any portion thereof which shall be prior or superior to this Lease or to the interest of Tenant hereunder, except taxes and other liens created by operation of law upon the property of Landlord (which, except as to taxes required to be paid hereby by Tenant, Landlord shall pay and discharge before delinquency)

32.2 Lease May be Subordinate to Mortgages At Landlord's option, this Lease shall be subordinate to any mortgage or deed of trust that may encumber the Premises at

the date hereof, or may hereafter encumber the Premises, and to any and all advances made thereunder, and to interest thereon and to all renewals, replacements and extensions thereof, provided and only if the mortgagee named in any such mortgage or the trustee and the beneficiary in any such deed of trust first agree in writing to recognize this Lease in the event of foreclosure of such mortgage or sale under such deed of trust, so long as Tenant is not in material default hereunder

Section 33 Zoning and Use In the event that Tenant shall at any time be prohibited by law from using the Premises for the conduct of its business, then, and in that event, Tenant may at its option terminate this Lease. In the event that Tenant shall elect to exercise its said right, it shall serve written notice thereof upon Landlord, the effective date of which shall not be less than thirty (30) days after service thereof upon Landlord

Section 34 Notices All notices or demands of any kind which either party is required or desires to give or make upon the other in connection with this Lease or arising out of the relationship created hereby, shall be in writing and shall be given or made (subject to the right of either party to designate a different address by notice given as provided herein) by United States registered or certified mail, postage prepaid, addressed in the case of Landlord to.

Twain Harte Custom Builders, Inc
P O Box 829
Twain Harte, CA 95383

and addressed in the case of Tenant to

United Fairway
Post Office Box 4025
Richmond, CA 94804
Attention President

Any notice so sent shall be deemed to have been given forty-eight (48) hours after the same has been deposited in the United States mail, registered or certified mail, within the State of California with postage thereon fully prepaid.

Section 35 Validity of Lease Amendments No lease amendment, nor modification nor interpretation of this Lease shall be valid unless signed by two (2) corporate officers of Tenant, with all correspondence on such directed in accordance with Section 34 hereof.

Section 36. [Intentionally Omitted.]

Section 37. Signs. Tenant shall have the exclusive right to use exterior walls of the Building for sign purposes and Tenant shall have the right to erect at or near the entrance and the exit of the parking area on the Premises, a sign or signs advertising parking therein for Tenant's customers and invitees, provided, however, that all such sign, shall pertain to the business conducted by Tenant at the Premises, comply with government regulations and comply with the sign criteria set forth in Exhibit E attached hereto Landlord shall not erect, place or permit any exterior signs which are not in conformance with Exhibit E attached hereto

(excluding signs on the premises of other tenants or owners) in or about the Shopping Center except with the prior written approval of Tenant, which approval shall not be unreasonably withheld, or except only as shown in Exhibit A.

Section 38 Holding Over Any holding over after the expiration of the term hereof shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified so far as applicable

Section 39 Short Form Memorandum of Lease and Verification of Lease

39 1 Short Form For the purpose of giving notice of Tenant's rights to others dealing with any of the real property referred to in this Lease, Landlord agrees that upon request of Tenant, Landlord will execute, acknowledge, deliver and record (in form and content satisfactory to Tenant) a "short form" or "memorandum" of this Lease, which shall set forth the provisions of this Lease restricting the use of said real property as well as any other provisions of this Lease requested by Tenant

39 2 Verification Either Landlord or Tenant shall at any time and from time to time, upon not less than ten (10) days' prior request by the other, execute, acknowledge and deliver to the other a statement in writing certifying the Commencement Date and that this Lease is unmodified and in full force and effect (or if there have been modifications,

that the same is in full force and effect as modified and stating the date of the modifications), and further stating the dates to which the Minimum Rent and other charges have been paid, and setting forth such other matters as may reasonably be requested by Landlord or Tenant

Section 40 Attorneys' Fees. In addition to the provisions for attorneys' fees and other expenses of litigation provided for in Section 13.2 hereof, should either party institute any court or arbitration action or proceeding to enforce any provision hereof or for a declaration of such party's rights or obligations hereunder, the prevailing party shall be entitled to receive from the losing party such amounts as the court or the arbitrator may adjudge to be reasonable attorneys' fees for services rendered to the party prevailing in any such action or proceeding, and such fees shall be deemed to have accrued on the commencement of such action or proceeding and shall be enforceable whether or not such action or proceeding is prosecuted to judgment

Section 41 Landlord's Cooperation. Landlord will cooperate with Tenant in all matters relative to the Premises, including required municipal consents and permits, and will execute all papers proper or necessary in connection therewith

Section 42 Arbitration of Disputes Any question, dispute, or controversy as to the interpretation or application

of this Lease shall be determined by final and binding arbitration in accordance with California Code of Civil Procedure, Section 1280 and following

Section 43 Real Estate Fees Tenant shall not be liable for any broker or real estate commissions in connection with this Lease, and Landlord shall be solely responsible therefor.

