

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor Fleming Companies, Inc		Case Number 03-10945
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 (The person or other entity to whom the debtor owes money or property) Safeway Inc		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and Address where notice should be sent Marnie E. Simon, Esquire Stevens & Lee, P.C. 1818 Market Street, 29th Floor Philadelphia, PA 19103		
Telephone number 215-751-2885		
Account or other number by which creditor identifies debtor Lease of non-residential real property located at 310 Oneida Street, Rupert, ID 83350 – Safeway 274		THIS SPACE IS FOR COURT USE ONLY
Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> previously filed claim dated _____ <input type="checkbox"/> amends		
1 Basis for Claim <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>Rent owed</u> <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 _____ (date) (date)		
2 Date debt was incurred 12/22/02		3 If court judgment, date obtained
4 Total Amount Of Claim At Time Case Filed \$14,517.88 plus interest and late fees If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attached itemized statement of all interest or addition charges.		
5 Secured Claim <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 arrears and other charges at time case filed included in secured claim if any \$ _____		6 Unsecured Priority Claim <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"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal family or household use. 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties of governmental units. 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other specify applicable paragraph of 11 U.S.C. § 507(a) _____ * Amounts are subject to adjustment on 4/1/04 and every 5 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 the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date 9/12/03	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). Stevens & Lee, P.C. By <u>Marnie E. Simon</u> Marnie E. Simon	

FILED
SEP 15 2003
BMC
 Fleming Companies Claim

 13528

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.

EXHIBIT "A"
to Safeway Inc Proof of Claim

(To be supplemented)

EXHIBIT

A-1

SHOPPING CENTER LEASE

THIS LEASE is made this 16th day of March . 19 79 .
between ASHLEY CRAIG AND ASSOCIATES, INC.
a Utah corporation lessor,

and SAFEWAY STORES INCORPORATED a Maryland corporation lessee on the following terms and conditions

1 **Premises Term** Lessor hereby leases to lessee a portion of the following described real property in the City of

Rupert County of Minidoka
State of Idaho

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 in Block 54 of the Rupert Townsite, Minidoka County, Idaho, and all of Block 68 of the Rupert Townsite, Minidoka County, Idaho, as the same platted in the official plat thereof, now of record in the office of the Recorder of said County.

on which property lessor is to construct the Rupert Plaza Shopping Center
therein called the shopping center) as shown on the plan dated March 16, 1979

, attached hereto as Exhibit 'A' The portion of the shopping center hereby leased therein called the leased premises) is designated 'Safeway' and outlined in RED on Exhibit 'A', and includes the building or portion of building and related improvements to be constructed thereon by lessor in accordance with the provisions of this lease

TO HAVE AND TO HOLD the leased premises together with all appurtenances for a term of twenty-five

(25) years commencing the 1st day of March 1980

2 Rent Lessee agrees to pay the following rents by checks or drafts payable to **Ashley Craig and Associates, Inc.**

and mailed to **Ashley Craig & Associates, Inc.**

at **350 South 400 East, Suite 302, Salt Lake City, Utah 84111**

or as designated in writing by lessor

(a) A fixed minimum rent in the sum of **Ten Thousand Two Hundred Eight and 34/100**

~~-----~~ **DOLLARS (\$10,208.34)** payable in advance on the first day of

each calendar month during the term. The minimum rent for any fractional calendar month shall be prorated

(b) A percentage rent in the amount, if any, by which ~~one~~ per cent (~~1~~%)

~~of the first~~ **DOLLARS**

(~~\$~~) plus per cent (~~1~~%) of the next

~~(~~ **DOLLARS**

(~~\$~~) plus per cent (~~1~~%) of the next

~~(~~ **DOLLARS**

~~of gross sales made by lessee in the leased premises in each calendar year of the lease~~

term exceeds the minimum rent for the same calendar year. No percentage rent shall be paid by lessee on gross sales in excess of

FIFTEEN MILLION ~~-----~~ **DOLLARS**

(~~\$~~ **15,000,000.00**) in any calendar year. If lessee occupies the leased premises for a fractional period of

a calendar year, percentage rent for said fractional period shall be prorated based on the annual rate of gross sales made by lessee

in the leased premises during said fractional period and the annual rate of minimum rent for said fractional period

Feb 15th On or before the forty-fifth day following each December thirty-first during the term and the last day of the term lessee shall mail to lessor at the place where rent is payable a statement showing gross sales made by lessee in the leased premises during the term of this lease for the calendar year or portion thereof last preceding the due date of such statement together with any percentage rent due.

The term "gross sales" as used herein shall not include any of the following: (1) credits or refunds to customers for merchandise returned or exchanged; (2) transfers of merchandise from the leased premises to other stores or warehouses of lessee or its affiliated companies; (3) any sales taxes or other taxes imposed under any laws, ordinances, orders or regulations, whether now or hereafter in force, upon or based upon the gross receipts of lessee or the sale or sales price of merchandise and which must be paid by lessee, whether or not collected by lessee from its customers; (4) returns of merchandise to shippers or manufacturers; (5) the net amount of discounts allowed to any customer pursuant to any customary and reasonable policy adopted by lessee including, in such discounts, but not by way of limitation, the net amount of

*Lessor covenant that by no later than June 1, 1979, lessor will have
 ** lessors acquisition of fee title to the shopping center, such recordation to be

3 Lessor's title Short Form Lease Zoning ~~As soon as possible~~ ^{*} that lessor has lawful title to the shopping center and full right to make this lease. This lease shall not be recorded, however, to establish the status of lessor's title and to establish the priority of lessee's lease. Lessor and lessee shall simultaneously with the execution of this lease execute a short form of this lease which shall be recorded by lessee immediately after ~~execution~~ ^{**} at the expense of lessor. Within ~~thirty (30)~~ ^{twenty (20)} days after the date of recording the short form lease, lessor, at its expense, shall provide lessee with current evidence satisfactory to lessee from a responsible title insurance company of the status of lessor's title to the shopping center and with a licensed surveyor's recent survey of the shopping center which is satisfactory to lessee. Lessor further covenants that at the time of the recording of the short form lease, the shopping center will be free from encumbrances except those agreed to in writing by lessee and that there will be no zoning or other ordinances, or title or other matters, except those agreed to in writing by lessee, which will restrict lessee's operation of a general mercantile business (including the sale of alcoholic beverages if not prohibited by law and if lessee obtains all necessary licenses and/or permits at lessee's expense) in the leased premises or the use of the common areas of the shopping center as provided for in this lease, and that so long as lessee is not in default, lessee shall have quiet and peaceful possession of the leased premises and enjoy all rights herein granted without interference. In the event of any violation of any of the covenants made by lessor in this paragraph, lessee may cancel this lease by notice to lessor.

