B10 (Official Form 10) (Rev 04/01)

UNITED STATES BANKRUPTCY COURT
For the District of Delaware

PROOF OF CLAIM

In re FLEMING COMPANIES, INC

Case Number 03-10945-MFW

NOTE This claim 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

Creditor Name (Person or entity debtor owes) MARKET LUBBOCK, INC

Address Line 1 1301 Broadway, Suite 200

Address Line 2

Address Line 3

City ST ZIP Lubbock, Texas 79401

☐ 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 the address differs from the address on the envelope sent to you by the court

REC'D DEC 12 2003

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here if this claim ☐ replaces ☐ amends a previously filed claim dated. _____

1 BASIS FOR CLAIM

☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U S C § 1114(a)

☐ Services performed ☐ Taxes ☐ Wages salaries, and compensation (Fill out below)

Your social security No. _____

☐ Money loaned ☒ Other (Describe Briefly)

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

Economic Development Grant Contract
Independent Accountants' Report

2 Date Debt Incurred (MMDDYY) 08 09 01

3 If Court Judgment, Date Obtained

4 CLASSIFICATION OF CLAIM Under the Bankruptcy Code all claims are classified as one or more of the following. (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured It is possible for part of a claim to be in one category and part in another CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED

☐ SECURED CLAIM
Attach evidence of perfection of security interest
Brief Description of Collateral
☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)

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

☒ UNSECURED NONPRIORITY CLAIM
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM Specify the priority of the claim.
☐ Wages, salaries or commissions (up to $4,650) earned not more than 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)
☐ Taxes or penalties of governmental units 11 U S C § 507 (a)(7)
☐ Other Specify applicable paragraph of 11 U S C. § 507(a) _____

5 AMOUNT OF CLAIM AT TIME CASE FILED

(Secured)	(Unsecured Nonpriority)	(Unsecured Priority)
	583,333.34	

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

6 CREDITS AND SETOFFS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim In filing this claim, claimant has deducted all amounts that claimant owes to debtor

7 SUPPORTING DOCUMENTS *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts contracts, court judgments or evidence of security interests If the documents are not available, explain If the documents are voluminous, attach a summary

8 TIME STAMPED COPY To receive an acknowledgment of the filing of your claim enclosed a stamped, self addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date 11/21/03

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)

Gary C Lawrence CEO

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

Fleming Companies Claim

15040

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

ECONOMIC DEVELOPMENT GRANT AND CONTRACT

This Economic Development Grant and Contract (hereinafter referred to as the "Agreement") is made and entered into by and between **MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION**, a Texas Not-for-Profit Corporation, d/b/a **MARKET LUBBOCK, INC** (hereinafter referred to as "**MARKET LUBBOCK, INC**") and **FLEMING COMPANIES, INC**, an Oklahoma Corporation (hereinafter referred to as "**THE RECIPIENT**" or "**RECIPIENT**"), acting herein by and through their duly authorized officers under the terms and conditions that follow

WHEREAS, Article 3 Section 52-a, of the Texas Constitution, provides that the Legislature may provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment, the stimulation of agricultural innovation, the fostering of the growth of enterprises based upon agriculture, or the development or expansion of transportation or commerce in the State of Texas

WHEREAS, the Legislature has enacted new laws to implement the above referenced Constitutional provision, including § 380 001 of the Local Government Code, which provides that a municipal governing body may establish and provide for the administration of one or more economic development programs to promote local economic development and to stimulate business and commercial activity in the municipality

WHEREAS, this Agreement is executed as a part of an Economic Development Program of the City of Lubbock, Texas, for the purposes of elimination of unemployment or underemployment within the City of Lubbock, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, the expansion of commerce and to stimulate business and commercial activity in the City of Lubbock and the surrounding area

WHEREAS THE RECIPIENT has sought from **MARKET LUBBOCK, INC** economic assistance in the following areas

(1) The retention of not less than two hundred (200) full-time equivalent jobs within the City of Lubbock for a period of three (3) years from the Effective Date of this Agreement

