

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re)	Chapter 11
)	
Fleming Companies, Inc et al ,)	Case No 03-10945 (MFW)
)	
Debtor)	(Jointly Administered)

NOTICE OF WITHDRAWAL

To

Laura Davis Jones, Esq
Chris J Lhulier, Esq
Pachulski, Stank, Ziehl, Young, Jones & Weintraub, P C
919 N Market St , 16th Floor
Wilmington, DE 19801

Julie Crompton, Esq
Office of the U S Trustee
Caleb Boggs Federal Building
44 N King St, Ste 2313
Lockbox 35
Wilmington, DE 19801

Ira D Kharasch, Esq
Pachulski, Stank, Ziehl, Young, Jones & Weintraub, P C
10100 Santa Monica Blvd , #1100
Los Angeles, CA 90067

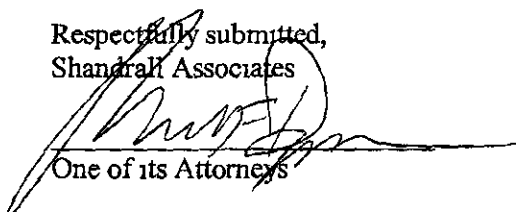
Aaron A Garber, Esq
Pepper Hamilton LLP
1201 Market St , Ste 1600
P O Box 1709
Wilmington, DE 19899-1709

AND ALL PARTIES ON THE SERVICE LIST ATTACHED

Shadrall Associates on December 16, 2003 filed a Motion for Order Under 11 U S C §§105,
365(d)(3) and 503(b) Directing Debtors to Pay Unpaid Administrative Lease Obligations (Docket No
5025) The Motion which was scheduled for hearing on February 2, 2004 is hereby withdrawn

Respectfully submitted,
Shadrall Associates

By


One of its Attorneys

Michael F Duggan
Attorney No 3269
Phillips, Goldman & Spence
1200 W Broom Street
Wilmington, Delaware 19806
Phone (302) 655-4200

John A Lipinsky
Attorney No 6207678
Coman & Anderson, P C
1979 North Mill Street, Suite 211
Naperville, Illinois 60563
(630) 428-2660

clm 15120

Docket # 5776

eod 1/28/04

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF DELAWARE

In re)	Chapter 11
)	
Fleming Companies, Inc et al ,)	Case No 03-10945 (MFW)
)	
Debtor)	(Jointly Administered)

SHADRALL ASSOCIATES MOTION FOR ORDER
UNDER 11 U S C §§105, 365(d)(3) AND 503(b)
DIRECTING DEBTORS TO PAY
UNPAID ADMINISTRATIVE LEASE OBLIGATIONS

Shadrall Associates, a New York General Partnership ("Shadrall" or "Landlord"), by and through its attorneys, hereby moves (the "Motion") for entry of an order under 11 U S C §§105, 365(d)(3) and 503(b) directing the above-captioned debtors and debtors-in-possession (the "Debtors") to pay unpaid administrative lease obligations within ten (10) days from the date of the entry of the Order approving this Motion. In support of the Motion, Shadrall states as follows

JURISDICTION

1 This Court has jurisdiction over this matter pursuant to 28 U S C §§157 and 1334. The statutory basis for the relief sought is 11 U S C §§105, 365(d)(3) and 503(b). Venue is appropriate in this Court pursuant to 28 U S C §§1408 and 1409. This is a core proceeding pursuant to 28 U S C §157(b)(2)(B).

BACKGROUND

1 On April 1, 2003 (the "Petition Date"), Fleming Companies, Inc ("Fleming") and its affiliated entities (collectively the "Debtors") filed for a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

FILED

DEC 16 2003

BMC



Pocket # 5025
eod 12/16/03

2 Debtors are conducting their affairs and managing their property as debtors-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code

3 Prior to the Petition Date, Shadrall and Fleming entered into a lease agreement dated September 20, 1993 leasing a nonresidential real property located at 5300 Kansas Avenue, Kansas City, Kansas ("Lease") (A true and correct copy of the Lease is attached hereto as Exhibit 1)

4 Pursuant to Section 3 01(c) of the Lease, Fleming agreed to pay promptly all real estate taxes assessed against the property Fleming was to pay the taxing authority directly (See Exhibit 1, Section 3 01(c))

5 On June 11, 2003, Flemming filed a Motion for Order Pursuant to Section 365 Approving Procedures to Reject Leases ("Motion to Reject") Fleming's Motion to Reject included the Lease On July 28, 2003 an Order was entered which granted Fleming's rejection of the Lease and it was considered rejected as of June 30, 2003

6 On March 21, 2003 Wyandotte County issued its Real Estate Tax Statement for 2002 (A true and correct copy of the Real Estate Tax Statement for 2002 is attached hereto as Exhibit 2) Prior to the rejection date of June 30, 2003 a total of \$231,956 15 was owed Fleming failed to pay these taxes¹

