

<b>UNITED STATES BANKRUPTCY COURT</b> <b>FOR THE DISTRICT OF DELAWARE</b>		<b>PROOF OF CLAIM</b> <b>Chapter 11</b>
<b>IN RE FLEMING COMPANIES, INC , et al, CASE NO 03 10945 (MFW) (Jointly Administered)</b>		
<b>Name of Debtor</b> FLEMING COMPANIES, INC	<b>Case Number</b> 03 10945 (MFW)	<div style="font-size: 2em; font-weight: bold;">FILED</div> <div style="font-size: 1.5em; font-weight: bold;">SEP 15 2003</div> <div style="font-size: 1.5em; font-weight: bold;">BMC</div> <div style="font-size: 0.8em; margin-top: 10px;">THIS SPACE IS FOR COURT USE ONLY</div>
<b>NOTE</b> This form should not be used to make a claim for an administrative expense arising on or after April 1, 2003 the date of commencement of the Debtors bankruptcy cases. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503		
<b>Name of Creditor</b> (The person or other entity to whom the debtor owes money or property) <b>ALBERTSON'S, INC</b> <b>C/O DAN DAY</b> <b>250 PARK CENTER BLVD ,</b> <b>P O BOX 20</b> <b>BOISE, ID 83726</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case	
<b>Name and address where notices should be sent</b> <b>Daniel B Prieto</b> <b>Jones Day</b> <b>77 West Wacker Drive, Suite 3500</b> <b>Chicago, IL 60601</b>	<b>Telephone number</b> (312) 782 3939	
<b>Account or Other Number by Which Creditor Identified Debtor</b>	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim dated _____	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>1 Basis for Claim</b>  <input type="checkbox"/> Goods sold  <input type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input checked="" type="checkbox"/> Other <u>See addendum</u> </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Your SS # _____            Unpaid compensation for services performed from _____ to _____  <div style="text-align: center;">(date) (date)</div> </div> </div>		
<b>2 Date debt was incurred</b> See Addendum	<b>3 If court judgment, date obtained</b> n/a	
<b>4 Total Amount of Claim at Time Case Filed</b> \$ <u>Not less than \$4,050,118 14 See Addendum</u> If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. (See addendum)		
<b>5 Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Value of Collateral \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim if any \$ _____	<b>6 Unsecured Priority Claim</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages salaries or commissions (up to \$4 650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier - 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contribution to an employee benefit plan - 11 U.S.C. § 407(a)(4) <input type="checkbox"/> Up to \$2 100* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony maintenance or support owed to a spouse former spouse or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (____)	

Fleming Companies Claim




13086

FILED

SEP 2003

BMC

<p><b>7 Credits</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim</p> <p><b>8 Supporting Documents</b> <i>Attach copies of supporting documents</i>, such as promissory notes purchase orders invoices itemized statements of running accounts, contracts court judgments, mortgages security agreements and evidence of perfection of lien <b>DO NOT SEND ORIGINAL DOCUMENTS</b> If the documents are not available explain If the documents are voluminous, attach a summary</p> <p><b>9 Date-Stamped Copy</b> To received an acknowledgment of the filing of your claim enclose a stamped, self-addressed envelope and copy of this proof of claim</p>		<p><u>THIS SPACE IS FOR COURT USE ONLY</u></p>
<p><b>Date</b></p> <p><i>Sept. 11, 2003</i></p>	<p><b>Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)</b></p> <p><b>Charles F Cole</b>  <b>Group Vice President</b> Title (if any)  <b>Litigation and Regulatory Affairs</b></p> <p><i>By D</i>  Signature </p>	
<p><b>Penalty for presenting fraudulent claim Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 3571</b></p>		

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

**In re**

**Chapter 11**

**FLEMING COMPANIES, INC , et al,**

**Case No 03-10945 (MFW)**

**Debtors**

**ADDENDUM TO PROOF OF CLAIM OF ALBERTSON'S, INC**

1        This Addendum to Proof of Claim is filed by Albertson's, Inc ("Albertson's") against Fleming Companies, Inc , a debtor and debtor in possession herein (the "Debtor")

2        The undersigned is authorized to make this proof of claim on Albertson's behalf

3        On June 28, 2003, Albertson's entered into certain supply agreements (the "Facility Standby Agreements") with the Debtor, pursuant to which the Debtor agreed to supply eight categories of "food, grocery and related products" to forty Albertson's stores in Oklahoma and Nebraska (i) warehouse grocery, (ii) dairy, (iii) frozen food products, (iv) produce, (v) meat, (vi) bakery, (vii) deli, and (viii) grocery, dairy and frozen warehouse supplies (collectively, the "Products")