Section 44 Merchants' Association.

44 1 Compulsory Membership Landlord agrees that membership in a Merchants' Association for the Shopping Center will be compulsory on every tenant in the Shopping Center. Such Association members shall be entitled to vote and shall pay dues based on ratios in direct proportion to the square footage of space leased by such member in the Shopping Center, subject, however, to the provisions of Section 44 2(b) hereof.

44 2 Tenant's Duty to Join Association Tenant will become a member of, participate fully in, and remain in good standing in the Merchants Association (as soon as the same has been formed) limited to tenants occupying premises in the Shopping Center, and abide by the regulations of such Association. Each member tenant shall have one vote and Landlord shall also have one vote in the operation of the Association. The object of such Association shall be to encourage its members to deal fairly and courteously with their customers, to sell their merchandise or services at fair

prices, follow ethical business practices, to assist the businesses of the tenants upon sales, promotions, and center advertising, and in particular to help the interest of the members of the said Association. Tenant agrees to pay to the Merchants Association such dues as are assessed by the Association, provided, however, that such dues shall not exceed five cents (5¢) per square foot of the Premises during any given fiscal year of the Association. Default in payment of dues shall be treated in similar manner as to default in rent with like rights of Landlord at its option to the collection thereof on behalf of the Merchants Association.

44 3 Bylaws Subject to Tenant's Approval The by-laws of the Association, including the dues requirements and voting rights, shall be drawn in cooperation between the Landlord and the tenants of the Shopping Center and shall be subject to the approval of Tenant.

Section 45 Tenant May Perform Landlord's Covenants If Landlord shall fail to perform any of the terms, provisions, covenants, or conditions to be performed or complied with by Landlord pursuant to this Lease, or if Landlord should fail to make any payment which Landlord agrees to make, and any such failure shall remain uncured for a period of thirty (30) days after Tenant shall have served upon Landlord written notice of such failure, then Tenant may at Tenant's option perform any such term, provision, covenant or condition or make any such

payment, as Landlord's agent, and in Tenant's sole discretion as to the necessity therefor, and the full amount of the cost and expense entailed, or the payment so made, shall immediately be owing by Landlord to Tenant, and Tenant shall have the right to deduct the amount thereof, together with interest at the maximum legal rate thereon from the date of payment, without liability or forfeiture, from any percentage rent then due or thereafter coming due hereunder, and irrespective of who may own or have an interest in the Premises at the time such deductions are made. Any such deduction shall not constitute a default in the payment of rent unless Tenant shall fail to pay the amount of such deduction to Landlord within thirty (30) days after final adjudication that such amount is owing to Landlord. The option given in this section is for the sole protection of Tenant and its existence shall not release Landlord from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord.

Section 46 [Intentionally Omitted]

Section 47. Indemnification

47.1 Tenant's Indemnification. Tenant covenants that it shall hold and save Landlord harmless of and from any and all loss, cost or damage arising by reason of injury to or death of persons or damage to property, including Tenants', in

or upon the Premises or caused by activities conducted thereon or related thereto, provided, however, that Tenant shall not be required to indemnify Landlord for any damage or injury of any kind arising out of the negligence of Landlord, its agents or employees

47 2 Landlord's Indemnification. Landlord covenants that it shall hold and save Tenant harmless of and from any and all loss, cost or damage arising by reason of the injury to or death of persons or damage to property in or upon the Common Area, or caused by activities conducted thereon, provided, however, that Landlord shall not be required to indemnify Tenant for any damage of any kind arising out of the negligence of Tenant, its agents or employees.

Section 48 Waiver. No waiver of any default or breach of any term, covenant or condition by either party hereunder shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then said waiver shall be operative only for the time and to the extent therein stated. Waiver of any term, covenant or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same term, covenant or condition. The consent or approval by either party to or of any act by either party requiring further consent or approval

shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts

Section 4⁹ Miscellaneous Provisions

49.1 License In the event that by statute or ordinance Tenant is prohibited from obtaining or retaining a state or local license for some or all of its business operations contemplated hereunder (excluding a license for the sale of alcoholic beverages) except upon such conditions as would require Tenant to alter its form of organization, its methods of doing business, or the type of merchandise or service customarily offered for sale by Tenant, then Tenant may upon forty-five (45) days' notice in writing terminate this Lease without further liability

49.2 Captions Captions of sections and parts of this Lease are for convenience only and shall not be considered in resolving any questions of interpretation or construction.