7 Shadrall has an administrative expense claim for real estate taxes incurred during the Debtors' use of the Lease for the post-petition, pre-rejection period (April 1 to June 30, 2003) in the amount of \$231,956 15

¹ This Motion is filed with full reservation of rights of Shadrall to amend, modify or otherwise supplement the Motion

BASIS FOR RELIEF REQUESTED

8 Section 365(d)(3) of the Bankruptcy Code mandates that “the trustee shall timely perform all the obligations of the debtor arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding Section 503(b)(1) of this title ” 11 U S C §365(d)(3)

9 Under §365(d)(3), the Debtors are required to pay their post-petition lease obligations in full as they become due See In re Pacific-Atlantic Trading Co., 27 F 3d 401, 404-05 (9th Cir 1994), In re Barnster of Del Ltd., 49 B R 446, 447 (Bankr D Del 1985)

10 Despite the plain language of §365(d)(3), Fleming has failed to pay Shadrall the amounts obligated to be paid under the Lease through June 30, 2003 Fleming is obligated to pay these amounts promptly Centerpoint Properties v Montgomery Ward Holding Corp (In re Montgomery Ward Holding Corp), 268 F 3d 205, 211 (3rd Cir 2001), In re Valley Media, Inc., 290 B R 73, 76 (Bankr D Del 2003)

11 Section 503(b)(1)(A) states that administrative expenses are the “actual, necessary costs and expenses of preserving the estate ” The amounts incurred during the post-petition, pre-rejection period, including the real estate taxes and rental payments under the Lease are actual, necessary costs and expenses of preserving the estates Valley Media 290 B R at 76 Accordingly, these administrative expenses must be paid promptly

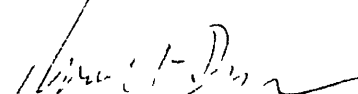
WHEREFORE, Shadrall Associates respectfully requests that this Court enter an Order

- (i) granting the Motion,
- (ii) granting Shadrall’s administrative claim in the amount of \$231,956 15,

- (iii) directing Fleming to pay the administrative claim within ten (10) days after the entry of the order, and
- (iv) granting such other relief as the Court deems just and fair

Respectfully submitted,
Shandral Associates

By


One of its Attorneys

Michael F Duggan
Attorney No 3269
Phillips, Goldman & Spence
1200 W Broan Street
Wilmington, Delaware 19806
Phone (302) 655-4200

John A Lipinsky
Attorney No 6207678
Coman & Anderson, P C
1979 North Mill Street, Suite 211
Naperville, Illinois 60563
(630) 428-2660

United States Bankruptcy Court
District of Delaware

In re

Fleming Companies, Inc , et al

Debtors

Chapter 11

Case No 03-10945 (MFW)

Response Deadline December 24, 2003 at 4 00 p m

Hearing date January 5, 2004 at 2 00 p m

NOTICE OF MOTION

TO

Laura Davis Jones, Esquire
Chris J. Lihulier, Esquire
Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P C
919 N Market Street, 16th Floor
Wilmington, DE 19801

Ira D. Kharasch, Esquire
Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P C
10100 Santa Monica Blvd , #1100
Los Angeles, CA 90067

Julie Compton, Esquire
Office of the U S Trustee
Caleb Boggs Federal Building
44 N King Street, Suite 2313
Lockbox 35
Wilmington, DE 19801

Aaron A. Garber, Esquire
Pepper Hamilton LLP
1201 Market Street, Suite 1600
P O Box 1709
Wilmington, DE 19899-1709

AND ALL PARTIES ON THE SERVICE LIST ATTACHED

Shadrall Associates has filed a Motion for Order Under 11 U.S.C. §§ 105, 365 (d)(3) and 503(b) Directing Debtors to Pay Unpaid Administrative Lease Obligations and Order Between Shadrall Associates and Debtors

HEARING ON THE MOTION WILL BE HELD ON **January 5, 2004 at 2 00 p m**

You are required to file a response (and supporting documentation required by Local Rule 4001-1(d)) to the attached motion at least five business days before the above hearing date

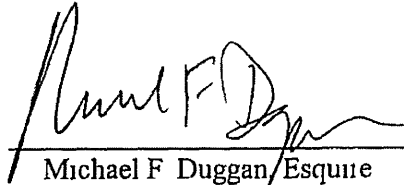
At the same time you must also serve a copy of the response upon Movant's attorneys

Michael F. Duggan, Esquire
Phillips Goldman & Spence
1200 N Broom Street
Wilmington DE 19806

John A. Lipinsky Esquire
Coman & Anderson, P C
1979 North Mill Street Suite 211
Naperville IL 60563

The Hearing date specified above may be a preliminary hearing or may be consolidated with at the final hearing, as determined by the Court

