

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM



206332

In re
Fleming International, Ltd

Case Number
03-10956 (MFW)

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

Name of Creditor and Address

0354668006132

Hunton & Williams
Kimberly Nelson
1751 Pinnacle Dr
McLean VA 22102

Rebneq Nine, Inc
c/o Judy Eyster
P O Box 1000
Toledo, Ohio 43697

☐ 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.

Creditor Telephone Number () 703-714-7400

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

CREDITOR TAX ID #

ACCOUNT OR OTHER NUMBER BY WHICH
CREDITOR IDENTIFIES DEBTOR

Check here ☐ replaces
if this claim ☐ 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

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ 10,295,064.00 (unsecured) \$ See attached Summary (secured) \$ 10,295,064.00 (total)
(unsecured priority)

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 and 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 Equipment

Value of collateral \$ See attached Summary

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

6 UNSECURED PRIORITY CLAIM

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

Specify the priority of the claim

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

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

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

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

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

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

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

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

DATE SIGNED

9/12/2003

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

Kimberly L. Nelson, Counsel for Rebneq Nine, Inc

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



13056

See Other Side For Instructions

In re Fleming Companies, Inc , et al
United States Bankruptcy Court for the District of Delaware
Chapter 11 Case No 03-10945 (MFW) (Jointly Administered)

Summary of claim of Rebnec Nine, Inc

As part of the Debtors' wholesale distribution business, the Debtors lease a warehouse facility located at 2001 West Magnolia Avenue, Geneva, Alabama (the "Warehouse") from Rebnec Nine, Inc ("Rebnec")

The Sublease and Agreement (the "Sublease"), dated November 20, 1986, between BNE Capital Corporation ("BNE"), as Lessor, and Fleming Foods of Alabama, Inc , as Lessee, sets forth the terms upon which the Debtors agreed to lease the Warehouse. A copy of the Sublease is attached hereto as Exhibit A. Under the Sublease, the Debtors are obligated to make quarterly rent payments as set forth on Exhibit B to the Tax Indemnity Agreement. In addition to its quarterly rent obligations, under certain circumstances, the Debtors may also be liable for other fees associated with this facility. The obligations of the Debtors under the Sublease are partially secured by certain property and equipment located in the Warehouse. The value of the collateral is currently unknown.

Fleming Companies, Inc , a Debtor in these jointly-administered cases, signed a Sublease Guaranty agreement for the Warehouse thereby assuring the Lessor that all of the obligations of Fleming Foods of Alabama, Inc for this Warehouse would be satisfied by either Fleming Foods of Alabama, Inc or by Fleming Companies, Inc. A copy of the Sublease Guaranty is attached hereto as Exhibit B.

On November 20, 1986, the Debtors also entered into the Tax Indemnity Agreement with BNE. Under the Tax Indemnity Agreement, the Debtors agreed to indemnify BNE for its loss of tax benefits which result from certain specified actions of the Debtors. See Section 4 to Tax Indemnity Agreement (a copy of which is attached hereto as Exhibit C). Like the Sublease, Fleming Companies, Inc also entered into a Tax Indemnity Guaranty with BNE for Fleming Foods of Alabama, Inc 's obligations under the Tax Indemnity Agreement. A copy of the Tax Indemnity Guaranty is attached hereto as Exhibit D.

On August 19, 1994, BNE assigned all of its rights in the various lease documents to Rebnec and Rebnec assumed the role of Lessor under the Sublease and the Tax Indemnity Agreement. A copy of the Assignment and Assumption Agreement is attached hereto as Exhibit E. This assignment included the Sublease Guaranty with Fleming Companies, Inc.

Rebnec files this claim for all unpaid rent, additional rent (including attorneys' fees), and for indemnification by the Debtors for its losses under the Tax Indemnity Agreement. Rebnec is aware that the Debtors no longer operate out of the Warehouse and that the Court has approved the Debtors' rejection of this facility. Rebnec reserves all of its rights to supplement this claim with an administrative claim, a rejection damages claim, and to include any additional amounts owed that are not known to Rebnec at the time of this filing. The deadline to file all additional claims that flow from the rejection of this facility has not arrived as of the date of this claim. Accordingly, Rebnec reserves the right to submit supplemental claims that include amounts due from the rejection of the Warehouse by filing this claim.

EXHIBIT A

SUBLEASE AND AGREEMENT

Between

BNE CAPITAL CORPORATION,
as Lessor

and

FLEMING FOODS OF ALABAMA, INC ,
as Lessee

THIS SUBLEASE AND AGREEMENT HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF MORGAN GUARANTY TRUST COMPANY OF NEW YORK, AS TRUSTEE, UNDER A TRUST INDENTURE, DATED AS OF THE DATE HEREOF, BETWEEN THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF GENEVA, AN ALABAMA PUBLIC CORPORATION, AS GRANTOR, TO MORGAN GUARANTY TRUST COMPANY OF NEW YORK, AS TRUSTEE. INFORMATION CONCERNING SAID SECURITY INTEREST MAY BE OBTAINED FROM SAID TRUSTEE AT 30 WEST BROADWAY, NEW YORK, NEW YORK 10015. NO POSSESSORY SECURITY INTEREST MAY BE OBTAINED IN THIS SUBLEASE AND AGREEMENT BY ANY PERSON OTHER THAN SAID TRUSTEE BY POSSESSION OF ANY COUNTERPART OF THIS SUBLEASE AND AGREEMENT OTHER THAN A COUNTERPART WHICH HAS BEEN SIGNED BY AN AUTHORIZED OFFICER OF SAID TRUSTEE ON THE SIGNATURE PAGE HEREOF.

Dated as of November 20, 1986

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SUBLEASE and AGREEMENT, dated as of November 20, 1986 (herein, as amended and supplemented from time to time as permitted hereby, called this Sublease), between BNE CAPITAL CORPORATION, a Massachusetts corporation (herein, together with its successors and assigns, called Lessor), having an address at 28 State Street, Boston, Massachusetts 02109, and FLEMING FOODS OF ALABAMA, INC., an Alabama corporation (herein, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, called Lessee), having an address at 6301 Waterford Boulevard, P O Box 26647, Oklahoma City, Oklahoma 73126-0647

I Sublease of Premises and Equipment, Title and Condition,
Guaranty, Tax Indemnity Agreement

(a) In consideration of the rents and covenants herein stipulated to be paid and performed by Lessee and upon the terms and conditions herein specified, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, (i) the premises (the Premises) consisting of the land described in Schedule A, all buildings, structures and other improvements now or hereafter located thereon (the Improvements), and all easements, rights and appurtenances relating thereto, and (ii) the equipment, machinery and other personal property (the Equipment) described in Schedule A-1 hereto including any additions, alterations, accessions, substitutions, renewals, repairs and replacements thereof. Lessor's interest in the Premises and Equipment is created by a Lease and Agreement, dated as of the date hereof (the Lease), by and between the Industrial Development Board of the City of Geneva (the Board) as lessor, and Lessor, as lessee. In connection with the execution and delivery of the Lease, the Board has provided for the permanent financing of the Premises and the Equipment by the issuance and sale of (i) its \$10,400,000 aggregate original principal amount of its 9 375% Industrial Development Bonds (Fleming Foods 1986 Project), Series A, Due 2011 (the Series A Bonds), which Series A Bonds have been secured by a mortgage lien on the Premises and a security interest in the Equipment created by a Trust Indenture (the Mortgage), dated as of the date hereof, by and between the Board as mortgagor and Morgan Guaranty Trust Company of New York, as trustee (the Mortgagee), and (ii) its \$2,600,000 original principal amount 9 00% Industrial Development Bond (Fleming Foods, 1986 Project), Series B, Due 2011 (the Series B Bond). The Premises and the Equipment are leased to Lessee in their present condition without representation or warranty by Lessor and subject to the terms and conditions of the Lease, to the rights of parties in possession, to the existing state of title, and to all applicable legal requirements now or hereafter in effect. Lessee has examined the Premises and the Equipment and title thereto and has found the same satisfactory.

(b) As an inducement for Lessor to sublease the Premises and the Equipment to Lessee hereunder, (i) Fleming Companies, Inc., an Oklahoma corporation (the Guarantor) is simultaneously entering into a guaranty of all of Lessee's obligations hereunder pursuant to a Sublease Guaranty from Guarantor to Lessor dated as of the date hereof and a separate guaranty of all of Lessee's obligations under the Tax Indemnity Agreement hereinafter described pursuant to a Tax Indemnity Guaranty, from Guarantor to Lessor dated as of the date hereof, and (ii) Lessee is simultaneously entering into a Tax Indemnity Agreement with Lessor dated as of the date hereof.

2 Use, Quiet Enjoyment, Identification (a) Lessee may use the Premises and the Equipment for any lawful purpose. The Equipment is located on the Premises and Lessee shall not remove the Equipment from the Premises without the prior written consent of the Lessor. So long as no default has occurred and is continuing hereunder, Lessor warrants peaceful and quiet enjoyment of the Premises and the Equipment by Lessee against acts of Lessor or anyone claiming through Lessor, provided that Lessor and its agents may enter upon the Premises and examine the Premises and the Equipment at reasonable times and upon reasonable advance notice.

(b) Lessee agrees, upon the request of Lessor, at Lessee's sole cost and expense, to place markings on the Equipment by stencil or by a metal tag or plate affixed thereto showing plainly, distinctly and conspicuously Lessor's estate therein, and, if requested by Mortgagee, Mortgagee's security interest therein, provided, however, that such identification markings are to be placed so as not to interfere with the usefulness of such Item of Equipment. If during the term hereof any such identification marking shall at any time be defaced or destroyed, Lessee shall immediately cause such defaced or destroyed identification marking to be restored or replaced. Lessee shall not allow the name of any person to be placed upon any part of the Equipment as a designation which might be interpreted as indicating a claim of ownership thereof or a security interest therein by any person other than Lessor or Mortgagee.

3 Terms The Premises and the Equipment are leased hereunder for a primary term (the Primary Term) and, at Lessee's option, up to four consecutive additional terms of five years each and a fifth successive additional term of fifty-four (54) months (the Extended Terms) unless and until the term of this Sublease shall expire or be terminated pursuant to any provision hereof. The Primary Term and each Extended Term shall commence and expire on the dates set forth in Schedule B. So long as no event of default has occurred and is continuing hereunder, Lessee may exercise its option to extend the term of this Sublease for an Extended Term with respect to the Premises and Equipment by giving notice thereof to Lessor not less than 180 days prior to the expiration of the then existing term.

4 Rent

(a) Lessee shall pay to Lessor in lawful money of the United States, as fixed rent for the Premises and the Equipment, the amounts, subject to adjustment (upwards and not downwards) as provided in the Tax Indemnity Agreement, set forth in Schedule B (Basic Rent) on the dates set forth therein (Payment Dates), at Lessor's address set forth above, or at such other address or to such other person as Lessor from time to time may designate.

(b) All amounts which Lessee is required to pay pursuant to this Sublease (other than Basic Rent, amounts payable upon purchase of the Premises and the Equipment and amounts payable as liquidated damages pursuant to paragraph 17), together with every fine, penalty, interest and cost which may

be added for non-payment or late payment thereof, shall constitute additional rent. If Lessee shall fail to pay any additional rent, Lessor shall have the right to pay the same and shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of non-payment of Basic Rent. Lessee shall pay to Lessor interest at the rate per annum equal to 2% over the interest rate on the Series A Bonds on all overdue Basic Rent from the due date thereof (notwithstanding any requirements of notice or the expiration of grace periods contained herein) until paid, and on all overdue additional rent paid by Lessor on behalf of Lessee from the date of payment by Lessor until repaid by Lessee. Lessee shall perform all its obligations under this Sublease at its sole cost and expense, and shall pay all Basic Rent and additional rent when due, without notice or demand.

5 Net Lease, Non-Terminability

(a) This Sublease is a net lease and the Basic Rent, additional rent and all other sums payable hereunder by Lessee, whether as the purchase prices for the Premises and the Equipment or any portion thereof or otherwise, shall be paid without notice or demand and, any present or future law to the contrary notwithstanding, this Sublease shall not terminate, nor shall Lessee have any right to terminate this Sublease (except as otherwise expressly provided in paragraphs 11(b), 11(c) and 13(a) of this Sublease), nor shall Lessee be entitled to any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Basic Rent, additional rent or other sum payable hereunder (except as otherwise expressly provided in paragraph 10(d) of this Sublease), nor shall the obligations of Lessee hereunder be affected, by reason of any termination of the Lease, any damage to or destruction of the Premises and/or the Equipment, any taking of the Premises and/or the Equipment or any part thereof by condemnation or otherwise, any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of the Premises and/or the Equipment, or any interference with such use, occupancy or enjoyment by any person, any eviction by paramount title or otherwise, any default by Lessor hereunder or under any other agreement, the impossibility or illegality of performance by Lessor, Lessee or both, any action of any governmental authority, or any other cause whether similar or dissimilar to the foregoing. Lessor and Lessee intend that the obligations of Lessee hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Sublease.

(b) Lessee agrees to remain obligated under this Sublease in accordance with its terms and to take no action to terminate, rescind or avoid this Sublease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Lessor or any assignee of Lessor or any action with respect to this Sublease which may be taken by any trustee, receiver or liquidator or by any court or any termination of the Lease.

(c) Lessee waives all rights which may now or hereafter be conferred by law (i) to terminate this Sublease or any part thereof, or (ii) to any abatement, suspension, deferment or reduction of the Basic Rent, additional rent or any other sums payable under this Sublease, except as otherwise expressly provided herein

6 Taxes and Assessments, Compliance with Law

(a) Lessee shall pay (i) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen which are, at any time prior to or during the term hereof, imposed or levied upon or assessed against (A) the Premises and/or the Equipment, (B) any Basic Rent, additional rent or other sum payable hereunder or (C) this Sublease or the leasehold estate hereby created, or which arise in respect of the operation, possession or use of the Premises and/or the Equipment, (ii) all gross receipts or similar taxes imposed or levied upon, assessed against or measured by any Basic Rent, additional rent or other sum payable hereunder, (iii) all sales, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing or use of the Premises and/or the Equipment and (iv) all charges for utilities serving the Premises Lessee shall not be required to pay any franchise, estate, inheritance, transfer, income or similar tax of Lessor (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy that Lessee is required to pay pursuant to this paragraph 6(a) No tax shall be considered in substitution for another tax, assessment, charge or levy that Lessee is required to pay pursuant to this paragraph 6(a) unless such tax applies principally to property, owners of property or income derived from property and then Lessee shall be obligated to pay only so much of such tax as would be payable if the Lessor's interest in Premises and the Equipment were the sole assets of Lessor Lessee will furnish to Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by Lessee If any such assessment may legally be paid in installments, Lessee may pay such assessment in installments, in such event, Lessee shall be liable only for those installments which become due and payable prior to or during the term hereof

(b) Lessee shall comply with and cause the Premises and the Equipment to comply with (i) the Lease, (ii) all legal requirements applicable to the Premises and the Equipment or the use thereof, and (iii) all contracts (including insurance policies), agreements and restrictions applicable to the Premises or the Equipment or the ownership, occupancy or use thereof, including all such legal requirements, contracts, agreements and restrictions which require structural, unforeseen or extraordinary changes to the Improvements or the Equipment

7 Liens Lessee will promptly remove and discharge any charge, lien, security interest or encumbrance upon the Premises and/or the Equipment or any Basic Rent, additional rent or other sum payable hereunder which arises for any reason, including all liens which arise out of the use, occupancy, construction, repair or rebuilding of the Premises and/or the Equipment or by reason of labor or materials furnished or claimed to have been furnished to Lessee or for the Premises and/or the Equipment, but not including the liens and encumbrances set forth in Part II of Schedule A and any mortgage, charge, lien, security interest or encumbrance created by Lessor without the prior written consent of Lessee. At the request of Lessee, Lessor shall join in, to the extent of its interest in the Premises, any (i) grant of easements and other rights in the nature of easements, (ii) release of existing easements or other rights in the nature of easements which are for the benefit of the Premises, (iii) dedication or transfer of unimproved portions of the Premises for road, highway or other public purposes, (iv) execution of petitions to have the Premises annexed to any municipal corporation or utility district, (v) execution of amendments to any covenants and restrictions affecting the Premises, and (vi) execution and delivery to any person of any instrument appropriate to confirm or effect such grant, release, dedication or transfer, but only upon delivery to Lessor of (x) a certificate of Lessee stating that such grant, release, dedication, transfer, petition or amendment is not detrimental to the proper conduct of the business of Lessee on the Premises, the consideration, if any, being paid for such grant, release, dedication, transfer, petition or amendment and that such grant, release, dedication, transfer, petition or amendment does not materially impair the use of the Premises or reduce their value by more than the amount of such consideration, (y) an acknowledgment by Lessee that Lessee remains obligated hereunder to the same extent as if such grant, release, dedication, transfer, petition or amendment had not been made, and (z) such other instruments, certificates and opinions of counsel as Lessor may reasonably request. Any such grant, release, dedication, transfer, petition or amendment shall be at the sole cost and expense of Lessee. Lessor shall be entitled to receive any consideration paid in connection with any such grant, release, dedication, transfer, petition or amendment and the Basic Rent payable hereunder, amounts payable upon the purchase of the Premises and the Equipment and amounts payable as liquidated damages pursuant to paragraph 17 shall not be reduced.

