

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM	
In re FLEMING COMPANIES, INC		Case Number 03-10945 (MFV)	



571528
Bar Date Ref # 2 NVM 30570

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
 Stabler's Inc dba Franklin Farms IGA
 c/o Geoffrey M Khotim, Esq
 Ridenour, Hienton, Harper, Kelhoffer,
 Lewis & Garth, P L L C
 201 North Central Avenue, Suite 3300
 Phoenix, AZ 85004-1052
 602-254-9900

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

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

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

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

Creditor Telephone Number ()	CREDITOR TAX ID #	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR	Check here <input type="checkbox"/> replaces or amends a previously filed claim dated _____
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1 BASIS FOR CLAIM

<input type="checkbox"/> Goods sold	<input type="checkbox"/> Personal injury/wrongful death	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)
<input type="checkbox"/> Services performed	<input type="checkbox"/> Taxes	<input type="checkbox"/> Wages, salaries, and compensation (Fill out below)
<input type="checkbox"/> Money loaned	<input checked="" type="checkbox"/> Other (describe briefly) Breach of Contract	Your social security number _____
		Unpaid compensation for services performed from _____ to _____ (date) (date)

2 DATE DEBT WAS INCURRED January 2002	3 IF COURT JUDGMENT DATE OBTAINED
----------------------------------------------	------------------------------------------

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE	\$ 1,308,000* (unsecured)* estimated	\$ (secured)	\$ (unsecured priority)	\$ 1,308,000 (total)
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If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

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

5 SECURED CLAIM

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

Brief description of collateral:

☐ Real Estate

☐ Motor Vehicle

☐ Other _____

Value of collateral \$ _____

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

6 UNSECURED PRIORITY CLAIM

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

Specify the priority of the claim:

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

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

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

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

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

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

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

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

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

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

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

THIS SPACE FOR COURT USE ONLY

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 9/12/03	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) Geoffrey M. Khotim
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FILED
SEP 15 2003
BMC

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



See Other Side For Instructions

FACILITY STANDBY AGREEMENT

THIS FACILITY STANDBY AGREEMENT (the "Agreement") is made as of May 17, 2001 (the "Effective Date") by and between FLEMING COMPANIES, INC., an Oklahoma corporation ("Fleming"), and STABLER'S, INC., an Arizona corporation ("Retailer"), with reference to the following circumstances

(i) Fleming is a full-line wholesale supplier of food, grocery, and related products through its product supply center at Phoenix, Arizona and other locations, and

(ii) Retailer is a retailer of food, grocery, and related products and operates retail grocery stores at the locations listed on Exhibit "A" hereto, and

(iii) Retailer contemplates acquiring and/or developing additional retail grocery stores from time to time during the term of this Agreement and desires that the additional stores be subject to this Agreement, and

(iv) Retailer presently subleases from an affiliate of Fleming the premises at which the Store is located ("Sublease"), and

(v) Retailer has requested that Fleming be prepared to supply to Retailer a certain amount of food, grocery, and related products, and to be able to do so Fleming will have to commit certain resources, including capital, employees, inventory, equipment, and facilities, and

(vi) Retailer acknowledges that but for Retailer's covenants and agreements in this Agreement, Fleming would not have agreed to commit its resources for the benefit of Retailer, entered into this Agreement, and/or entered into the Sublease

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants stated below, the parties agree as follows

1 Fleming's Commitment to Supply Throughout the term of this Agreement, Fleming will maintain capital, employees, inventory, equipment, and facilities sufficient to supply Products to Retailer in quantities sufficient to allow Retailer to maintain the Teamwork Score described in Section 3 of this Agreement

2 Price and Other Terms of Sale Except as hereinafter provided, the Products sold to Retailer pursuant to this Agreement shall be priced, and other terms of sale shall be established, generally in accordance with the Fleming FlexMate Marketing Plan dated June 8, 1998, which Retailer has reviewed and which is attached hereto as Exhibit B, as amended from time to time by Fleming in its discretion upon thirty (30) days notice (the "Selling Plan") Although Fleming has the ability to amend the Selling Plan in any respect, any amendments will be applicable to all customers of Fleming who are situated similarly to Retailer in Retailer's trade area and who are purchasing Products pursuant to the Selling Plan As to any Products which are not covered by the Selling Plan the price of such Products shall be Fleming's quoted selling price in effect for such Products from time to time

3 Facility Standby Fee

(a) Amount By entering into this Agreement, Fleming has committed to devote such capital, employees, inventory, equipment, and facilities as are required to supply Retailer with the quantity of Products necessary for Retailer to maintain the minimum Teamwork Score (defined in Section 3(b) hereof) for the term of this Agreement. Fleming is willing to so commit such resources because of the return it will realize from sale of Products in the quantities necessary for Retailer to meet the minimum Teamwork Score during the term of this Agreement. If Retailer does not purchase Products in such quantities, Retailer agrees to pay Fleming a Facility Standby Fee. The amount of the Facility Standby Fee shall be equal to two percent (2%) of the amount by which Retailer's purchases during each twelve (12) month period during the term of this Agreement are less than the amount of purchases which are required to maintain the minimum Teamwork Score. Retailer shall pay the Facility Standby Fee within 30 days after the close of the twelve (12) month period for which such fee is owed.