49.3 Covenants as Conditions. Whenever in this Lease words of obligation or duty are used, such words shall have the force and effect of covenants; subject in each case to grace periods provided. Any obligation imposed by either party hereto shall include the imposition on such party of the obligation to pay all costs and expenses necessary to perform such obligation

49.4 Successors and Assigns Each and all of the covenants, provisions and conditions of this Lease to be performed by or on the part of either party, whether to be performed on or in the Premises or in any other portion of the Shopping Center, and whether affirmative or negative in nature, are intended to and shall bind such party, its successors, tenants and assigns at any time and from time to time, and shall inure to the benefit of the other party, its successors, tenants and assigns, and such covenants, provisions and conditions are intended to be for the benefit of the Premises.

49.5 Impartial Construction Both parties certify to their full familiarity with the provisions hereof and agree that the provisions hereof are not to be construed either for or against either party.

49.6 Merger. This Lease contains all terms, covenants, and conditions between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Premises, and all prior negotiations between the parties are merged herein.

49.7 Governing Law This Lease shall be governed exclusively by the provisions thereof and by the laws of the State of California as the same from time to time exist.

49.8 Number and Gender As used in this Lease and when required by the context, each number (singular or plural)

shall include all numbers, and each gender shall include all genders

49 9 Time of the Essence Time is and shall be of the essence of this Lease and of each term or provision hereof.

49 10 Disclaimer of Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer, of a member of a joint enterprise with Tenant. The provisions of this Lease relating to the percentage rent payable hereunder are included solely for the purpose of providing a method whereby the rent is to be measured and ascertained. Nothing herein contained shall be deemed for any purpose as creating any relation between the parties hereto other than the relationship of landlord to tenant.

49 11 Sale or Transfer of Premises. If Landlord sells or transfers all or any portion of the Premises, Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease if Landlord's successor has assumed in writing, for the benefit of Tenant, Landlord's obligations under this lease. Tenant agrees to attorn to such successor upon such sale or

transfer, provided, however, that such successor recognizes the estate of Tenant created under this Lease

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first set forth hereinabove

LANDLORD:

TENANT:

Twain Harte Custom Builders Inc.

United Fairway

By Joseph P. Rotundo (Pres.)

By Paul G. Hackett
PRESIDENT

By William J. Rotundo (Sec.)

By _____

[List Exhibits]

- Exhibit A - Plot Plan
- Exhibit B - Legal Description
- Exhibit C - Exceptions
- Exhibit D - Landlords Additional Property
- Exhibit E - Tenants Proportionate Share
- Exhibit F - Sign Criteria
- Exhibit G - Building Specifications

EXHIBIT "E"

TENANT'S PROPORTIONATE SHARE

Total square footage of building space shown on EXHIBIT "A" is 73,400 square feet. The total square footage of the leased premises is 20,160 feet. Tenant's proportionate share is 20,160 divided by 73,400, 27.46594 percent.

CORRECTED & ACKNOWLEDGED 12-15-82

SAVE THIS SHEET & ATTACH TO LEASE

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DOCUMENT</u>
A	NOTICE OF CONTINUED PERFECTION OF LIEN WITH MECHANIC'S LIEN ATTACHED
B	CONTRACT AGREEMENT BETWEEN CLIENT AND CONTRACTOR
C	INVOICES
D	ITEMIZED STATEMENT OF INTEREST

McDONOUGH HOLLAND & ALLEN PC
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Fax 916 444 0707

Attorneys for Plaintiff
S D Deacon Corp of California

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re)	Case No 0310945
)	Chapter 11
FLEMING COMPANIES, INC , et al)	
)	NOTICE OF CONTINUED
)	PERFECTION OF LIEN
Debtor)	

NOTICE OF PERFECTION OF MECHANIC'S LIEN
PURSUANT TO SECTION 546 (b) OF THE BANKRUPTCY CODE

TO THE DEBTOR IN THE ABOVE-CAPTIONED CHAPTER 11 CASE AND ITS
COUNSEL

YOU ARE HEREBY NOTIFIED that S D Deacon Corp of California ("Deacon"), a
California corporation, claims a mechanic's lien in the amount of \$31,048 00, in assets of
Fleming Companies, Inc ("Debtor"), the debtor in possession in the above-captioned
chapter 11 case