8 Indemnification Lessee shall pay, and shall protect, indemnify and save harmless Lessor, the Board, the Mortgagee, any owner of any of the Series A Bonds or the Series B Bond, and any partner, officer, director or shareholder of any thereof (collectively, Indemnified Parties) from and against, all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature to which any Indemnified Party is subject solely because of Lessor's, the Board's, or the Mortgagee's interest in the Premises and the Equipment or the Lease or this Sublease and arising from (i) injury to or death of any person, or damage to or loss of property, on the Premises or on adjoining sidewalks, streets or ways, or connected with the use, condition or occupancy of any thereof, (ii) any failure on the part of Lessee to perform or observe the provisions of this Sublease and (iii) any

contest referred to in paragraph 16 and (iv) any negligence, tortious act or violation of this Sublease on the part of any of its agents, contractors, sublessees, licensees or invitees

9 Maintenance and Repair Disclaimer of Warranties Lessee will maintain the Premises and the Equipment in good repair and condition, except for ordinary wear and tear, and will make all structural and non-structural, foreseen and unforeseen and ordinary and extraordinary changes and repairs which may be required to keep the Premises and the Equipment in good repair and condition. Lessee will comply with such maintenance and repair standards and procedures as are set forth in the manufacturer's manuals pertaining to the Equipment and as otherwise necessary to maintain any manufacturer's warranties with respect thereto. So long as no event of default has occurred and is continuing hereunder, Lessor hereby assigns to the Lessee any rights it may have under any manufacturer's warranties relating to the Equipment, to extent permitted by the terms of such warranties. Lessor shall not be required to maintain, repair or rebuild the Improvements or the Equipment or to maintain the Premises, and Lessee waives the right to make repairs at the expense of Lessor pursuant to any law at any time in effect.

LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF THE TYPE, DESIGN, SIZE, CAPACITY AND MANUFACTURE SELECTED BY LESSEE, THAT LESSOR IS NOT A MANUFACTURER OR REPRESENTATIVE OF, OR MERCHANT OR DEALER IN, THE EQUIPMENT, THAT LESSOR WILL NOT, AND HAS NO OBLIGATION TO, INSPECT THE EQUIPMENT PRIOR TO DELIVERY TO LESSEE, AND THAT LESSOR HAS NOT MADE AND WILL NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, ON WHICH LESSEE MAY RELY, WITH RESPECT TO (i) THE MERCHANTABILITY, FITNESS, SAFETY, CONDITION, QUALITY, DURABILITY OR SUITABILITY FOR LESSEE'S PURPOSES OF THE EQUIPMENT IN ANY RESPECT, (ii) THE EQUIPMENT'S COMPLIANCE WITH ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, (iii) PATENT INFRINGEMENT, (iv) LATENT DEFECTS, OR (v) ANY OTHER REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, WHETHER DIRECT, INDIRECT, EXEMPLARY OR PUNITIVE, WHETHER OR NOT LESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10 Alterations (a) So long as no event of default has occurred and is continuing hereunder Lessee may, at its expense, make additions and alterations to the Improvements and/or the Equipment, construct additional Improvements and make substitutions and replacements for the Improvements and/or the Equipment, provided that (i) the fair market value of the Premises and/or the Equipment, as the case may be, shall not be materially lessened thereby, (ii) such work shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable legal requirements and the requirements of any insurance policy required to be maintained by Lessee hereunder, and (iii) no Improvements shall be demolished unless Lessee shall have first furnished Lessor with such surety bonds or other security acceptable to Lessor as shall be reasonably necessary to assure rebuilding of such Improvements. Lessee shall provide Lessor with plans and specifications

for any alterations (herein "Substantial Alterations") which have a projected cost of \$250,000 or greater. Subject to the provisions of Section 10(d) hereof, all such additions, alterations, additional Improvements, substitutions and replacements shall be and remain part of the realty and/or the Equipment, as the case may be, and the property of Lessor and shall be subject to this Sublease.

In the case of any alterations or additions to the Equipment which are not readily removable without causing material damage to the Equipment, Lessee may not make such alteration or addition unless (1) such alteration or addition will not cause such Equipment to become limited use property within the meaning of Revenue Procedure 76-30, or materially alter or reduce its general usefulness, and (ii) such alteration or addition satisfies the conditions of Section 4(4) 03(B) of Revenue Procedure 75-21, as amended by Revenue Procedure 79-48, and is described in subparagraph (i) or (ii) of Section 4(4) 03(C) of Revenue Procedure 75-21. Lessee may make readily removable alteration or addition to the Equipment if such alteration or addition is readily removable without causing material damage to the Equipment or impairing the value, utility or condition which such Equipment would have had if such alteration or addition had not been so affixed or installed.

(b) Lessee may request (a Lessee's Request) that Lessor pay or cause to be paid to Lessee costs and expenses that Lessee has incurred or intends to incur for any Substantial Alterations. Said costs and expenses are herein called the Reimbursable Expenses. Reimbursable Expenses may include (1) the actual cost of the additions, alterations, replacements or substitutions for the Equipment, buildings, improvements (including site improvements, storm drains, offsite road construction and utilities), adjacent land for roads dedicated or to be dedicated to municipalities and, with respect to the Premises, such personal property as, in the opinion of Lessee, has been incorporated into the building and constitutes real property under the law of the state where the Premises are located, provided, however, the cost of any Substantial Alterations shall constitute Reimbursable Expenses only to the extent that such costs result in an increase in the fair market value of the Equipment at least equal to such costs, (ii) costs and expenses of acquisition of easements and rights in the nature of easements necessary to the operation of the Premises and of acquisition of any interest constituting a portion of Lessor's interest in the Substantial Alterations, (iii) all fees and expenses incurred in connection with the placement, issuance and sale of the Indebtedness (as defined in paragraph 10(c)(ii)) (iv) survey costs, transfer fees, taxes and expenses, title insurance premiums and recording fees, taxes and expenses all incurred with respect to such Substantial Alterations, (v) interest, real estate taxes and insurance premiums, incurred in connection with and prior to completion of any such Substantial Alterations, and (vi) fees and disbursements of architects, engineers, surveyors and counsel (including the Mortgagee's counsel) incurred in connection with such Substantial Alterations. Lessee may make any such request only if (1) the construction or acquisition of the Substantial Alterations is completed or Lessee's Request is made not more than two years after the completion of such construction or acquisition, (ii) the amount of the Reimbursable Expenses

equals or exceeds \$250,000, and (iii) Lessee was not required to make such Substantial Alterations pursuant to any provision of this Sublease. Each Lessee's Request shall describe the Substantial Alterations and shall be accompanied by (A) architects' drawings and specifications of the Substantial Alterations to the extent such Substantial Alterations relate to the Premises, (B) invoices and/or purchase orders with respect to any Substantial Alterations relating to the Equipment (C) a certificate of Lessee (i) setting forth in reasonable detail the amount and character of the Reimbursable Expenses referred to in such Request, (ii) stating that the acquisition or construction of the Substantial Alterations has been or will be completed in accordance with paragraph 10(a) and this paragraph 10(b), (iii) specifying the dates on which such acquisition or construction was or will be completed, and (iv) stating that Lessee has not previously been reimbursed by Lessor for such Reimbursable Expenses and that such Reimbursable Expenses are reimbursable hereunder in the amount requested.

(c) Lessor, in its sole discretion, may determine whether or not to pay such Reimbursable Expenses. If Lessor shall determine to pay such Reimbursable Expenses, Lessor and Lessee shall negotiate in good faith as to terms and conditions of such payment, but no such payment shall be made unless the following conditions have been satisfied on or prior to 180 days after receipt of such Lessee's Request:

- (i) All of the conditions of paragraph 10(b) shall have been satisfied,
- (ii) All of the conditions of the Lease relating to the financing of such Substantial Alterations shall have been satisfied and such Substantial Alterations shall have become part of the leased estate under the Lease,
- (iii) The Board shall have issued indebtedness (the Indebtedness) to obtain funds to make such payment to Lessee, the original principal amount of the Indebtedness shall have been not more than the amount of such Reimbursable Expenses and the proceeds of the Indebtedness actually received by the Board shall have been not less than the amount of such Reimbursable Expenses,
- (iv) Lessor and Lessee shall have duly authorized, executed and delivered a supplement (the Sublease Supplement) to this Sublease, in form and substance satisfactory to the Mortgagee, if any, which shall (A) increase each instalment of Basic Rent required to be made during the remainder of the Primary Term by an amount which shall be at least sufficient to make each payment, when due, of principal of, and interest on, the Indebtedness, (B) increase the purchase prices set forth in Schedule C by amounts which shall at all

times during the remainder of the Primary Term be at least sufficient to prepay the then outstanding principal amount of the Indebtedness, together with all accrued interest thereon, and (C) make such other changes, if any, as shall be necessary or appropriate by reason of the transactions contemplated by this paragraph 10,

- (v) Lessee shall have delivered to such Mortgagee an endorsement to any mortgage title insurance policy theretofore delivered to such Mortgagee with respect to the Premises, increasing the net amount of such mortgage title insurance by an amount equal to that portion of the Indebtedness relating to the Premises and insuring the first lien of the Mortgage as of the date of such payment to Lessee,
- (vi) Lessor and the Board shall have duly authorized, executed and delivered a supplement to the Lease, in form and substance satisfactory to the Mortgagee and Lessor and Lessee shall have duly authorized, executed and delivered a supplement to the Tax Indemnity Agreement,
- (vii) Guarantor shall have duly authorized, executed and delivered a supplement to the Sublease Guaranty, in form and substance satisfactory to the Lessor and the Mortgagee and a supplement to the Tax Indemnity Guaranty in form and substance satisfactory to Lessor,
- (viii) To the extent that such Substantial Alterations relate to the Premises, Lessee shall have delivered to such Mortgagee a survey of the Premises, dated within 90 days of such payment to Lessee and satisfactory in form and substance to such Mortgagee,
- (ix) Lessee shall have delivered to such Mortgagee an appraisal of such additions, alterations or additional Improvements by an appraiser reasonably satisfactory to Mortgagee,
- (x) Lessor and such Mortgagee shall have received such additional documents, assurances, supplements (including without limitation supplements to any assignment of the Lease or the Sublease), certificates and opinions as Lessor may reasonably request to enable Lessor through the Board to finance the cost of such Reimbursable Expenses by the issuance by the Board of the Indebtedness, including, without

limitation, current cost certifications in reasonable detail and confirmations of assignments of the Sublease as supplemented by the Sublease Supplement, and

- (xi) Lessor shall have determined that the Substantial Alterations will not detract from the value or impair the use of the Premises and/or Equipment, as the case may be

If Lessor shall have agreed to pay such Reimbursable Expenses and all the conditions as set forth above shall have been satisfied, such amounts shall be payable to Lessee only upon the completion of the acquisition or construction of the Substantial Alterations to which such Reimbursable Expenses shall relate

(d) If Lessor has not paid or agreed to pay (within 90 days after receiving a Lessee's Request therefor) any Reimbursable Expenses of \$250,000 or more relating to any Substantial Alterations relating to the Premises constructed on any portion of the Premises which Lessor has a right to purchase under the Lease that are, prior to such construction, unimproved or do not have any major structure thereon (herein called the Unimproved Land), then Lessee shall have the right to require Lessor to purchase on any Payment Date from the Board the Unimproved Land and sell the Unimproved Land to Lessee upon 90 days' notice to Lessor, provided that upon the purchase by Lessee of such Unimproved Land, the remainder of the Premises would then (1) constitute an integrated economic unit with adequate parking and capable of operating on a stand-alone basis, (2) be a contiguous parcel of land, without gap or hiatus, (3) have access to and from public highways or roads, (4) be a separate tax parcel for real estate taxation purposes, and (5) not be in violation of any law, ordinance, rule or regulation or any restrictive covenant or other agreement applicable thereto, and provided, further, that the fair market value of the remainder of the Premises would not thereby be reduced by an amount greater than the fair market value for such Unimproved Land (exclusive of the amount referred to in clause (ii) below) The purchase price for such Unimproved Land payable by Lessee to Lessor hereunder shall be an amount equal to the area of such Unimproved Land multiplied by the per square foot cost set forth in Schedule B On the date for such purchase, Lessor shall transfer and convey the Unimproved Land to Lessee or its designee pursuant to and in compliance with paragraph 14, against payment by Lessee of the purchase price thereof determined as provided above in this paragraph 10(d) Lessee agrees that, in the event of such purchase, no improvements will be undertaken upon such Unimproved Land which would reduce the value of the remainder of the Premises If Lessee purchases any Unimproved Land, (i) Lessor's Cost set forth in Schedule B shall be reduced by the amount of such purchase price, (ii) each installment of Basic Rent payable on and after the first Payment Date occurring three months or more after such purchase shall be reduced by an amount equal to the product of (x) such installment of Basic Rent and (y) a fraction, the numerator of which shall be the amount of such purchase price and the denominator of which shall be Lessor's Cost prior to the reduction thereof referred to in clause (i) above and (iii) the purchase prices shown on Schedule C and Schedule D payable on and after the first Payment Date occurring three months or more after such purchase shall be reduced by an amount equal to the product of (x) the respective purchase price

set forth on schedule C or Schedule D and (y) a fraction, the numerator of which shall be the amount of the purchase price for such Unimproved Land and the denominator of which shall be such respective purchase price shown on Schedule C or Schedule D

(e) Lessor shall incur no liability by reason of its inability to finance any Reimbursable Expenses, and, except as modified pursuant to paragraph 10(c), this Sublease shall continue in full effect notwithstanding such inability

(f) In addition to the Equipment, Lessee may place upon the Premises any inventory, trade fixtures, machinery or equipment belonging to Lessee or third parties (herein called Lessee's Equipment) and may remove the same at any time during the term of this Sublease. Lessor hereby acknowledges that the Lessee's Equipment is personal property and, to the extent not part of the Equipment, not the property of Lessor, and hereby releases any claim of Lessor to such Lessee's Equipment. Lessor and Lessee hereby agree that the owner of such Lessee's Equipment shall have the right to enter upon the Premises at reasonable times to effect the removal of such Lessee's Equipment, provided such owner shall repair any damage to the Premises caused by such removal at its own expense. Lessee shall repair or cause to be repaired any damage to the Premises caused by such removal by Lessee or any other person

11 Condemnation and Casualty

(a) Lessee hereby irrevocably assigns to Lessor any award, compensation or insurance payment to which Lessee may become entitled by reason of its interest in the Premises and/or the Equipment (i) if the Premises and/or the Equipment are damaged or destroyed by fire or other casualty (Casualty) or (ii) if the use, occupancy or title of the Premises and/or the Equipment or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (Condemnation). Lessee is hereby authorized and empowered in the name and on behalf of Lessor to appear in any such proceeding or action, to negotiate, prosecute and adjust any claim for any award, compensation or insurance payment on account of any such damage, destruction, taking, requisition or sale, and to collect any such award, compensation or insurance payment. Lessor shall be entitled to participate in any such proceeding, action, negotiation, prosecution or adjustment. All amounts paid in connection with any such damage, destruction, taking, requisition or sale shall be applied pursuant to this paragraph 11, and all such amounts (minus the expense of collecting such amounts) are herein called the Net Proceeds. Lessee shall take all appropriate action in connection with each such proceeding, action, negotiation, prosecution and adjustment and shall pay all expenses thereof provided, that Lessee shall be reimbursed for such expenses from proceeds collected as a result thereof

(b) If, during the last ten years of the Primary Term or during any Extended Term, an occurrence of the character referred to in clause (i) of paragraph 11(a) shall affect all of the Premises and the Equipment or more than fifty percent (50%) of the floor space within the Premises shall be damaged or destroyed, then Lessee may, not later than 30 days after such occurrence, deliver to Lessor (A) notice of its intention to terminate this

Sublease on the next Payment Date (the Termination Date) which occurs not less than 30 days after the delivery of such notice, and (B) a certificate of Lessee describing the event giving rise to such termination and certifying that its board of directors, or an executive committee thereof, has determined that as a result of such event it would be uneconomic to rebuild or restore the Premises and/or the Equipment for continued use and occupancy in Lessee's business. If the Termination Date occurs during the Primary Term such notice shall be accompanied by an irrevocable offer by Lessee to purchase any remaining portion of the Premises, the Equipment, and the Net Proceeds, if any, payable in connection with such occurrence (or the right to receive the same when made, if payment thereof has not yet been made) on the Termination Date, at prices for the Premises and the Equipment determined in accordance with Schedule C. If either (1) Lessor shall reject such offer by notice given to Lessee not later than the 20th day prior to the Termination Date or (2) the Termination Date occurs during an Extended Term, this Sublease shall terminate on the Termination Date except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, additional rent and other sums then due and payable hereunder to and including the Termination Date, and the Net Proceeds shall belong to Lessor. So long as the Series A Bonds shall remain outstanding no rejection by Lessor shall be effective hereunder without Mortgagee's written consent. Unless Lessor shall have rejected such offer in accordance with this paragraph, Lessor shall be conclusively presumed to have accepted such offer, and, on the Termination Date, shall convey the remaining portion of the Premises, if any, and the Equipment to Lessee or its designee and shall assign to Lessee or its designee all its interest in the Net Proceeds, pursuant to and upon compliance with paragraph 14.

(c) If an occurrence of the character referred to in clause (11) of paragraph 11(a) shall affect all or a substantial portion of the Premises with the result that rebuilding or restoring the Premises for continued use and occupancy in Lessee's business would be uneconomic, then Lessee may, not later than 60 days after such occurrence, deliver to Lessor (A) notice of its intention to terminate this Sublease on the next Payment Date (the Termination Date) which occurs not less than 60 days after the delivery of such notice, and (B) a certificate of Lessee describing the event giving rise to such termination and certifying that its board of directors or an executive committee thereof has determined that as a result of such event it would be uneconomic to rebuild or restore the Premises for continued use and occupancy in Lessee's business. Such notice shall be accompanied by an irrevocable offer by Lessee to purchase any remaining portion of the Premises, the Equipment and the Net Proceeds, if any, payable in connection with such occurrence (or the right to receive the same when made, if payment thereof has not yet been made) on the Termination Date, at prices for the Premises and the Equipment determined in accordance with Schedule C. If either (1) Lessor shall reject such offer by notice given to Lessee not later than the 20th day prior to the Termination Date or (2) the Termination Date occurs during an Extended Term, this Sublease shall terminate on the Termination Date except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, additional rent and other sums then due

and payable hereunder to and including the Termination Date, and the Net Proceeds shall belong to Lessor. So long as the Series A Bonds shall remain outstanding no rejection hereunder shall be effective without the Mortgagee's prior written consent. Unless Lessor shall have rejected such offer in accordance with this paragraph, Lessor shall be conclusively presumed to have accepted such offer, and, on the Termination Date, shall convey the remaining portion of the Premises, if any, and the Equipment to Lessee or its designee and shall assign to Lessee or its designee all its interest in the Net Proceeds, pursuant to and upon compliance with paragraph 14.