(b) Teamwork Score The "Teamwork Score" will be determined by dividing the amount of purchases of all Products sold to Retailer by Fleming for the Store by Retailer's total retail sales for the Store. The Teamwork Score will be calculated by Fleming and written notice thereof shall be given to Retailer within a reasonable time after the expiration of each Period during the term of this Agreement. Retailer shall provide to Fleming on a timely basis such information, including total retail sales, to enable Fleming to make the calculation contemplated by this provision. The minimum Teamwork Score for each year of this Agreement shall be fifty percent (50%). For internal accounting purposes, Fleming divides the year into thirteen (13) periods, each containing four weeks. A "Period" for purposes of this Agreement, means any of such periods, as reasonably established by Fleming for accounting purposes from time to time. The term "Fiscal Year" shall herein mean a year comprised of the thirteen (13) periods ending on the last Saturday in December in each such year. The term "Anniversary Year" shall mean a year beginning on the Effective Date, and on each anniversary of the Effective Date after the first year of this Agreement and ending exactly one year later.

(c) No Other Retailer Obligations Except as otherwise provided in Section 14 of this Agreement, Retailer shall have no obligation to purchase any specific quantity or type of Products from Fleming.

4 Term Unless terminated sooner in accordance with this Agreement, the term of this Agreement will commence on the date hereof and will extend until the date which is seven years following the date hereof, at the end of such term, this Agreement will automatically be extended for additional one-year terms until terminated on an anniversary date by either party on six months prior written notice, provided however, such termination by Retailer shall not occur until (i) Retailer is no longer obligated under any agreement with Fleming, or any affiliate of Fleming, and (ii) all of Retailer's financial obligations to Fleming, and all affiliates of Fleming, have been fully paid and satisfied, provided, however, if a Store or Additional Store operates on property under a Sublease, the term of this Agreement, as to that Store or Additional Store, will extend until the later of the date set forth above or the termination or expiration of the applicable Sublease, provided further, however in no event will the term of this Agreement extend beyond twenty (20) years from the date hereof.

5 Default

(a) Default by Retailer If Retailer fails to perform in any material respect any of its obligations under this Agreement, then Retailer shall be in default and Fleming shall have all rights and remedies available under law, including, without limitation, the right to immediately stop shipment of Products, the right to immediately terminate this Agreement by written notice, and the right of specific enforcement of the obligations of Retailer. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Retailer shall have five days from receipt of the notice of termination from Fleming within which to cure the monetary default. Fleming shall not be obligated to ship any Products to Retailer during such five days. Fleming's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Fleming. In no event whatsoever shall Retailer be liable to Fleming for, and Fleming waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), or statutorily prescribed damages.

(b) Default by Fleming If Fleming fails to perform in any material respect any of its obligations under this Agreement, then Fleming shall be in default and Retailer shall have the right to immediately terminate this Agreement by written notice and pursue all remedies available under this Agreement or law by reason of such default, including, without limitation, specific enforcement of the obligations of Fleming. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Fleming shall have five days from receipt of the notice of termination from Retailer within which to cure the monetary default. Retailer's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Retailer. In no event whatsoever shall Fleming be liable to Retailer for, and Retailer waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise) or statutorily prescribed damages.

6 Disputes, Arbitration All disputes between Fleming and the Retailer, including any matter relating to this Agreement, shall be resolved by final binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). To the extent they are available, arbitrators shall be selected from the AAA Food Industry panel. In any dispute involving a claim in excess of \$100,000, three arbitrators shall be employed. Absent a showing of good cause, the hearing shall be conducted within ninety (90) days from the service of the statement of claim. All proceedings shall be governed by the Federal Arbitration Act.

Each party shall bear the expense of its own attorneys' experts and out-of-pocket costs as well as fifty percent (50%) of the expense of administration and arbitrator fees. However, the Retailer may be relieved from all or part of such obligation as it relates to such administration and arbitrator fees upon a finding by the arbitrator(s) of economic hardship.

The parties agree (i) TO WAIVE THE RIGHT TO RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES, and (ii) that the arbitrators SHALL NOT

HAVE THE POWER TO AWARD CONSEQUENTIAL OR PUNITIVE DAMAGES unless, in the case of (i) or (ii), the arbitrator(s) or a court of competent jurisdiction determines that this limitation under the circumstances, violates public policy

Depositions, other than those taken in lieu of live testimony shall not be taken except upon the arbitrator(s) finding of special need. Parties shall be entitled to conduct document discovery in accordance with a procedure where responses to information requests shall be made within twenty (20) days from their receipt

Either party shall be entitled to pursue remedies for emergency judicial relief in any court of competent jurisdiction, e.g., in order for Fleming to preserve its collateral except that immediately following the preliminary adjudication of such request for emergency relief, the parties hereby consent to a stay of the judicial proceedings pending a determination of the dispute on the merits by arbitration as herein provided

7 Change of Control If Fleming does not elect to exercise its right of first refusal provided in Section 8 below and there has been a Change of Control, upon thirty (30) days written notice to Retailer Fleming may terminate this Agreement