Deacon, as original contractor, agreed to provide labor and materials, under
contract with the Debtor, for construction of certain improvements, including new
concrete and interior finishes, to that existing retail building commonly known as Food 4
Less, located in Sacramento County at 3860 Florin Road, Sacramento, California, 95823-
1816 (the "Project") California law provides Deacon a mechanic's lien for the

1 construction labor and materials so provided

2 Deacon duly recorded its mechanic's lien in the records of Sacramento County, as
3 instrument number 0001995315, Book 20030519, Page 1764, pursuant to 11 U S C
4 § 362 (a)(4) Deacon's mechanic's lien encumbers the Debtor's interest in the Project

5 Deacon hereby gives notice, pursuant to Bankruptcy Code section 546 (b)
6 (11 U S C § 546 (b)), that it is perfecting its security interest in the Project You are
7 further notified that Deacon intends to enforce the lien to the fullest extent allowed by
8 bankruptcy law and California state law A true and correct copy of Deacon's
9 recorded Notice and Claim of Mechanic's Lien is attached hereto as Exhibit A

10 DATED August 13, 2003

11 McDONOUGH HOLLAND & ALLEN PC
12 Attorneys at Law

13 By *Dawn M D Balzarano*
14 Dawn M D Balzarano

15 Attorneys for Plaintiff
16 S D Deacon Corp of California
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EXHIBIT A

Sacramento County Recording
Mark Norris, Clerk/Recorder
BOOK 20030519 PAGE 1764
Monday, MAY 19, 2003 2:15:37 PM
Ttl Pd \$12.00 Nbr-0001995315
KDL/24/1-2

AND WHEN RECORDED MAIL TO

S D Deacon Corp. of California
7745 Greenback Lane, Suite 250
Citrus Heights, CA 95610

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

NOTICE AND CLAIM OF MECHANICS' LIEN

The undersigned S.D. DEACON CORP. OF CALIFORNIA

(Name of person or firm claiming mechanics lien. Contractors use name exactly as it appears on contractor's license)

claimant, claims a mechanics lien upon the following described real property

City of Sacramento County of Sacramento California
3860 Florin Road, Sacramento, CA 95823-1816

(General description of property where the labor or materials were furnished. A street address is sufficient, but if possible use both street address and legal description)
The sum of \$ 31,048.00 together with interest thereon
(Amount of claim due and unpaid)
a. the rate of 18 percent per annum from March 22 2003
(Date when balance became due)

is due claimant (after deducting all just credits and offsets) for the following labor services, equipment, or materials furnished by claimant renovation of existing retail building including new concrete and interior finishes
(Insert general description of labor services, equipment or material)

Claimant furnished the work and materials at the request of, or under contract with the following
Fleming Companies, Inc.

(Name of person or firm who ordered or contracted for the work or materials)

The owners and reputed owners of the property are Ennis Commercial Properties, a L L C

(Insert name and owner of real property. This can be obtained from the County Recorder or by checking the building permit application at the Building Department)

Firm Name S.D. Deacon Corp. of California

By Richard G. Smith

(Signature of claimant or authorized agent)

Richard G. Smith, President

VERIFICATION

I the undersigned say I am the President of
(President or Manager of a partner or Owner of said)
the claimant of the foregoing mechanics lien. I have read said claim of mechanics lien and know the contents thereof. The same is true of my own knowledge.

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

Executed on May 19, 2003 at Citrus Heights California

Richard G. Smith
(Personal signature of the individual who is swearing that the contents of the claim of mechanics lien are true)
Richard G. Smith, President

SERVICE LIST

Debtor

Fleming Companies, Inc
1945 Lakepoint Drive
Lewisville, TX 75039

Co-Counsel for the Debtor

KIRKLAND & ELLIS
James H M Sprayregen
Richard L Wynne
Geoffrey A Richards
Shirley Cho
Marjon Ghasemi
777 South Figueroa Street
Los Angeles, CA 90017

PACHULSKI, STANG, ZIEHL, YOUNG,
JONES & WEINTRAUB
Laura Davis Jones
Ira D Kharasch
Scotta E McFarland
Christopher J Lhulier
919 North Market Street, 16th Floor
P O Box 8705
Wilmington, Delaware 19899-87005