4        The Facility Standby Agreements specifically establish a target weekly service level (i.e., order fulfillment level) of 96 percent (the "Service Level") on each of the eight departments contemplated by the Facility Standby Agreements (Facility Standby Agreements ¶ 5) The Facility Standby Agreements further provide that the Debtor is in material breach of the agreements if the average weekly Service Level of all departments (the "Average Service

Level") fails to exceed 95 percent for any four, four-week periods (each four-week period, being a "Period") during any 13 consecutive Periods (Id )

5       The Debtor has consistently failed to satisfy its obligations under the Facility Standby Agreements, including its obligation to provide Albertson's with Products at the Average Service Level. The Debtor's consistent failure to meet the contractual Service Level and the continuous deterioration of the Average Service Level, in violation of the Facility Standby Agreements, not to mention continuing quality problems, has caused serious disruptions to Albertson's operations. For example, the Debtor's breach of the Facility Standby Agreements has forced Albertson's to expend significant amounts of money, manpower and time to obtain replacement Products.

6       As of July 22, 2003, the total amount of the prepetition and postpetition damages suffered by Albertson's as a result of the Debtor's breaches under the Facility Standby Agreements is no less than **\$4,050,118.14**, plus interest and expenses allowable under applicable law. Moreover, since July 22, 2003, Albertson's has continued to incur additional damages as a result of the Debtor's repeated defaults under the Facility Standby Agreements. As a result, Albertson's hereby reserves its right to adjust this claim to reflect the damages suffered by Albertson's on or after July 22, 2003.

7       In its Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing Debtors to Assume and Assign Certain Unexpired Executory Contracts with Albertson's (the "Assignment Motion"), the Debtor is attempting to assume and assign the Facility Standby Agreements to AWG Acquisition, LLC. Although Albertson's vigorously disputes that the Debtor can assume and assign the Facility Standby Agreement, in the event that the Court permits the Debtor to assume and assign the Facility Standby Agreements,

section 365(b) of the Bankruptcy Code requires the Debtor to cure all of the defaults under the Facility Standby Agreements, including compensating Albertson's for this claim

8        Additionally, a portion of this claim may be entitled to administrative priority under section 503 of the Bankruptcy Code because a portion of this claim arose after the Petition Date

9        The Debtor has failed to pay certain vendors for products that it purchased from them. Certain of these vendors have threatened to assert, and are expected to assert in the future, claims against Albertson's for payment of these products (the "Product Claims"). Albertson's denies that it is liable for any portion of the Debtor's liability for these products. Albertson's files this claim to preserve its rights against the Debtor if and to the extent that Albertson's incurs or has incurred liability for any products for which the Debtor is partly or fully responsible. Albertson's asserts, without limitation, rights of setoff, recoupment, indemnification or contribution, with respect to (i) any costs Albertson's has incurred or will incur defending itself or its current and former officers and directors from Product Claims, and (ii) any liabilities Albertson's will incur for such claims.

10       Albertson's hereby reserves and asserts any and all claims, whether known or unknown, liquidated or unliquidated, choate or inchoate, disputed or undisputed and contingent or fixed which Albertson's has or may have.

11       This proof of claim is not subject to any setoff or counterclaim. Albertson's expressly reserves any and all rights to setoff and recoupment which it has with respect to this claim, including all rights to which it is entitled pursuant to 11 U.S.C. § 553.

12       Nothing contained herein is or shall be deemed to be a waiver of any rights that Albertson's may have under the Bankruptcy Code or relevant Bankruptcy Rules,

including the characterization of a claim as an administrative expense claim under section 503 of the Bankruptcy Code. In executing and filing this proof of claim, Albertson's does not, to the extent provided by applicable law, submit itself to the jurisdiction of this Court for any purpose other than with respect to claims asserted herein and does not waive (i) any of its respective rights and remedies against any other person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate of any Debtor, an assignee, guarantor or otherwise, or (ii) any obligation owed to it, or any right to any security that may be determined to be held for its benefit. The filing of this proof of claim is not an election of remedies.

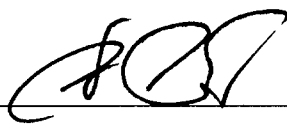
13 The filing of this proof of claim in no respect waives, alters or otherwise affects any rights Albertson's may have with regard to any claims created or otherwise arising on or subsequent to the Petition Date.