8 Right of First Refusal Subject to the written consent of Fleming as may be required under any other agreement between Fleming and Retailer, (including without limitation, under any security agreement or lease, sublease or license agreement between Fleming or its affiliate and Retailer), in the event Retailer or any Equity Owner desires to make a Disposition, other than in the ordinary course of its business, and in the event Retailer or such Equity Owner shall have received an Offer to make a Disposition, Retailer or Equity Owner, as the case may be, shall promptly notify Fleming in writing of the Offer. The notice shall state the name and address of the proposed transferee and the terms of the proposed Disposition, including the price and manner and time of payment and other terms and conditions of such proposed Disposition and shall be accompanied by a complete copy of the Offer. Within thirty (30) days after receipt of such notice, Fleming may elect to lease or acquire, as the case may be, the Assets or the Equity Interest, which is the subject of the Offer, upon the terms and conditions as are contained in the Offer by providing Retailer or Equity Owner with a written notice of election to effect the lease or acquisition. Retailer or Equity Owner shall thereupon make the Disposition of the Assets or Equity Interest to Fleming upon the same terms and conditions as are contained in the Offer from such third party, except that in the event of a sale of the Assets or Equity Interest, Retailer or Equity Owner agrees that it shall be bound to comply with the applicable laws in the State of Oklahoma, to pay or otherwise satisfy any and all claims, liens, taxes and encumbrances in connection therewith and to deliver to Fleming good and marketable title to the Assets or Equity Interest being conveyed to Fleming

If the Offer is not accepted by Fleming within thirty (30) days from the date of delivery of the notice of the written Offer and provided the written consent of Fleming as required by any lease, sublease or other agreement between Fleming and Retailer has been given, Retailer shall have the right for a period of ninety (90) days to make the Disposition of the Assets or Equity Interest in the Retailer to the third party specified in the written notice at a price not less than and upon terms and conditions no more favorable than offered to Fleming. If the proposed Disposition is not consummated within such ninety (90) day period, the Assets and

Equity Interest in Retailer shall again become subject to the restrictions of this right of first refusal. Notwithstanding the foregoing, nothing herein shall be construed as allowing Retailer to lease or sublease any store premises or transfer any leasehold interest therein through an assignment or otherwise, without the prior written consent of Fleming if any store premises are being leased or subleased by Retailer from Fleming or its affiliates. Furthermore, in order to preserve Fleming's right of first refusal in the Equity Interest, each Equity Owner shall, contemporaneously with the execution of this Agreement, provide evidence to Fleming that the following restrictive legend has been conspicuously stated on the face of all certificates of stock or other similar type documents evidencing the Equity Interest in Retailer:

"The shares of stock or interests evidenced by this certificate are subject to a right of first refusal to purchase such shares or interests granted to Fleming Companies, Inc."

Notwithstanding anything contained in this Agreement to the contrary, the right of first refusal granted hereunder to Fleming shall survive any termination of this Agreement unless Fleming specifically terminates such right of first refusal in writing. Furthermore, Fleming may assign this right of first refusal to any person or entity independent of or with any assignment of this Agreement.

9 Amendment or Waiver This Agreement may not be amended, nor any of its terms waived, unless such amendment or waiver is in writing and signed by the parties hereto.

10 Governing Law This Agreement will be governed by and construed in accordance with the laws of the State of Oklahoma.

11 Counterparts This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument and each of which will be considered an original for all purposes.

12 Time is of the Essence Time is of the essence of this Agreement.

13 Notices Whenever any notice is required to be given under this Agreement, then such notice shall be written and shall be given or sent, and the other party shall be deemed to have received it, if delivered personally or by national overnight courier, on the date such notice is delivered personally or by the national overnight courier, or if mailed, on the third business day after mailing, if sent by first-class certified mail, postage prepaid, return receipt requested, and addressed as follows:

(a) Notices to Fleming

Fleming Companies, Inc.
624 S. 25th Avenue
Phoenix, Arizona 85038
Attn: Division President

With copies to

Fleming Companies, Inc
5701 N Shartel
Oklahoma City, Oklahoma 73118
Attn Associate General Counsel

(b) Notices to Retailer

Stabler's, Inc
2039 W Guadalupe
Mesa, Arizona 85202
Attn Tom Stabler

or to such other address as may be designated on ten (10) days prior notice in writing by such party. All such notices and communications shall be in writing and signed by the party giving such notice.

14 Purchase of Store Supplies and Control Label Products Upon the termination of this Agreement, Retailer will purchase from Fleming (i) all store supplies that Fleming has purchased or obtained as supplies for Retailer, and (ii) private label or label designated products, each group of which, because of any special design, label, logo, quantity, or other feature cannot be sold promptly by Fleming to other retailers being served by the product supply center servicing Retailer under this Agreement at the same price being paid for such supplies and control label products by Retailer. Retailer will pay to Fleming the then current price for such supplies and control label products being charged by Fleming to Retailer. Such amount will be paid and such supplies and products will be delivered by Fleming to Retailer within ten (10) days after termination of this Agreement.

15 Miscellaneous

(a) Authorization Retailer or Fleming will execute and deliver any and all documents that may reasonably be requested by the other in order to properly document this Agreement, including, but not limited to, certified resolutions of the owners of Equity Interests in Retailer authorizing the undersigned to enter into this Agreement.