Trustee

Dana B Geyer
125 S Howes Street, #910
Fort Collins, CO 80521

CONTRACT AGREEMENT BETWEEN CLIENT AND CONTRACTOR STIPULATED SUM CONTRACT

FLEMING STORE NO. 8808

3860 Florin Road

Sacramento, Ca

RECEIVED

SEP 12 2002

S D DEACON CORP.
OF CALIFORNIA

THIS AGREEMENT is made as of the 30th day of July, 2002;
by and between FLEMING, INC an Oklahoma corporation (the "Client") and, S.D. Deacon Corp of California
a(n) California corporation (the "Contractor") and,
pertains to the construction project of Food 4 Less®
which is located at 3860 Florin Rd. Sacramento, Ca (the "Project")

Client and Contractor hereby agree as set forth below

Section 1 The Contract Documents

The Contract Documents consist of this Agreement, the plans, specifications, drawings, addenda and other items listed and described in Section 7 hereof all Modifications and Change Orders issued after execution of this Agreement in accordance with the terms hereof and the General Conditions (A201 1997 Edition) These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral

Section 2 The Work of This Contract

The Contractor shall at its own expense procure and provide all trade permits only as are customarily provided by the General Contractor and his Subcontractors, applicable to construction documents and specifications, (except building permit) labor, materials, cartage, tools, supplies, taxes and all items provided for in the Contract Documents or necessary to perform all the Work required by the Contract Documents for the completion of the entire work The Contractor shall complete the entire Project as defined per plans and specifications

Section 3 Date of Commencement, Substantial Completion, Damages

3 1 The Work to be performed under this Contract shall be commenced not later than 6/17, 2002, (hereinafter known as the "Commencement Date"), unless a different date is stated or provision is made for the date to be fixed in a "Notice to Proceed" issued by Client and,

3 2 The Contractor shall be completed not later than 10/19/02 (124) calendar days (hereinafter known as the "Substantial Completion" date) following the date of such commencement, subject to extension for any period of delay caused by

- (i) act of God, act of war or civil insurrection, strikes, lockouts, abnormal inclement weather or other contingencies that could not have been reasonably anticipated unforeseen by Contractor and beyond Contractor's reasonable control, provided, however, that as a condition of any such delay Contractor shall have given written notice thereof, specifying the cause and estimated duration, to Client within forty-eight (48) hours after discovery,
- (ii) by wrongful act of the Client, except as otherwise provided in the Contract Documents or
- (iii) by written agreement between Contractor and Client For purposes of this Agreement, "Completion" shall mean actual completion of all Work for which Contractor is responsible hereunder

Section 4 The Contract Sum

The Client shall pay the Contractor in current funds for the performance of the Work the Contract Sum of (\$1,694,357.00) One Million Six Hundred Ninety Four Thousand Three Hundred Fifty Seven Dollars which sum is complete and includes all amounts to be paid or reimbursed to Contractor for the performance and completion of the Work and all of Contractor's other obligations under the Contract Documents, including without limitation all labor, materials, supplies, cartage, supervision, overhead, expenses, insurance to be provided by Contractor, contract fees expenses and out-of-pocket costs of any kind, whether or not similar to any of the foregoing, except as may otherwise be expressly provided in the Contract Documents The Contractor agrees that the overhead and profit mark-up on any Change Order shall not exceed five percent (5%) Deductive change orders will include a 5% fee reduction

Section 5 Progress Payments, Lien Waivers

5 1 Based upon Applications for Payment submitted by the Contractor, the Client shall make monthly progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents

5 2 The period covered by each Application for Payment shall be one calendar month ending on the 25 day of the month, based on the following terms and conditions

5 3 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. Contractor shall submit to Client, Applications for Payments in form approved by Client not later than five (5) days following the end of the period covered by the Application for Payment. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Such Application for Payment shall show, among other things, all Work completed as of the end of such period and the amounts payable therefore less the amounts of all previous payments by line item and shall certify that all Work has been performed in accordance with the Contract Documents

5 3 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows

5 3 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten (10%) percent

5 3 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored off the site ("Stored Materials") for subsequent incorporation in the completed construction (or, if approved in advance by the Client suitably stored off the site at a location agreed upon in writing), less retainage of ten (10%) percent

5 3 3 Subtract the aggregate of previous payments made by the Client and this amount shall be the amount calculated by Contractor for the amount owed for Work completed for such period

5 4 Conditional lien waivers, prior to final pay application must be submitted within 60 days of application for payment

5 4 1 In the event that any subcontractor, material supplier or other person fails or refuses to provide a lien waiver due to a dispute with Contractor, Contractor may provide bonds sufficient to remove any lien rights of such person in lieu of lien waivers

5 4 2 Client shall be entitled as a condition of any such payment to inspect or cause its agent to inspect the Work to verify the information provided by Contractor in such Application for Payment