(2) The creation of not less than one hundred (100) new full-time equivalent jobs within the City of Lubbock to be caused or created by **RECIPIENT** over a three (3) year period ending June 30, 2004, and out of those one hundred (100) new full-time equivalent jobs, the creation and maintaining of those one hundred (100) new full-time equivalent jobs within the City of Lubbock over a three (3) year period beginning upon the effective date of this Agreement

WHEREAS, MARKET LUBBOCK, INC has agreed to provide such economic assistance in the amounts and upon the terms and conditions hereinafter set forth

NOW, THEREFORE, the parties hereby mutually agree that such financial assistance shall be provided and accepted upon the following terms and conditions, to-wit

1 CONTRIBUTION **MARKET LUBBOCK, INC**, subject to the contingencies and conditions contained herein, shall contribute a total sum of not more than $2,000,000 00 to **RECIPIENT** This contribution shall be broken down and paid as follows

(a) Job Retention Incentive For the purposes of retaining jobs, **MARKET LUBBOCK, INC** will pay **RECIPIENT** not more than $1,000,000 00 over a three (3) year period This Job Retention Incentive will be earned by **RECIPIENT** based upon the following

(1) For each full-time equivalent job having an Annual Compensation of not less than $22,500 00, that **RECIPIENT** shall maintain from the Effective Date of this Agreement and throughout the term of this Agreement **RECIPIENT** shall earn a Job Retention Incentive of $5,000 00 per job The maximum number of jobs eligible for the $5,000 00 payment, during the three (3) year term of this Agreement, is two hundred (200) The maximum amount of Job Retention payment which may be earned over the entire three (3) year period of this Agreement is $1,000 000 00

(b) Job Creation Incentive For the purposes of creating and maintaining new jobs **MARKET LUBBOCK, INC** will pay **RECIPIENT**, not more than $1,000,000 00 over a three (3) year period This Job Creation Incentive will be earned by **RECIPIENT** based upon the following

(1) Jobs created by November 1, 2001 **RECIPIENT** must create by November 1, 2001, sixty (60) new full-time equivalent jobs, each having an Annual Compensation of not less than $22,500 00

(2) Job Creation Incentive for Jobs Created by November 1, 2001 If **RECIPIENT** has created the sixty (60) new full-time equivalent jobs as described above by November 1, 2001, **RECIPIENT** will earn a Job Creation Incentive of $10,000 00 per job The maximum number of jobs eligible for the $10,000 00 payments in the first four (4) month period of this Agreement is sixty (60)

(3) Jobs Created by June 30, 2002 **RECIPIENT** must create by June 30, 2002, eighty (80) new full-time equivalent jobs, each having an Annual Compensation of not less than $22,500 00 These eighty (80) new full-time equivalent jobs include those sixty (60) new full-time equivalent jobs to be created in the earlier provisions of this Agreement, thus being the creation of twenty (20) additional new full-time equivalent jobs

(4) Job Creation Incentive for Jobs Created by June 30, 2002 If **RECIPIENT** has created the eighty (80) new full-time equivalent jobs as described above by June 30, 2002, **RECIPIENT** will earn a Job Creation Incentive of $10,000 00 for each new full-time equivalent job created over and above the sixty (60) new full-time equivalent jobs to be created in the earlier provisions of this Agreement The maximum number of jobs eligible for the $10,000 00 payments in the fifth (5th) through the twelfth (12th) month period of this Agreement is twenty (20)

(5) Jobs Created by June 30, 2003 **RECIPIENT** must create by June 30, 2003, one hundred (100) jobs, each having an Annual Compensation of not less than $22,500 00 These one hundred (100) new full-time equivalent jobs include those eighty (80) new full-time equivalent jobs to be created in the earlier provisions of this Agreement, thus being the creation of twenty (20) additional new full-time equivalent jobs