The Attorneys for the parties shall confer with respect to the issues raised by the motion in advance for the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as value of the property, and the extent and validity of any security instrument

By 
Michael F. Duggan, Esquire
Phillips, Goldman & Spence, P A
1200 North Broom Street
Wilmington, DE 19806
(302) 655-4200
Attorneys for Movant

Dated December 16, 2003

LEASE

SHADRALL ASSOCIATES
a New York General Partnership
("Landlord")

and

FLEMING COMPANIES, INC
a Oklahoma Corporation
("Tenant")



TABLE OF CONTENTS

1	Definition of Certain Terms	1
1 01	Definitions	1
2	Term of Lease, Quiet Enjoyment, Use of Premises	5
2 01	Term, Quiet Enjoyment	5
2 02	Use of Demised Premises, Signage	6
2 03	Option to Extend	7
3	Rent	8
3 01	Base Rent	8
3 01 (a)	Base Rent	8
3 01 (b)	Additional Rent	8
3 01 (c)	Tenant Tax Contribution	8
3 01 (d)	Partial Month	9
3 02	Late and Parital Payments	9
3 03	Net Rent	9
4	Land and Grounds Comprising Demised Premises, Site Plan	10
4 01	Land and Grounds	10
4 02	Site Plan	10
5	Insurance	10
5 01	Insurance Required	10
5 02	Policy Terms and Beneficiaries	12
6	Personal Property of Tenant	12
6 01	Tenant's Property	12
6 02	Removal	13
7	Maintenance, Repairs, Utilities	13
7 01	Repairs and Maintenance	13
7 02	Utilities	14
8	Construction of Improvements and Alterations	14
8 01	Tenant Leasehold Improvements and Alterations	14
8 02	Ownership and Maintenance	15
8 03	No Liability	16

9	Compliance with Legal Requirements	16
9 01	Legal Requirements	16
10	Discharge of Liens	16
10 01	No Liens Permitted, Removal	16
11	Damage or Destruction	17
11 01	Election to Terminate Lease	17
11 02	Repair	17
11 03	Waiver of Subrogation	18
12	Condemnation	18
12 01	Entire Demised Premises	18
12 02	Partial Taking	18
12 03	Allocation of Award	19
12 04	Temporary Taking	19
12 05	Definitions	20
12 06	Waiver	20
13	Notice	20
13 01	Notice	20
13 02	Environmental Notices	20
14	Tenant's Default, Landlord's Remedies	21
14 01	Events of Default	21
14 02	Remedies	22
14 03	Bankruptcy	24
14 04	Survival	24
15	Tenant's Notice to Landlord of Default	24
15 01	Landlord's Default	24
16	Assignments and Subleases	24
16 01	Restrictions on Assignment and Subletting	24
16 02	Notice of Offer, Right to Terminate	25
16 03	Liability Continues	26
17	Termination of Lease, Surrender	26
17 01	Surrender, Holding Over	26
17 02	Survival	27

18	Landlord's Right to Perform Tenant's Covenants	27
	18 01 Right to Perform	27
19	Inspection by Landlord	27
	19 01 Inspection	27
20	Subordination, Attornment	28
	20 01 Relationship to Mortgage	28
	20 02 Effect on Mortgagee	28
21	Indemnification	29
	21 01 Tenant's Indemnification	29
	21 02 Environmental Matters	29
	21 03 Survival	30
22	Landlord's Exculpation	30
	22 01 Limitation of Liability	30
	22 02 Sale of Demised Premises	30
	22 03 Survival	30
23	Certificates, Financial Statements	30
	23 01 Lease Status Certificates	30
	23 02 Tenant Environmental Certificate	31
	23 03 Tenant's Business Activities	32
	23 04 Tenant's Financial Statement	32
24	Security Deposit	32
	24 01 Security Deposit	32
25	Brokers	32
	25 01 Warranty	32
	25 02 Survival	32
26	Overlease	32
	26 01 Lease as Sublease	32
	26 02 Tenant's Waiver of Right to Purchase	33
27	Miscellaneous Provisions	34
	27 01 Invalidity of Certain Provisions	34
	27 02 Captions and Table of Contents	34
	27 03 Independent Operation	34
	27 04 Time of the Essence	34

27 05	Waiver	34
27 06	Counterparts	35
27 07	Short Form Lease	35
27 08	Covenants to Bind and Benefit Respective Parties	35
27 09	Integration, No Oral Modifications	35
27 10	Gender, Number	35
27 11	Rights and Remedies Cumulative	35
27 12	Covenants Independent	36
27 13	Corporate Authority and Status	36
27 14	Cost of Performance	36
27 15	Attorney's Fees	36
27 16	No Offer	37
27 17	Reasonableness, Construction	37