(d) If, after an occurrence of the character referred to in clause (i) or (ii) of paragraph 11(a), Lessee shall not have given notice of its intention to terminate this Sublease as permitted by paragraphs (b) or (c) above, then this Sublease shall continue in full effect, and Lessee shall repair any damage to the Premises and/or Equipment caused by such event in conformity with the requirements of paragraph 10(a) so as to restore the Premises and/or the Equipment (as nearly as practicable) to the condition and fair market value thereof immediately prior to such occurrence. Lessee shall be entitled to receive the Net Proceeds payable in connection with such occurrence, but, if such Net Proceeds shall exceed \$500,000, only against certificates of Lessee delivered to Lessor from time to time as such work of repair progresses, each such certificate describing the work of repair for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work. Lessee will receive, within 10 days after delivery of each such required certificate, the amount of the costs certified by Lessee in such certificate, provided that the aggregate of such payments shall in no event exceed the Net Proceeds. If any Net Proceeds remain after final payment has been made for such work, such amount will be paid to Lessee within 10 days after such final payment and Basic Rent and other sums payable pursuant to this Sublease shall continue unabated. In the event of any temporary requisition (for a period not to exceed 365 days), this Sublease shall remain in full effect for the remainder of the term hereof and Lessee shall be entitled to receive the entire Net Proceeds payable during the remainder of the term hereof by reason of such requisition. If the cost of any repairs required to be made by Lessee pursuant to this paragraph 11(d) shall exceed the amount of such Net Proceeds, the deficiency shall be paid by Lessee.

12 Insurance

(a) Lessee will maintain insurance with respect to the Premises and the Equipment of the following character:

- (i) Insurance against loss by fire, lightning and other risks from time to time included under "extended coverage" policies, in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any loss but in any event in amounts not less than the greater of (A) 100% of the actual replacement value of the Improvements, exclusive of foundations,

excavations, footings and paving, and 100% of the actual replacement value of the Equipment and (B) the applicable amounts payable from time to time pursuant to Schedule C hereto,

- (ii) Comprehensive public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and adjoining streets and sidewalks and against claims for bodily injury, death or property damage resulting from the use and operation of the Equipment, with a combined single limit not less than \$10,000,000,
- (iii) Worker's compensation insurance to the extent required by the law of the state in which the Premises are located and to the extent necessary to protect Lessor and the Premises and Equipment against workmen's compensation claims, or in lieu of such insurance, a program of self-insurance complying with the rules and regulations of the appropriate agency of the State in which the Premises are located, and
- (iv) Such other insurance, in such amounts and against such risks, as is commonly obtained in the case of property similar in use to the Premises and Equipment and located in the state in which the Premises are located

All such insurance shall be written by companies of nationally recognized financial standing legally qualified to issue such insurance, and shall name as insured parties Lessor and Lessee as their interests may appear. The Mortgagee and the Board shall be named as additional insureds with respect to any public liability policies.

(b) Every such policy (other than any general public liability or workmen's compensation policy) shall bear a first mortgagee endorsement in favor of the Mortgagee or any successor mortgagee or beneficiary under any instrument creating a first lien on Lessor's interest in the Premises, and any loss under any such policy shall be payable to the Mortgagee to be held and applied pursuant to paragraph 11(d). Every policy referred to in paragraph 12(a) shall provide that it will not be cancelled except after 30 days' written notice to Lessor and the Mortgagee and that it shall not be invalidated by any act or neglect of Lessor or Lessee, nor by occupancy of the Premises, nor by use of the Premises and/or the Equipment for purposes more hazardous than permitted by such policy, nor by any foreclosure or other proceedings relating to the Premises and/or the Equipment, nor by change in title to the Premises and/or Equipment.

(c) Lessee shall deliver to Lessor and the Mortgagee original or duplicate policies or certificates of insurers, satisfactory to Lessor and the Mortgagee, evidencing the existence of all insurance which is required to be maintained by Lessee hereunder, such delivery to be made (i) promptly after the execution and delivery hereof, (ii) within 30 days after the end of each annual period hereunder, and (iii) within 30 days prior to the expiration of any such insurance. Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required by this paragraph 12 unless Lessor and the Mortgagee are named as insured parties therein, with loss payable as provided herein. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to Lessor and the Mortgagee the policies or certificates evidencing the same. Any insurance required hereunder may be provided under blanket policies with deductible provisions not to exceed \$1,000,000.

13 Uneconomic Use, Purchase Options, Rejectible Offer

(a) If, after the expiration of the fifteenth year of the Primary Term, the Premises shall have become uneconomic or unsuitable for continued use and occupancy in Lessee's business and Lessee has discontinued use thereof or decided to discontinue use thereof, then Lessee may give notice to Lessor of its intention to terminate this Sublease on the next Payment Date (the Termination Date) during the Primary Term relating to the Premises which occurs not less than 90 days after the giving of such notice. Such notice shall include (i) an irrevocable offer by Lessee to purchase the Premises and the Equipment (to the extent it remains subject to this Lease) on the Termination Date at prices for the Premises and the Equipment determined in accordance with Schedule D plus an amount equal to the then Applicable Premium (as defined in the Mortgage), and to simultaneously sell such Premises and Equipment to a non-related third party purchaser and (ii) a certificate of Lessee that its board of directors or an executive committee thereof has determined that the Premises are uneconomic or unsuitable for continued use and occupancy in Lessee's business and that Lessee has discontinued use thereof or will discontinue use thereof, that simultaneously with the purchase thereof from Lessor, Lessee will sell the Premises and the Equipment to a non-related third party purchaser, and that within 90 days of the Termination Date, Lessee will cease to use and occupy the Premises for a period of at least five years from the expiration of such ninety day period. If Lessor shall reject such offer by notice given to Lessee not later than the 30th day prior to the Termination Date, this Sublease shall terminate on the Termination Date, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, additional rent and other sums then due and payable hereunder to and including the Termination Date. Unless Lessor shall have rejected such offer in accordance with this paragraph, Lessor shall be conclusively presumed to have accepted such offer, and, on the Termination Date, Lessor shall convey the Premises and the Equipment to the non-related third party purchaser as designated by Lessee pursuant to and upon compliance with paragraph 14. Within 90 days of the Termination Date, Lessee shall cease to use and occupy the Premises for a period of at least five years from expiration of such ninety day period. The agreement contained in the preceding sentence shall survive any termination of this Sublease pursuant to this paragraph 13(a).

(b) If Lessee is not at the time in default hereunder, Lessee shall have the option to purchase the Premises and the Equipment on the last day of the Primary Term or upon the last day of any of the Extended Terms, upon 180 days' prior notice to Lessor, at a price equal to the fair market value of the Premises and the Equipment, as the case may be, taking into consideration Lessee's continuing rights and obligations under the Sublease, such value to be as determined by Lessor and Lessee, or, if Lessor and Lessee fail to agree within sixty (60) days after receipt of Lessee's notice, as determined by appraisers selected in the following manner: Lessor and Lessee shall each appoint an appraiser, and the fair market value shall be as determined by the two appraisers so appointed. If the fair market value as determined by each of the appraisers varies by less than five percent (5%), fair market value shall be the average of such appraisals. If fair market value as determined by such appraisers shall vary by five percent (5%) or more, fair market value shall be determined by a third appraiser selected by the two appraisers appointed by the parties hereto. Fair market value as determined by such third appraiser shall not be higher than the higher fair market value determined by the two appraisers or lower than the lower fair market value determined by the two appraisers. All appraisers with respect to the Premises shall be members in good standing of the American Institute of Real Estate Appraisers or any organization succeeding thereto. Each party shall bear the cost of the appraiser selected by it and shall share equally the cost of the third appraiser. On such date of purchase, Lessor shall convey the Premises and the Equipment to Lessee or its designee pursuant to and upon compliance with paragraph 14.

(c) In the event that either (i) the consolidated net worth of Guarantor and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles has fallen below \$375,000,000 or (ii) the sum of the consolidated long-term debt of the Guarantor and its consolidated subsidiaries plus capital leases of Guarantor and its consolidated subsidiaries exceeds 70% of the sum of the consolidated long-term debt of Guarantor and its consolidated subsidiaries, the consolidated capital leases of Guarantor and its consolidated subsidiaries, and the consolidated net worth of Guarantor and its consolidated subsidiaries, all as determined in accordance with generally accepted accounting principles, then upon notice from Lessor to Lessee, Lessee shall have the right to make an offer to purchase the Premises and the Equipment by written notice delivered by Lessee to Lessor by not later than the 90th day following the date of receipt by Lessee of such notice from Lessor. If Lessee shall not make such written offer to purchase within such ninety day period, then the event described in the first sentence hereof shall constitute an Event of Default hereunder immediately upon the expiration of such ninety day period. Upon the receipt of any such written offer, Lessor shall have thirty (30) days to notify Lessee whether it will accept or reject such offer. If Lessor shall reject such offer, then this Sublease shall continue in full force and effect, provided, however, Lessor shall have the right to give Lessee subsequent notices with respect to the events described in the first sentence hereof so long as the conditions described therein shall continue to exist notwithstanding any failure to make or reject any such offer.

If Lessor shall accept such offer then the Lessee shall purchase the Premises as described hereinafter. The price at which Lessee must purchase the Premises and the Equipment shall be equal to the greater of the purchase price for the Premises and Equipment determined in accordance with Schedule C or the fair market value of the Premises and Equipment, taking into consideration Lessee's continuing rights and obligations under the Lease, such value to be as determined by Lessor and Lessee. If Lessor and Lessee fail to agree within sixty (60) days after receipt of Lessee's notice, such value shall be as determined by appraisers selected in the following manner. Lessor and Lessee shall each appoint an appraiser, and the fair market value shall be as determined by the two appraisers so appointed. If the fair market value as determined by each of the appraisers varies by less than five percent (5%), fair market value shall be the average of such appraisals. If fair market value as determined by either appraiser shall exceed by more than five percent (5%) the fair market value determined by the other appraiser, fair market value shall be determined by a third appraiser selected by the two appraisers appointed by the parties hereto. Fair market value as determined by such third appraiser shall not be higher than the higher fair market value determined by the two appraisers or lower than the lower fair market value determined by the two appraisers. All appraisers with respect to the Premises shall be members in good standing of the American Institute of Real Estate Appraisers or any organization succeeding thereto. Each party shall bear the cost of the appraiser selected by it and shall share equally the cost of the third appraiser. On the date of purchase, Lessor shall convey the Premises and the Equipment to Lessee or its designee pursuant to and upon compliance with paragraph 14.

14 Procedure Upon Purchase

(a) If the Premises and/or the Equipment or a portion thereof are conveyed to Lessee or its designee pursuant to this Sublease, Lessor shall convey title thereto at least as good as that which existed on the date of the commencement of the term hereof, and Lessee or its designee shall accept such title, subject to all charges, liens, security interests and encumbrances affecting the Premises and/or the Equipment or the portion thereof and all applicable legal requirements, but free of the lien of the Mortgage and Subordinated Mortgage and charges, liens, security interests and encumbrances resulting from acts of Lessor taken without the prior written consent of Lessee. Upon the conveyance of the Premises and the Equipment to Lessee pursuant to the terms hereof, Lessor shall convey to Lessee all of its right, title and interest under the Lease, including any rights it shall have to purchase the Premises and/or Equipment from the Board under the Lease.

(b) Upon the date fixed for any conveyance of the Premises and/or the Equipment or a portion thereof pursuant to this Sublease, Lessee shall pay to Lessor the purchase price therefor specified herein, together with all Basic Rent, additional rent and other sums then due and payable hereunder to and including such date of conveyance, and Lessor shall deliver to Lessee a deed to the Premises (if only a portion of the premises is being purchased hereunder, the deed shall be only for such portion), a bill of sale to the

Equipment or such portion purchased hereunder and any other instruments necessary to assign any other property then required to be assigned by Lessor pursuant hereto Lessee shall pay all charges incident to each such conveyance and assignment, including counsel fees, escrow fees, recording fees, title insurance premiums and all applicable taxes (other than any income or franchise taxes of Lessor) which may be imposed by reason of such conveyance and assignment and the delivery of said deed and other instruments Upon the completion of such conveyance but not prior thereto (whether or not any delay or failure in completion of such conveyance shall be the fault of Lessor), this Sublease shall terminate as to the portion of the Premises and/or Equipment so conveyed, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to such date of conveyance

15 Assignment and Subletting Lessee may sublet the Premises and the Equipment in whole or in part, provided that each sublease shall expressly be made subordinate to the Lease and this Sublease and subject to the provisions hereof and any such sublease shall be upon such terms and conditions reasonably satisfactory to Lessor and Lessee Lessor's consent to any such proposed terms and conditions shall not be unreasonably withheld No such sublease shall modify or limit any right or power of Lessor hereunder or affect or reduce any obligation of Lessee hereunder, and all such obligations shall continue in full effect as obligations of a principal, and not of a guarantor or surety, as though no subletting had been made Neither this Sublease nor the term hereby demised shall be assigned or mortgaged by Lessee, nor shall Lessee mortgage create a security interest in or pledge its interests in a sublease of the Premises or the Equipment or the rentals payable thereunder Any such assignment, mortgage or pledge, and any sublease made otherwise than as permitted by this paragraph 15, shall be void Lessee shall, within 30 days after the execution of any such sublease, deliver a conformed copy thereof to Lessor

16 Permitted Contests Lessee shall not be required, nor shall Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge, lien or encumbrance, or to comply with any legal requirement applicable to the Premises and/or the Equipment or the use thereof, so long as Lessee shall contest the existence, amount or validity thereof by appropriate proceedings which shall prevent the collection of or other realization upon the tax, assessment, levy, fee, rent, charge, lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises and/or the Equipment or any Basic Rent or any additional rent to satisfy the same, and which shall not affect the payment of any Basic Rent or any additional rent, provided that such contest shall not subject Lessor to the risk of any criminal liability or material civil liability Lessee shall give such reasonable security as may be demanded by Lessor to insure payment of such tax, assessment, levy, fee, rent, charge, lien or encumbrance, to comply with any legal requirement applicable to the Premises and/or the Equipment or the use thereof and to prevent any sale or forfeiture of the Premises and/or the Equipment by reason of such non-payment or non-compliance

17 Conditional Limitations, Default Provision

(a) Any of the following occurrences or acts shall constitute an event of default under this Sublease

- (1) if Lessee shall (1) fail to pay any Basic Rent, additional rent or other sum required to be paid by Lessee hereunder and such failure shall continue for ten days after Lessor shall give written notice to Lessee of such failure, provided, however, no more than one notice within any twelve month period during the Primary Term shall be required for any such failure which has continued for ten days after the date such payment shall have been due and payable, or (2) fail to observe or perform any other provision hereof or in any agreement or certificate furnished to Lessor, any assignee of Lessor hereunder, or any Mortgagee in connection herewith and such failure shall continue for 30 days after Lessor shall give notice to Lessee of such failure (provided, that in the case of any such failure which cannot be cured solely by the payment of money and cannot with diligence be cured within such 30 day period, if Lessee shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such failure may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence) but in no event shall such time be extended for a period longer than six (6) months, or
- (11) if Lessee or the Guarantor shall file a petition commencing a voluntary case under any federal bankruptcy or similar law or for reorganization or for an arrangement pursuant to any state bankruptcy law or any similar federal or state law, or shall be adjudicated a debtor or a bankrupt under any federal or state bankruptcy law or become insolvent or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay or shall not pay its debts generally as they become due, or if an involuntary case against Lessee or Guarantor as debtor is commenced by a petition for reorganization or liquidation under any federal bankruptcy or similar law or if a petition or answer proposing the adjudication of Lessee or Guarantor as a bankrupt or its reorganization pursuant to any state bankruptcy law or any similar state law shall be filed in any court and Lessee shall consent to or acquiesce in the filing thereof or such case, petition or answer shall not be dismissed, discharged or denied within 60 days after the filing thereof, or

- (111) if a custodian for purposes of any federal bankruptcy statute of substantially all Lessee's or Guarantor's assets is appointed or otherwise takes possession thereof or if a receiver, United States trustee, trustee or liquidator of Lessee or Guarantor or of all or substantially all of the assets of Lessee or of the Premises or of the Equipment or Lessee's or Guarantor's estate therein shall be appointed in any proceeding brought by Lessee or Guarantor, or if any such receiver, United States trustee, trustee or liquidator shall be appointed in any proceeding brought against Lessee and shall not be discharged within 60 days after such appointment, or if Lessee or Guarantor shall consent to or acquiesce in such appointment, or
- (1v) if the Premises shall have been left unattended and without maintenance for a period of 30 days (provided, the Premises shall not be deemed to have been left unattended and without maintenance so long as the Premises are maintained in accordance with this Sublease and there are security guards on the Premises, even though the Premises are not actually occupied by an operating tenant), or
- (v) (i) default shall be made by the Lessee or Guarantor in the payment of any installment of interest on any bond, debenture, note or other evidence of indebtedness of, or assumed by, the Lessee or Guarantor (but, in the case of Lessee, only if such amount of such installment, either individually or in the aggregate, is greater than \$100,000, and in the case of the Guarantor, only if such amount, either individually or in the aggregate, is greater than \$1,000,000), when and as the same shall become due and payable and such default shall continue beyond all applicable grace periods, if any, and any extension periods effectively granted for the payment of such amounts or (ii) default shall be made by the Lessee or Guarantor in the payment of the principal or premium, if any of any such bond, debenture, note or other evidence of indebtedness (but, in the case of Lessee, only if such amount of such payment, either individually or in the aggregate, is greater than \$100,000, and in the case of the Guarantor, only if such amount, either individually or in the aggregate, is greater than \$1,000,000), when and as the same shall become due and payable, whether at maturity, by declaration, upon redemption, or otherwise, and such default shall continue beyond all applicable grace

periods and any extension periods effectively granted for the payment of such amounts provided, however, that for the purposes of this clause (v), the Lessee shall not be deemed in default if it (or the Guarantor, as the case may be) shall be contesting in good faith its liability for the payment of the installment of interest or of principal or premium in question, or