(b) Binding Effect This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. Except as expressly provided herein, neither this Agreement nor the rights and obligations of Retailer hereunder shall be assignable by Retailer, and any purported assignment in contravention hereof shall be void without the consent of Fleming. However, if Fleming should consent to an assignment or if without Fleming's consent the rights and obligations of Retailer are transferred by operation of law or otherwise, Retailer shall require that such rights and obligations be assumed by the transferee.

(c) Exhibits Any Exhibit attached to this Agreement is made a part hereof and is fully incorporated herein by reference.

(d) Entire Agreement This Agreement is the final expression of the agreement of the parties regarding the purchase of Products by Retailer from Fleming and supersedes any prior or contemporaneous agreement between the parties pertaining to the matters covered by this Agreement. There are no representations, promises, warranties, understandings, or agreements, express or implied, oral or otherwise, except those expressly referred to or set forth in this Agreement. Retailer acknowledges that the execution and delivery of this Agreement is its free and voluntary act and deed and that Retailer's execution and delivery have not been induced by or done in reliance upon any representations, promises, warranties, understandings, or agreements made by Fleming or its agents, officers, employees, or representatives that are not expressly stated in this Agreement. No promise, representation, warranty, or agreement made subsequent to the execution and delivery of this Agreement by either party, and no revocation, partial or otherwise, or change, amendment, addition, alteration, waiver or modification of this Agreement or any of the terms hereof will be enforceable, unless it is in writing and signed by Fleming and Retailer.

(e) Headings Headings or captions of the sections in this Agreement are for convenience of reference only and in no way define or limit or describe the intent of this Agreement or any provision hereof.

(f) Inconsistency with Selling Plan If any of the provisions of this Agreement are inconsistent with the provisions of the Selling Plan, the provisions of this Agreement will govern.

(g) No Effect The length of the term of this Agreement may not correspond with the terms of other agreements between Fleming and Retailer, and nothing shall be implied therefrom. Furthermore, this Agreement shall have no relevance or effect in determining whether or not a loan, mortgage, sublease, license, franchise, or other agreement, if any between Fleming and Retailer will be extended or renewed.

(h) Limitation of Actions In accordance with the provisions of Article 2 of the Uniform Commercial Code, an action for breach of this Agreement must be commenced within two years after the cause of action has occurred by sending the other party a statement of claim and demand for arbitration under the provisions of this Agreement.

(i) Cross Default Any material breach of this Agreement by Retailer will be deemed to be a breach of any and all other agreements by and between Retailer and Fleming and its affiliates, whether now in existence or hereafter entered into, including, without limitation, any and all lease agreements, franchises, licenses, sublease agreements, promissory notes, loan agreements, security agreements, deeds of trust, leasehold deeds of trust and pledge agreements. A breach of any of the agreements referenced in the preceding sentence shall constitute a breach of this Agreement, in which event Fleming may pursue all remedies legally available to it under this Agreement and those other agreements, including, without limitation, termination, acceleration of Retailer's obligations under those agreements, seeking monetary damages and seeking equitable relief.

(j) Force Majeure Fleming shall not be deemed in default of this Agreement if Fleming's non-performance is the result of a condition beyond Fleming's control.

including, but not limited to labor strikes, government rationing or other regulations, flood, fuel shortages, earthquake acts of God, drought, and other weather conditions

(k) State and Local Taxes Retailer represents and warrants that all Products purchased from Fleming that are tangible personal property shall be purchased for resale in the ordinary course of Retailer's business and that Retailer shall comply with pertinent state and local laws regarding the collection and payment of sales, use, and other taxes applicable to all such resale transactions and furnish evidence thereof to Fleming. If any such tangible personal property is put to a taxable use by Retailer or is purchased by Retailer other than for resale, Retailer shall make timely return and payment to the proper taxing authority of all sales, use, and like taxes applicable thereto, and shall indemnify Fleming against such taxes and all penalties and interest related thereto

(l) Severable If any provision of this Agreement is determined by a court of competent jurisdiction or arbitrators appointed pursuant to this Agreement to be void or unenforceable, then the remaining provisions of this Agreement shall be given effect as if such void or unenforceable provision was not a part of this Agreement

16 Definitions Capitalized terms used in this Agreement shall have the following meanings

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, Controls Retailer (a "Controlling Person") or any Person that is Controlled by or is under common Control with a Controlling Person

"Assets" means any of the Stores or any substantial asset or assets in any Store, including, without limitation the land and building where an owned Store is located and the leasehold interest in a leased Store, together with substantially all furniture, fixtures, equipment, inventory, accounts, general intangibles, and other personal property of any kind or character that is used in connection with any Store

"Change of Control" means the acquisition by any Person of the sufficient Equity Interest in Retailer such that the Person has the power to Control Retailer

"Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of equity, by contract, or otherwise

"Disposition" shall mean the sale, transfer, lease or exchange, directly or indirectly, of substantially all of the Assets or fifty percent (50%) or more of the Equity Interests of Retailer in one transaction, or in a series of transactions the result of which would constitute a transfer of fifty percent (50%) or more of such Equity Interests

"Effective Date" shall have the meaning stated in the first paragraph of this Agreement