TABLE OF EXHIBITS

- Exhibit A - Property Description - Section 1 01 (d)
- Exhibit B - Site Plan - Section 1 01 (d)
- Exhibit C - Form of Subordination, Non-Disturbance and
Attornment Agreement - Section 20 01

LEASE

LEASE executed this 20th day of September, 1993, between SHADRALL ASSOCIATES, a New York general partnership, of 372 Washington Street, Wellesley, Massachusetts 02181 (the "Landlord") and FLEMING COMPANIES, INC, an Oklahoma corporation, of 6301 Waterford Boulevard, Oklahoma City, Oklahoma 73126 (the "Tenant")

For and in consideration of the mutual promises, covenants and conditions herein contained and the rent reserved by Landlord to be paid by Tenant to Landlord, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Demised Premises, as hereinafter defined, for the term, at the rentals and upon the terms and conditions set forth below

ARTICLE 1 - DEFINITION OF CERTAIN TERMS

Section 1 01 - Definitions As used in this Lease, the following terms shall have the meanings set forth below

- (a) "Additional Rent" shall mean and include any amounts other than Base Rent required to be paid by Tenant pursuant to any of the provisions of this Lease
- (b) "Alterations" shall mean and include all improvements, changes, alterations and betterments to the Demised Premises
- (c) "Commencement Date" shall mean December 1, 1993
- (d) "Demised Premises" shall consist of (i) the land as described in Exhibit A attached hereto, with improvements shown on the Site Plan of the Demised Premises attached hereto as Exhibit B (the "Site Plan"), (ii) any and all leasehold improvements permanently affixed or attached at any time by Landlord, Tenant or a previous occupant in or on the Demised Premises, including, without limitation, any heating, ventilation and air conditioning units or electrical systems, and (iii) if acquired, then upon and after the time of acquisition of the same in the name of Landlord pursuant to Landlord's election in Section 8 01(d)(1), the additional land shown on the Site Plan as "To Be Acquired", together with improvements thereon, upon the acquisition of such additional land in the name of Landlord, such additional land shall thereupon become part of the Demised Premises without the necessity of amending the Site Plan. The Tenant's use of the Demised Premises is subject to the Easements

- (e) "Easements" shall mean those certain easements, restrictions, covenants and conditions relating to the Demised Premises as set forth in Schedule 1 01 (e)
- (f) "Environmental Laws" shall mean all laws, ordinances, orders, rules, regulations and requirements referred to in the regulation or remediation of Hazardous Materials, each Environmental Law is a Legal Requirement
- (g) "Force Majeure" shall mean causes beyond the reasonable control of Tenant or Landlord, as the case may be, including but not limited to "acts of God", fire and other casualties, earthquakes and floods, strikes, lock-outs, protests, riots, insurrection, war, nuclear disaster, unavailability of materials, acts of governmental authority, including courts, or acts or conduct of the other party to this Lease, its employees or agents, in violation of this Lease. Such causes shall not include financial difficulties or inability to obtain financing
- (h) "Hazardous Materials" shall mean any hazardous, poisonous, toxic or infectious substance, material, asbestos, gas or waste which is or becomes regulated by any federal, state, county or municipal governmental authority or any agency or commission related thereto having jurisdiction over the Demised Premises, or which has been identified as a toxic, cancer causing or otherwise hazardous substance
- (i) "Initial Term" shall have the meaning set forth in Section 2 01
- (j) "Landlord" shall mean Shadrall Associates and any purchasers, successors or assigns of the Demised Premises or any assignee of their interest under this Lease
- (k) "Lease Term" shall mean the Initial Term, plus any Option Term, if actually exercised
- (l) "Lease Year" shall refer to a period of 365 days (366 in any leap year) commencing on the Commencement Date or an anniversary of the Commencement Date. In the event the Commencement Date is other than the first day of a month, each Lease Year shall commence on the first day of the first full calendar month following the Commencement Date (provided that any additional days between the Commencement Date and the beginning of the first Lease Year shall be included within the first Lease Year)
- (m) "Legal Requirements" shall mean (1) all present and future laws, ordinances, orders, rules, regulations and

requirements of all federal, state and municipal governments, departments, commissions, boards and courts, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Demised Premises or to the use or manner of use of the Demised Premises by the owners, tenants, or occupants thereof, (ii) the requirements of all companies providing public liability, fire and other policies of insurance at any time in force with respect to the Demised Premises, (iii) the provisions of any covenants, conditions, restrictions, easements or agreements of record governing the Demised Premises as described in Schedule 1 01 (e), and (iv) the requirements relating to the use and condition of the Demised Premises set forth in that certain Mortgage from Landlord to The First National Bank of Boston dated September 16, 1991 recorded in the real estate records of Wyandotte County, Kansas in Book 3511, Page 688