- (vi) if a default shall have occurred and be continuing under either the Sublease Guaranty or the Collateral Assignment, dated as of the date hereof, from Lessor to the Board and consented to by Lessee, Guarantor or the Assignment of Leases and Agreement, dated as of the date hereof, from the Board to Mortgagee and consented to by Lessee and Guarantor and any applicable grace period thereunder shall have expired,
- (vii) if an attachment or other lien shall be filed or levied against a substantial part of the property of Lessee or Guarantor, and such judgment shall continue unstayed and in effect, or such attachment or lien shall continue undischarged or unbonded, for a period of 30 days, or
- (viii) if any execution or writ or process shall be issued under any action or proceeding against Lessee whereby any of the Premises may be taken or restrained, or
- (ix) if Lessee's or Guarantor's corporate existence shall cease or Lessee or Guarantor shall, without Lessor's prior written consent, sell, transfer or dispose of or pledge or otherwise encumber all or substantially all of its assets or property, or consolidate or merge with any other entity, provided, however, that any merger or consolidation of Lessee with the Guarantor or any other entity which is a consolidated subsidiary of Guarantor shall not be deemed an event of default hereunder,
- (x) if any representation or warranty of the Lessee or Guarantor set forth in any notice, certificate, demand, request or other instrument delivered in connection with or pursuant to this Sublease or the Guaranty or in connection with the financing by the Lessor of its interest in the Premises and Equipment shall prove to be incorrect or misleading in any material respect as of the time when the same shall have been made, or

(x1) an event of default as described in paragraph 13(c) hereof shall have occurred and is continuing

(b) If an event of default shall have happened and be continuing, Lessor shall have the right to give Lessee notice of Lessor's intention to terminate the term of this Sublease on a date not less than five days after the date of such notice. Upon the giving of such notice, the term of this Sublease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Sublease, and all rights of Lessee hereunder shall expire and terminate, but Lessee shall remain liable as hereinafter provided

(c) If an event of default shall have happened and be continuing, Lessor shall have the immediate right, whether or not the term of this Sublease shall have been terminated pursuant to paragraph 17(b), to re-enter and repossess the Premises and the Equipment by summary proceedings, ejectment or in any manner Lessor determines to be necessary or desirable and the right to remove all persons and property therefrom. Lessor shall be under no liability by reason of any such re-entry, repossession or removal. No such re-entry or repossession of the Premises and/or the Equipment shall be construed as an election by Lessor to terminate the term of this Sublease unless a notice of such intention is given to Lessee pursuant to paragraph 17(b), or unless such termination is decreed by a court of competent jurisdiction

(d) At any time or from time to time after the re-entry or repossession of the Premises and/or the Equipment pursuant to paragraph 17(c), whether or not the term of this Sublease shall have been terminated pursuant to paragraph 17(b), Lessor may (but shall be under no obligation to) relet the Premises and/or the Equipment for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms and on such conditions and for such uses as Lessor, in its absolute discretion, may determine. Lessor may collect and receive any rents payable by reason of such reletting. Lessor shall not be liable for any failure to relet the Premises and/or the Equipment or for any failure to collect any rent due upon any such reletting

(e) No expiration or termination of the term of this Sublease pursuant to paragraph 17(b), by operation of law or otherwise, and no re-entry or repossession of the Premises and/or the Equipment pursuant to paragraph 17(c) or otherwise, and no reletting of the Premises and/or the Equipment pursuant to paragraph 17(d) or otherwise, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, re-entry, repossession or reletting

(f) In the event of any expiration or termination of the term of this Sublease or re-entry or repossession of the Premises and/or the Equipment by reason of the occurrence of an event of default, Lessee will pay to Lessor all Basic Rent, additional rent and other sums required to be paid by Lessee

to and including the date of such expiration, termination, re-entry or repossession, and, thereafter, Lessee shall, until the end of what would have been the term of this Sublease in the absence of such expiration, termination, re-entry, or repossession, and whether or not the Premises and/or the Equipment shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages (i) all Basic Rent, additional rent and other sums which would be payable under this Sublease by Lessee in the absence of such expiration, termination, re-entry, or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to paragraph 17(d), after deducting from such proceeds all Lessor's expenses in connection with such reletting (including all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, employees' expenses, alteration costs and expenses of preparation for such reletting) Lessee will pay such current damages on the days on which Basic Rent would be payable under this Sublease in the absence of such expiration, termination, re-entry, or repossession, and Lessor shall be entitled to recover the same from Lessee on each such day

(g) At any time after such expiration or termination of the term of this Sublease or re-entry or repossession of the Premises and/or Equipment by reason of the occurrence of an event of default, whether or not Lessor shall have collected any current damages pursuant to paragraph 17(f), Lessor shall be entitled to recover from Lessee, and Lessee will pay to Lessor on demand, as and for liquidated and agreed final damages for Lessee's default and in lieu of all liquidated and agreed current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the excess, if any, of (a) all Basic Rent, additional rent and other sums which would be payable under this Sublease from the date of such demand (or, if it be earlier, the date to which Lessee shall have satisfied in full its obligations under paragraph 17(f) to pay current damages) for what would be the then unexpired term of this Sublease in the absence of such expiration, termination, re-entry or repossession, discounted at the rate of 5% per annum over (b) the then fair rental value of the Premises and the Equipment (determined by applying a discount rate of 5% per annum) for the same period. If any law shall limit the amount of such liquidated final damages to less than the amount above agreed upon, Lessor shall be entitled to the maximum amount allowable under such law

18 Bankruptcy or Insolvency

(a) If Lessee becomes a debtor in a case filed under Chapter 7 of the Bankruptcy Code and Lessee's trustee or Lessee elects to assume this Sublease for the purpose of assigning it or otherwise, such election and assignment may be made only if the provisions of paragraphs 18(b) and 18(d) are satisfied as if the election to assume were made in a case filed under Chapter 11 of the Bankruptcy Code. In any such Chapter 7 case, if Lessee or Lessee's trustee fails to make any such election within 60 days after the filing of such petition or such additional time as provided by the court before the expiration of such 60 day period, this Sublease shall be deemed to have been

rejected Immediately upon such failure, or upon a rejection by Lessee or Sublessee's trustee of this Lease, Lessor shall be entitled to possession of the Premises and the Equipment without further obligation to Lessee or Lessee's trustee and this Sublease shall terminate, but Lessor's right to be compensated for damages (including, without limitation, liquidated damages pursuant to any provision hereof) and its right to exercise any other remedies it may have in any such proceeding shall survive the termination of this Sublease

(b) (1) If Lessee becomes a debtor in a case filed under Chapter 11 of the Bankruptcy Code, or in a case filed under Chapter 7 of the Bankruptcy Code which is transferred to Chapter 11, Lessee's trustee or Lessee as debtor-in-possession must elect to assume this Sublease within 120 days from the date of the filing of the petition under Chapter 11 or the transfer thereto or Lessee's trustee or the debtor-in-possession shall be deemed to have rejected this Sublease If Lessee, Lessee's trustee or Lessee as debtor-in-possession has failed to perform all of Lessee's obligations under this Sublease within the time periods (excluding grace periods) during which such performance was required, no election by Lessee's trustee or the debtor-in-possession to assume this Sublease, shall be permitted or effective unless each of the following conditions has been satisfied

- (1) Lessee's trustee or the debtor-in-possession has cured all defaults under this Lease, or has provided Lessor with Assurance (as defined below) that it will cure all defaults susceptible to monetary cure within 10 days after the date of such election and that it will cure all other defaults under this Sublease which are susceptible of cure by any other act promptly after the date of such election
- (2) Lessee's trustee or the debtor-in-possession has compensated Lessor, or has provided Lessor with Assurance that within 10 days from the date of such election it will compensate Lessor, for any actual pecuniary loss incurred by Lessor arising from the default of Lessee, Lessee's trustee, or the debtor-in-possession as indicated in any statement of actual pecuniary loss sent by Lessor to Lessee's trustee or the debtor-in-possession Lessee's trustee or the debtor-in-possession may contest the amount indicated in any such statement to the extent Lessee's trustee or the debtor-in-possession believe that such amount exceeds such actual pecuniary loss incurred by Lessor, provided that Lessee's trustee or the debtor-in-possession shall have paid all undisputed amounts and all Rent and other sums then due and payable under this Sublease Any amounts for which it is determined pursuant to such contest Lessor is entitled to be compensated shall bear interest at the

then rate of interest per annum on the Series A Bonds or, if there is then no such financing, at the rate of 11 375% per annum (or, in either case, the maximum amount which is not prohibited by law, whichever is less), from the date of such election to assume this Sublease and Lessee's trustee or the debtor-in-possession shall pay such amounts, together with such interest, within 5 days of such determination

- (3) Lessee's trustee or the debtor-in-possession has provided Lessor with Assurance of the future performance of each of the obligations of Lessee under this Sublease, and, if Lessee's trustee or the debtor-in-possession has provided such Assurance, Lessee's trustee or the debtor-in-possession shall also (i) deposit with Lessor, as security for the timely payment of rent hereunder, an amount equal to 3 instalments of Basic Rent (at the rate then payable) which shall be applied to instalments of Basic Rent in the inverse order in which instalments of Basic Rent shall become due provided all the terms and provisions of this Sublease shall have been complied with, and (ii) pay in advance to Lessor on the date each installment of Basic Rent is due and payable a pro rata share of Lessee's annual obligations for additional rent and other sums under this Sublease such that Lessor shall hold funds sufficient to satisfy all such obligations as they come due. The obligations imposed upon Lessee's trustee or the debtor-in-possession by this paragraph shall continue with respect to Lessee or any assignee of this Sublease after the closing of bankruptcy proceedings unless, in the case of an assignee, such assignee shall have a net worth of \$500,000,000
- (4) The assumption of this Sublease will not breach or cause a default under any provision of any other lease, mortgage, financing arrangement or other agreement by which Lessor or the Board is bound

(11) For purposes of this paragraph 18 "Assurance" shall mean no less than Lessee's trustee or the debtor-in-possession has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses reasonably to assure Lessor that sufficient funds will be available to fulfill the obligations of Lessee under this Sublease and (x) there shall have been deposited with Lessor or the Bankruptcy Court shall have entered an order segregating, sufficient cash payable to Lessor, and/or (y) Lessee's trustee or the debtor-in-possession shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Lessee, Lessee's trustee or the

debtor-in-possession, acceptable as to value and kind to Lessor, to secure to Lessor the obligation of Lessee, Lessee's trustee or the debtor-in-possession to cure the defaults under this Sublease, monetary and/or non-monetary, within the time periods set forth above

(c) If this Sublease is assumed in accordance with paragraph 18(b) and is not subsequently assigned, and thereafter Lessee is liquidated or files or has filed against it a subsequent petition under Chapter 7 or Chapter 11 of the Bankruptcy Code, Lessor may, at its option, terminate this Sublease and all rights of Lessee's hereunder by giving Lessee notice of its election to so terminate within 30 days after the occurrence of any such event

(d) If Lessee, Lessee's trustee or the debtor-in-possession has assumed this Sublease pursuant to the terms and provisions of paragraphs 18(a) or 18(b) and thereafter elects to assign this Sublease, this Sublease may be so assigned only if the proposed assignee (Assignee) has provided adequate assurance of future performance of all of the terms, covenants and conditions of this Sublease to be performed by Lessee. As used herein "adequate assurance of future performance" shall mean no less than that each of the following conditions has been satisfied

- (1) The Assignee has furnished Lessor with either (i) (x) a copy of a credit rating of Assignee which Lessor reasonably determines to be sufficient to assure the future performance by Assignee of Lessee's obligations under this Sublease and (y) a current financial statement of Assignee audited by a certified public accountant indicating a net worth and working capital in amounts which Lessor reasonably determines to be sufficient to assure the future performance by Assignee of Lessee's obligations under this Sublease or (ii) a guarantee or guarantees, in form and substance satisfactory to Lessor, from one or more persons with a net worth of not less than \$500,000,000 and a credit rating equal to or exceeding the credit rating of Lessee as of the date hereof
- (2) All consents or waivers from others required under any lease, mortgage, financing arrangement or other agreement by which Lessor or the Board is bound to permit Lessor and the Board to consent to such assignment have been obtained. Lessor agrees to cooperate with Lessee, Lessee's trustee or the debtor-in-possession in obtaining such consents or waivers
- (3) The proposed assignment will not release or impair any guaranty of the obligations of Lessee under this Lease

(e) When, pursuant to the Bankruptcy Code, Lessee's trustee or the debtor-in-possession shall be obligated to pay reasonable use and occupancy charges for the use of the Premises and the Equipment, such charges shall not be less than the Basic Rent, additional rent and other sums payable by Lessee under this Sublease

(f) Neither the whole nor any portion of Lessee's interest in this Sublease nor Lessee's estate in the Premises shall pass to any trustee, receiver, or assignee for the benefit of creditors, by operation of law or otherwise, or, except as expressly provided herein, to any other person or entity, in each case under the laws of any state having jurisdiction of the person or property of Lessee unless Lessor shall have consented to such transfer. No acceptance by Lessor of rent or any other payments from any such trustee, receiver, assignee, person or other entity shall be deemed to constitute such consent by Lessor nor shall it be deemed a waiver of Lessor's right to terminate this Sublease for any such transfer of Tenant's interest under this Sublease without such consent

19 Additional Rights of Lessor

(a) No right or remedy hereunder shall be exclusive of any other right or remedy, but shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future. Receipt by Lessor of any Basic Rent, additional rent or other sums payable hereunder with knowledge of the breach of any provision hereof shall not constitute a waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless made in writing. Lessor shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions hereof, or to a decree compelling performance of any of the provisions hereof, or to any other remedy allowed to Lessor by law

(b) To the full extent permitted by law, Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have to redeem the Premises or the Equipment or to have a continuance of this Sublease after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Sublease, or after the termination of the term of this Sublease as herein provided, and (ii) the benefits of any law which exempts property from liability for debt or for distress for rent

(c) If Lessee shall be in default in the performance of any of its obligations hereunder, Lessee shall pay to Lessor, on demand, all expenses incurred by Lessor as a result thereof, including reasonable attorneys' fees and expenses. If Lessor shall be made a party to any litigation commenced against Lessee and Lessee, at its expense, shall fail to provide Lessor with counsel approved by Lessor, Lessee shall pay all costs and reasonable attorneys' fees incurred by Lessor in connection with such litigation

20 Certain Transactions Affecting the Premises Lessor hereby irrevocably constitutes and appoints Lessee its attorney-in-fact (a) to apply for and secure any building permit or permission of any governmental authority for the purpose of doing any of the things which Lessee is required or permitted to do under the provisions hereof, (b) to comply on behalf of Lessor with the provisions of the Mortgage giving Lessor the power to grant or release any easements, rights-of-way, access, party-wall rights or other rights and privileges in the nature of easements with respect to the Premises, free of the lien of the Mortgage, (c) to comply on behalf of Lessor with the provisions of the Mortgage giving Lessee the right to sell, assign, transfer or convey a portion of the Premises, free of the lien of the Mortgage and (d) to execute and deliver on behalf of Lessor any confirmation of the release of Lessor's interest in trade fixtures, inventory, machinery or equipment referred to in paragraph 10(f)

21 Notices, Demands and Other Instruments All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Sublease shall be in writing and shall be validly given when mailed by prepaid registered or certified mail, (a) if to Lessor, addressed to Lessor at its address set forth above, and (b) if to Lessee, addressed to Lessee at its address set forth above with the notation, "Attention R Randolph Devening, Vice President " Lessor and Lessee each may from time to time specify any address in the United States as its address for purposes of this Sublease by giving 15 days' notice to the other party

22 Estoppel Certificates, Inspection, Financial Statements Lessee and Lessor will each, from time to time but not in excess of four times within any twelve month period, upon 20 days prior request by either such party, execute, acknowledge and deliver to the requesting party a certificate stating that this Sublease is unmodified and in full effect (or, if there have been modifications, that this Sublease is in full effect as modified, and setting forth such modifications) and the dates to which Basic Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer has knowledge Any such certificate may be relied upon by any prospective mortgagee or purchaser of the Premises Lessee will permit Lessor and Mortgagee by their respective agents, accountants and attorneys, to visit the Premises and the Equipment and to examine Lessee's financial records and books of account relating to the Premises and the Equipment during normal business hours at the principal corporate offices of Lessee and to discuss generally Lessee's affairs, finances and accounts with its corporate officers and agents at such reasonable time as may be requested by Lessor or Mortgagee, as the case may be

(b) If Lessee shall cease to be a consolidated subsidiary of Guarantor (except in the case of any merger or consolidation of Lessee with the Guarantor), then upon the request of Lessor, Lessee shall provide Lessor promptly after they become available, copies of all financial statements, reports, notices and proxy statements sent by Lessee to its stockholders or to the Securities and Exchange Commission, provided, however, that, if Lessee shall not be a reporting company under Section 13 of the Securities Exchange Act of 1934, Lessee will deliver to Lessor the following