Within twenty (20) days after receipt of the above-referenced title report and survey by lessee, lessee shall notify lessor of lessee's objections, if any; in the event lessor fails to remedy any objection of lessee by August 1, 1979, lessee may, at lessee's option, cancel this lease by delivering to lessor written notice of termination within thirty (30) days after said August 1, 1979 deadline, ~~and~~ ^{***} if lessee does not so cancel this lease, lessee shall be deemed to have approved the survey and title report. It is understood and agreed that if lessor is delayed in remedying any of the objections by lessee by August 1, 1979 as a direct result of riot, insurrection, fire or Act of God, or operation of law, governmental regulation or order, an extension of one day shall be granted for each day lost from said cause provided, however, that in no event shall the August 1, 1979 deadline referred to above be extended beyond September 1, 1979.

***as said deadline may be extended per the following sentence,

4 Common areas Completion of shopping center All those portions of the shopping center not shown as building areas on Exhibit "A" shall be common areas for the sole and exclusive joint use of all tenants in the shopping center their customers, invitees and employees, and lessor hereby grants to lessee and its customers, invitees and employees the right of such exclusive joint use of all of said common areas. Lessor agrees that at lessor's expense, all common areas will be maintained in good repair, kept clean and kept clear of snow and ice and adequately lighted when stores are open for business. Lessor agrees that all buildings in the shopping center shall not exceed one story in height (but may include mezzanines). Lessor further agrees that the 16,100 square feet of building space to be constructed within that portion of the shopping center outlined in orange on Exhibit "A" hereof and marked, Building Area A" on said Exhibit "A" will be completed by no later than one hundred twenty (120) days following the lease commencement date as specified in paragraph 1; that following completion of construction of any portion of the shopping center, the

It is further understood and agreed that lessor may construct buildings anywhere within those portions of the shopping center outlined in orange on Exhibit "A" hereof provided that:

- 1) The total square footage of buildings to be constructed within the area marked, "Building Area A" on Exhibit "A" hereof does not exceed 16,100 square feet;
- 2) That the total square footage of the buildings to be located within the area marked, "Building Area B" on Exhibit "A" hereof does not exceed 3,200 square feet;
- 3) The total square footage of buildings to be located within the area marked, "Building Area C" on Exhibit "A" hereof does not exceed 2,500 square feet;
- 4) All portions of the areas outlined in orange on Exhibit "A" hereof which are not developed for buildings shall be developed as and used for common areas of the shopping center;
- 5) Until such time as lessor constructs buildings within the areas outlined in orange on Exhibit "A" hereof, said areas shall be developed for and used as common areas of the center and shall be developed as common areas simultaneously with the development of the balance of the common areas for the center; and
- 6) The building which is to be constructed within, "Building Area C" shall be developed for and used only as a financial institution.

The provisions of Paragraphs 4 and 5 hereof notwithstanding, in the event lessor has not commenced the construction of the building on the leased premises on or before October 1, 1979, lessee may cancel this lease by notice to lessor. The words "commenced the construction" as used herein being defined to mean the completion of said building,

5 Construction of common areas and lessee's building Plans and specifications Lessor agrees, at lessor's sole cost, risk and expense, to construct on the common areas a sign tower for lessee, all parking and service areas, sidewalks, driveways and related improvements shown on Exhibit "A" and to construct on the leased premises a building or portion of a building all in accordance with plans and specifications to be prepared at lessor's expense by **Holland and Pasker** (architect) and approved in writing by lessor and lessee/Lessee shall furnish lessor with drawings and/or specifications setting forth lessee's requirements to be incorporated in the plans and specifications to be prepared by the architect. Upon approval by the parties, the plans and specifications shall become a part of this lease as though set out in full herein. If for any reason whatsoever the plans and specifications are not approved by both parties on or before **June 1, 1979**, either party may cancel this lease by notice to the other party within ninety (90) days thereafter. Lessee may have the plans and specifications revised, at lessor's expense, if more than ninety (90) days elapse between the date of approval of plans and specifications and the date of commencement of construction of the building on the leased premises. Lessor agrees to complete said construction work (which shall include lessor's obtaining and furnishing to lessee of any certificate of occupancy or like document required by lawful authority) by no later than the date of commencement of the term of this lease specified in Paragraph 1. Lessee may enter upon the leased premises during the course of construction to inspect the construction work and to install its fixtures and equipment and such entry shall not constitute acceptance of possession of the leased premises by lessee.

*, which approval shall not be unreasonably withheld.

the term shall commence on the date lessee accepts possession but the expiration date specified in Paragraph 1 shall remain unchanged. If for any reason whatsoever the leased premises are not ready for occupancy within ninety (90) days after the commencement date specified in Paragraph 1, lessee may cancel this lease by notice to lessor. Notwithstanding the provisions of Paragraph 2, the rent shall not commence, become due, or be payable until thirty (30) days after the term of this lease commences or until the date lessee opens for business in the leased premises, whichever shall first occur.