5 4 3 Subject to the foregoing, not later than fifteen (15) days following receipt of such Application for Payment and along with original Conditional Lien Waivers, Client shall pay to Contractor in cash ninety percent (90%) of the amount determined to be properly charged and allocated through such period based on the percentage of Work completed

Section 6 Final Payment

6 1 Within twenty (20) days after the Work has been substantially completed and final inspection of the Work has been obtained, the Contractor shall submit to the Client a final Application for Payment certifying that the Work has been substantially completed in accordance with the Contract Documents

6 2 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Client upon receipt of such final Application for Payment together with original Final Unconditional Lien Waivers from all persons having lien rights with respect to the Work

6 3 In the event that any subcontractor, material supplier or other person fails or refuses to provide a Final Unconditional Lien Waiver due to a dispute with Contractor, Contractor may provide bonds sufficient to remove any lien rights of such person in lieu of lien waivers. Notwithstanding the foregoing, Contractor shall remit reasonable evidence for obtaining such bond prior to remitting bond to Client

6 4 Client shall be entitled as a condition of such payment to inspect or cause its agent to inspect the Work to verify the information provided by Contractor in such Application for Final Payment

6 5 Subject to the foregoing, not later than fifteen (15) days following receipt of such application for Final Payment and receipt and approval of all close-out manuals and as-built drawings, per direction of plans and specifications, and receipt of original unconditional final lien waivers from all subcontractors, suppliers and/or materialmen and satisfaction or expiration of any local or state notice of completion statutes, Client shall pay the Contractor the balance of the Contract Sum less the greater of 150% value of punch list item(s) or \$50,000, as Client determines to be necessary in order to complete any incomplete work or "punch list" items. If the Contractor is in default, Client shall have the right to pay any portion of such final payment directly to unpaid subcontractors, material suppliers or others having valid lien rights with respect to the Work

persons and Contractor Any retained balance shall be paid upon completion of incomplete or punch list items and Application for Payment as herein provided

Section 7 Miscellaneous Provisions

7 1 Terms used in this Agreement which are defined in the General Conditions shall have the meanings designated therein

7 2 The Contract Documents, which constitute the entire agreement between the Client and the Contractor, are listed in Section 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows

- a This Agreement,
- b General Conditions in the form of AIA Document A201, General Conditions of the Contract for Construction—1997 Edition, with the additions, deletions and modifications as referenced in the Supplementary General Conditions of the Specifications,
- c Construction drawings dated 3/01, 2002, prepared by Casco (the "Architect") with reference to the Project (the "Drawings") SEE EXHIBIT "A" ATTACHED,
- d Specifications dated 3/01, 2002, prepared by the Architect with reference to the Project (the "Specifications"),
- e Project manual dated 3/01, 2002, prepared by the Architect with reference to the Project,
- f Bid Schedule of Values dated 3/22, 2002 SEE EXHIBIT "B" ATTACHED,
- g Subcontractor list to be completed in its entirety, SEE EXHIBIT "D" ATTACHED,
- h Contractor's Payment and Performance Bond number N/A dated N/A in the amount of \$N/A (same as Contract Agreement Stipulated Sum Amount),
- i Contractor's Certificate of Insurance dated naming Project Location, Fleming, Inc (Client) and its subsidiaries shall be named as Additional Insured and Certificate Holder named as Fleming, Inc ,
- j Other None (if none, so specify)

7 3 In the event of any conflict between this agreement and the provisions of AIA document A201, this agreement shall prevail

7 4 Any reference to "Owner" in AIA document A201 is deemed to mean "Client," as identified herein.

7 5 Contractor shall indemnify, protect, defend and hold harmless FLEMING, FLEMING's subsidiaries and affiliates, and each of their respective employees, officers, directors, and shareholders, and the successors and assigns of each of the foregoing (each an "Indemnified Person"), from and against any and all claims, demands losses, liabilities, damages, costs and expenses, arising or resulting from personal injury, accidental death or property damage suffered by and Indemnified Person or any third person (collectively "Claims"), arising out of

- (a) Contractor's use, occupancy, work, and/or activities in, on or about the Project(s),
- (b) Any breach or default by Contractor of any obligation of Contractor under this Agreement, and
- (c) Any negligent or otherwise tortious act or omission of Contractor, its agents, employees, invitees or contractors

If paid according to the contract documents, the Contractor agrees to defend, at Contractor's sole cost and expense, each Indemnified Person, in any action or proceeding arising out of any such Claims, by counsel approved by the Indemnified Person, and to pay promptly all costs and expenses arising in connection with such defense, including without limitation, attorneys', consultants' and expert witnesses' fees, as they become due