- (n) "Mortgage" shall mean any mortgage, deed of trust or security agreement now or hereafter encumbering or creating a lien on any portion of the Demised Premises, as the same may be consolidated, renewed, replaced, extended or modified, excluding security interests encumbering Tenant's leasehold interest only
- (o) "Mortgagee" shall mean the holder or holders of any Mortgage or the beneficiary or beneficiaries under any deed of trust or other instrument constituting a Mortgage
- (p) "Option Term" shall mean the term of each and all options to extend the term of the Lease set forth in Section 2 03
- (q) "Overlease" shall mean, collectively, (i) that certain lease dated December 1, 1968 between The City of Kansas City, a municipal corporation, as lessor ("Kansas City"), and T G & Y Stores Co, as lessee ("T G & Y") as amended by instrument dated July 1, 1971 (collectively, the "1968 Overlease") and (ii) that certain lease dated July 1, 1974 between Kansas City, as lessor, and T G & Y, as lessee, as amended by instrument dated September 24, 1980 (collectively, the "1974 Overlease"), as each may have been or may be amended, the lessee's interest in each lease having been assigned by T G & Y to Landlord
- (r) "Personalty" shall mean and include any and all personal property, inventory, goods, stock, chattels, trade fixtures, furniture, furnishings and equipment (excluding those items included within the definition of Demised

Premises as set forth in Subsection 1 01(d)(ii), which items are and shall remain the property of Landlord from and after the time they are installed), owned by Tenant or any subtenant, concessionaire or licensee and now or hereafter located on or used in connection with the Demised Premises

- (s) "Real Estate Taxes" shall mean any form of real property tax, excise or assessment (whether general or special), tax on commercial rentals and receipts, gross income tax (but not any federal or state net income, gift, inheritance or estate taxes), or documentary transfer tax on the making of this Lease, imposed now or in the future by any authority having the direct or indirect power to tax, including, but not limited to, any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof, levied against or with respect to the land and buildings comprising the Demised Premises, or any legal or equitable interest of Landlord in the Demised Premises, or Landlord's business of leasing the Demised Premises, or gross income derived from such business, and further including all reasonable costs and expenses, including reasonable attorneys', consultants' and accountants' fees, incurred in determining, filing, contesting and appealing any such tax, excise or assessment or a judgment with respect thereto. In the event a taxing authority shall impose taxes in lieu of real property taxes described above, such taxes shall be deemed included within the definition of Real Estate Taxes
- (t) "Rent", "Rents" or "Rental" shall mean the Base Rent, Additional Rent and all other monetary sums required to be paid by the Tenant pursuant to the terms of this Lease
- (u) "Rent Commencement Date" shall mean the Commencement Date
- (v) "Repair" or "repairs" shall include, but not be limited to, maintenance, repair, replacement and restoration, all of the foregoing being of an extent and quality equal to the original work and materials
- (w) "Tenant" shall mean the party named as Tenant above and any party or parties succeeding to the interest in the Demised Premises of such named party in accordance with the provisions of this Lease

ARTICLE 2 - TERM OF LEASE, QUIET ENJOYMENT, USE OF PREMISES

Section 2 01 - Term, Quiet Enjoyment

- (a) The term of this Lease shall commence on the Commencement Date and shall end at 11 59 p m , November 30, 2003 (the "Initial Term"), unless such term shall be sooner terminated as herein provided. Tenant has possession of the Demised Premises pursuant to an existing lease therefor, no other delivery of the Demised Premises by Landlord to Tenant is required. The foregoing notwithstanding, if the tenth anniversary of the commencement of Tenant's lease for the Metro Park Warehouse adjoining the Demised Premises shall end on a date later than November 30, 2003, Tenant shall so notify Landlord no later than January 31, 1995, and the initial term of this Lease shall be extended to the tenth anniversary of the commencement of the initial term of such Metro Park Warehouse lease, but in no event later than December 30, 2004. Upon such extension, Landlord and Tenant shall sign an amendment to this Lease specifying the termination date of the Initial Term hereof.
- (b) Landlord covenants that so long as Tenant shall fully and timely perform the agreements, terms, covenants and conditions hereof, Tenant shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the Lease Term without disturbance by or from Landlord or anyone claiming under Landlord, subject to all Mortgages and other matters to which this Lease is or may become subordinate and to the provisions contained herein. Tenant takes the Demised Premises in strictly "AS IS" condition, both as to title and physical condition, there being no representations or warranties by Landlord concerning the title to or condition of the Demised Premises, except as expressly provided in this Lease. Tenant agrees that Tenant has been given ample opportunity to make such investigation of the Demised Premises and Legal Requirements applicable to the Demised Premises and business conducted thereat.
- (c) Landlord and Tenant acknowledge that the Tenant's obligations under this Lease are subject to the satisfaction of certain conditions. Such conditions are that:
 - (1) Tenant shall have executed leases for the adjoining Metro Park property(ies) as shown on the Site Plan,
 - (11) Tenant shall have received a non-disturbance agreement, in a form reasonably satisfactory to the