7 Lessor's repairs Lessor agrees to keep the building structure on the leased premises (including without limitation the roof, roof structures and supports, foundation and structural supports, walls, structural portion of the floors, chimneys, skylights, gutters, downspouts and exterior doors) and all heating, ventilating and cooling equipment, wiring, plumbing, sprinkler system and plate glass in good repair during the lease term and to paint the exterior when needed in colors approved by lessee. If lessee is deprived of the use of a substantial portion of the leased premises during the making of any repairs, improvements or alterations by lessor under any provision of this lease, the rent shall be abated or proportionately reduced according to the extent to which lessee is deprived of such use. Notwithstanding the foregoing, lessor shall not be responsible for maintenance and repair of the heating, ventilating and cooling equipment, wiring, plumbing and plate glass after the first twelve (12) months of the lease term except in those instances where the lessor has assumed the repair responsibility elsewhere in this lease.

8 Lessee's repairs Utilities Lessee agrees to repair all damage to the leased premises caused by lessee's use other than (1) ordinary wear and tear and (2) those instances where the lessor has assumed the repair responsibility elsewhere in this lease, and that on surrendering possession it will leave the leased premises in good condition, allowance being made for ordinary wear and tear, damage by fire, the elements or other casualty, or resulting from the acts of persons other than lessee, and from defects therein being excepted. Lessee may make such repairs, alterations and improvements to the leased premises as lessee deems desirable, but lessee agrees not to permit any liens to stand against the leased premises for work done or material furnished. Lessee may paint the interior of the building on the leased premises in such colors as lessee elects. Lessee shall have the exclusive right to paint, erect or authorize signs in, on or about the building on the leased premises and may at any time remove signs and color effects installed by lessee. On surrendering possession lessee shall not be required to restore the leased premises to their condition at the commencement of the term, and lessor agrees to accept the leased premises with alterations and improvements made by lessee. Lessee agrees to pay all charges for electricity, gas, heat, water, telephone and other utility services used by lessee on the leased premises.

9 Lessee's fixtures Lessee may install in the leased premises such fixtures and equipment as lessee dees

11 Damage by casualty If the leased premises are damaged by fire, the elements or other casualty, lessor shall promptly repair all damage and restore the leased premises to their condition just prior to the damage. If lessee is deprived of the use of any substantial portion of the leased premises either by reason of said damage or during restoration, the rent shall be abated or proportionately reduced according to the extent to which lessee is deprived of such use. Lessor agrees to keep in effect on the leased premises fire insurance with extended coverage endorsement in an amount not less than eighty per cent (80%) of the insurable value of the building improvements thereon. Unless this lease is terminated as provided below, the insurance proceeds shall be used for the repair or restoration of the leased premises. If lessor's insurance policy permits the release of others from liability for loss from casualties insured against, such release from liability is hereby granted to lessee to the extent of lessor's actual recovery of loss under such policy. If after the twentieth year of the original term, the leased premises are damaged by fire, the elements or other casualty to the extent of 75% or more of the insurable value thereof, and if lessee does not, within thirty days after such damage, exercise options under paragraph 16 hereof so as to extend the term of this lease for an additional term of five years after the expiration of the original term or option term then in effect, either lessor or lessee may terminate this lease as of the date of the damage by notice to the other party within sixty (60) days after said date.

12 Condemnation If any portion of or interest in the shopping center including, without limitation, the lease premises, the common areas and the other buildings in the shopping center shall be taken or damaged under any right of eminent domain or in lieu thereof, and such taking or damage renders the leased premises unsuitable in the judgment of lessee for lessee's business operations, lessee may cancel this lease by notice to lessor within thirty (30) days after such taking or damage deprives lessee of possession of any portion of the leased premises or of any other rights of lessee under this lease. If this lease is not so terminated, lessor shall promptly restore the shopping center to an architectural unit as nearly comparable as practicable to the unit existing just prior to such taking or damage and this lease shall continue, but commencing with the date on which lessee is deprived of the use of any portion of the leased premises or of any rights under this lease, the rent shall be abated or proportionately reduced according to the extent to which lessee is deprived of such use or rights. Nothing contained here shall prevent lessor and lessee from prosecuting claims in any condemnation proceedings for the values of their respective interests. It is agreed, however, that the taking or damaging under any rights of eminent domain or transfer in lieu thereof of any portion of the center other than that portion outlined in yellow on the Exhibit "A" hereof, shall not give lessee the right to cancel under this paragraph provided that such taking does not adversely affect the access rights from the shopping center to all of the adjacent streets.

13 Assignment and subletting Lessee may assign this lease or sublet the whole or any part of the leased premises. If lessee assigns this lease, lessee shall remain liable as a surety to lessor for full performance of lessee's obligations.

14 Indemnification Lessee agrees to indemnify lessor against and save lessor harmless from all demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person or property.

15 Default If lessee shall be in default for more than twenty (20) days after receipt of lessor's notice specifying such default, lessor may declare the term ended and re-enter the leased premises with or without process of law. If lessor shall be in default for more than twenty (20) days after receipt of lessee's notice specifying such default, lessee may incur any expense necessary to perform any obligation of lessor specified in such notice and deduct such expense from the rents thereafter to become due. The performance of each and every covenant and agreement by lessor herein contained shall be a condition precedent to lessor's right to collect rents or enforce this lease.

16 Options for renewal Lessee, at lessee's option, by giving lessor sixty (60) days' written notice before the expiration of the term or option term then in effect, may extend the term of this lease for ~~seven~~ ^{seven (7)} separate and additional periods of five (5) years each on the same terms and conditions, except that lessee, by giving lessor one hundred eighty (180) days' written notice, may cancel any option term then in effect.

17 Holding over If lessee remains in possession of the leased premises after the expiration of this lease, such continued possession shall, if rent is paid by lessee and accepted by lessor, create a month-to-month tenancy on the terms herein specified, and said tenancy may be terminated at any time by either party by thirty (30) days' notice to the other party.