Within 90 days after the end of each fiscal year of Lessee, balance sheets (consolidated, if kept on a consolidated basis) of Lessee and its subsidiaries as at the end of such year and statements of income, retained earnings and changes in financial position (consolidated, if kept on a consolidated basis) of Lessee and its subsidiaries for such year setting forth in each case, in comparative form, the corresponding figures for the preceding fiscal year in reasonable detail and scope, as to said financial statements, certified by independent certified public accountants of recognized national standing selected by Lessee, as at the end of such year, and within 45 days after the end of each fiscal quarter of Lessee, balance sheets (consolidated, if kept on a consolidated basis) of Lessee and its subsidiaries as at the end of such quarter and for the quarterly and year-to-date periods then ended, statements of income, retained earnings and changes in financial position (consolidated, if kept on a consolidated basis) of Lessee and its subsidiaries setting forth in each case, in comparative form, the corresponding figures for the similar periods of the preceding year, in reasonable detail and scope, and certified by a financial officer of Lessee having knowledge thereof

23 No Merger There shall be no merger of this Sublease or of the leasehold estate hereby created with the leasehold estate in the Premises created by the Lease by reason of the fact that the same person acquires or holds, directly or indirectly, this Sublease or the leasehold estate hereby created or any interest herein or in such leasehold estate as well as the leasehold estate in the Premises created by the Lease or any interest in such leasehold estate

24 Surrender Upon the expiration or termination of the term of this Sublease, Lessee shall surrender the Premises to Lessor in the condition in which the Premises were originally received from Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required hereby, and except for ordinary wear and tear. Lessee shall remove from the Premises on or prior to such expiration or termination all property situated thereon which is not owned by Lessor, and shall repair any damage caused by such removal. Property not so removed shall, subject to paragraph 10(f), become the property of Lessor, and Lessor may cause such property to be removed from the Premises and disposed of, but the cost of any such removal and disposition and of repairing any damage caused by such removal shall be borne by Lessee

25 Separability, Binding Effect Each provision hereof shall be separate and independent and the breach of any such provision by Lessor shall not discharge or relieve Lessee from its obligations to perform each and every covenant to be performed by Lessee hereunder. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforceable to the extent permitted by law. All provisions contained in this Sublease shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and

assigns of Lessor and Lessee to the same extent as if each such successor and assign were named as a party hereto. This Sublease may not be changed, modified or discharged except by a writing signed by Lessor and Lessee. This Sublease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

If the Lease shall terminate for any reason prior to the termination of this Sublease, Lessee agrees that this Sublease shall become a direct lease between lessor under the Lease or any assignee thereof and Lessee hereunder.

26 Exhibits and Schedules Attached hereto are Exhibits A and B and Schedules A, A-1, B, C and D referred to in this Sublease, which Exhibits and Schedules are hereby incorporated by reference herein.

27 Undertaking Lessee shall perform its obligations under an undertaking dated as of the date hereof from the Lessee to the Lessor, the Board, the Mortgagee and the purchasers of the Series A Bonds.

IN WITNESS WHEREOF, Lessor and Lessee each have caused this Sublease to be duly executed and delivered, and its corporate seal to be hereunto affixed and attested, all as of the date first above written

BNE CAPITAL CORPORATION,
as Lessor

[Seal]

By David A. Meehan
Vice President - Administration

Attest Susan G. Lewis Dee
Asst Secretary

FLEMING FOODS OF ALABAMA, INC ,
as Lessee

[Seal]

By _____,
Vice President

Attest _____
John M Thompson,
Assistant Secretary

COMMONWEALTH OF MASSACHUSETTS))
SUFFOLK COUNTY) ss.

I, Janis E. Sheppard, a Notary Public in and for said County in said State, hereby certify that David A. Meehan, whose name as Vice President - Administration of BNE Capital Corporation, a Massachusetts corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 24th day of December, 1986.

James C. Sheppard
Notary Public

[NOTARIAL SEAL]

My commission expires: June 22, 1990

IN WITNESS WHEREOF, Lessor and Lessee each have caused this Sublease to be duly executed and delivered, and its corporate seal to be hereunto affixed and attested, all as of the date first above written

BNE CAPITAL CORPORATION,
as Lessor

[Seal]

By _____, President

Attest _____, Secretary

FLEMING FOODS OF ALABAMA, INC.,
as Lessee

[Seal]

By Donald N Eyler, Vice President

Attest

John M. Thompson
John M. Thompson,
Assistant Secretary

DONALD N EYLER

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

I, Paul M. Benjamin, a Notary Public in and for said County in said State, hereby certify that Donald N. Eyler, whose name as Vice President of Fleming Foods of Alabama, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 10th day of December, 1986.

Paul M. Benjamin
Notary Public

[SEAL]

My commission expires:

12-15-87

SCHEDULE A-1

LAND

A lot or parcel of land described as follows: Commencing at the point where the projected south right of way line of the L & N Railroad intersects the centerline of Geneva County Road #4 and running N66°-00'W a distance of 3451.90 feet to the point of beginning, thence continuing along said railroad right of way line N66°-00'W a distance of 1800 feet to a point, thence S24°-00'W a distance of 1200 feet to a point, thence S66°-00'E a distance of 1800 feet to a point; thence N24°-00'E a distance of 1200 feet to the point of beginning. Said property being in the NW¼ of the SW¼ and the SW¼ of the SW¼, Section 13, T1N, R21E and the SE¼ of Section 14, T1N, R21E, Geneva County, Alabama.

Together with the Deed of Easement of Access from Alabama and Florida Railroad Company, Inc. and CSX Transportation, Inc. to The Industrial Development Board of The City of Geneva, dated December 2, 1986, and recorded in the Official Record Book 30, at pages 105 and 106, records of the Probate Office of Geneva County, Alabama

SCHEDULE 4-1

EQUIPMENT

DESCRIPTION

Rack Bumpers
In-Rack Sprinklers
Cooler-Freezer Equipment
Railcock Lights
Barber Connection
Tool Crib
Kitchen Equipment
Counters, Shelving & Cabinets
Lockers and Benches
Employee Welfare Equipment
Battery Charger Equipment
Fueling Booth and Connections
Pallet Rack
Vehicle Maintenance Equipment
Conveyor Connection
Vending Machine Connection
Office Equipment Connection
Guard Booth Equipment
Emergency Generator
Fueling Equipment and Pad
Oil Equipment Connection
Garage Equipment
Dock Levelers and Seals
Air Curtains
Signage - Interior
Signage - Exterior
Telephone and Intercom
Mini Blinds
Rack Unloading
Flagpole

SCHEDULE B

Terms and Basic Rent Payments

I The Primary Term shall commence on December 15, 1986 and end at midnight on December 14, 2011. The first Extended Term shall commence on December 15, 2011 and end at midnight on December 14, 2016. The second Extended Term shall commence on December 15, 2016, and end at midnight on December 14, 2021. The third Extended Term shall commence on December 15, 2021, and end at midnight on December 14, 2026. The fourth Extended Term shall commence on December 15, 2026 and end at midnight on December 14, 2031. The fifth Extended Term shall commence on December 15, 2031, and end at midnight on June 14, 2036.

1 Each instalment of Basic Rent during the Primary Term is \$292,318, and said instalments are payable on March 15, 1987 and quarterly thereafter on the 15th day of each June, September, December and March occurring during the Primary Term to and including December 15, 2011.

2 Each instalment of Basic Rent payable during each Extended Term shall be the applicable amounts set forth below and said instalments are payable quarterly on the last day of each June, September, December and March, occurring during each such Extended Term.

<u>Extended Term</u>	<u>Rent</u>
1st	\$302,796
2nd	378,495
3rd	641,810
4th	641,810
5th	641,810

II The per square foot cost of the land is \$0.04815. Lessor's Cost is \$13,000,000. That portion of Lessor's Cost relating to the Land is \$104,000, to the Improvements is \$10,566,992, to the Equipment is \$2,087,868 and to transaction expenses is \$241,140.

SCHEDULE C

Purchase Prices Pursuant to Paragraphs 11(b) and 11(c)

Upon the purchase of the Premises and the Equipment pursuant to paragraph 11(b) or 11(c) of this Sublease, the purchase price payable for the Premises and the Equipment shall be an amount equal to the amount set forth in Column 2 below opposite the date of purchase set forth in Column 1 below

<u>Column 1</u> <u>Date of Purchase</u>	<u>Column 2</u> <u>Purchase Price</u>
3/1987	14118531
6/1987	14195248
9/1987	14263536
12/1987	14329060
3/1988	14395750
6/1988	14462070
9/1988	14528601
12/1988	14593838
3/1989	14659812
6/1989	14726731
9/1989	14793553
12/1989	14860668
3/1990	14927550
6/1990	14994718
9/1990	15061846
12/1990	15128802
3/1991	15195637
6/1991	15262892
9/1991	15329567
12/1991	15396544
3/1992	15463560
6/1992	15530677
9/1992	15597619
12/1992	15664540
3/1993	15731448
6/1993	15798904
9/1993	15866338
12/1993	15933606
3/1994	16000971
6/1994	16068066
9/1994	16135175
12/1994	16202154
3/1995	16269228
6/1995	16336274
9/1995	16403326
12/1995	16470443
3/1996	16537504
6/1996	16604611
9/1996	16671666
12/1996	16738748
3/1997	16805875
6/1997	16872997
9/1997	16940145
12/1997	17007265

<u>Column 1</u> <u>Date of Purchase</u>	<u>Column 2</u> <u>Purchase Price</u>
3/1998	13623106
6/1998	13566043
9/1998	13507168
12/1998	13446438
3/1999	13393970
6/1999	13319311
9/1999	13252884
12/1999	13164542
3/2000	13114280
6/2000	13042060
9/2000	12967924
12/2000	12891827
3/2001	12813735
6/2001	12733741
9/2001	12651798
12/2001	12567860
3/2002	12481869
6/2002	12394055
9/2002	12304277
12/2002	12212490
3/2003	12118606
6/2003	12023010
9/2003	11925457
12/2003	11825904
3/2004	11724231
6/2004	11620994
9/2004	11515833
12/2004	11408710
3/2005	11297469
6/2005	11186954
9/2005	11076662
12/2005	10962557
3/2006	10846439
6/2006	10731319
9/2006	10616098
12/2006	10500793
3/2007	10384934
6/2007	10271019
9/2007	10157375
12/2007	10044030
3/2008	9930481
6/2008	9819483
9/2008	9709210
12/2008	9599705
3/2009	9490429
6/2009	9384419
9/2009	9279685
12/2009	9176268
3/2010	9073650
6/2010	8975120
9/2010	8878529
12/2010	8783959
3/2011	8688631
6/2011	8619199
9/2011	8566317
12/2011	8450000

SCHEDULE D

Purchase Prices Pursuant to Paragraph 13(a)

Upon the purchase of the Premises and the Equipment pursuant to paragraph 13(a) of this Sublease, the purchase price payable for the Premises and the Equipment shall be an amount equal to the amount set forth in Column 2 below opposite the date of purchase set forth in Column 1 below

<u>Column 1</u> <u>Date Purchase Occurs</u>	<u>Column 2</u> <u>Purchase Price</u>
12/2001	11377728
3/2002	11272010
6/2002	11164019
9/2002	11053609
12/2002	10940721
3/2003	10825258
6/2003	10707568
9/2003	10587402
12/2003	10464703
3/2004	10339340
6/2004	10211820
9/2004	10081785
12/2004	9949179
3/2005	9813836
6/2005	9676130
9/2005	9536766
12/2005	9394489
3/2006	9249485
6/2006	9104571
9/2006	8958683
12/2006	8811807
3/2007	8663473
6/2007	8514007
9/2007	8367798
12/2007	8218841
3/2008	8068628
6/2008	7919723
9/2008	7770366
12/2008	7620561
3/2009	7469762
6/2009	7320793
9/2009	7171733
12/2009	7022599
3/2010	6872799
6/2010	6725449
9/2010	6578450
12/2010	6431832
3/2011	6283006
6/2011	6150874
9/2011	6026166
12/2011	5858061

EXHIBIT B

1897c

SUBLEASE GUARANTY

from

FLEMING COMPANIES, INC

to

BNE CAPITAL CORPORATION

Dated as of November 20, 1986

SUBLEASE GUARANTY, dated as of November 20, 1986 (herein, together with all amendments and supplements hereto, called this Guaranty), from FLEMING COMPANIES, INC., an Oklahoma corporation (herein, together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, called Guarantor), having an address at 6301 Waterford Boulevard, P O Box 26647, Oklahoma City, Oklahoma 73126-0647, to BNE CAPITAL CORPORATION, a Massachusetts corporation (herein, together with any assignee of its rights under this Guaranty, called Lessor), having an address 28 State Street, Boston, Massachusetts 02109

Guarantor is the owner of all of the issued and outstanding stock of Fleming Foods of Alabama, Inc., an Alabama corporation (herein, together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety called Lessee). Lessee intends to sublease from the Lessor a parcel of land located in Geneva, Alabama (the Land Parcel) and the buildings, structures and other improvements located respectively thereon (the Land Parcel and the improvements thereon being herein called the Premises) and certain items of machinery, equipment and other personal property (the Equipment) to be used in connection therewith, pursuant to a Sublease and Agreement, dated as of the date hereof, between Lessor, as lessor, and Lessee, as lessee (herein, together with all amendments and supplements thereto and any memorandum or short form thereof entered into for purposes of recording, called the Sublease).

Lessor will finance a portion of its acquisition price of the Premises and the Equipment from the issuance and sale by the Industrial Development Board of the City of Geneva, Alabama (the Board) of \$10,400,000 aggregate original principal amount of its 9 3/4% Industrial Development Bonds (Fleming Foods, 1986 Project), Series A, Due 2011 and \$2,600,000 aggregate original principal amount of its Industrial Development Bond (Fleming Foods, 1986 Project), Series B, Due 2011 and secure such Series A Bonds (the Indebtedness) with a mortgage lien (the instrument or instruments evidencing any such lien called the Mortgage and the party or parties entitled to the benefits of such lien, including any trustee therefor, called the Mortgagee). The Sublease and this Guaranty will be assigned by the Lessor as security for the Indebtedness.

The execution and delivery of this Guaranty by Guarantor is an inducement to the Lessor to execute and deliver the Sublease. Guarantor, as owner of all the issued and outstanding stock of Lessee, deems it to be in its interest and for its financial benefit that Lessee execute and deliver the Sublease.

NOW, THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees that all sums stated in the Sublease to be payable by Lessee, whether as Basic Rent (as defined in the Sublease) or additional rent, or as purchase prices or otherwise and all sums to be paid by Lessee under the Collateral Assignment, dated as of the date hereof (herein, together with all amendments and supplements thereto, called the Collateral Assignment), from the Lessor to the Board and consented to by Lessee and Guarantor, and the Assignment of Lease and Agreement, dated as of the date hereof (herein, together with all amendments and supplements thereto, called the Assignment), from the Board to the Mortgagee and consented to by

Lessee and Guarantor, will be promptly paid in full on or before the expiration of any applicable grace period in accordance with the provisions of said documents, and that Lessee will punctually perform and observe each and every covenant, agreement, term and condition in said documents required to be performed or observed by Lessee. This Guaranty is primary, irrevocable, unconditional and absolute, irrespective of any circumstance which might otherwise constitute a legal or equitable discharge or defense of or by a guarantor or surety. If for any reason any such sums shall not be paid when due, or any such covenant, agreement, term or condition is not performed or observed, in accordance with said documents, Guarantor, within 3 business days after notice thereof, but in any event prior to the expiration of any applicable period of grace provided therefor in the Sublease, the Collateral Assignment, or Assignment, as the case may be (which notice shall not extend any such grace period), shall pay the same to the persons entitled thereto pursuant to the provisions of the Sublease and any assignments thereof or the Collateral Assignment or Assignment, as the case may be, and will perform and observe or cause to be promptly performed and observed every such covenant, agreement, term and condition thereof regardless of (a) any defenses or rights of set-off or counterclaims which Lessee or Guarantor may have or assert, (b) whether Lessor or any Mortgagee shall have taken any steps to enforce any rights against the Lessee or any other remedy thereunder as a result of the default of Lessee thereunder and (c) any other condition or contingency. Failure of Guarantor to comply with the provisions of the immediately preceding sentence shall constitute an Event of Default hereunder and failure of Guarantor to comply with any other covenant or agreement contained herein for a period of 30 days after notice shall likewise constitute an Event of Default hereunder. Guarantor also agrees to pay to such person such further amounts as shall be sufficient to cover the cost and expense of collecting such sums or any part thereof, or of otherwise enforcing this Guaranty, including, in any case, reasonable compensation to its attorneys. This Guaranty is a guaranty of payment and performance and not merely of collectability.