Tenant, executed by the City of Kansas City, Kansas ("Owner"), as Owner of the Demised Premises and a portion of the Metro Park property(ies), by which Owner agrees that in the event of any default by such Owner's lessee under the base lease for any such property and a resulting termination of such base lease, Tenant may, provided that it is not in default under its sublease for any such property, remain in possession thereof in accordance with the terms of Tenant's sublease relating to such property during the remainder of the term specified therein and a similar agreement from the holder of a mortgage or deed of trust covering any such property or covering any leasehold interest therein,

- (iii) Tenant shall have obtained a Phase I environmental study relating to the Demised Premises and to the Metro Park property(ies) which is satisfactory to Tenant,
- (iv) Tenant shall have received a title report and commitment to issue leasehold interest title insurance relating to the Demised Premises and to the Metro Park property(ies) satisfactory to Tenant

If the foregoing conditions have not been satisfied on or before October 1, 1993, Tenant may, at its option, terminate this Lease by notice to Landlord given no later than October 1, 1993, in which event neither party shall have any further obligations hereunder, and this Lease shall be deemed void and of no further effect. Failure by Tenant to give such notice by October 1, 1993, shall be deemed a waiver by Tenant of its right to terminate this Lease hereunder. Landlord and Tenant agree that the time within which Tenant may exercise its next renewal option under the outstanding Sublease Agreement dated May 11, 1987 between Landlord and Tenant is hereby extended to October 15, 1993 and the current term of such sublease is hereby extended to April 15, 1994. Such sublease will automatically terminate on the Commencement Date.

Section 2.02 - Use of Demised Premises, Signage

- (a) Tenant covenants and agrees that Tenant will use or permit the use of the Demised Premises only for warehousing, storage and distribution, with offices incidental to such use, provided, however, that Tenant may use the Demised Premises for other uses with the prior written consent of the Landlord, which consent

shall not be unreasonably withheld so long as such use is not otherwise prohibited by this Lease, and provided further, that upon expiration or earlier termination of this Lease for any reason, at the request of Landlord, Tenant shall remove any changes to the Demised Premises which would interfere with warehouse use of the Demised Premises. Notwithstanding the foregoing, Tenant will in no event use or occupy the Demised Premises or allow the Demised Premises to be used or occupied (i) for any unlawful or immoral purpose, and will not suffer any unlawful or immoral act to be done or any unlawful or immoral condition to exist on the Demised Premises, (ii) for any business or purpose deemed extra hazardous on account of fire or otherwise, (iii) in violation of any Legal Requirement, (iv) so as to commit or permit to be committed any waste thereon, (v) for the conduct of distress, auction, fire, liquidation, going-out-of-business or bankruptcy sales, or for any retail sales of any nature

- (b) Subject to the approval of the appropriate municipal or other governmental authority, Tenant, upon notice to Landlord, may erect and maintain signs on the exterior of the Demised Premises so as to identify Tenant's place of business. All signs shall comply with all Legal Requirements. Tenant shall keep insured and shall maintain such signs in good condition and repair at all times. Tenant shall remove all such signs at the end of the Lease Term, repairing any damage caused thereby.
- (c) Anything in this Lease to the contrary notwithstanding, Tenant covenants and agrees that Tenant and its successors, assigns, subtenants, licensees, concessionaires and occupants and their agents, employees, contractors, and invitees, shall not, at any time during the Initial Term or any Option Term, cause or permit any Hazardous Materials other than cleaning supplies and items of inventory in normal quantities, all of which shall be stored, used and disposed of in accordance with Legal Requirements, to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the Demised Premises for any purpose.

2.03 - Option to Extend

Provided Tenant has fully and faithfully performed the terms and conditions of this Lease for the Lease Term prior to the date of Tenant's election, Tenant may elect in writing received by Landlord not later than twelve (12) months prior to the end of the Initial Term or the then existing Option Term, as the case may be, to extend the term of this Lease for not more than four (4) additional five (5) year terms, each such term to commence

immediately after the then existing term would otherwise have terminated, (each and collectively, the "Option Term") and otherwise be upon the terms and conditions hereof

ARTICLE 3 - RENT

Section 3 01 - Base Rent Tenant shall pay to Landlord or such other party as Landlord may from time to time designate by notice to Tenant, in legal tender of the United States, without deduction, abatement or setoff, except as provided in this Lease, at the address of Landlord specified herein or furnished pursuant to the terms hereof

- (a) **Base Rent** The Base Rent shall commence on the Rent Commencement Date. It shall be paid in equal monthly installments in advance on the first day of each calendar month during the Lease Term. For the Initial Term, the annual Base Rent shall be \$608,139 00, and the monthly payment thereof shall be \$50,678 25. For the Option Terms (if exercised), the annual and monthly Base Rent for each Option Term shall be as follows