18 Notices Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, addressed: if to lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed; and if to lessee, to it at P.O. Box 5927, Terminal Annex, Denver, Colorado 80217.

The person and the place to which notices are to be mailed may be changed by either party by notice to the other party.

~~**19 Principal tenants** Lessor covenants that, by not later than ninety (90) days before the lease commencement date specified in Paragraph 1, lessor will furnish lessee with proof satisfactory to lessee that lessor has entered into leases with tenants from the following categories for space in the shopping center in the location shown on Exhibit 'A' and in an amount not less than the amount set opposite each category designation, for a term not less than the number of years set opposite the category designation:~~

_____	sq. ft.	_____	years
_____	sq. ft.	_____	years
_____	sq. ft.	_____	years

Lessor covenants that each category's tenant's lease will be noncancelable except for cancellation rights based on default, casualty damage or condemnation which are substantially similar to such cancellation rights set forth in this lease, the word "substantially similar" being defined for this purpose to mean that the event, act or omission which gives said tenant a right

*It is understood and agreed that lessee, at the commencement of the 8th, 13th, 18th or 23rd year of the original lease term and the commencement of each option term, may have a building addition made to the leased premises.

~~Notwithstanding to minimum rent shall not resume until it is or shall be furnished lessee with proof satisfactory to lessee that~~
 lessor has entered into a lease with another tenant of the same category (1) replacement tenant for the same space in the shopping center and for a term of not less than the remainder of the term specified in such cancelled lease and (2) such replacement tenant shall have opened its store to the general public for business. If the replacement tenant is not opened its store to the general public for business within one hundred eighty (180) days after such principal tenant's lease is cancelled, lessee may, at its option, cancel this lease by notice to lessor.

20 Future expansion/ ~~It is understood and agreed that lessee at any time during the term of this lease may have a building addition made to the leased premises.~~ Said building addition is to be located within that portion of the common area shown outlined in GREEN on Exhibit "A" and marked "Safeway Expansion Area". It is also agreed that in connection with the building addition to the leased premises, lessee may have the then existing building on the leased premises remodeled (said building addition and said remodeling, if its inclusion is requested by lessee is hereinafter referred to as "said addition"). Said addition shall be made on the following terms and conditions:

(a) If lessee desires said addition, it shall give written notice to lessor of said desire not later than six months prior to the commencement of the 8th, 13th, 18th, or 23rd year of the original term or the commencement of any option term and request lessor to build said addition according to plans and specifications which shall be prepared by lessee and approved by lessor, said approval not to be unreasonably withheld. Lessor shall obtain bids for said addition from at least three (3) general contractors approved by lessee; lessee shall have the right to review and approve all bids received by lessor, and the award of the contract.

(b) Lessor anticipates constructing approximately 4,500 square feet of shop space within lessee's future expansion area. Lessor hereby represents that it will terminate all leasehold interests in said shop space upon lessee's notice of its intent to expand its store as provided herein. Commencing on the date of completion of said addition by lessor in accordance with the plans and specifications, the minimum monthly rental payable by lessee under paragraph 2(a) hereof, shall be increased by an amount equal to the following:

1. The total monthly rental income received by lessor from the tenants in the aforesaid 4,500 square feet for the remaining terms of this lease or \$2,250.00, whichever is less.

2. The amount necessary to fully amortize the cost of said addition with interest on the monthly declining straight-line balance thereof at the interest rate then being paid to finance other retail commercial shopping centers containing a Safeway grocery supermarket in the Salt Lake City Metropolitan Area at the time of completion of said addition plus one-half of 1% (.50%), hereinafter referred to as "said interest rate", over the remainder of the original term (or at lessee's election, also over one or more option terms which shall be exercised by lessee in the hereinafter mentioned Lease Modification Agreement) from the date of completion.

(c) If lessor advises lessee within thirty (30) days of lessee's written notice that it is unable or unwilling to construct said addition or if construction has not commenced within sixty (60) days after the approval of the plans and specifications, and if the aforesaid, then lessee may, at its sole cost and expense, make such addition to the leased premises, provided however that (1) said addition is in accordance with the aforesaid approved plans and specifications, (2) there shall be no additional minimum rent

(d) If lessee constructs said addition, lessee may deduct from percentage rent, if any, otherwise payable under the provisions of this lease for any calendar year after all other offsets and deductions against percentage rent provided in this lease are first taken, an amount equal to said percentage rent until such time as the balance in the amortization account, as hereinafter created, equals zero. An amortization account shall be created to record the operation of the provisions of this paragraph. The original balance of said account shall be the cost of said addition. Interest at the Industrial A-rated bond rate (long term) in effect at the time of completion of said addition, shall accrue on the balance of said account for the previous calendar year or January 1 of each year. Interest shall be prorated from the date of completion to December 31 of the year of completion of said addition. After accrual of said interest, lessee shall deduct from said account an amount equal to the amount to be deducted under the provisions of this paragraph from percentage rent.

(e) The cost of said addition, as used herein shall include architect fees for preparation of plans and specifications, the construction contract price for the construction and making of said addition (including site development and parking improvements, contractor's performance bond, surveys, soil tests, permit fees, ^{finance costs} and other costs directly relating to the construction), but shall not include legal fees ~~or finance costs~~.

(f) The cost of said addition shall be determined by the party having said addition made furnishing the other party within sixty (60) days of the completion of said addition, paid invoices, contracts or such other documents as establish its payment or obligation to pay for the cost of said addition.

(g) Upon completion of said addition and determination of the cost of said addition, but in no event later than ninety (90) days after completion of said addition, the lessor and lessee shall execute a Lease Modification Agreement which shall set forth: (1) the cost of said addition; (2) the date of completion of said addition; (3) the new extent of the leased premises, by including the expansion area within the R1 D outline on a new Exhibit A to the lease; (4) the Industrial A-rated bond rate (long term) in effect at the time of completion of said addition; and (5) if lessor constructed said addition, shall exercise the option periods, if any, which lessee has elected to use in the amortization of the cost of said addition, as provided in (b) above, and (6) set forth the revised minimum monthly rent.