(6) Job Creation Incentive for Jobs Created by June 30, 2003 If **RECIPIENT** has created the new one hundred (100) new full-time equivalent jobs as described above by June 30, 2003, **RECIPIENT** will earn a Job Creation Incentive of $10,000 00 for each new full-time equivalent job created over and above the eighty (80) new full-time equivalent jobs to be created in the earlier provisions of this Agreement The maximum number of jobs eligible for the $10,000 00 payments in the second twelve (12) month period of this Agreement is twenty (20)

The maximum amount of Job Creation Incentive payments which may be earned over the entire three (3) year period of this Agreement is $1,000,000 00

(c) Earning the Job Creation Incentive **MARKET LUBBOCK, INC** will fund the Job Creation Retention and Job Incentives based upon the above scales The Job Retention Incentive and the Job Creation Incentive will be earned by **RECIPIENT** based on the following terms

In order to earn the Job Retention Incentive and the Job Creation Incentive listed above, **RECIPIENT** must retain the jobs as described above and must create the new jobs by the dates indicated above, and must maintain the number of jobs described above throughout the term of this Agreement For the purposes of determining the first year of this Agreement, the period will begin July 1, 2001

In the event that **RECIPIENT** retains more full-time equivalent jobs and/or creates throughout the applicable periods more new full-time equivalent jobs than required during any applicable period, **RECIPIENT** will be entitled to the maximum amount incentive based upon the number of retained full-time equivalent jobs and of the

new full-time equivalent jobs Notwithstanding the foregoing, **RECIPIENT**, must retain at least the number of full-time equivalent jobs described above and must create at least the number of new full-time equivalent jobs and retain these new full-time equivalent jobs described above, for the time frames described above If **RECIPIENT**, does not retain the required number of full-time equivalent jobs and/or does not create the required number of new full-time equivalent jobs and maintain the positions during the four (4) time periods covered by this Agreement, in that event, **RECIPIENT**, shall be entitled to only a pro rata portion of the incentives available for the given period, based upon the actual number of retained full-time equivalent jobs and/or new full-time equivalent jobs actually created or maintained by **RECIPIENT** during the given period, compared to the number of retained full-time equivalent jobs and/or the new full-time equivalent jobs required to earn the full incentives If **RECIPIENT** does not earn the full amount of the incentives available in any given period, that lost incentive shall not be available to be earned by **RECIPIENT** at a later date Regardless of whether or not **RECIPIENT** has the required number of retained full-time equivalent jobs and/or new full-time equivalent employees in any given period, **RECIPIENT** may nonetheless earn the incentives, either in whole or pro rata, for the following periods, if **RECIPIENT** has either retained the required number of full-time equivalent jobs and/or created the required number of new full-time equivalent jobs or some portion thereof as called for in this Agreement for the following period **RECIPIENT** shall not be entitled to make up any incentives lost by reason of failure to either retain the required number of full-time equivalent jobs and/or create the required number of new full-time equivalent jobs in any preceding period

This Job Creation Incentive will be earned by **RECIPIENT** based upon the increase in payroll of full-time equivalent employees of **RECIPIENT** per person from and after the Effective Date of this Agreement for the jobs to be created and their Annual Compensation as described above Full-time equivalent employee shall mean a full-time employee working a full normal weekly work week Full-time equivalent employee shall be a new employee to **RECIPIENT** and shall be working or officing out of **RECIPIENT**'s Lubbock offices Provided, however, that if the full-time equivalent employee is a prior employee of **RECIPIENT**, such full-time equivalent employee will qualify as a new full-time equivalent job under this Agreement, provided that the employee's former position with **RECIPIENT** is immediately filled by the **RECIPIENT** by another employee so that there is no loss of a job position to **RECIPIENT**

In order for any of the jobs listed above to be eligible for the Job Creation Incentive, the job must pay not less than the Annual Compensation listed above

(d) Payment of Incentives Any incentives earned by **RECIPIENT** under this Agreement will be paid as follows

(1) First Payment At the four (4) month anniversary of this Agreement, (i e November 1, 2001), and upon verification that **RECIPIENT** has retained two hundred (200) full-time equivalent jobs and created sixty (60) new full-time equivalent jobs, all having the Annual Compensation as described above, **RECIPIENT** will be entitled to be paid the sum of $1,000,000 00