14 Albertson's expressly reserves the right to amend, modify, or supplement this proof of claim at any time.

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Dated Sept 11, 2003

**Albertson's, Inc**

By   
Name  
Title **Charles F. Cole**  
**Group Vice President**  
**Litigation and Regulatory Affairs**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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

**DOCUMENTS APPENDED TO CLAIM**

On June 3, 2005, document(s) were appended to Claim Number **13086** for the following reason(s):

- ☒ Settlement Agreement dated 12/20/04
- ☐ New Supporting Documents
- ☐ Change of Address
- ☐ Notice of Withdrawal of Claim
- ☐ Other: Docket Number ##



## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (this "Agreement") is dated as of December 20, 2004 among Albertson's, Inc. ("Albertson's"), Associated Wholesale Grocers, Inc., AWG Acquisition, L.L.C., a special purpose subsidiary of Associated Wholesale Grocers, Inc. (collectively "AWG") and Post Confirmation Trust of the Fleming Companies Estate successor in interest to Fleming Companies, Inc. ("PCT" and collectively with Albertson's and AWG the "Parties").

## RECITALS

A. On July 7, 2003, Fleming Companies, Inc. and its affiliated debtors (collectively the "Debtors") entered into an asset purchase agreement (the "APA") with C&S Wholesale Grocers, Inc. ("C&S") to sell the Debtors' wholesale distribution business. On August 15, 2003, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order approving the APA. Pursuant to the APA, C&S designated the right to take assignment of certain of the Debtors' contracts to AWG, pursuant to a separate agreement with AWG.

B. On September 3, 2003, the Debtors filed a motion [D.L. 3521] (the "Assignment Motion") seeking to assume and assign two of their executory contracts with Albertson's to AWG: (1) the Facility Standby Agreement (Lincoln) between Fleming Companies, Inc. and Albertson's dated June 28, 2002 (the "Lincoln FSA") and (2) the Facility Standby Agreement (Tulsa) between Fleming Companies, Inc. and Albertson's dated June 28, 2002 (the "Tulsa FSA," and together with the Lincoln FSA, the "Agreements").

C. On November 26, 2003, Albertson's filed a timely objection to the Assignment Motion, asserting that as a matter of law the Agreements could not be assigned to

AWG, and that based on the factual record, the Debtors could not meet their burden to permit the assignment of the Agreements.

D. On December 4, 2003, the Court conducted an evidentiary hearing on the Assignment Motion, at the conclusion of which the Court directed Albertson's and AWG to each file a post-trial memorandum on the Assignment Motion by December 24, 2003. Albertson's filed its post-trial memorandum [D.I. 5161] on December 23, 2003 and AWG filed its post-trial memorandum [D.I. 5162] on December 24, 2003.

E. On or about February 27, 2004, the Court rendered its Opinion and Order (the "Opinion") on the Assignment Motion. Among other things, the Court held that the Debtors could assume and assign the Lincoln FSA to AWG.

F. Albertson's and AWG have agreed to terminate the Lincoln FSA on the terms and subject to the conditions set forth in this Agreement.

G. On July 26, 2004, the Court approved Fleming Companies, Inc.'s plan of reorganization entitled, "Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code" ("Plan"). This resulted, *inter alia*, in the creation of the PCT, and the appointment of Castellammere Advisors, LLC as the Post Confirmation Trust Representative for the estate of the Fleming Companies, Inc. and its former subsidiaries. Pursuant to Article V. G. 3. of the Plan, certain of Fleming Companies, Inc.'s rights and assets were put under the control of the PCT including, but not limited to, Fleming Companies, Inc.'s rights under the Agreements.

### AGREEMENT

In consideration of the Recitals set forth above (which are incorporated herein by reference), the covenants and agreements set forth herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Payment. Albertson's agrees to pay AWG the amount of \$750,000 (the "Payment") on or before December 31, 2004. Until such time as AWG receives the Payment, AWG shall have no obligations under the Lincoln FSA. In the event payment as identified herein is not received by AWG by December 31, 2004, AWG shall have the right, in its sole discretion, to terminate this Agreement.
2. Termination of Lincoln FSA. Upon AWG's receipt of the Payment, the Lincoln FSA will be deemed terminated and null and void without any further actions by the Parties.
3. AWG and the PCT's Release of Albertson's. Except for the obligations created by this Agreement, in consideration of the Payment, the agreements and covenants contained in this Agreement and other good and valuable consideration, AWG and PCT (on behalf of themselves and their employees, agents, representatives, predecessors, successors, assigns, heirs, affiliates and/or any party claiming by, through or on behalf of AWG or the PCT) hereby releases Albertson's and its respective officers, directors, employees, affiliates, agents, representatives, successors and assigns from, and waives any claims or rights in respect of, any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, interest, attorneys' fees and losses whatsoever (collectively, "Claims"), whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or

otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued based upon wrongful or other acts, omissions, conduct or other matters, occurring prior to the date of this Agreement and arising under or related in any way to the Lincoln FSA.

Notwithstanding the foregoing, the releases herein shall in no manner be deemed to affect the Claims, if any, of AWG or the PCT against Albertson's arising under or related in any way to the Tulsa FSA, including without limitation, the pending appeal of the Opinion as to the Tulsa FSA.