21 Separation of uses Lessor recognizes lessee's customers' need for adequate parking facilities in the proximity to the leased premises, and the importance of protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long-term parking by patrons or employees of certain types of business establishments. Lessor further recognizes lessee's interest in not having tenants occupying space in close proximity to the leased premises who create or cause excessive noise, litter or odor. To satisfy said lessee's interest in a clean, quiet and odor-free environment and adequate parking for its customers, lessor covenants and agrees that it shall not permit the use or operation of any portion of shopping center ^{two} ~~within three hundred feet (300)~~ ²⁰⁰ of any exterior building wall of the leased premises for a restaurant (fast food, sit down, ^{except donut, ice cream, and candy shops} or other food service) or recreation or other activities such as, but not limited to, bowling alleys, theaters, carnivals or other place of public or private amusement.

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25 Paragraph headings The paragraph headings of this lease are inserted only for reference and in no way define limit or describe the scope or intent of this lease nor affect its terms and provisions

26 Lease execution and change It is understood and agreed that until this lease is fully executed and delivered by both lessor and the authorized corporate officers of lessee there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. It is further agreed that once this lease is fully executed and delivered that it contains the entire agreement between the parties hereto and that in executing it the parties do not rely upon any statement, promise or representation not herein expressed and this lease once executed and delivered shall not be modified, changed or altered in any respect except by a writing executed and delivered in the same manner as required for this lease

27 Rights of successors All of the rights and obligations of the parties under this lease shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns

28 Real Property Taxes. Lessor agrees to pay all real property taxes on the entire shopping center and all improvements thereon with reimbursement by Lessee of a portion thereof as hereinafter provided. Lessee shall reimburse Lessor for the Lessee's share of such taxes provided Lessor requests such reimbursement not later than sixty (60) days after the delinquent date for such taxes. Lessee's share shall be a fraction, the numerator of which fraction shall be the building area on the Leased Premises and the denominator of which shall be the total building area in the shopping center, including the building on the Leased Premises, as shown on Exhibit "A". Lessee shall so reimburse Lessor within thirty (30) days after receipt of satisfactory evidence of Lessor's payment of such taxes and the amount due from Lessee. Lessee shall not be obliged to pay any portion of any penalty for delinquent payment by Lessor of such taxes. Any tax reimbursement by Lessee hereunder shall be prorated as of the commencement and termination or expiration dates of this lease. Lessee reserves the right to appear before the appropriate taxing authority for the purpose of protesting any taxes or assessments.

In the event any percentage rent shall be payable to Lessor under Paragraph 2 of this lease for any calendar year, all sums paid by Lessee under this paragraph during the same calendar year shall be deducted from the percentage rent otherwise payable to Lessor.

29 Common Area Maintenance Reimbursement. Lessee agrees to reimburse Lessor for Lessee's share of the actual costs incurred by Lessor in lighting the common areas, in keeping same striped, clean and clear of snow and ice and in maintaining the common areas in good repair, including, however, the costs of any capitalizable improvements or additions to the common areas. Such costs shall be kept at a reasonable

30 It is understood and agreed that, at present, there exists a railroad line located within the shopping center which runs parallel with State Highway 24 and 25. Lessor agrees to remove said railroad line and terminate any interests any railroad company may have in said railroad line by no later than July 1, 1979 and if said railroad line is not so removed and said interests not so terminated by said July 1, 1979 deadline, the lessee may terminate this lease by giving lessor written notice within thirty (30) days after said July 1, 1979 deadline.

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By [Signature]
Its Assistant Vice President

By [Signature]
Its Assistant Secretary

(Corporate Seal)

ASHLEY CRAIG AND ASSOCIATES, INC.
(a Utah corporation)

By [Signature]
Its Assistant Vice President

By [Signature]
Its Assistant Secretary

A-2

LEASE MODIFICATION AGREEMENT

THIS LEASE MODIFICATION AGREEMENT is made this 8th day of November, 1979 between ASHLEY CRAIG AND ASSOCIATES, INC., a Utah corporation, as lessor, and SAFEWAY STORES, INCORPORATED, a Maryland corporation, as lessee.

W I T N E S S E T H :

THAT, WHEREAS, by lease dated March 16, 1979, lessor leased to lessee a portion of certain real property situate in the City of Rupert, County of Minidoka, State of Idaho, which property is more particularly described in said lease; and

WHEREAS, the parties desire to amend said lease on the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree to and with each other as follows:

FIRST: That the legal description of the leased premises is hereby modified to include the following: "That portion of Railroad Avenue vacated by City of Rupert, Ordinance No. 617 recorded November 8, 1978 as Instrument No. 286823, records of Minidoka County, Idaho".

SECOND: That Exhibit "A" (dated March 16, 1979) has been revised and amended to Exhibit "A" (dated July 30, 1979) which is attached hereto and incorporated into said lease as Exhibit "A" thereto.

THIRD: That the fixed minimum rent figure in the first sentence in paragraph 2(a) of said lease is hereby modified from Ten Thousand Two Hundred Eight and 34/100 Dollars (\$10,208.34) to the sum of Eleven Thousand Six Hundred Sixty-Six and 66/100 Dollars (\$11,666.66), which will be payable in advance on the first day of each calendar month during the term.