(2) Second Payment At the first twelve (12) month anniversary of this Agreement (i e July 1, 2002), and upon verification that **RECIPIENT** has retained two hundred (200) full-time equivalent jobs and created eighty (80) new full-time equivalent jobs, all having the Annual Compensation as described above, **RECIPIENT** will be entitled to be paid the sum of $400,000 00

(3) Third Payment At the second twelve (12) month anniversary of this Agreement (i e July 1, 2003), and upon verification that **RECIPIENT** has retained two hundred (200) full-time equivalent jobs and created one hundred (100) new full-time equivalent jobs, all having the Annual Compensation as described above, **RECIPIENT** will be entitled to be paid the sum of $300,000 00

(4) Fourth Payment At the third twelve (12) month anniversary of this Agreement (i e July 1, 2004), and upon verification that **RECIPIENT** has retained two hundred (200) full-time equivalent jobs and crated one hundred

(100) new full-time equivalent jobs, all having the Annual Compensation as described above, **RECIPIENT** will be entitled to be paid the sum of $300,000 00

Payment of incentives to **RECIPIENT** will be paid within sixty (60) days of the end of the periods indicated above, provided that **RECIPIENT** shall have provided **MARKET LUBBOCK, INC** with sufficient information as called for herein for the parties to be able to verify **RECIPIENT'S** entitlement to the incentives and the amount of the incentives

(e) Proof of Earning Incentives At the end of the first four (4) month period of this Agreement ending November 1, 2001, and each twelve (12) month period under this Agreement, **RECIPIENT** will provide **MARKET LUBBOCK, INC** with the number of jobs retained and the number of jobs created and maintained for the periods and with **RECIPIENT's** payroll records for the periods The jobs retained and created by **RECIPIENT** will be verified by an audit of these payroll records by **MARKET LUBBOCK, INC** or its authorized representatives

(f) Reimbursement of Incentives **RECIPIENT** will reimburse or repay to **MARKET LUBBOCK, INC** any incentives that **RECIPIENT** may have been paid and to which **RECIPIENT** may not have fully earned or been entitled to receive determined as follows

(1) Job Retention Incentive If **RECIPIENT** does not retain the required two hundred (200) full-time equivalent jobs throughout the entire three (3) year term of this Agreement, **RECIPIENT** shall be entitled to receive only a pro rata portion of this Job Retention Incentive of $5,000 00 per full-time equivalent job having the required Annual Compensation described above Further, this Job Retention Incentive of $5,000 00 per full-time equivalent job is earned on a per job basis and over the entire term of this Agreement

(2) Job Creation Incentive If **RECIPIENT** does not create the required one hundred (100) new full-time equivalent jobs by the times set forth in this Agreement, and retain those new full-time equivalent jobs once created through the term of this Agreement, **RECIPIENT** shall be entitled to receive only a pro rata portion of this Job Creation Incentive of $10,000 00 per new full-time equivalent job having the required Annual Compensation described above This Job Creation Incentive of $10,000 00 per new full-time equivalent job is earned on a per job basis and is earned over the period of time from the creation of the new full-time equivalent job through the remaining term of this Agreement Because the dates of the creation of such new full-time equivalent job varies during the Agreement, each Job Creation Incentive will be earned by **RECIPIENT** based upon the date of creation of each new full-time equivalent job as called for in this Agreement, plus the maintaining of that new full-time job equivalent from the time required for its creation through the remaining term of this Agreement

(3) Repayment of Incentives If, for any reason, **RECIPIENT** receives payment for more Job Retention Incentive and/or Job Creation Incentive than **RECIPIENT** is entitled to receive under the terms of this Agreement, **RECIPIENT** will pay such amount to **MARKET LUBBOCK, INC** , within sixty (60) days of written demand for payment.