"Equity Interest" means, in the case of a corporation, the voting capital preferred or common stock or other voting security of the corporation, and in the case of a

limited liability company or partnership any membership partnership, or other economic interest in the entity

“Equity Owner” means any person or entity owning any Equity Interest in
Retailer

“Facility Standby Fee” shall have the meaning described in Section 3(a) of
this Agreement

“Fleming” shall have the meaning stated in the first paragraph of this
Agreement

“Initial Term” shall have the meaning stated in Section 4 of this
Agreement

“Offer” means any proposal or offer for the acquisition of any of the
Assets, other than in the ordinary course of Retailer’s business, or any Equity Interest made by or
on behalf of any Person

“Period” means any of the thirteen (13) four-week periods into which
Fleming divides each calendar year for Fleming’s internal accounting purposes

“Person” means any individual, a partnership, a corporation, an
association, a limited liability company, a joint stock company, a trust, a joint venture, an
unincorporated organization, or a governmental entity (or any department agency or political
subdivision thereof)

“Products” means food grocery, meat, perishables and other related
products, supplies, and merchandise described in the Selling Plan that Fleming offers for sale to
its other retail customers

“Retailer” means the person identified in the first paragraph of this
Agreement and any successors thereof

“Selling Plan” shall have the meaning described in Section 2 of this
Agreement

“Store” means the retail grocery store operated by Retailer at the location
described in Exhibit ‘A’ of this Agreement

“Sublease” shall have the meaning described in the recitals of this
Agreement

“Teamwork Score” shall have the meaning described in Section 3 of this
Agreement

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

FLEMING COMPANIES, INC , an Oklahoma corporation

By W.C. Mee
Name William C Mee
Title Vice President, Shared Services-Real Estate

"FLEMING

STABLER'S, INC , an Arizona corporation

By Thomas F. Stabler
Name THOMAS F. STABLER
Title President

"RETAILER"

* Thomas F. Stabler
Thomas F Stabler

* Marilyn L. Stabler
Marilyn L Stabler

*Executed for the purpose of agreeing to the provisions of Section 8 hereof

EXHIBIT A

Store

Store 693
2039 W Guadalupe
Mesa, Arizona

EXHIBIT B

SUBLEASE AGREEMENT

THIS SUBLEASE is entered into as of the 7th day of May, 2001, by and between ABCO REALTY CORP, an Arizona corporation (hereinafter referred to as "Sublandlord"), and STABLER'S, INC, an Arizona corporation (hereinafter referred to as "Subtenant")

RECITALS

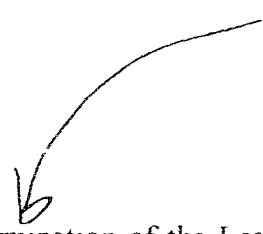
Sublandlord, as successor in interest to Lucky Stores, Inc, a California corporation, is the tenant of certain premises located at 2039 W Guadalupe, Mesa AZ 85202 (the "Premises") under a lease between Sublandlord and Excel Mortgage Funding Corp, as successor in interest to OTR, an Ohio general partnership (the "Prime Landlord"), dated November 19, 1981, as amended (the "Lease") The Lease is described in detail on Exhibit A attached hereto

Subtenant has now agreed to sublease the Premises from Sublandlord on the terms and conditions contained herein

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1 Premises Sublandlord hereby subleases from Sublandlord, the Premises subject to a Lease, except for the term, rental assignment, sublease operations, right of first refusal and option to purchase as otherwise set forth herein. In addition, in no event shall any payments due from Prime Landlord under the Lease Sublease, the terms of the Lease are hereby incorporated. Sublandlord shall have all of the rights of Prime Landlord.

2 Term The term of this Sublease shall be for a period of one day and year first written above (the "Commencement Date") January 31, 2002 (the "Term") Notwithstanding anything to the contrary, this Sublease shall automatically terminate upon the expiration or termination of the Lease for any reason. In no event shall Subtenant have the right to exercise any options to extend the term of the Lease that may be available to Sublandlord under the Lease.



3 Rent

(a) Commencing on the Commencement Date and continuing for a period of twenty-six (26) weeks thereafter, Subtenant shall not be required to pay minimum weekly rent for the Premises. Commencing on the date that is twenty-seven (27) weeks from the Commencement Date and continuing through the expiration or earlier termination of the Term, Subtenant shall pay to Sublandlord as minimum weekly rent for the Premises the sum of One Thousand Two Hundred Fifteen and 75/100 Dollars (\$1,215.75) per week.

SUBLEASE AGREEMENT

THIS SUBLEASE is entered into as of the 7th day of May, 2001 by and between ABCO REALTY CORP, an Arizona corporation (hereinafter referred to as "Sublandlord"), and STABLER'S, INC, an Arizona corporation (hereinafter referred to as "Subtenant")

RECITALS

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Subtenant has now agreed to sublease the Premises from Sublandlord on the terms and conditions contained herein

NOW, THEREFORE, in consideration of the terms, covenants, conditions and agreements contained herein the parties hereto agree as follows