FOURTH: Paragraph 3 has been amended as follows:

- A. The date of June 1, 1979 set forth in the first sentence of paragraph 3 of said lease is hereby changed to July 10, 1979.
- B. The second paragraph of paragraph 3 of said lease is amended to read as follows:

"Within twenty (20) days after receipt of the above-referenced title report and survey by lessee, lessee shall notify lessor of lessee's objections, if any; in the event lessor fails to remedy any objection of lessee by December 15, 1979, lessee may, at lessee's option, cancel this lease by delivering to lessor written notice of termination within thirty (30) days after said December 15, 1979 deadline, as said deadline may be extended per the following sentence, and if lessee does not so cancel this lease, lessee shall be deemed to have approved the survey and title report. It is understood and agreed that if lessor is delinquent in remedying any of the objections by lessee by December 15, 1979 as a direct result of riot, insurrection, fire or act of God

FIFTH The date of June 1, 1979 set forth in paragraph 5 of said lease is hereby changed to December 30, 1979

SIXTH The date of October 1, 1979 set forth in the last paragraph of paragraph 4 of said lease is hereby changed to December 15, 1979. Additionally, the last sentence of paragraph 4 of said Lease is hereby revised to read as follows

The words "commence the construction" as used herein being defined to mean "the completion of foundations of all such buildings"

SEVENTH That except as herein modified, all of the terms and conditions of said lease shall remain in full force and effect.

EIGHTH: That each and all of the covenants, terms, agreements and obligations to this Lease Modification Agreement shall extend to and bind and inure to the benefit of the successors and/or assigns of said parties hereto, that therein the singular number includes the plural and the masculine gender includes the feminine and neuter

IN WITNESS WHEREOF, the parties hereto have executed this Lease Modification Agreement as of the day and year first above written

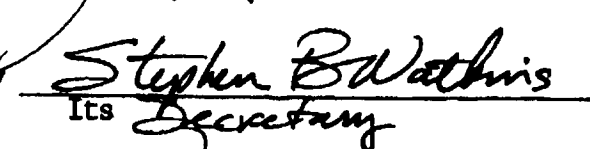
(Corporate Seal)

ASHLEY CRAIG AND ASSOCIATES, INC.
(a Utah corporation)

By


Its President

By


Its Secretary

(Lessor)

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By


Its Assistant Vice President

By


Its Assistant Secretary

(Lessee)

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

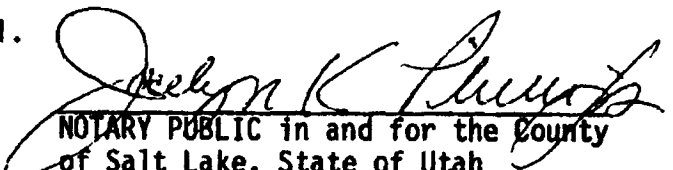
On the 11th day of July, A.D. 79, personally appeared before me, PATRICK S. TOTMAN and RICHARD H. COSTELLO, who, being by me duly sworn, did say that they are, respectively, the Assistant Vice President and the Assistant Secretary of

STATE OF UTAH)
 ss
COUNTY OF SALT LAKE)

On the 1st day of July, A.D. 79, personally appeared before me, CRAIG A. CHRISTENSEN, who, being by me duly sworn did say that he is the PRESIDENT of ASHLEY CRAIG & ASSOCIATES, INC., a Utah Corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said CRAIG A. CHRISTENSEN acknowledged to me that said corporation executed the same.

WITNESS my hand and official seal.

(NOTARIAL SEAL)


NOTARY PUBLIC in and for the County
of Salt Lake, State of Utah
My residence is S.L.C., Utah

My Commission Expires. 11/15/79

UTAH ACKNOWLEDGMENT

SECOND SHOPPING CENTER LEASE AMENDMENT

THIS SECOND SHOPPING CENTER LEASE AMENDMENT is made and entered into this 26th day of August 1985 by and between Terteling Market, Inc., an Idaho corporation, hereinafter referred to as "lessor", and Safeway Stores, Incorporated, a Maryland corporation, hereinafter referred to as "lessee"

1 RECITALS

- A. Lessor's predecessor in interest, Ashley Craig and Associates, Inc., a Utah corporation, leased to lessee pursuant to that Shopping Center Lease, dated March 16, 1979, as modified by Lease Modification Agreement, dated November 8, 1979, collectively hereinafter referred to as "said lease", a portion of real property situated in the City of Rupert, County of Minidoke, State of Idaho, which property is more particularly described in said lease. A memorandum of said lease entitled Shopping Center Lease (Short Form), dated July 1, 1979, was recorded on September 21, 1979 as Instrument No. 296706, Official Records of Minidoke County, Idaho.
- B. The Shopping Center and all of landlord's interest in said lease has been conveyed and assigned to lessor, and lessor is now the landlord under said lease.
- C. The parties desire to amend said lease as provided herein.

2. AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows

3 TERMS

1. Paragraph 4 of said lease is hereby amended so that the total square

square feet and the building which may be constructed within Building Area C may be developed for and used as a Pizza Hut restaurant, or a similar family style restaurant establishment, rather than only as a financial institution, provided that.

- (a) The total seating capacity of all restaurants or other establishments located within Building Area C combined may not exceed 150 persons, and
 - (b) No portion of Building Area C may be used as a bar, beer parlor, cocktail lounge, or other drinking or nightclub establishment with the exception of the sale of beer and/or wine only, provided that same is sold only for on premises consumption incidental to the restaurant establishment otherwise operating within Building Area C.
- 2 Exhibit "A" of said lease is hereby revised so that Building Area C otherwise shown on Exhibit "A" is hereby relocated to that area outlined in yellow on Exhibit "A-1" attached herein and made a part hereof.
 - 3. Except as herein modified, said lease remains in full force and effect.
 - 4 Each and all of the covenants, terms, agreements, and obligations set forth herein shall extend to and bind and inure to the benefit of the successors and/or assigns of the parties hereto. Herein the singular number includes the plural and any gender includes all others.

IN WITNESS WHEREOF, the parties hereto have executed this Second Shopping Center Lease Modification Agreement the day and year first above written.