2 CONDITIONS FOR CONTRIBUTION It is specifically agreed and understood by and between the parties that **MARKET LUBBOCK, INC** has agreed to make such contributions of funds as herein contemplated strictly upon the following terms and conditions

(a) That any use of **MARKET LUBBOCK, INC 'S** name for publicity in connection with **RECIPIENT'S** business or activities must be approved in advance by **MARKET LUBBOCK, INC** It is understood that **MARKET LUBBOCK, INC** may make known its contributions to **RECIPIENT** in whatever public manner it deems appropriate in its sole discretion

(b) That **RECIPIENT** shall have delivered to **MARKET LUBBOCK, INC** a certified copy of the resolutions and minutes of meetings of the Board of Directors of **RECIPIENT** duly authorizing the execution, delivery and

performance of this Agreement

(c) That **RECIPIENT** must maintain its status under Federal and State law as a corporation duly qualified to do business in the State of Texas and if it fails to do so, **RECIPIENT** must notify **MARKET LUBBOCK, INC** , which in its sole discretion, may terminate the Agreement and all contributions and other obligations called for herein

(d) If at any time during the term of this Agreement, **RECIPIENT** ceases to operate or substantially reduces its operations, **MARKET LUBBOCK, INC** may, in its sole discretion, terminate the Agreement and all contributions and other obligations called for herein

(e) That the operations or activities of **RECIPIENT** and its employees be performed and conducted in a professional and businesslike manner and shall be in keeping with Federal and State laws and regulations and any ordinances of the City of Lubbock, and/or governmental entities which may have jurisdiction over **RECIPIENT'S** operations and activities If **RECIPIENT** shall continue its operations and activities in violation of any such law, ordinance or regulation, after thirty (30) days written notice from **MARKET LUBBOCK, INC** of such violation without correcting or bringing such violation into compliance with such law, ordinance or regulation, **MARKET LUBBOCK, INC** , in its sole discretion, may terminate the Agreement and all contributions and other obligations called for herein

(f) That in connection with this Agreement, **MARKET LUBBOCK, INC** or its agents or assigns shall have the right to audit **RECIPIENT** and the books and records of **RECIPIENT** insofar as seeking confirmation of the compliance and continued compliance by **RECIPIENT** of the conditions and requirements in order for **RECIPIENT** to be entitled to receive the contributions described above The books and records of **RECIPIENT** shall be maintained in accordance with generally accepted accounting methods consistently applied **MARKET LUBBOCK, INC** or its agents or assigns shall have the periodic, at least annual, right to audit and inspect such records at any and all reasonable times insofar as such books and records relate to the contributions described above This right to audit and inspect shall include the rights to examine any and all documents necessary to insure compliance with the conditions of the contributions

The failure of **RECIPIENT** to comply with any of the foregoing conditions shall be a breach of this Agreement and **MARKET LUBBOCK, INC** may, at its option, declare this Agreement terminated unless such breach is corrected to the satisfaction of **MARKET LUBBOCK, INC** within thirty (30) days of written notice to **RECIPIENT** of such breach

3 **TERM OF AGREEMENT AND DEFINITIONS** The term of this Agreement shall begin July 1, 2001, and end June 30, 2004 "Full-time equivalent employee" shall mean a full-time employee working a full normal weekly work week A new full-time equivalent employee is intended to mean a new employee to **RECIPIENT** but shall qualify as a new full-time equivalent employee under this Agreement, if the employee is a prior employee of **RECIPIENT** and that employee's former position with **RECIPIENT** is immediately filled by the **RECIPIENT** by another employee so that there is no loss of a job position to **RECIPIENT** "Annual Compensation" shall be the total compensation actually paid to an employee of **RECIPIENT** and shall not include any benefits provided, such as health or life insurance, but for which an employee does not actually receive payment The "Effective Date" of this Agreement shall mean July 1, 2001