<u>Option Term</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
First	\$670,182 40	\$55,848 54
Second	\$733,012 00	\$61,084 34
Third	\$774,898 40	\$64,574 87
Fourth	\$837,728 00	\$69,810 67

- (b) **Additional Rent** In addition to Base Rent, Tenant shall pay as Additional Rent all other sums owing from Tenant as provided in this Lease, commencing with the Commencement Date
- (c) **Tenant Tax Contribution** Tenant covenants and agrees to pay promptly when due all taxes imposed upon its business operations, its personalty, and any fixtures or appurtenances included as part of the Demised Premises. In addition, Tenant shall pay, as Additional Rent to Landlord, or if Landlord so elects by notice to Tenant directly to the taxing authority, commencing with the Commencement Date, all Real Estate Taxes assessed against the Demised Premises, as well as the cost of any tax consultant or advisor retained by the Landlord. Payments due by Tenant hereunder shall be based on Landlord's written certification, accompanied by a copy of the relevant tax bill issued by the taxing authority, of the amount due for that Lease Year or tax year and the amount of any fees or expenses paid or payable to tax consultants or advisors. Any payments due by Tenant hereunder shall be made, if directly to the taxing authority pursuant to the foregoing, no later than the

due date therefor, and if to Landlord, within 15 days after Tenant's receipt of Landlord's written certification of the amount due, provided, however, if Landlord's Mortgagee shall require that Landlord pay an estimated sum each month in advance, subject to later adjustment, then at Landlord's election Tenant shall pay such sum to Landlord monthly in advance, along with such additional sum to be credited towards Real Estate tax obligations as is necessary to insure that the said Landlord's Mortgagee has on hand sufficient funds to pay the taxes before same are overdue, subject to adjustment at the end of each Lease Year or tax year. In the event of direct payment hereunder by Tenant to the taxing authority, Tenant shall furnish Landlord receipted tax bills within 15 days after the due date for taxes payable directly by Tenant, and shall be liable for and pay all penalties and interest resulting from late payments

- (d) Partial Month In the event that the Rent Commencement Date, or the first day of the Option Term, is on a date other than the first day of a month, or the Lease Term ends on a date other than the last day of a month, the payment owing for Base Rent for such partial month shall be the monthly Base Rent multiplied by a fraction, the numerator of which is the number of days in such partial month that this Lease is in effect and the denominator of which is the number of days in such partial month. This payment shall be due on the first day of such partial month for which Rent is payable

Section 3 02 - Late And Partial Payments Should Tenant fail to pay when due or within 5 days after the due date any installment of Rent, then Tenant shall pay to Landlord on demand, in addition to amounts owing and unpaid, interest at 12% per annum from the due date until the required payment(s) are made. Landlord may apply any partial payments as Landlord deems appropriate. No assessment or acceptance by Landlord of any late charge for overdue payments shall be construed or interpreted as a waiver or abandonment of any claim for breach or default by Landlord under this Lease

Section 3 03 - Net Rent: It is the purpose and intent of Landlord and Tenant that all payments of Base Rent, Additional Rent and any other Rent payable by Tenant pursuant to this Lease shall be absolutely net to Landlord and shall be paid to Landlord without notice or demand (except as may be specifically required in this Lease) and without abatement, reduction, counterclaim or set-off (except as may be specifically permitted in this Lease). Tenant shall pay together with any Base Rent, Additional Rent or other Rent any sales, use, or other similar tax (other than Landlord's income or similar taxes) required to be paid in connection with such payments

**ARTICLE 4 - LAND AND GROUNDS COMPRISING DEMISED PREMISES,
SITE PLAN**

Section 4 01 - Land and Grounds Landlord may close temporarily all or part of the land and grounds comprising the Demised Premises as reasonably required to make repairs in accordance with Article 18 hereof (although nothing herein shall require Landlord to make any repairs) or to prevent the acquisition of public rights in such areas, in which event Landlord shall not be subject to liability therefor, nor shall any such action be deemed an actual or constructive eviction of Tenant. Tenant understands that Tenant's use of the land and grounds comprising the Demised Premises is subject to the Easements.

Section 4 02 - Site Plan The site analysis figures and Demised Premises detail drawings in the Site Plan do not constitute a representation or warranty by Landlord that the figures or detail drawings are accurate or that the design of the land and buildings comprising the Demised Premises does not vary in minor respects from that shown on the Site Plan. The site analysis figures and Demised Premises detail drawings are provided only to give a sense of the layout of the Demised Premises. The parties agree that Tenant currently occupies the Demised Premises and has inspected the Demised Premises and satisfied itself of its suitability for Tenant's intended use. Except for the land to be acquired pursuant to Section 8 01(d), Landlord shall not change the current configuration of the Demised Premises without the prior written consent of Tenant.