Section 8 Legal Status of Client

Contractor acknowledges and agrees that Client is the tenant of the premises where the Project is located SEE EXHIBIT "C" ATTACHED (lessee, sublessee or owner)

Section 9 Termination and/or Suspension of the Contract Agreement

This Contract may be Terminated by the Client or the Contractor as defined under the terms and conditions in AIA Document A201 (1997 Edition) Article 14 of the General Conditions

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written and is executed in at least two original copies of which one is to be delivered to the Contractor and the other to the Client


CLIENT

FLEMING, INC
an Oklahoma corporation
1945 Lakepointe Drive
Lewisville, TX 75029
(972) 906-8000

By

Printed Name

Its



Paul J DiBrito

VP, Planning & Development

9/9/02

CONTRACTOR

S.D. Deacon Corporation
a(n) California corporation
7745 Greenback Lane, Ste 250
Citrus Heights, CA
Phone No (916) 969-0900
Taxpayer I D #94-332-3231

By

Printed Name

Its



PAUL CUNHA

VICE PRESIDENT

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF TWO PAGE

To: FLEMING COMPANIES INC
1945 LAKEPOINT DRIVE
LEWISVILLE, TX 75029

Project (SDD Job #851) FOOD 4 LESS
3860 FLORIN ROAD
SACRAMENTO, CA 95823-1816

APPLICATION NO
PERIOD TO
NINE (9)
02/28/03

Distribution to
Owner
Architect
Contractor

FROM (CONTRACTOR)
S D DEACON CORP OF CALIFORNIA
7745 GREENBACK LANE, SUITE 250
CITRUS HEIGHTS CA 95610

Architect
CASCO
10877 WATSON ROAD
ST LOUIS, MO 63127

ARCHITECT'S
PROJECT NO

CONTRACT DATE April 30, 2002

CONTRACT FOR CONSTRUCTION

CONTRACTOR'S APPLICATION FOR PAYMENT

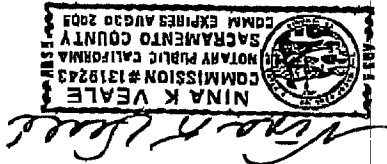
CHANGE ORDER SUMMARY			VALUES
Change Orders approved in previous months by Owner			
Approved This Month			
Number	Date Approved		
7	2/24/03		29,309
TOTAL			\$ 289,844
TOTALS			\$ 29,309 00
Net change by Change Orders			\$ 289,263 00

The undersigned Contractor certifies that to the best of the Contractor's knowledge Information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR S D DEACON CORP OF CALIFORNIA

By: *Michael Mahony*
Michael Mahony, Project Manager

Date 7-Mar-03



Application is made for Payment, as shown below, in connection with the Contract Continuation Sheet, which is attached

1 ORIGINAL CONTRACT SUM	\$ 1,894,357 00
2 Net change by Change Orders	\$ 289,263 00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$ 1,893,611 00
4 TOTAL COMPLETED & STORED TO DATE (Column G on Continuation Sheet)	\$ 1,893,610 00
5 RETAINAGE (10%)	\$ -
6 TOTAL EARNED LESS RETAINAGE (Column I of Continuation Sheet)	\$ 1,893,610 00
7 LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$ -
8 CURRENT PAYMENT DUE (Line 3 less 6)	\$ 29,309 00
9 BALANCE TO FINISH, PLUS RETAINAGE	\$ -

State of California County of Sacramento
Subscribed and sworn to before me this 7th day of March 2003
Notary Public Nina K Veale
My Commission Expires August 30, 2005

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

AMOUNT CERTIFIED
ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractor's signed certification is attached

In tabulations below amounts are stated to the nearest dollar

Use Column 1 on Contracts where variable retainage for line items may apply

AIA DOCUMENT G703

2 OF 2 PAGES

APPLICATION NUMBER NINE (9)