4 **ASSIGNMENT, MERGER AND TERMINATION DUE TO MERGER, ETC.** This Agreement shall not be assignable, either in whole or in part, by **RECIPIENT** without the express written consent of **MARKET LUBBOCK, INC** In the event of a merger, consolidation, acquisition, sale or purchase of **RECIPIENT** with a third party or entity, whether or not related to **RECIPIENT, MARKET LUBBOCK, INC** shall have the option of either terminating or affirming this Agreement **MARKET LUBBOCK, INC** shall give **RECIPIENT** thirty (30) days written notice of its choice made by **MARKET LUBBOCK, INC** under this provision and if **MARKET LUBBOCK, INC** decides to terminate this Agreement, it shall be terminated thirty (30) days after such written notice After such termination, all contributions and obligations called for herein shall be terminated In the event of such termination under this provision, all contributions previously made by **MARKET LUBBOCK, INC** to **RECIPIENT** shall be refunded and repaid by **RECIPIENT** to **MARKET LUBBOCK, INC** within sixty (60) days of written notice of termination pursuant to this provision by **MARKET**

LUBBOCK, INC to RECIPIENT

5 INDEMNIFICATION **RECIPIENT** agrees that it will indemnify and hold harmless **MARKET LUBBOCK, INC** of and from any and all liability for any damage or injury caused to any employee, customer, client, patron, agent, visitor or guest of **RECIPIENT** and **RECIPIENT** agrees that it shall maintain in force and effect a policy of liability insurance **RECIPIENT** will provide **MARKET LUBBOCK, INC** a certificate of insurance in which **MARKET LUBBOCK, INC** will be named as an additional insured

6 NO PRIVITY OF ENDEAVOR NOR JOINT VENTURE It is specifically agreed that there shall be no privity of endeavor or joint venture whatsoever between **MARKET LUBBOCK, INC** and **RECIPIENT** and that the sole connection between the two is the contribution of money by **MARKET LUBBOCK, INC** to **RECIPIENT** under the restricted conditions set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by **MARKET LUBBOCK, INC** to **RECIPIENT**

7 GOOD FAITH-NORMAL BUSINESS OPERATIONS The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions The parties further agree to transact all their business under and that relates to this Agreement in accordance with their normal business operations

8 MISCELLANEOUS PROVISIONS

(a) Notices For the purposes of any notices to be given pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties upon written notice to the other party, to-wit

Market Lubbock Economic Development Corporation,
d/b/a MARKET LUBBOCK, INC
1301 Broadway, Suite 201
Lubbock, Texas 79401
Attention C David Sharp

Fleming Companies Inc
408 E 50th Street
P O Box 1530
Lubbock, Texas 79408
Attention Carroll McLarty, President Lubbock Division

Notices shall be deemed given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested to the above described addresses or as may be changed pursuant to the terms and conditions hereof

(b) Entire Agreement This instrument constitutes the entire agreement between the parties hereto and this Agreement cannot be altered, changed, or amended in any respect, except by an instrument in writing duly executed by both parties

(c) Governing Law and Performance This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas

(d) Partial Invalidity In the event that any portion of this Agreement should be found or declared to be invalid for any reason the remaining provisions of this Agreement shall remain in full force and effect and be binding upon the parties

(e) Binding Effect This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.

(f) Force Majeure If any default or performance of any other covenant or term of this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond a signatory party s control, then the duty

to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated or not, is excused during the delay period

EXECUTED in multiple counterparts, each of which is an original, this 9th day of August, 2001

MARKET LUBBOCK, INC

MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION, d/b/a MARKET LUBBOCK, INC

By T. Mike Field
T MIKE FIELD, Chairman

ATTEST

JANE ANNE STINNETT, Secretary

EXECUTED in multiple counterparts, each of which is an original, this 9th day of August, 2001

THE RECIPIENT

FLEMING COMPANIES, INC

By
MIKE CAREY, Senior Vice President

ATTEST

Linda Rebmann
LINDA REBMANN, Executive Assistant

Robinson
Burdette
Martin
Seright &
Burrows,L L.P.