1 Premises Sublandlord hereby subleases to Subtenant, and Subtenant subleases from Sublandlord, the Premises subject to all terms and conditions contained in the Lease, except for the term, rental, assignment, subletting use, renewal discontinuance of operations, right of first refusal and option to purchase provisions of the Lease, if any, and except as otherwise set forth herein In addition, in no event shall Subtenant have the right to receive any payments due from Prime Landlord under the Lease To the extent not inconsistent with this Sublease, the terms of the Lease are hereby incorporated into this Sublease by reference Sublandlord shall have all of the rights of Prime Landlord under the Lease

2 Term The term of this Sublease shall be for the period beginning on the day and year first written above (the "Commencement Date") and ending at 11 59 p m on January 31 2002 (the "Term") Notwithstanding any provision herein to the contrary, this Sublease shall automatically terminate upon the expiration or termination of the Lease for any reason In no event shall Subtenant have the right to exercise any options to extend the term of the Lease that may be available to Sublandlord under the Lease

3 Rent

(a) Commencing on the Commencement Date and continuing for a period of twenty-six (26) weeks thereafter, Subtenant shall not be required to pay minimum weekly rent for the Premises Commencing on the date that is twenty-seven (27) weeks from the Commencement Date and continuing through the expiration or earlier termination of the Term, Subtenant shall pay to Sublandlord as minimum weekly rent for the Premises the sum of One Thousand Two Hundred Fifteen and 75/100 Dollars (\$1,215 75) per week

(b) Minimum rent shall be payable weekly in advance without demand, offset or deduction.

(c) Subtenant shall also pay to Sublandlord for each Sublease Year (as defined herein) during the Term, as additional rent, a sum equal to one and three-eighths percent (1 375%) of Subtenant's gross sales made in Subtenant's business on the Premises, less the amount of fixed minimum rent payable by Sublandlord under the Lease. Real property taxes and assessments for public improvements paid by Subtenant pursuant to Section 7(a) of the Lease, taxes paid by Subtenant pursuant to Section 7(d) of the Lease, and insurance premiums paid by Subtenant pursuant to Section 9(a) of the Lease shall be credited against percentage rent paid or payable hereunder. The term "gross sales" as used herein shall have the same meaning as in the Lease. Any percentage rent due hereunder shall be paid to Sublandlord no later than fifteen (15) days following the end of the Sublease Year for which percentage rent is due and shall be payable without demand, offset or deduction of any kind. Within five (5) days after the end of each calendar month during the Term, Subtenant shall deliver to Sublandlord a written statement showing in all reasonable detail the amount of gross sales made from the Premises during the previous month. In addition, within twenty (20) days after the end of each Sublease Year, Subtenant shall deliver to Sublandlord a written statement showing in all reasonable detail the amount of gross sales made from the Premises during the previous Sublease Year. Subtenant shall also prepare and maintain all other records required by the Lease in regard to Subtenant's gross sales. Sublandlord shall have the right, at all reasonable times, to inspect and audit the books and records of Subtenant to verify Subtenant's gross sales. The term "Sublease Year" shall mean a period of time identical to the annual period for which percentage rent is calculated under the Lease. Percentage rent payable during a partial Sublease Year shall be prorated accordingly.

(d) Subtenant shall also pay any and all amounts payable by Sublandlord as tenant under the Lease, including but not limited to all common area maintenance costs (including insurance premiums) and ad valorem and rental taxes. Prior to the commencement of each Sublease Year, Sublandlord shall notify Subtenant of its good faith estimate of such amounts payable for such Sublease Year. Subtenant shall pay Sublandlord the amount of such estimate, in equal weekly installments at the time weekly installments of minimum rent are due and payable hereunder. Promptly after Sublandlord's reconciliation of such amounts owed under the Lease with the Prime Landlord, Sublandlord shall notify Subtenant of the actual amount of such expenses. Any excess in amounts paid by Subtenant during the Sublease Year shall be credited against amounts payable under this subparagraph for the following Sublease Year. Any shortfall in such payments shall be reconciled by a cash payment by Subtenant to Sublandlord within twenty (20) days after such notice.

4 Assumption Agreement and Covenants Subtenant hereby assumes and shall faithfully and promptly make all payments and perform all obligations and duties imposed on Sublandlord as tenant under the Lease, including without limitation, any obligations to maintain and repair the Premises, to make payments or contributions for taxes, special assessments, insurance and any other payments required to be made by Sublandlord, not to commit or suffer waste, not to use the Premises for any unlawful purposes, and, at the termination of this Sublease, to surrender the Premises in good condition, reasonable wear and tear excepted and in the condition required by the Lease. Any and all payments required under

2 NOTE: PREEXISTING ROOF LEAK PROBLEMS NEED TO BE FIXED TO BRING UP TO PROPER OPERATING CONDITIONS JS

the Lease and this Sublease to be made by Subtenant as aforementioned shall be made in a timely manner directly to Sublandlord

5 Default Upon nonpayment by Subtenant of any rentals or other payments when due, or any failure of Subtenant to perform any of its other covenants required to be performed by Subtenant under this Sublease, or any default by Subtenant or any affiliate of Subtenant in the payment or performance of any obligation under any other indenture, agreement, note or undertaking with Sublandlord, after five (5) days written notice of any default in regard to rent or other indebtedness and after twenty-one (21) days written notice of any other item of default Sublandlord shall have all remedies available at law or in equity including, without limitation, the right, at its option, to re-enter the Premises without terminating this Sublease, remove Subtenant and all persons holding under Subtenant from the Premises, accelerate all rentals due hereunder for the entire term of this Sublease, and/or to terminate this Sublease and re-enter and repossess the Premises provided, however, that such re-entry, repossession and/or termination shall not constitute an acceptance or surrender of this Sublease or a waiver of any of Sublandlord's rights or remedies, including without limitation, the right to re-let the Premises, or any part thereof, for the benefit of Subtenant and to recover damages for Subtenant's default