2 The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following, although without notice to or the further consent of Guarantor

- (a) the waiver by Lessor or any Mortgagee of the performance or observance by Lessee, Guarantor or any other party of any of the agreements, covenants, terms or conditions contained in the Sublease, this Guaranty, the Collateral Assignment, the Assignment or any other instrument contemplated therein or herein,
- (b) the extension, in whole or in part, of the time for payment by Lessee or Guarantor of any sums owing or payable under the Sublease, the Collateral Assignment, the Assignment or this Guaranty, or of any other sums or obligations under or arising out of or on account of the Sublease, or this Guaranty or the renewal of any thereof,

- (c) any assignment of the Sublease or subletting of the Premises or the Equipment or any part thereof or any refinancing of the Indebtedness,
- (d) the modification or amendment (whether material or otherwise) of any of the obligations of Lessee or Guarantor under the Sublease, the Collateral Assignment, the Assignment or this Guaranty, specifically including (but without limitation) in connection with the construction of Substantial Alterations pursuant to Section 10 of the Sublease,
- (e) the doing or the omission of any of the acts referred to in the Sublease, the Collateral Assignment, the Assignment or this Guaranty (including, without limitation, the giving of any consent referred to therein),
- (f) any failure, omission or delay on the part of Lessor, or any Mortgagee to maintain, enforce, assert or exercise any right, power or remedy conferred on or available to Lessor in or by the Sublease, the Collateral Assignment, the Assignment or this Guaranty or any other instrument, or any action on the part of Lessor or Mortgagee granting indulgence or extension in any form whatsoever,
- (g) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Lessee or Guarantor or any of their assets,
- (h) the release of Lessee or Guarantor from, or any defense of Lessee or Guarantor to, the performance or observance of any of the agreements, covenants, terms or conditions contained in the Sublease, the Collateral Assignment, the Assignment or this Guaranty by operation of law,
- (i) any change in the corporate relationship between Guarantor and Lessee, specifically including (but without limitation) divestiture of ownership of Lessee by Guarantor,
- (j) the inability of Lessor, Mortgagee or Lessee to enforce any provisions of the Sublease, the Collateral Assignment or the Assignment for any reason, or

- (k) the modification, amendment (whether material or otherwise) or termination of the Lease (as defined in the Sublease) or any termination of the Sublease prior to the expiration of its term other than as a result of the exercise of any purchase option thereunder, or
- (l) any action or inaction of Lessor or the Mortgagee which results in any impairment or destruction of any subrogation rights of Guarantor or any rights of Guarantor to proceed against Lessee for reimbursement

Guarantor's liability hereunder shall not be affected or impaired by any sale, pledge, surrender, compromise, release, renewal, extension, indulgence, alteration, exchange, change in or modification of said liabilities and obligations, either expressed or implied or any contract or contracts evidencing any thereof, or any security or collateral therefor, including, without limitation, any contained in the Sublease or the Collateral Assignment or Assignment

3 In the event of the rejection or disaffirmance of the Sublease by Lessee or Lessee's trustee in bankruptcy pursuant to any present or future, federal or state bankruptcy law or any other law affecting creditors' rights, Guarantor will, and does hereby (without the necessity of any further agreement or act) assume all obligations and liabilities of Lessee under the Sublease to the same extent as if it had been originally named instead of Lessee as a party to each such document and there had been no such rejection or disaffirmance, and Guarantor will confirm such assumption in writing at the request of the Lessor or Mortgagee upon or after such rejection or disaffirmance. Guarantor, upon such assumption, shall have all rights of Lessee under the Sublease and Collateral Assignment, the Assignment (to the extent permitted by law)

4 (a) Guarantor will deliver to Lessor and Mortgagee copies of all financial statements, reports, notices and proxy statements sent by Guarantor to its stockholders (other than monthly financial statements and reports) along with such additional information (including copies of public reports filed by Guarantor with the Securities Exchange Commission) regarding the business affairs and financial condition of Guarantor as Lessor or Mortgagee may reasonably request. If Guarantor shall cease to be a reporting company under Section 13 of the Securities Exchange Act of 1934, Guarantor will deliver to Lessor the following

(i) Within 90 days after the end of each fiscal year of Guarantor balance sheets (consolidated, if kept on a consolidated basis) of Guarantor and its subsidiaries as at the end of such year and statements of income, retained earnings and changes in financial position (consolidated, if kept on a consolidated basis) of Guarantor and its subsidiaries for such year setting forth in each case, in comparative form, the corresponding figures for the preceding fiscal year in reasonable detail and scope, as to said financial statements, certified by independent certified public

accountants of recognized national standing selected by Guarantor, as at the end of such year, and within 45 days after the end of each fiscal quarter of Guarantor, balance sheets (consolidated, if kept on a consolidated basis) of Guarantor and its subsidiaries as at the end of such quarter and for the quarterly and year to date periods then ended, statements of income, retained earnings and changes in financial position (consolidated, if kept on a consolidated basis) of Guarantor and its subsidiaries setting forth in each case, in comparative form, the corresponding figures for the similar periods of the preceding year, in reasonable detail and scope, and certified by a financial officer of Guarantor having knowledge thereof,

(11) With reasonable promptness upon the reasonable request of the Lessor or Mortgagee, if the accountant's opinion with respect to the Guarantor's financial reports is qualified, copies of such portions of any management or accountant's letter relating to such qualification, and

(111) With reasonable promptness such additional public information (including copies of public reports filed by Guarantor) regarding the business affairs and financial condition of Guarantor as the Lessor may reasonably request

All financial statements required to be given by clause (1) above shall be accompanied by the certificate of the chief financial officer of Guarantor stating that to the best of his knowledge and belief (A) no default or Event of Default under this Guaranty or the Sublease has occurred and is continuing, (B) if any such default or Event of Default has occurred and is continuing, specifying the nature and the period of existence thereof and what action Guarantor has taken or is taking with respect thereto, and (C) except as otherwise stated, that Guarantor has fulfilled all its obligations under this Guaranty and Lessee has fulfilled all its obligations under the Sublease, the Collateral Assignment and the Assignment. The certification accompanying each financial statement required to be given above shall include a certification that such financial statement presents fairly and completely in all material respects the financial information which it purports to present

(b) Guarantor will permit the Lessor, the Mortgagee, and any owner of any of the Series A Bonds, at their expense, to inspect the financial books (and to make copies thereof or extracts therefrom), and to discuss its affairs, finances and accounts with its officers and accountants, all at such reasonable times and as often as may be reasonably requested. Such Bondholders are hereby authorized to deliver any documents, or copies thereof, received by them from Guarantor pursuant to any provision of this Guaranty or in connection with any of the transactions contemplated hereby to any governmental body having or acquiring jurisdiction over such Bondholder and to the National Association of Insurance Commissioners which may request or require the same

5 Notice of acceptance of this Guaranty and notice of any obligations or liabilities contracted or incurred by Lessee, whether

or not waived by Lessor or any Mortgagee, are hereby waived by Guarantor

6 This Guaranty may not be modified or amended except by a written agreement duly executed by Guarantor with the consent in writing of Lessor and all assignees of Lessor, including, without limitation, the Mortgagee

7 This Guaranty has been entered into with the knowledge and agreement of Guarantor that it will be assigned by Lessor to the Mortgagee, as security for the Indebtedness and Guarantor hereby consents to such assignment

8 Guarantor waives any right it may have to require Lessor or the Mortgagee to proceed against Lessee or to pursue any remedy within the power of Lessor or the Mortgagee Guarantor agrees that all of its obligations hereunder are independent of the obligations of Lessee under the Sublease, the Collateral Assignment, and the Assignment and that a separate action may be brought against Guarantor whether or not an action is commenced against Lessee under the Sublease, the Collateral Assignment or the Assignment

9 All agreements, representations and warranties contained herein or made in writing by Guarantor shall survive the execution and delivery of this Guaranty

10 All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Guaranty shall be in writing and shall be deemed to have been properly given if sent by prepaid certified or registered mail or by prepaid messenger service guaranteeing overnight delivery, addressed to each party at their respective address first above set forth Guarantor and Lessor shall each have the right from time to time to specify as its address for purposes of this Guaranty any other address in the United States of America upon giving 15 days' written notice thereof, similarly given, to the other party

11 This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, whether by merger, consolidation or transfer of assets

12 This Guaranty shall be construed and enforced in accordance with and governed by, the laws of the State of Alabama

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly
executed as of the day and year first above written

FLEMING COMPANIES, INC.
Guarantor

By Donald N Eyler
Donald N Eyler, Vice President

(Corporate Seal)

Attest

By

John M Thompson
John Thompson, Assistant Secretary

EXHIBIT C

TAX INDEMNITY AGREEMENT

TAX INDEMNITY AGREEMENT, dated as of November 20, 1986 (this Agreement) between BNE CAPITAL CORPORATION, a Massachusetts corporation (the Lessor) and FLEMING FOODS OF ALABAMA, INC , an Alabama corporation (the Lessee)

WHEREAS the Lessor and Lessee are parties to that certain Sublease and Agreement, dated as of the date hereof (the Lease) whereby the Lessor has leased the Premises and the Equipment as described in the Lease,

WHEREAS, the Basic Rent payable by the Lessee under the Lease has been determined in part on the basis of the assumption that the Lessor will be treated as the owner and lessor of the Premises and the Equipment, for Federal income tax purposes, and will be entitled to the Federal income tax benefits identified below,

WHEREAS, the Lessor and Lessee desire to set forth the circumstances under which the Lessee shall be required to indemnify the Lessor for the loss of the Federal income tax benefits identified below, and

WHEREAS, all capitalized terms used herein and not specifically defined herein shall have the same meaning as in the Lease,

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Lease, and of other good and valuable consideration, receipt of which is hereby acknowledged, the Lessor and Lessee agree as follows

SECTION 1 Assumptions In entering into the Lease and the transactions contemplated hereby, the parties hereto have assumed that

- (a) the Lessor will be treated as the owner of the Premises and the Equipment for Federal income tax purposes,
- (b) the Lessor will be entitled to the following tax benefits

- (1) Cost recovery deductions under Section 168 of the Internal Revenue Code of 1954, as amended to August 1, 1986 (the Code) (the Accelerated Cost Recovery Deductions) for the Improvements in the percentages specified in Section 168(b)(2) of the Code for "19-year property", applied against an "unadjusted basis" for such Improvements (within the meaning of Section 168(d) of the Code) in the amount of \$10,566,992, commencing with an accelerated cost recovery deduction beginning in the month in which the Premises are placed in service under the Lease,
- (11) Accelerated Cost Recovery Deductions for the Equipment in the percentages specified in Section 168(b)(1) of the Code for "5-year property," applied against an "unadjusted basis" for such Equipment (within the meaning of Section 168(d) of the Code) of no less than 100% of the purchase price thereof, commencing with an accelerated cost recovery deduction equal to 15 percent of such unadjusted basis for the Equipment in the taxable year of the Lessor that includes the month in which Equipment is placed in service under the Lease,
- (111) Deductions pursuant to Section 163 of the Code for interest paid or accrued with respect to any indebtedness incurred by the Lessor in connection with any financing by the Lessor of any portion of the purchase price of any part of the Premises and the Equipment (the Interest Deductions),
- (1v) Deductions for the amortization of the expenses of the transaction (other than those included in the purchase price of the Premises and the Equipment) at a rate no less rapid than straight-line over the Primary Term of the Lease (the "Amortization Deductions") (the Accelerated Cost Recovery Deductions, the Interest Deductions and the Amortization Deductions are

collectively referred to herein as the "Tax Benefits"),

- (v) The Lessee's payments of Basic Rent will constitute income to the Lessor for Federal income tax purposes in the amounts, and for the respective periods, determined on the assumption that such amounts will be received by the Lessor on each Basic Rent payment date under the Lease, as set forth on Schedule B to the Lease, as such Schedule B may be adjusted, and such amounts together with any indemnity and termination, purchase, and liquidated damage payments pursuant to Sections 11, 13 and 17 of the Lease will be the only income to be realized by the Lessor for Federal income tax purposes from or with respect to the Premises and/or the Equipment or the Lease, and
- (vi) All amounts includable in gross income by the Lessor with respect to the Lease and all deductions and credits allowable to the Lessor with respect to the Lease, the Premises and the Equipment will be treated as derived from sources within the United States

SECTION 2 Representations and Warranties by Lessee
The Lessee represents and warrants that, for Federal income tax purposes,

- (a) at the time the Premises are placed in service under the Lease by Lessor and leased to Lessee under the Lease
- (1) the Improvements will be "19-year property" within the meaning of Section 168(c)(2)(D) of the Code and, in determining its cost recovery deductions under Section 168 of the Code with respect to the Improvements for each taxable year, the Lessor will be entitled to utilize the percentages applicable to such property,
- (11) Neither the Lessee nor any other person has claimed Accelerated Cost Recovery Deductions with respect to the Improvements or any part thereof,

- (b) at the time the Equipment is placed in service under the Lease and accepted under the Lease
- (1) the Equipment will be "5-year property" within the meaning of Section 168(c)(2)(B) of the Code and, in determining its cost recovery deductions under Section 168 of the Code with respect to the Equipment for each taxable year, the Lessor will be entitled to utilize the percentages applicable to such property,
- (11) the Federal income tax basis to the Lessor of the Equipment for purposes of determining the Accelerated Cost Recovery Deductions will be 100% of the purchase price therefor (assuming Lessor does not make an election under Section 48(g) of the Code),
- (111) neither the Lessee nor any other person has claimed Accelerated Cost Recovery Deductions with respect to the Equipment or any part thereof,
- (1v) no improvements, modifications or additions (other than ancillary items of equipment of a kind that are customarily furnished by purchasers or lessees of property similar in nature to such Equipment) will be required to render such Equipment complete for its intended use by Lessee,
- (c) at all times during the term of the Lease no part of the Improvements or any Equipment is or will become "tax-exempt use property" within the meaning of Section 168(j)(3) of the Code,
- (d) neither the Lessee nor any of its affiliates will claim that it is the owner of any part of the Premises or any Equipment nor will the Lessee or any of its affiliates file any returns or documents inconsistent with the assumption that the Lessor will be the owner of the Premises or any Equipment for Federal income tax purposes,

- (e) at the end of the Primary Term, it is reasonable to estimate that the fair market value of the Premises and the Equipment will be in the amount equal to at least twenty percent (20%) of the purchase price thereof, without including in such value any increase or decrease for inflation or deflation during such term, and after subtracting from such value any cost to Lessor for removal and delivery of possession of any Equipment to Lessor at the end of the such term,
- (f) It is reasonable to estimate that the Premises and Equipment will be useful to or usable by Lessor at the end of the Primary Term for purposes other than continued leasing by or transfer to any member of the "lessee group" (as such term is defined in Revenue Procedure 75-21),
- (g) neither (i) the ownership of the Premises and the Equipment by the Industrial Development Board of the City of Geneva, Alabama (the Board), (ii) the leasing of the Premises and the Equipment by the Board to the Lessor pursuant to the Lease and Agreement, dated as of the date hereof, between the Board and the Lessor, (iii) the issuance by the Board of the Series A Bonds and Series B Bond (both as defined in the Lease), nor (iv) the consummation of the transactions contemplated by the foregoing will result in the Loss (as defined in Section 3(b) hereof) of any of the Tax Benefits

SECTION 3 Income Tax Indemnification (a) If any Indemnified Event (as defined in Section 3(b) hereof) results in a Final Determination (as defined in Section 6(c) hereof) pursuant to which there occurs a Loss of Operative Benefits or Loss (as defined in Section 3(c) hereof), then the Lessee shall pay to the Lessor at the time specified in paragraph (d) hereof an amount (herein the "Tax Payment") which, after the deduction of all taxes payable by the Lessor with respect to the receipt

thereof, is equal to the Tax Payment (as defined in Section 6(c) hereof) payable by the Lessor. This amount shall be computed in accordance with Section 9(b) hereof including all interest, penalties and additions to tax payable by the Lessor with respect to such Tax Payment (after giving credit for tax benefits with respect to the Lessor's payment or accrual thereof). Notwithstanding the foregoing, in any year in which the Lessor would realize a reduction in Federal income taxes or a reduction in interest, penalties or additions to tax, as a result of a Loss with respect to which the Lessee has previously made an indemnity payment hereunder, the Lessor shall pay to the Lessee an amount which, after the deduction of all taxes payable by Lessee with respect to the receipt thereof, will be equal to the sum of (x) the amount of such reduction in income taxes, interest, penalties or additions to tax, computed in accordance with Section 9(b) hereof, plus (y) the amount of any interest received because of such reduction, plus (z) the amount of any net tax benefits accruing to the Lessor by reason of any such payment pursuant to this sentence, except that the Lessor will not be required to make such a payment to the Lessee if an event of default shall have occurred and be continuing under Section 17 of the Lease, and the Lessor has not waived its rights with respect to such default.

(b) An "Indemnified Event" shall mean one or more of the following

- (i) the sale or other disposition of any part of the Premises or the Equipment or the interest of the Lessor therein after the occurrence of an event of default under the Lease,
- (ii) the incorrectness of any representation or warranty made by the Lessee herein, or
- (iii) any act or failure to act by the Lessee or any person who acquires possession or control of any part of the Equipment or any part of the Premises through the Lessee, regardless of whether such act or failure to act is permitted or required by the terms of the Lease,
- (iv) use by the Lessee or any sublessee of the Equipment outside the United States,

(c) A "Loss of Operative Benefits" or a "Loss" shall mean any of the following

- (1) the Lessor shall have suffered a disallowance, deferral or recapture of, or is otherwise not allowed or loses the right to claim all or any portion of the Tax Benefits, or
- (11) the Lessor shall be required to include in income with respect to the Lease, the Premises and/or the Equipment any amounts other than or at a time other than those specified in Section 1(b)(v) hereof, (together with the Tax Benefits, the "Operative Benefits")

(d) All amounts payable to the Lessor hereunder shall be paid within thirty days of written notice from the Lessor to the Lessee describing the Loss, provided that no amount shall be payable prior to the date on which the Lessor makes a Tax Payment with respect to such Loss. Any payment due to the Lessee from the Lessor shall be paid within thirty days after the Lessor realizes a reduction in tax, interest, penalties or additions to tax, as the case may be.