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certified public accountants

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INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

Mr David Sharp
Chief Executive Officer
Market Lubbock, Inc
1301 Broadway, Suite 200
Lubbock, TX 79401

Dear Mr Sharp

We have performed the procedures enumerated in the attached supplement, which were agreed to by you, the specified user, solely to assist you with respect to determining the amounts payable pursuant to the Economic Development Grant Contracts with regard to job creation incentives only, for Fleming Companies, Inc This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants The sufficiency of the procedures is solely the responsibility of the specified user of the report Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose

The procedures we performed and the findings as a result thereof, are enumerated in the attached supplement which is an integral part of this report

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items Accordingly, we do not express such an opinion Had we performed additional procedures, other matters might have come to our attention that would have been reported to you

This report is intended solely for the use of the specified user listed above and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes

Robinson Burdette Martin Seright & Burrows, L.L.P.

Lubbock, Texas
March 18, 2003

Market Lubbock, Inc. Grant to Fleming Companies, Inc. For the period from November 1, 2001 through July 1, 2002

Background:

The Lubbock City Council established the Market Lubbock Economic Development Corporation (d/b/a Market Lubbock, Inc) (hereinafter referred to as MLI) to stimulate and foster economic activity in Lubbock and the surrounding area To this end, MLI entered into a contract with Fleming Companies, Inc (Fleming) on August 9, 2001

The terms of the contract provide a grant to Fleming for the maintenance of existing jobs and the creation of new jobs The general terms of the contract allow the grantee to receive up to $1,000,000 for the maintenance of two hundred (200) existing jobs, and $1,000,000 for the creation of one hundred (100) new full-time jobs within the period from July 1, 2001 through July 1, 2003 The grantee will earn a $5,000 incentive for each job retained as of July 1, 2001 with annual compensation of not less than $22,500 The grantee will earn a $10,000 for each job created within specified time periods with annual compensation of not less than $22,500

Objective, Scope and Procedures Performed:

Our objective was to determine if Fleming met the job creation requirements of their contract with MLI A summary of the procedures used is as follows

- Reviewed the pertinent contract
- Reviewed a listing of employees indicating dates of hire, dates of termination if applicable, and hourly wage or annual salary prepared by Fleming
- Reviewed a listing of employees with average annual compensation prepared by USF Logistics (USF Logistics provides drivers exclusively for Fleming and are included in the total census)
- Calculated projected earnings for each employee
- Projected total annual earnings for each listed employee
- Used the overall average earnings to determine the number of employees qualifying for the new positions and the maintained positions

Had we performed additional procedures, other matters might have come to our attention that would have been reported to you

Results and Conclusions:

Per our review of the above data, Fleming has

- As of November 1, 2001 Fleming maintained 208 employees and created 61 new positions
- As of July 1, 2002, Fleming had 225 employees (164 Fleming, 61 USF Logistics), which are the 200 jobs maintained and 25 net jobs created

- Last year Fleming received the first payment of $1,000,000 according to the contract schedule
- On February 26, 2003, Fleming announced that it would close its Lubbock facilities on May 5, 2003

Based on the above, Fleming has earned one-third of the $1,000,000 of job retention incentives for maintaining the 200 jobs for one of the required three years and one-third of the $250,000 of job creation incentives for creating 25 jobs for one of three years at $10,000 per job created Pursuant to the incentive repayment clause in the contract, Fleming owes MLI $583,333 34

Computation

Incentive paid	$1,000,000 00
Incentive earned	
1/3 of $1,000,000 00 job maintenance	- 333,333 33
1/3 of $250,000 00 job creation	- 83,333 33
	$ 583,333 34

Jeff R Lashaway

Direct Dial (806) 741-8494
jlashaway@cdmlaw com

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December 4, 2003

U S BANKRUPTCY COURT
Attn Claims
824 Market Street
3rd Floor
Wilmington, DE 19801

Via Federal Express - Priority Overnight

Case No 03-10945-MFW, Fleming Companies, Inc

Gentlemen

Enclosed, you will find the original and two (2) copies of a Proof of Claim to be filed in the above-referenced bankruptcy on behalf of Market Lubbock, Inc

Upon filing, please return a file-marked copy of the Proof of Claim to our office in the enclosed, self-addressed, stamped envelope

Thank you for your assistance in this matter

Yours truly,

CRENSHAW, DUPREE & MILAM, L L P

Jeff R Lashaway

JRL cc

Enclosures