TERTELING MARKETING, INC.
(a Idaho corporation)

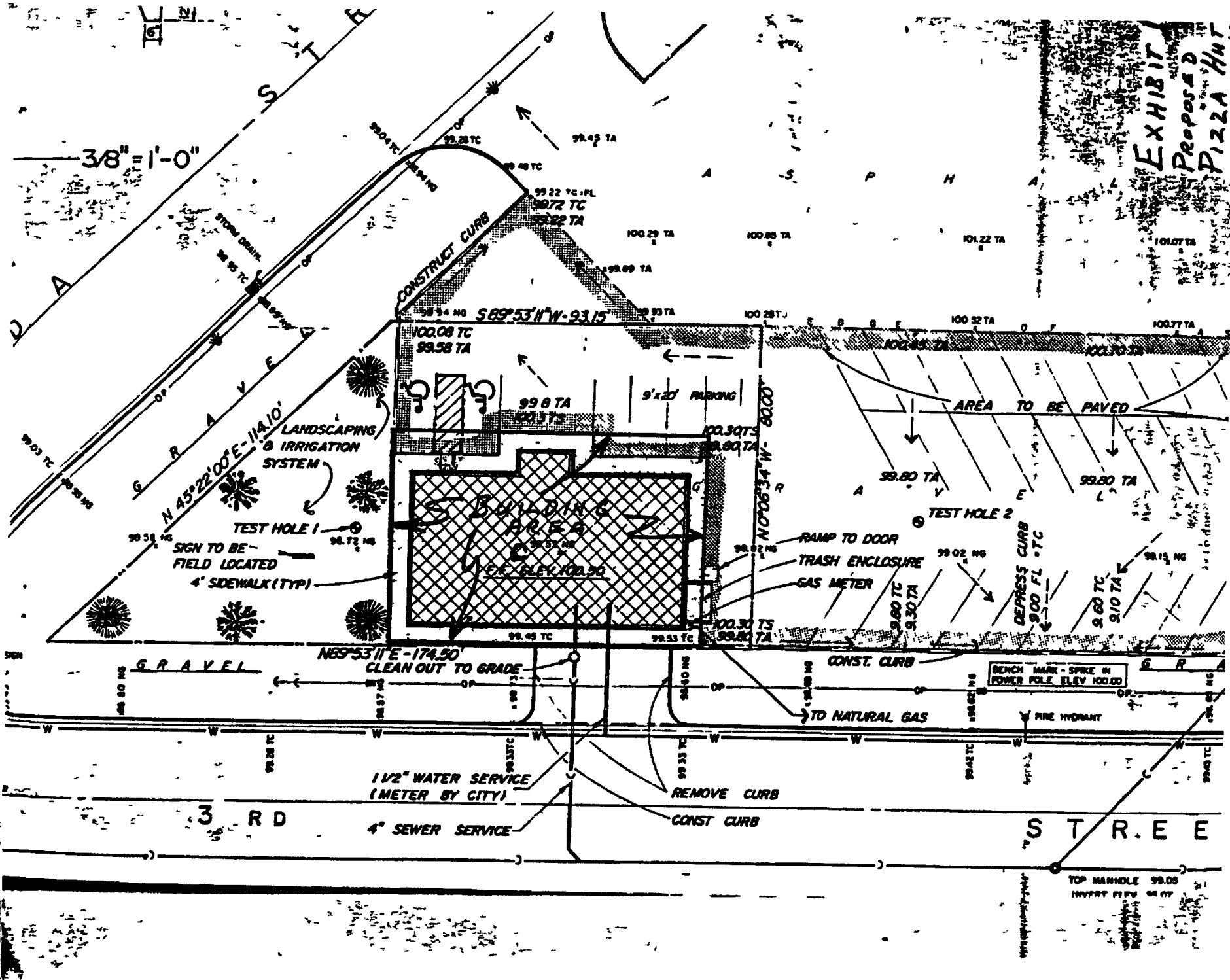
By


Its Vice President

SAFEWAY STORES, INCORPORATED
(a Maryland corporation)

By


Its Assistant Vice President



EXHIBIT

A-4

We hereby certify this to be
a true and correct copy of

original assignment

LAWYERS TITLE OF IDAHO

BY: [Signature]

ASSIGNMENT

TERTELING BOOKLING INCORPORATED, an Idaho corporation,
(Terteling) for valuable consideration, receipt of which is hereby
acknowledged, hereby assigns and transfers to EDMOND TERRY AND
BARBARA LOUISE TERRY, husband and wife, (Terry) of 429 Alexander
Palm Road, Boca Raton, Florida, all right, title and interest in
and to that certain Lease dated 12.16.1979, covering and
leasing a portion of the real property described on Schedule 1
attached hereto which lease was originally entered into between
Ashley Craig & Associates as landlord, and Safeway Stores
Incorporated as Tenant.

Terteling warrants.

1. Terteling has full power and authority to make this
assignment.

2. There are no liens or third party rights in the
interest assigned hereby except the interest of the Travelers
Insurance Company which has or may have an assignment of such lease
for security purposes.

3. Terteling has made no previous assignment of any
portion of the interest assigned hereby except as described in 2
above.

Terry hereby accepts such assignment and agrees to assume
and perform such lease from and after the date hereof. Terteling
agrees to indemnify, defend and hold harmless Terry from any

claim, liability, or cause of action arising from and after the date hereof, or arising from any failure of Terteling to perform such lease, and Terry agrees to indemnify, defend and hold harmless Terteling from any claim, liability or cause of action arising from and after the date hereof or arising from any failure of Terry, or Terry's successors and assigns, to perform this lease.

IN WITNESS WHEREOF, the parties have set their hands and seals this 29th day of April, 1986.