6 Subtenant Indemnity, Waiver of Subrogation Subtenant shall defend, indemnify and hold Sublandlord harmless from any and all damages, costs, losses and expenses (including reasonable attorney fees) resulting in any way from Subtenant's occupancy and/or use of the Premises or the surrounding area, or the breach of any obligation of Subtenant as set out in the Sublease, and Subtenant shall carry, at Subtenant's expense, public liability insurance on the Premises with an insurance company having a BEST rating of at least A XIV and licensed to issue such insurance within the state wherein the Premises are located, which insurance shall stipulate a combined single limit of not less than Three Million Dollars (\$3,000,000) for personal injury, death and property damage No later than the Commencement Date and thereafter on each anniversary of the Commencement Date, Subtenant shall provide Sublandlord with certificates evidencing such insurance naming the Prime Landlord and Sublandlord as additional named insureds, which certificate shall require the insurance carrier to give Sublandlord thirty (30) days written notice of any cancellation or material amendment to such insurance

Sublandlord and Subtenant hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein on account of fire or other casualty or for injuries sustained on or about the Premises to the extent such loss or damage is or would be covered by the insurance required to be carried by each party hereunder, even if such coverage is not actually maintained Such waiver shall also apply to the extent of any deductible maintained by either party under its insurance policies It is understood that this waiver applies to any loss or damage regardless of the cause, including, without limitation, if caused by the negligence of Sublandlord, Subtenant or their respective employees, agents, assigns or sublessees

7 Use, Compliance with Law The Premises shall be continuously occupied and used by Subtenant only for the operation of a supermarket and for no other purpose

Subtenant shall obey, observe and promptly comply with all rules, regulations, ordinances and laws which shall be applicable, now or at any time during the Term, to the Premises and shall promptly comply with all orders, rules, rulings and directives of any governmental authority or agency having jurisdiction of the Premises. Subtenant shall not store, use, discharge or dispose of any hazardous or toxic substances, pollutants, contaminants or any other substances regulated by any state or federal statute (collectively "Contaminants") on the Premises other than in the ordinary course of its business. Subtenant shall be solely responsible for the costs of removing or cleaning any Contaminants found on the Premises and caused by Subtenant.

8 Assignment and Subletting Subtenant shall not assign its interest in the Sublease voluntarily or by operation of law and shall not sublet or license all or any portion of the Premises without the prior written consent of Sublandlord (and Prime Landlord if such consent is required by the Lease). Sublandlord's consent or approval may be granted or withheld in Sublandlord's sole discretion. The transfer of fifty percent (50%) or more of the voting stock of Subtenant, whether in one or a series of transactions, shall be considered an assignment requiring Sublandlord's prior written consent. Any purported or attempted assignment or subletting, without Sublandlord's prior written consent, shall be null and void. Any permitted assignee or sublessee of Subtenant shall expressly assume Subtenant's liabilities and obligations under this Sublease. No assignment, subleasing or licensing shall release Subtenant from any of its obligations hereunder. Subtenant shall not mortgage or otherwise encumber its leasehold interest hereunder without the prior written consent of Sublandlord. This Sublease shall not be construed as an assignment of Sublandlord's interest in the Lease, and Subtenant shall not negotiate, modify or amend the Lease.

9 Inspection, Alterations Subtenant has inspected the Premises, and is satisfied that the same is acceptable to Subtenant for all of its purposes and uses, and accepts the same and any included trade fixtures and equipment in "AS IS" condition, without any warranties, representations or obligation on Sublandlord's part to make any repairs, replacements, alterations, additions, installations or improvements whatsoever. Subtenant shall not expand or make or install any additions, renovations, alterations, improvements, or changes in or to the Premises, or any part thereof without Sublandlord's prior written consent. Any permitted work shall be performed in a good and workmanlike manner at the sole expense of Subtenant. Subtenant shall not permit, create, incur or impose or cause or suffer others to permit, create, incur or impose any lien or other obligation against the Premises or any interest therein by reason of any work upon the Premises, and Subtenant shall indemnify and hold Sublandlord harmless of and from any and all claims or demands by any contractor, subcontractor, materialman, laborer or any other third person against the Premises, Subtenant's interest in the Premises or any interest therein relating to or arising because of any work thereon. As between Sublandlord and Subtenant, any improvements or additions upon the Premises at the expiration of this Sublease shall be deemed a part of the Premises.

10 Termination Notwithstanding anything contained herein to the contrary, the existence of this Sublease is dependent and conditioned upon the existence of the Lease, and

in the event of the cancellation or termination of the Lease for any reason, this Sublease, at Sublandlord's option, shall thereupon be terminated without the need for further action and without liability to Sublandlord. If Subtenant is not in default under the terms and conditions hereof, any such termination shall be without liability between Sublandlord and Subtenant, except for such liability theretofore accruing or as otherwise provided herein, however, if Subtenant is in default, the provisions hereof including those of default shall control as to Subtenant's liability.