APPLICATION DATE 3/7/03

PERIOD TO 2/28/03

ARCHITECT'S PROJECT NO

SDD JOB #851 FOOD 4 LESS, SACRAMENTO

A ITEM NO	B DESCRIPTION OF WORK	C SCHEDULED VALUES	D WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	E WORK COMPLETED THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H BALANCE TO FINISH (G - G)	I RETAINAGE
1	Demolition	12,000	12,000		0	12,000	100%	0
2	Fencing	1,700	1,700		0	1,700	100%	0
3	Concrete	240,000	240,000		0	240,000	100%	0
4	Concrete Reinforcing	10,000	10,000		0	10,000	100%	0
5	Masonry	1,000	1,000		0	1,000	100%	0
6	Structural Steel	40,000	40,000		0	40,000	100%	0
7	Rough Carpentry	20,000	20,000		0	20,000	100%	0
8	Finish Carpentry	11,000	11,000		0	11,000	100%	0
9	Insulation	33,000	33,000		0	33,000	100%	0
10	Flashing	9,000	9,000		0	9,000	100%	0
11	Caulking	18,000	18,000		0	18,000	100%	0
12	Doors, Frames, & Hardware	20,000	20,000		0	20,000	100%	0
13	Overhead Doors	5,000	5,000		0	5,000	100%	0
14	Glass	3,000	3,000		0	3,000	100%	0
15	Drywall & Metal Studs	70,000	70,000		0	70,000	100%	0
16	Ceramic Tile	9,000	9,000		0	9,000	100%	0
17	Acoustical Ceilings	10,000	10,000		0	10,000	100%	0
18	Flooring	6,000	6,000		0	6,000	100%	0
19	Painting	23,000	23,000		0	23,000	100%	0
20	Epoxy Flooring	23,700	23,700		0	23,700	100%	0
21	Specialties	37,457	37,457		0	37,457	100%	0
22	Dock Equipment	12,000	12,000		0	12,000	100%	0
23	Plumbing	185,000	185,000		0	185,000	100%	0
24	Fire Sprinklers	30,000	30,000		0	30,000	100%	0
25	HVAC	220,000	220,000		0	220,000	100%	0
26	EMS	24,500	24,500		0	24,500	100%	0
27	Electrical	373,000	373,000		0	373,000	100%	0
28	General Conditions	131,000	131,000		0	131,000	100%	0
29	Insurance	15,000	15,000		0	15,000	100%	0
30	Contractors Fee	90,500	90,500		0	90,500	100%	0
31	Bond Fee	11,500	11,500		0	11,500	100%	0
32	Change Order #1	34,000	34,000		0	34,000	100%	0
33	Change Order #2	33,836	33,836		0	33,836	100%	0
34	Change Order #3	18,240	18,240		0	18,240	100%	0
35	Change Order #4	38,933	38,933		0	38,933	100%	0
36	Change Order #5	80,971	80,971		0	80,971	100%	0
37	Change Order #6	83,965	83,965		0	83,965	100%	0
38	Change Order #7	29,308	29,308		0	29,308	100%	0
39								
40								
41								
42								
43								
44								
45	TOTAL	1,993,610	1,993,610	29,308		1,993,610	100%	0

**S D. Deacon Corp. of California****INVOICE**

Name Rob Johnson
Company Fleming Foods
Address 1945 Lakepointe Drive
City, State, Zip Lewisville, TX 75067

Date April 2, 2003

.851-16000

MM:ny
Invoice No 888S D. Deacon Corp
of California**INVOICE AMOUNT: \$1,369 00**Sacramento
Portland
Seattle

The following is a description of items covered by this invoice

Food-4-Less building at 3860 Florin Road, Sacramento, CA 95823

Additional electrical work done on-site at Fleming's direction

\$1,369 00

John Ball approved
3/21/03

**S.D. Deacon Corp of California****INVOICE**

Name Rob Johnson
Company Fleming Foods
Address 1945 Lakepointe Drive
City, State, Zip Lewisville, TX 75067

Date April 9, 2003

851-13810

MM nv
Invoice No 891 *WEM*

S D Deacon Corp
of California

Sacramento
Portland
Seattle
Anaheim

INVOICE AMOUNT. \$370.00

The following is a description of items covered by this invoice

Addition of ground switches in switch gear for controls
system as approved by Fleming

- \$370 00

7745 Greenback Ln
Suite 250
Citrus Heights, CA
95610
916/969-0900
FAX 916/729-0900



Item	Additional ground for EMS
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ESTIMATE SUMMARY

4/8/03

EWD#

18048

**PROJECT: Food 4 Less
Sacramento, CA**

BT- M M

[illegible]

approved John Bull
4/8/03

Re *In Re Fleming Companies, Inc , et al ,* Case No 03-10945
Proof of Claim – S D Deacon Corp of California

Itemized Statement of Interest

Amount of Mechanic's Lien	\$ 31,048 00
Interest (\$15 31/day x 10 days)	<u>\$ 153 10</u>
(calculated at 18% per annum from March 22, 2003 to April 1, 2003)	
Total Amount of Claim	\$ 31,201 10