TERTELING MARKETING INCORPORATED

By

EDMUND TERRY

BARBARA LOUISE TERRY

All Remaining monies due Landlord for 1985 Property Taxes and for April 1986 CAM shall be paid directly by Safeway to Terteling Marketing Incorporated

(P)
11

EXHIBIT

6103718505

P 24

0

P 8



FARMER JACK
S E G STORES, INC
P O Box 30001
(331 Bearcat Drive)
Salt Lake City, UT 84130-0001

May 27, 1987

Dear Landlord

As you may be aware, on April 28, 1987 S E G Stores, Inc., a Delaware corporation, acquired substantially all the assets of the Salt Lake City Division of Safeway Stores, Incorporated, including 60 operating stores in Utah, Idaho, Wyoming, Nevada and Oregon, distribution center, supply facilities and office facilities. S E G Stores, Inc. is a wholly owned subsidiary of Borman's, Inc., a New York Stock Exchange listed company primarily engaged in the supermarket business in the metropolitan Detroit, Michigan area under the trade name Farmer Jack Supermarkets.

The assets thus acquired included certain property leased from you, as lessor. Said lease was assigned to S E G Stores, Inc., which assumed all obligations thereunder arising from and after April 27, 1987. We are enclosing a check in payment of the rent due June 1, 1987 according to our records.

Please see that all invoices and routine communications in connection with this lease are directed as follows:

S E G Stores, Inc.
Attn: Controller
331 Bearcat Drive
Salt Lake City, UT 84115
(801) 488-1000

If there are any problems or discrepancies, or if you have any questions relating to this lease or the acquisition described above, please communicate with

Borman's, Inc.
Attn: Ted J. Simon, Vice President-Real Estate
P O. Box 33446
Detroit, Michigan 48232-5446
(313) 270-1008

We appreciate your cooperation, and look forward to a mutually fruitful relationship.

Very truly yours,

S E G STORES, INC

A handwritten signature in dark ink, appearing to read "Don R. Cannon".

Don R. Cannon
Vice President

DRC/sja

ONE STORE IS BETTER THAN THE REST FARMER JACK

**Fleming
Companies, Inc.**



6301 Waterford Blvd
PO Box 26647
Oklahoma City OK 73126-0647
405/840-7200

CORPORATE STAFF

March 30, 1988

Edmund and Barbara Louise Terry
Rupert Plaza Shopping Center
c/o First Security Bank of Idaho
P. O. Box 617
Rupert, ID 83350

Re: Safeway 274
SL-020
310 Oneida
Rupert, Idaho
Rupert, ID 83350

Dear Mr. and Mrs. Terry:

This is to advise the Lease for the subject location has been assigned to Fleming on March 20, 1988. Enclosed is our rent check for the month payable April 1, 1988.

Shortly we will be sending to you a copy of the Assignment together with insurance certificates whereby you may update your records accordingly.

Notices should be sent to Fleming Companies, Inc., P. O. Box 26647, Oklahoma City, Oklahoma 73126-0647, Attention: Store Development Department.

We sincerely look forward to our future relationship with you. Should you have any questions, please don't hesitate to call or write.

Sincerely,

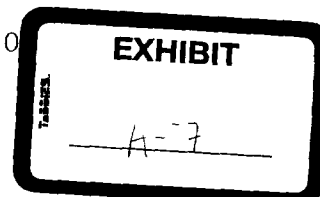
FLEMING COMPANIES, INC.

Allen David
Director of Site Selection

AD/bh

CC:

Sue Coen - Corporate Staff



Fleming

1945 Lakepointe Dr.
P O Box 299013
Lewisville, TX 75029
telephone 972 906 8000

April 8 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edmund Terry & Barbara L. Terry
429 Alexander Palm Road
Boca Raton, FL 33432

RE Change of notice/correspondence address for the Premises located at:
Ridley's Super Center - 310 Onelda, Rupert, ID (Lease ID ID-020)

Dear Contact.

Effective April 15, 2002, Fleming Companies, Inc. and all of its affiliated companies (collectively referred to as "Fleming"), has engaged The Staubach Company, to assist Fleming in administering its real estate portfolio. In addition to this change, Fleming's Lease Administration department will be moving to a new location, so please consider this letter as formal notification that our "notice address" has changed.

Upon the effective date noted above, the original of all current and future official and legal notifications, real estate administration correspondence, along with all other lease related issues and/or requests, etc. (with supporting documentation) should be sent directly to Fleming at the address below.

FLEMING COMPANIES, INC.
Manager, Real Estate Administration
c/o The Staubach Company - (Lease ID ID-020)
1945 Lakepoint Drive
Lewisville, TX 75057

With a copy to.

FLEMING COMPANIES, INC.
Legal Department
Attn: General Counsel
1945 Lakepoint Drive
Lewisville, TX 75057

Sincerely

FLEMING COMPANIES, INC

A handwritten signature in black ink, appearing to read "Ken Dewhirst".

Ken Dewhirst
Manager, Lease Administration

Submitted By (Please return your signed letter to Staubach within seven (7) business days from the date of this letter Thank You)

Contact Company _____

Contact Name _____

Contact Phone No _____

Contact Email Address. _____

Date: _____

STEVENS & LEE

A PROFESSIONAL CORPORATION

1818 Market Street - 29th Floor
Philadelphia, PA 19103
(215) 575-0100 Fax (215) 851-0214
www.stevenslee.com

Direct Dial (215) 751-2885
Email mes@stevenslee.com
Direct Fax (610) 371-8505

September 12, 2003

VIA FEDERAL EXPRESS

Bankruptcy Management Corporation ("BMC")
1330 East Franklin Avenue
El Segundo CA 90245


Re Fleming Companies, Inc
Bankruptcy No. 03-10945

Dear Sir or Madam

This firm represents Safeway Inc., a creditor in the above referenced Chapter 11 bankruptcy case. Enclosed please find an original and one copy of our client's Proof of Claim. Please file the original and return a time stamped copy to me in the enclosed self addressed stamped envelope. Thank you.

Very truly yours,

STEVENS & LEE



Marnie E. Simon

MES/ec
Enclosure

cc Denise M. Roman, Esquire (via facsimile w/enclosure)

- Cherry Hill
- Reading,
- Harrisburg
- Scranton
- Lancaster
- Valley Forge
- Lehigh Valley
- Wilkes-Barre
- Philadelphia
- Wilmington