11 Sublandlord's Obligations Sublandlord shall have no duty to perform any obligations of Prime Landlord under the Lease and shall under no circumstances be responsible for or liable to Subtenant for any default, failure or delay on the part of Prime Landlord in the performance of any obligations under the Lease. No such default of Prime Landlord shall affect this Sublease or waive or defer the performance of any of Subtenant's obligations hereunder provided, however, that in the event of such default or failure, Sublandlord agrees, upon notice from Subtenant, and at Subtenant's expense, to make demand upon Prime Landlord to perform its obligations under the Lease.

12 Costs and Expenses Subtenant shall pay all costs and expenses, including reasonable attorneys' fees, that may be incurred by Sublandlord in enforcing the provisions of this Sublease or in enforcing Prime Landlord's obligations under the Lease if requested to do so by Subtenant. In the event any amounts due from Subtenant hereunder are not paid when due, such amounts shall bear interest from and after the date thereof to the date of payment at an annual rate of eighteen percent (18%).

13 Notices Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person hereunder shall be in writing and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, (ii) sent by receipted overnight delivery service, or (iii) personally delivered to the address set forth below. The effective date of any such notice shall be the date which is stamped by the United States Post Office on the envelope enclosing same, the date of the receipt for the overnight delivery or the date on which personal delivery is made, whichever is applicable. Any notice sent by Subtenant to Prime Landlord shall also be sent concurrently to Sublandlord. Until changed by written notice from the appropriate party to the other, the addresses of the parties are as follows:

Sublandlord	Fleming Companies, Inc 5701 N. Shartel Oklahoma City, Oklahoma 73118 Attn: Lease Manager (405) 840-7200
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Copy to	Fleming Companies, Inc 624 S. 25th Avenue Phoenix, Arizona 85009 Attn: Division President
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Subtenant

Stabler's Inc
2039 W Guadalupe
Mesa, AZ 85202
Attn: Thomas F. Stabler

14 Accord and Satisfaction No payment by Subtenant or receipt by Sublandlord of a lesser amount than the full amount of any payments to be made by Subtenant hereunder shall be deemed to be other than on account of the earliest stipulated unpaid installment thereof, and no endorsement or statement on any check or letter accompanying any check or payment shall be deemed to be an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice of Sublandlord's right to recover the full amount due hereunder or pursue any other remedy available to Sublandlord

15 Entire Agreement, Consent This Sublease constitutes the entire agreement and understanding of the parties with respect to the matters contained in this Sublease and supersedes all other agreements between and representations by the parties with respect to such matters. Subtenant is not relying upon any representations, market analysis, projections, reports or warranties of Sublandlord except as stated herein and Subtenant shall execute the Waiver of Liability attached as Exhibit B. No changes, amendments or modifications of this Sublease shall be effective or enforceable unless made in writing and executed by the parties hereto. Whenever Sublandlord's consent is required by the terms of this Sublease, Prime Landlord's consent shall also be obtained if so required by the terms of the Lease. The consent by Sublandlord to any act by Subtenant requiring Sublandlord's consent shall not waive or render unnecessary Sublandlord's consent to any subsequent similar act by Subtenant.

16 Multiple Originals This Sublease is executed simultaneously in multiple originals, each of which shall be deemed an original without the production of the other such originals.

17 Guaranty Simultaneously with the execution of this Sublease by Subtenant, Subtenant shall cause to execute the Guaranty attached hereto as Exhibit C.

18 Authority The individual executing this Sublease on behalf of Subtenant represents and warrants to Sublandlord that Subtenant is a corporation in good standing under the laws of the state in which the Premises are located and has full right and authority to enter into the Sublease and perform its obligations hereunder.

19 Entry by Sublandlord Sublandlord and its representatives shall have the right, at all reasonable times, to enter upon the Premises for the purposes of examining and inspecting the same, provided, however, this section shall not be construed as imposing any obligation upon Sublandlord to inspect the Premises.

20 Non-Waiver Any assent, expressed or implied by Sublandlord to any breach of any covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally or of any subsequent breach thereof.

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

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

IN WITNESS WHEREOF, Sublandlord and Subtenant have agreed to the foregoing Sublease in its entirety as of the day and year first set forth above, and have executed the same on the day and year first set forth above

"SUBLANDLORD"

ABCO REALTY CORP, an Arizona corporation

By WCM
Name William C Mee
Title VICE President

"SUBTENANT"

STABLER S INC, an Arizona corporation

By Thomas F Stabler
Thomas F Stabler, President

EXHIBIT A

The Lease

- **Lease**, dated November 19, 1981 by and between OTR, an Ohio general partnership, and Lucky Stores Inc , a California corporation
- **Assignment of Lease and Agreement**, dated August 5, 1988, by and between Lucky Stores, Inc , a California corporation, and ABCO Realty Corp , an Arizona corporation
- **Letter Agreement**, dated May 1, 1990, from ABCO Markets, Inc to Mr C Max Killian
- **Letter**, dated February 3, 1993, from The State Teachers Retirement System of Ohio to ABCO Foods, Inc