SECTION 4 Change in Law Indemnification

(a) In the event that a Tax Law Change (as hereinafter defined) shall result in a reduction in Lessor's Net After-Tax Margin (as hereinafter defined), the Lessee shall pay the Lessor a re-documentation fee in an amount necessary to maintain 75% of Lessor's Net After-Tax Margin, giving effect to the Tax Law Change, but in no event shall this amount be in excess of 2.5% of the Acquisition Cost. If such fee shall not be sufficient to maintain 75% of the Lessor's Net After-Tax Margin, giving effect to the Tax Law Change, the Basic Rent payable under the Lease shall be adjusted upwards as follows:

- (1) such adjustment shall result in amounts and be based upon an implicit lease rate necessary to maintain 75% of the Net After-Tax Margin, giving effect to the Tax Law Change,
- (11) such new implicit lease rate shall take into account the payment of the re-documentation fee described above and be applied toward maintaining Lessor's Net After-Tax Margin, and
- (111) such new implicit lease rate shall not result in the present value (using as the discount rate the interest rate on

the indebtedness secured by a lien on the Premises and the Equipment and incurred by Lessor in connection with its acquisition of the Premises and the Equipment) of Basic Rent payable under the Lease during the Primary Term to be in excess of 89 5% of the Acquisition Cost (as hereinafter defined)

(b) For the purposes of this Section 4, the following terms have the following meaning

- (1) "Acquisition Cost" means \$13,000,000
- (11) "Net After-Tax Margin" means the net after tax yield to be derived by Lessor from the sale and leaseback of the Premises and the Equipment less the net after tax cost of funds to the Lessor as assumed by Lessor as of the date hereof
- (111) "Tax Law Change" means any regulations promulgated after the date hereof under the Internal Revenue Code of 1986, as amended to the date hereof which affects the timing or amounts of any of the Operative Tax Benefits

(c) If a Tax Law Change shall occur, the Lessor shall determine whether the provisions of paragraph (a) hereof shall apply and if so, the amount of any Basic Rent increases, and shall, if Lessor determines that such Tax Law Change results in an increase in Basic Rent, within forty-five days after the date of enactment of a Tax Law Change deliver to the Lessee a notice either specifying the amount of such Basic Rent increases with respect to the Premises and/or Equipment and that the re-documentation fee is payable. Upon receipt of such notice, Lessee shall have a period of 30 days thereafter to determine whether Lessee agrees with the calculations and conclusions set forth therein. In the event Lessee disagrees with the calculations and conclusions set forth in the certificate, Lessee shall, within 30 days of the receipt of the certificate, notify Lessor of Lessee's disagreement and appoint a financial consultant (reasonably acceptable to Lessor) to make the calculations of rent increase as required by this Section 4. Such financial consultant shall present his calculations and conclusions within 30 days after appointment by Lessee. In the event the conclusion of Lessee's financial consultant as to the amount of increased rent does not differ

by more than 5% with the conclusion of Lessor, the decision of Lessor shall be binding upon the parties and the increased Basic Rent shall constitute the Basic Rent payable under the Lease commencing as of the date of enactment of the Tax Law Change. In the event the conclusion of Lessee's financial consultant as to the amount of increased rent differs by more than 5% from the conclusion of Lessor, Lessor and Lessee shall select a second financial consultant who shall decide which of the two conclusions is more accurate. The decision of the second financial consultant shall be binding upon the parties and the increased Basic Rent shall constitute the Basic Rent payable under the Lease with respect to the Premises and/or the Equipment commencing as of the date of enactment of the Tax Law Change. The re-documentation fee shall be due and payable within five business days after notice that such is due and payable.

SECTION 5 Excluded events Notwithstanding any provisions contained herein to the contrary, Lessee shall not be required to make any payment to the Lessor in respect of any Loss of Operative Benefits if that Loss results solely from one or more of the following events (hereinafter called "Excluded Events")

(a) a voluntary or involuntary sale, transfer or other disposition by the Lessor of any interest in the Premises and/or Equipment, including any such transfer or disposition pursuant to provisions of paragraphs 11(b), 11(c), 13(a), 13(b) and 13(c) of the Lease (in each case only to the extent that Lessee shall have paid all amounts which it is required to pay under the Sublease in connection therewith) and other than any such transfer or disposition pursuant to any assignment or grant of a security interest to a Mortgagee pursuant to the terms thereof as a result of Lessee's default under the Lease or Guarantor's default under the Guaranty

(b) the failure of the Lessor timely to claim any Operative Benefit in its Federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure or to make any necessary elections in claiming any Operative Benefit which is properly allowable,

(c) the failure of the Lessor to have sufficient income on its Federal income tax returns to benefit from Accelerated Cost Recovery Deductions, Amortization Deductions, or Interest Deductions (after giving effect to any carrybacks or carryforwards to which the Lessor is entitled),

(d) Any event which requires or permits the payment by the Lessee of the purchase price set forth in Schedules C or D to the Lease, but only if such purchase price shall have actually been paid by the Lessee, and

(e) a foreclosure by any person holding a lien or interest in the Premises or any interest therein, if no event of default under the Lease shall have occurred and be continuing

SECTION 6. Contest (a) In the event that (1) the Internal Revenue Service proposes an adjustment in the Federal income taxes of the Lessor which, if successful, would require Lessee to indemnify the Lessor pursuant to this Agreement, and (11) the amount of the indemnity which Lessee would be required to pay in the aggregate in respect of such adjustment would exceed \$50,000, then the Lessor shall give notice to the Lessee of such proposed adjustment within thirty days (or a longer period of time if the failure to give notice of such claim to Lessee within thirty days does not have a materially adverse impact on the ability of Lessee to participate in the contest of the proposed adjustment)

(b) The Lessee shall have the right at its option and at its own expense to be represented by counsel of its choice reasonably satisfactory to Lessor and to undertake the defense, negotiations or settlement of any such proposed adjustment which relates to any Loss indemnified against hereunder Except as provided in (c) below, such notice, and the opportunity to undertake the defense, negotiations or settlement of any such proposed adjustment, shall be a condition precedent to any liability of the Lessee under the provisions of this Agreement If the Lessee shall undertake to defend, negotiate or settle any such proposed adjustment, it shall notify the Lessor of its intention to do so within 30 days of notice of any such claim for indemnity, and the Lessor shall cooperate with the Lessee or its counsel in the defense against any such proposed adjustment and in any compromise thereof. Lessor shall be entitled to participate in any such defense with counsel of its choice and at its expense After the Lessee has notified the Lessor of its intention to undertake to defend, negotiate or settle any such proposed adjustment, the Lessee shall not be liable for any additional legal expenses incurred by the Lessor in connection with any defense, negotiation or settlement of such proposed adjustment If the Lessee shall desire to make a final and complete compromise with the Internal Revenue Service of all claims arising out of any such proposed adjustment and the Internal Revenue Service accepts such compromises and the Lessor shall refuse to consent to such compromise, then the Lessee's liability under this Agreement with respect to such

proposed adjustment shall be limited to the amount so offered in compromise. To the extent that the Lessee elects not to defend or settle such proposed adjustment, the Lessor may elect reasonably and in accordance with its good faith business judgment to defend or settle such proposed adjustment, provided, however, that any such settlement shall be made only with the consent of the Lessee (which consent shall not be unreasonably withheld or delayed and shall be deemed given by the Lessee unless the Lessee shall notify the Lessor of its objection to such settlement and the reasons for such objection by notice given within ten days after said consent shall be requested by the Lessor). After any final judgment, or award shall have been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which to appeal therefrom or a settlement shall have been consummated or the Lessor and the Lessee shall have arrived at a mutually binding agreement, the Lessee shall pay all sums due hereunder in accordance with the provisions of Section 3 hereof. If the Lessee determines that the Lessor should make a Tax Payment (as defined in paragraph (c) below) and then sue for refund, the Lessee shall advance the funds necessary for such Tax Payment to the Lessor free of interest. If the Final Determination (as defined in paragraph (c) below) shall be in favor of the Lessor, the Lessor shall pay to the Lessee an amount equal to the Operative Benefit to the Lessor resulting from the payment of such amount plus the amount of any tax, penalty or interest refunded to the Lessor as the result of such Final Determination and any interest paid to the Lessor by the Government, promptly upon receipt thereof. Notwithstanding the provisions of this Section 6(b), the Lessor may at any time waive the right to such indemnification from the Lessee and assume the defense of any claim, thereby relieving the Lessee for such claim.

(c) The provisions of subparagraph (b) above shall not apply if in connection with any such proposed adjustment subject to indemnity hereunder other adjustments in the Federal income taxes of the Lessor are proposed by the Internal Revenue Service which are not subject to indemnity hereunder. In such case, the provision of this subparagraph (c) shall apply. In such event, if requested by the Lessee within 30 days of notice, the Lessor will exercise its best efforts (which are to be determined in its sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor) to avoid requiring Lessee to pay such indemnity, provided, however, that in no event is the Lessor obligated to undertake, nor may Lessee require the Lessor to undertake, any appeal of an adverse decision by a United States Circuit Court of Appeals, and provided, further, that the Lessor shall determine in its sole and reasonable discretion the nature of all actions

to be taken to contest such proposed adjustment including (x) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (y) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (z) if the Lessor shall elect to undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Lessor shall have full control over any contest pursuant to this Section 6(c) but shall keep the Lessee informed of the status thereof and shall, when in good faith requested, consult the Lessee concerning the contest of such proposed adjustment.

The Lessor may, at its option, commence an action prior to making payments of any tax, interest, addition to tax or penalty attributable to a Loss of Operative Benefits (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, the Lessee shall not be required to make any payments to the Lessor pursuant to Section 3(a) hereof so long as such action is pending, provided that the Lessee shall pay the expenses relating to such action when and as the same shall become due. In such case, if the Final Determination (as defined in Section 6(c) hereof) is adverse to the Lessor, the payment required under Section 3(a) shall be payable by the Lessee at such time as the Tax Payment is payable (but not sooner than 30 days after receipt by the Lessee of written notice from the Lessor). If the Lessor shall elect to make such Tax Payment and then sue for refund, the Lessee shall lend to the Lessor free of net interest expense the amount of such Tax Payment. If the Final Determination shall be in favor of the Lessor, the Lessor shall pay to the Lessee an amount equal to the Tax Payment paid to the Lessor by the Lessee to the extent refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the government, promptly upon receipt thereof.

"Final Determination" means any of the following (1) a decision by the Lessor, consistent with an opinion of independent tax counsel (selected by the Lessor and reasonably acceptable to the Lessee), that the Lessor does not have a reasonable basis for claiming any of the Operative Benefits on its income tax return filed prior to the commencement of an audit by the Internal Revenue Service, (11) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, i.e., all allowable appeals requested by the Lessee pursuant to this Section 6(c) have been exhausted by either party to the action, provided, however, that the Lessor shall not be required to seek certiorari from the United States

Supreme Court, (iii) the settlement of such claim in accordance with this Section 6(c), or (iv) the written agreement of the Lessor and the Lessee that the Lessor has suffered a Loss with respect to which the Lessor is entitled to indemnification pursuant to Section 3(a) hereof

Anything to the contrary in this Section 6(c) notwithstanding, the Lessor shall not pay, compromise or settle any claim indemnified against herein without the consent of the Lessee, which consent shall not be unreasonably withheld, provided, however, that such consent shall be deemed given if such proposed compromise shall not be disapproved by the Lessee within 30 days after written notice thereof from the Lessor to the Lessee, or if the Lessee does not timely request that the Lessor contest such claim in accordance with, and if so requesting at all times comply with the requirements of, the provisions of this Section 6(c). At any time, whether before or after commencing to take action otherwise required pursuant to this Section 6(c), the Lessor may decline to take such action as is otherwise required by this Section 6(c) by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to such proposed adjustment or such portion thereof as may be specified in such notice

Moreover, at any time, whether before or after commencing to take any action to contest any proposed adjustment, the Lessee may give notice in writing to the Lessor of the Lessee's desire that such action be terminated. The Lessee shall promptly pay to the Lessor the amount that the Lessee would be required to pay the Lessor as an indemnity under this Agreement, assuming for this purpose only that the adjustment proposed to be made was actually made on the date the Lessor receives notice from the Lessee. The Lessee shall not be liable for any costs or expenses incurred in further pursuing such action after the Lessor's receipt of such notice in further pursuing such action except to the extent such expenses relate to winding-up such action.

(d) Notwithstanding anything to the contrary in this Section 6, the Lessor shall not be required to take any action pursuant to either paragraph (b) or (c) of this Section 6 unless the Lessee shall have furnished Lessor, if requested by Lessor, with an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious claim exists in favor of the allowance of the item or items proposed to be adjusted.

SECTION 7 Survival The obligations, liabilities, and rights of the Lessor and Lessee arising under this Agreement shall continue in full force and effect, notwithstanding the expiration or other termination of the Lease, until all such obligations have been met, such liabilities have been paid in full, and such rights have been exhausted. The obligations and liabilities of the Lessee hereunder shall be enforceable by the Lessor and its successors, assigns and agents.

SECTION 8 Recomputation of Purchase Prices If any amount is paid to the Lessor by the Lessee pursuant to this Agreement, the Lessor shall recompute the purchase prices under Schedule C to the Lease to reflect such payment in accordance with the manner in which such values were originally computed.

SECTION 9 Miscellaneous

(a) Notices Any notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, registered as certified, postage prepaid, addressed as follows:

If to the Lessor

BNE Capital Corporation
28 State Street
Boston, Massachusetts 02109
Attention Vice President -
Administration

If to the Lessee

Fleming Foods of Alabama, Inc
6301 Waterford Boulevard
P O Box 26647
Oklahoma City, OK 73126-0647
Attention R Randolph
Devening, Vice President

(b) Computations Whenever it may be necessary to determine (x) whether there is a Loss, (y) the amount of a Loss or (z) the amount of any payment required to be made hereunder by either the Lessee or the Lessor, such determination and such computation shall be made on the assumptions contained in Section 1 hereof. The computation of any Tax Payment shall be made based upon the highest marginal tax rate applicable to Lessor for the period to which such Tax Payment relates. All computations required to be made hereunder shall be made reasonably by the Lessor, and the results of such computations, together with a statement describing in reasonable detail the manner in which such computations were made, shall be delivered to the Lessee in writing.

Upon receipt of such statement, Lessee shall have a period of ten days thereafter to determine whether Lessee agrees with the computations and results set forth therein. In the event Lessee disagrees with the computations and results set forth in the statement, Lessee shall, within 30 days of the receipt of the statement, notify Lessor of Lessee's disagreement. Thereafter, within five days of such notification, Lessor and Lessee shall each appoint a financial consultant (the expenses of which to be paid by the party appointing the same) to make the computations necessary to determine (x), (y) or (z) above, as the case may be. Such financial consultants shall present their computations and determinations within 30 days after appointment by Lessee and Lessor. In the event the conclusions of the financial consultants do not differ by more than 5% with each other, the decision of Lessor's financial consultant shall be binding upon the parties. In the event the conclusion of Lessee's financial consultant as to the matter under determination differs by more than 5% from the conclusion of Lessor's financial consultant, the two financial consultants shall select a third financial consultant who shall decide which of the two conclusions is more accurate. The decision of the third financial consultant shall be binding upon the parties and the expenses of said third consultant shall be paid by the losing party.

(c) Counterparts This Agreement may be executed in any number of counterparts, each counterpart constituting an original but all together one and the same instrument and contract.

(d) Governing Law This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts.

(e) Payments All payments hereunder to the Lessor shall be made by wire transfer of immediately available funds to such bank or account as the Lessor shall designate by prior written notice. All payments hereunder to the Lessee shall be made by wire transfer of immediately available funds to such bank or account as the Lessee shall designate by prior written notice. If any payment required to be made pursuant to this Agreement is not made to the Lessor or the Lessee on or before the date required herein, then such payments shall bear interest at the rate provided for past due payments under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this
Tax Indemnity Agreement as of the date first above written.

BNE CAPITAL CORPORATION

By David A. Muehan
Vice President - Administration

FLEMING FOODS OF ALABAMA, INC.

By: _____

IN WITNESS WHEREOF, the parties hereto have executed
this Tax Indemnity Agreement as of the date first above written.

BNE CAPITAL CORPORATION

By _____

FLEMING FOODS OF ALABAMA, INC

By. Donald N Eyler
DONALD N EYLER, VP

EXHIBIT D

2055c

TAX INDEMNITY GUARANTY

from

FLEMING COMPANIES, INC

to

BNE CAPITAL CORPORATION

Dated as of November 20, 1986

TAX INDEMNITY GUARANTY, dated as of November 20, 1986 (herein, together with all amendments and supplements hereto, called this Guaranty), from FLEMING COMPANIES, INC., an Oklahoma corporation (herein, together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, called Guarantor), having an address at 6301 Waterford Boulevard, P O Box 26647, Oklahoma City, Oklahoma 73126-0647, to BNE CAPITAL CORPORATION, a Massachusetts corporation (herein, together with any assignee of its rights under this Guaranty, called Lessor), having an address 28 State Street, Boston, Massachusetts 02109

Guarantor is the owner of all of the issued and outstanding stock of Fleming Foods of Alabama, Inc., an Alabama corporation (herein, together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety called Lessee). Lessee intends to sublease from the Lessor a parcel of land located in Geneva, Alabama (the Land Parcel) and the buildings, structures and other improvements located respectively thereon (the Land Parcel and the improvements thereon being herein called the Premises) and certain items of machinery and equipment (the Equipment) to be used in connection therewith, pursuant to a Sublease and Agreement, dated as of the date hereof, between Lessor, as lessor, and Lessee, as lessee (herein, together with all amendments and supplements thereto and any memorandum or short form thereof entered into for purposes of recording called the Sublease).

In connection with the execution and delivery of the Sublease, Lessor and Lessee have also entered into a Tax Indemnity Agreement, dated as of the date hereof (the Tax Indemnity Agreement). Lessor will finance a portion of its acquisition price of the Premises and the Equipment from the issuance and sale by the Industrial Development Board of the City of Geneva, Alabama (the Board) of \$10,400,000 aggregate original principal amount of its Industrial Development Bonds (Fleming Foods, 1986 Project) Series A and its \$2,600,000 original principal amount Industrial Development Bond (Fleming Foods, 1986 Project) Series B and secure such Series A Bonds (the Indebtedness) with a mortgage lien (the instrument or instruments evidencing such lien called the Mortgage and the party or parties entitled to the benefits of such lien, including any trustee therefor, called the Mortgagee). The Sublease will be assigned by the Lessor as security for the Indebtedness.