4. Albertson's Release of AWG and the PCT. Except for the obligations created by this Agreement, in consideration of the Payment, the agreements and covenants contained in this Agreement and other good and valuable consideration, Albertson's (on behalf of itself and its employees, agents, representatives, predecessors, successors, assigns, heirs, affiliates and/or any party claiming by, through or on behalf of Albertson's) hereby releases AWG and the PCT and their respective officers, directors, employees, affiliates, agents, representatives, successors and assigns from, and waives any claims or rights in respect of, any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, interest, attorneys' fees and losses whatsoever (collectively, "Claims"), whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued based upon wrongful or other acts, omissions, conduct or other matters, occurring prior to the date of this Agreement and arising under or related in any way to the Lincoln FSA. Notwithstanding the foregoing, the releases herein shall in no manner be deemed to affect the Claims, if any, of Albertson's against AWG or the PCT arising under or related in any way to the Tulsa FSA, including without limitation, the pending appeal of the Opinion as to the Tulsa FSA,

except that Albertson's agrees that Proof of Claim Number 13086, which relates in part to the Tulsa FSA, shall be deemed withdrawn pursuant to paragraph 5.

5. **Binding Agreement.** Each of the Parties understands that this Agreement is a legally binding contract and agreement that may affect such Party's rights. Each of the Parties represents to the other that it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Agreement and is satisfied with its legal counsel and the advice received from it. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns upon its execution. Each Party executing this Agreement represents to the other that such Party has the full authority and legal power to do so. Each Party represents that it owns and has not assigned or otherwise transferred to any other person or entity all such Party's rights and claims as are being altered or otherwise affected by this Agreement. Consistent with the terms of this paragraph, Albertson's shall withdraw Proof of Claim Number 13086 by December 31, 2004, and Albertson's consents to the disallowance and/or expungement of such claim, except that Albertson's reserves the right to assert the portion of Proof of Claim Number 13086 that relates to the Tulsa FSA as a defense to any action brought by the PCT on account of the Tulsa FSA.

6. **Governing Law and Retention of Jurisdiction.** This Agreement shall be governed by and construed in accordance with the law of the State of Oklahoma, exclusive of its choice-of-law provisions. Furthermore, the Parties agree that the Court shall retain exclusive jurisdiction over all matters relating to this Agreement.

7. **Entire Agreement.** This Agreement constitutes the entire agreement of all of the Parties regarding the subject matter of this Agreement. All prior or contemporaneous understandings, oral representations or agreements made among all of the Parties regarding the

subject matter herein are merged and contained in this Agreement. There are no other agreements, express or implied, among all of the Parties regarding the subject matter of this Agreement. This Agreement may only be modified by a writing signed by all of the Parties. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement is not intended to and shall not alter or amend any other agreement that may exist between less than all of the Parties and/or that may involve one or more of the Parties and one or more additional parties.

8. Compromise. The Parties agree and acknowledge that this Agreement is the result of a compromise and a decision to enter into this Agreement. The Parties further agree that the execution of this Agreement shall never be construed as an admission by the Parties of any liability, wrongdoing, or responsibility.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have each approved and executed this

Agreement as of the date first above written.

Albertson's Inc.

By: 

Name:

Title:

Charles F. Cola

Group Vice President

Litigation and Regulatory Affairs

Associated Wholesale Grocers, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Castellammare Advisors, LLC,  
a Delaware limited liability company, as PCT  
(Post Confirmation Trust) Representative for  
the estate of Fleming Companies, Inc. and its  
former subsidiaries

By: \_\_\_\_\_

Robert A. Kors, Principal

AWG Acquisition, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Albertson's Inc.

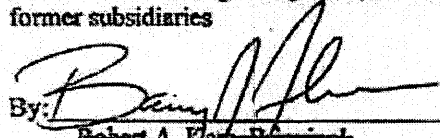
Associated Wholesale Grocers, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

~~Castellammare Advisors, LLC,~~  
~~a Delaware limited liability company, as PCT~~  
(Post Confirmation Trust) Representative for  
the estate of Fleming Companies, Inc. and its  
former subsidiaries

AWG Acquisition, LLC

By:   
Robert A. Folse, Principal  
Barry A. Folse, Authorized Representative  
Post Confirmation Trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



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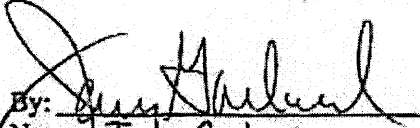
Albertson's Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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former subsidiaries


By: \_\_\_\_\_  
Robert A. Kors, Principal

Associated Wholesale Grocers, Inc.

By:   
Name: Terry Garland  
Title: Executive Vice President

AWG Acquisition, LLC

By: AWG Acquisition Corp., Manager

By:   
Name: Gary L. Phillips  
Title: President