The execution and delivery of this Guaranty by Guarantor is an inducement to the Lessor to execute and deliver the Sublease. Guarantor, as owner of all the issued and outstanding stock of Lessee, deems it to be in its interest and for its financial benefit that Lessee execute and deliver the Sublease and the Tax Indemnity Agreement.

NOW, THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees that all sums to be paid by Lessee under the Tax Indemnity Agreement, will be promptly paid in full on or before the expiration of any applicable grace period in accordance with the provisions of said document, and that Lessee will punctually perform and observe each and every covenant, agreement, term and condition in said documents required to be performed or observed by Lessee. This Guaranty is primary, irrevocable, unconditional and absolute, irrespective of any

circumstance which might otherwise constitute a legal or equitable discharge or defense of or by a guarantor or surety. If for any reason any such sums shall not be paid when due, or any such covenant, agreement, term or condition is not performed or observed, in accordance with said documents, Guarantor, within 3 business days after notice thereof, but in any event prior to the expiration of any period of grace provided therefor in the Tax Indemnity Agreement (which notice shall not extend any such grace period), shall pay the same to the persons entitled thereto pursuant to the provisions of the Tax Indemnity Agreement and will perform and observe or cause to be promptly performed and observed every such covenant, agreement, term and condition thereof regardless of (a) any defenses or rights of set-off or counterclaims which Lessee or Guarantor may have or assert, (b) whether Lessor shall have taken any steps to enforce any rights against the Lessee or any other remedy thereunder as a result of the default of Lessee thereunder and (c) any other condition or contingency. Failure of Guarantor to comply with the provisions of the immediately preceding sentence shall constitute an Event of Default hereunder and failure of Guarantor to comply with any other covenant or agreement contained herein for a period of 30 days after notice shall likewise constitute an Event of Default hereunder. Guarantor also agrees to pay to such person such further amounts as shall be sufficient to cover the cost and expense of collecting such sums or any part thereof, or of otherwise enforcing this Guaranty, including, in any case, reasonable compensation to its attorneys. This Guaranty is a guaranty of payment and performance and not merely of collectability.

2 The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following, although without notice to or the further consent of Guarantor:

- (a) the waiver by Lessor of the performance or observance by Lessee, Guarantor or any other party of any of the agreements, covenants, terms or conditions contained in this Guaranty, the Tax Indemnity Agreement or any other instrument contemplated therein or herein,
- (b) the extension, in whole or in part, of the time for payment by Lessee or Guarantor of any sums owing or payable under the Tax Indemnity Agreement or this Guaranty, or of any other sums or obligations under or arising out of or on account of the Tax Indemnity Agreement or this Guaranty or the renewal of any thereof,
- (c) any assignment of the Sublease or subletting of the Premises or the Equipment or any part thereof or any refinancing of the Indebtedness,
- (d) the modification or amendment (whether material or otherwise) of any of the obligations of Lessee or Guarantor under the Sublease, the Tax Indemnity Agreement or this Guaranty, specifically including (but without limitation) in connection with the construction of Substantial Alterations pursuant to Section 10 of the Sublease,

- (e) the doing or the omission of any of the acts referred to in the Tax Indemnity Agreement or this Guaranty (including, without limitation, the giving of any consent referred to therein),
- (f) any failure, omission or delay on the part of Lessor to maintain, enforce, assert or exercise any right, power or remedy conferred on or available to Lessor in or by the Tax Indemnity Agreement or this Guaranty or any other instrument, or any action on the part of Lessor granting indulgence or extension in any form whatsoever,
- (g) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Lessee or Guarantor or any of their assets,
- (h) the release of Lessee or Guarantor from, or any defense of Lessee or Guarantor to, the performance or observance of any of the agreements, covenants, terms or conditions contained in the Tax Indemnity Agreement or this Guaranty by operation of law,
- (i) any change in the corporate relationship between Guarantor and Lessee, specifically including (but without limitation) divestiture of ownership of Lessee by Guarantor,
- (j) the inability of Lessor, the Mortgagee or Lessee to enforce any provisions of the Tax Indemnity Agreement for any reason,
- (k) the termination of the Lease (as defined in the Sublease) or any termination of the Sublease prior to the expiration of its term other than as a result of the exercise of any purchase option thereunder, or
- (l) any action or inaction of Lessor which results in any impairment or destruction of any subrogation rights of Guarantor or any rights of Guarantor to proceed against Lessee for reimbursement

Guarantor's liability hereunder shall not be affected or impaired by any sale, pledge, surrender, compromise, release, renewal, extension, indulgence, alteration, exchange, change in or modification of said liabilities and obligations, either expressed or implied or any contract or contracts evidencing any thereof, or any security or collateral therefor including, without limitation, any contained in the the Tax Indemnity Agreement

3 In the event of the rejection or disaffirmance of the Tax Indemnity Agreement by Lessee or Lessee's trustee in bankruptcy pursuant to any present or future, federal or state bankruptcy law or any other law affecting creditors' rights, Guarantor will, and does hereby (without the necessity of any further agreement or act) assume all obligations and liabilities of Lessee under the Tax Indemnity Agreement to the same extent as if it had been originally named instead of Lessee as a party to each such document and there had been no such rejection or disaffirmance, and Guarantor will confirm such assumption in writing at the request of the Lessor upon or after such rejection or disaffirmance. Guarantor, upon such assumption, shall have all rights of Lessee under the Tax Indemnity Agreement (to the extent permitted by law)

4 Guarantor will deliver to Lessor copies of all financial statements, reports, notices and proxy statements sent by Guarantor to its stockholders (other than monthly financial statements and reports) along with such additional information (including copies of public reports filed by Guarantor with the Securities Exchange Commission) regarding the business affairs and financial condition of Guarantor as Lessor may reasonably request

5 Notice of acceptance of this Guaranty and notice of any obligations or liabilities contracted or incurred by Lessee, whether or not waived by Lessor, are hereby waived by Guarantor

6 This Guaranty may not be modified or amended except by a written agreement duly executed by Guarantor with the consent in writing of Lessor and all assignees of Lessor

7 Guarantor waives any right it may have to require Lessor to proceed against Lessee or to pursue any remedy within the power of Lessor. Guarantor agrees that all of its obligations hereunder are independent of the obligations of Lessee under the Tax Indemnity Agreement and that a separate action may be brought against Guarantor whether or not an action is commenced against Lessee under the Tax Indemnity Agreement

8 All agreements, representations and warranties contained herein or made in writing by Guarantor shall survive the execution and delivery of this Guaranty

9 All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Guaranty shall be in writing and shall be deemed to have been properly given if sent by prepaid certified or registered mail or by prepaid messenger service guaranteeing overnight delivery, addressed to each party at their respective address first above set forth. Guarantor and Lessor shall each have the right from time to time to specify as its address for purposes of this Guaranty any other address in the United States of America upon giving 15 days' written notice thereof, similarly given, to the other party

10 This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, whether by merger, consolidation or transfer of assets

11 This Guaranty shall be construed and enforced in accordance with
and governed by, the laws of the State of Alabama

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly
executed as of the day and year first above written

FLEMING COMPANIES, INC
Guarantor

By Donald N Eyler
Donald N Eyler, Vice President

(Corporate Seal)

Attest

By John Thompson
John Thompson,
Assistant Secretary

EXHIBIT E

This Instrument Was Prepared By
and When Recorded Return To:

Mark G. Henning, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601-9703

[Fleming]

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of August 9, 1994 (this "Assignment") between BNE CAPITAL CORPORATION, a Massachusetts corporation ("Seller"), and REBNEC Nine, Inc., a Delaware corporation ("Purchaser").

RECITALS

A. Seller leases from The Industrial Development Board of the City of Geneva, an Alabama public corporation, (hereinafter called the "Board") certain land described on Exhibit A attached hereto and made a part hereof, and all buildings and improvements located thereon (all of the foregoing being hereinafter collectively called the "Premises") pursuant to a certain Lease and Agreement dated as of November 20, 1986 (hereinafter called the "Lease"), which Lease was filed on December 15, 1986 in the records of the Judge of Probate of Geneva County, Alabama in Official Record Book 31 at pages 1-29.

B. Seller subleases the Premises to Fleming Foods of Alabama, Inc., an Alabama corporation pursuant to a certain Sublease and Agreement dated as of November 20, 1986 (hereinafter called the "Sublease"), which Sublease was filed on December 15, 1986 in the records of the Judge of Probate of Geneva County, Alabama in Official Record Book 31 at pages 30-72.

C. Pursuant to a certain Collateral Assignment dated as of November 20, 1986 (hereinafter called the "Collateral Assignment"), Seller assigned to the Board all of Seller's estate, right, title and interest in, to and under the Sublease and a certain Sublease Guaranty from Fleming Companies, Inc., an Oklahoma corporation to Seller dated as of November 20, 1986.

D. Pursuant to a certain Trust Indenture (the "Trust Indenture") dated as of November 20, 1986, the Board conveyed, assigned, mortgaged and granted to Morgan Guaranty Trust Company of New York, as Trustee (hereinafter called the "Trustee") all of the Board's right, title and interest in and to, among other things, the Premises, the Lease, the Sublease and the Sublease Guaranty; in addition, pursuant to a certain Assignment of Leases and Agreement dated as of November 20, 1986 (hereinafter called the "Assignment of Leases"), the Board assigned to the Trustee all of its right, title and interest in, to and under the Sublease, the Sublease

Guaranty, the Lease and the Collateral Assignment. The Collateral Assignment, the Trust Indenture and the Assignment of Leases are hereinafter collectively called the "Security Documents."

E. Seller has agreed to sell, transfer and assign to Purchaser all of Seller's right, title and interest (1) as Lessee in, to and under the Lease and the Premises, including, but not limited to Seller's rights and options to purchase the Premises as specifically provided in the Lease, and (2) as Sublessor in, to and under the Sublease, in each case subject to the estate, right, title and interest of the Trustee therein created and existing pursuant to the Security Documents.

F. Purchaser and Seller desire to enter into this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Assignment. Seller does hereby assign, transfer, sell and convey to Purchaser all of Seller's right, title and interest (a) as Lessee in, to and under the Lease and the Premises, including, but not limited to Seller's rights and options to purchase the Premises as specifically provided in the Lease, and (b) as Sublessor in, to and under the Sublease, in each case subject to the estate, right, title and interest of the Trustee therein created and existing pursuant to the Security Documents.

Section 2. Assumption. Purchaser hereby assumes all of the duties and obligations of Seller under the Lease and the Sublease arising or accruing on or after the date hereof. Purchaser confirms that (i) it has the requisite corporate power and authority to enter into and carry out the obligations of the Lessee under the Lease and the Sublease and (ii) it shall be bound by all of the terms of, and shall undertake all the obligations of Seller contained in, and shall be deemed a party to the Lease and the Sublease, in each case solely from and after the date hereof.

Section 3. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Purchaser, Seller and their permitted successors and assigns.

Section 4. Counterparts. This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 5. Governing Law. This Assignment, including all matters of construction, validity and performance shall be governed by and construed in accordance with the laws of the State

of Alabama applicable to contracts made in such state, without regard to conflicts of laws.

Section 6. Notices. All notices, offers, documents, approvals, waivers, requests, demands and other communications hereunder or under the Transaction Documents shall be given to Purchaser at:

REBNEC Nine, Inc.
1900 Indian Wood Circle
Maumee, Ohio 43547
Attn: President
Fax: (419) 893-7419

* * * *

IN WITNESS WHEREOF the undersigned have caused this Assignment to be duly executed as of the dates of the acknowledgments set forth below to be effective however as of the day and year first written above.

BNE CAPITAL CORPORATION

By: 

Its: President

REBNEC Nine, Inc.

By: _____

Its: _____

C:\DOCS\MGH\DANA\ASSUMPTION.FL2
7-26-94\1:38pm



IN WITNESS WHEREOF the undersigned have caused this Assignment to be duly executed as of the dates of the acknowledgments set forth below to be effective however as of the day and year first written above.

BNE CAPITAL CORPORATION

By: _____

Its: _____

REBNEC Wine, Inc.

By:  _____

Its: Vice President _____

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF Hampshire ;

I, the undersigned, a notary public in and for said county in said state, hereby certify that Ben S. Branch, whose name as President of BNE CAPITAL CORPORATION, a Massachusetts corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 1st day of August, 1994.

Darci L Dubreuil
Notary Public



My commission expires: _____

Darci L. Dubreuil
Notary Public
Commonwealth of Massachusetts
My commission expires March 16, 2001

STATE OF Ohio)
COUNTY OF Lucas)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Paul J. Bishop whose name as Vice President of REBNEC Nine, Inc., a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 18th day of August, 1994.

Marla K. Day
Notary Public

(NOTARIAL SEAL)

MARLA K DAY
Notary Public, State of Ohio
My commission expires: My Commission Expires 2 2 99

[Fleming Foods]

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of August 19, 1994 (this "Assignment") between BNE CAPITAL CORPORATION, a Massachusetts corporation ("Seller"), and REBNEC NINE, INC., a Delaware corporation ("Purchaser").

RECITALS

A. The parties hereto wish to effect the sale by Seller to Purchaser of all right, title and interest of Seller in and to the Transaction Documents (as defined below), and the assumption by Purchaser of the obligations of the Seller under the Transaction Documents relating to the sale to Purchaser of (i) Seller's leasehold interest in certain real property located in Geneva, Alabama (the "Property") and (ii) all of Seller's right, title and interest in and to Industrial Revenue Bond Series B (as defined below).

B. Purchaser and Seller desire to enter into this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. For purposes of this Assignment, the following specific terms shall have the meanings set forth below:

"Collateral Assignment" shall mean the Collateral Assignment dated as of November 20, 1986 from the Seller, as assignor, to the Board, as assignee, filed December 15, 1986 and recorded in Official Record Book 31 at pages 73-90, records of the Judge of Probate, Geneva County, Alabama.

"Closing" shall mean the date of execution and delivery of this Assignment.

"Board" shall mean The Industrial Development Board of the City of Geneva, an Alabama public corporation.

"Industrial Revenue Bond Series B" shall mean the 9.00% Industrial Development Bond (Fleming Foods, 1986 Project) Series B, due March 15, 2011 and dated December 15, 1986 purchased by Seller with an original face amount of \$2,600,000.

"Lease" shall mean the Lease and Agreement dated as of November 20, 1986 between the Board, as lessor, and Seller, as lessee, filed December 15, 1986, and recorded in Official Record Book 31 at pages 1-29, records of the Judge of Probate, Geneva County, Alabama.

"Sublease" shall mean the Sublease and Agreement dated as of November 20, 1986 between Seller, as lessor, and Sublessee, as lessee, recorded on December 15, 1986 at Official Record Book 31 pages 30-72 of

Section 4. Novation. Upon the execution and delivery of this Assignment and thereafter, Purchaser shall be substituted in lieu of Seller as a party to each Transaction Document to which Seller is a party.

Section 5. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Purchaser, Seller and their permitted successors and assigns.

Section 6. Counterparts. This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 7. Governing Law. This Assignment, including all matters of construction, validity and performance shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable to contracts made in such state, without regard to conflicts of laws.

Section 8. Notices. All notices, offers, documents, approvals, waivers, requests, demands and other communications hereunder or under the Transaction Documents shall be given to Purchaser at:

REBNEC Nine, Inc.
1900 Indian Wood Circle
Maumee, Ohio 43547
Attn: President
Fax: (419) 893-7419

All payments to be made to REBNEC Nine, Inc. shall be made to:

Society National Bank
Cleveland, Ohio
Account No. 500-079-3121
ABA No. 041-001-039
Attn: REBNEC Nine, Inc.

* * * * *

IN WITNESS WHEREOF the undersigned have caused this Assignment to be duly executed as of the date of the acknowledgments set forth below to be effective however as of the day and year first written above.

BNE CAPITAL CORPORATION

By: B. Bank

Its: President

REBNEC NINE, INC.

By: _____

Its: _____



IN WITNESS WHEREOF the undersigned have caused this Assignment to be duly executed as of the date of the acknowledgments set forth below to be effective however as of the day and year first written above.

BNE CAPITAL CORPORATION

By: _____

Its: _____

REBNEC NINE, INC.

By:  _____

Its: Vice President

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF Hampshire) SS.

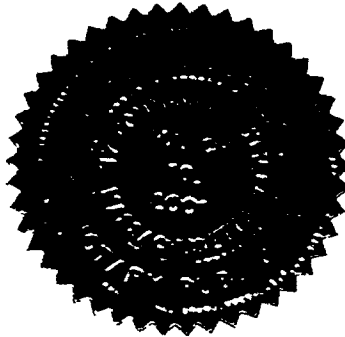
On this 15 day of August, 1994, before me appeared Ben S. Branch, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the President of BNE CAPITAL CORPORATION, a Massachusetts corporation, and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said President acknowledged said instrument to be the free act and deed of said Corporation.

Darci L. Dubreuil
Notary Public

(SEAL)

Commission expires: _____

Darci L. Dubreuil
Notary Public
Commonwealth of Massachusetts
My commission expires March 16, 2001



STATE OF Ohio)
COUNTY OF Lucas) SS.

On this 18th day of August, 1994, before me appeared Paul J. Bishop, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the Vice President of REBNEC NINE, INC., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said Vice President acknowledged said instrument to be the free act and deed of said Corporation.

Marla K Day
Notary Public

(SEAL)

Commission expires: My Commission Expires 2-2 99
M-RLA K DAY
Notary Public State of Ohio