ARTICLE 5 - INSURANCE

Section 5 01 - Insurance Required

- (a) During the Lease Term, Tenant, at its sole cost and expense, shall provide and keep in force
 - (1) commercial general liability insurance with the broad form endorsement, including, but not limited to, personal injury and contractual liability coverage of at least \$3,000,000.00 combined single limit per occurrence for the Demised Premises for both bodily injury and property damage resulting from a single occurrence, occurring in and around the Demised Premises and any exterior signs maintained by Tenant, and automobile liability insurance with limits of not less than \$1,000,000.00 combined single limit for both bodily injury and property damage resulting from one occurrence, with deductible amounts for each such coverage to be first approved by Landlord in writing,

- (11) workmen's compensation insurance at legally required levels and employer's liability insurance at limits of not less than \$1,000,000 00 per accident for the benefit of all employees entering in and around the Demised Premises or any portion thereof as a result of or in connection with their employment by Tenant, and
- (1ii) property casualty insurance against loss or damage by fire and other perils, vandalism and malicious mischief, in an amount covering 100% of the replacement cost of the Demised Premises. Such insurance shall include, but not be limited to, "All Risk" casualty insurance and earthquake coverage, in an amount equal to the full replacement cost of the Demised Premises (less foundations and items Tenant is otherwise required to insure herein), and may be in the form of a general coverage or blanket policy covering the Demised Premises and other properties as long as such coverage is sufficient to provide 100% replacement cost of the Demised Premises regardless of other possible losses in a single event
- (1v) at all times during which construction is being performed upon the Demised Premises by Tenant, its agents or contractors, "All Risk" builders risk insurance with limits of coverage not less than 100% of full replacement cost of Tenant's leasehold improvements and owner's and contractor's protective insurance insuring Landlord and Tenant and independent contractor's insurance with coverage of at least \$5,000,000 00 if obtainable, but not less than \$3,000,000 00, for a single occurrence and for property damage, such insurance to be maintained either by Tenant or its contractors

Anything to the contrary in this Lease notwithstanding, so long as Tenant maintains a net worth of not less than \$100,000,000, deductible amounts for any insurance required to be provided by Tenant herein shall not be subject to Landlord's prior written approval

- (b) During the Lease Term, Tenant shall provide and keep in force all insurance described in Section 5 01(a), and such other insurance as shall be common for properties similar to the Demised Premises in accordance with then current standards for types and amounts of insurance for similar properties and uses thereof as reasonably determined by mutual agreement of Landlord and Tenant and available in the marketplace

Section 5 02 - Policy Terms and Beneficiaries All insurance provided by Tenant shall name Landlord and each Mortgagee as insureds, as their respective interests may appear. No policy may contain a deductible amount greater than that which has been approved by Landlord in writing. Tenant shall be liable for all deductible amounts. No later than the Commencement Date and 10 days prior to the expiration date of any prior insurance policy, Tenant shall deliver to Landlord certificates evidencing the existence and amount of such insurance, issued and in a form by an insurer or insurers reasonably satisfactory to Landlord and, licensed to do business in the State of Kansas. Tenant shall procure policies for all insurance, and provide evidence thereof to Landlord, at least 10 days before the expiration of prior policies. Each insurance policy shall contain the following provisions: (i) the agreement of the insurer to give Landlord and each Mortgagee at least 30 days notice by registered mail prior to cancellation, change in coverage or any other material change in such policy, (ii) waiver of subrogation rights against Landlord and Tenant, (iii) agreement that such policy is primary and non-contributing with any insurance that may be carried by Landlord, (iv) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the property described in the insurance policy, and (v) a statement that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant's insurance may be in the form of a general coverage or blanket policy covering the Demised Premises and other properties, provided that Landlord and each Mortgagee are specifically named therein as additional insureds in a manner sufficient to protect their interests.

Tenant shall pay all of any increase in premiums for the casualty or public liability insurance which is a result of the use, occupancy or type of services rendered by Tenant or any subtenant, or their activities in the Demised Premises, whether or not Landlord has consented to the same.

In the event Tenant fails at any time during the term of this Lease to obtain and keep in force insurance required of Tenant herein, or to provide satisfactory evidence thereof, Landlord shall have the right, but not the duty, to procure such insurance, and Tenant shall pay to Landlord upon demand the costs and expenses thereof as Additional Rent. Tenant and Landlord hereby waive any right of subrogation against the other party hereto. In no event shall the limits or amount of insurance limit Tenant's liability under this Lease.

ARTICLE 6 - PERSONAL PROPERTY OF TENANT

Section 6 01 - Tenant's Property All Personalty shall remain the property of Tenant. Landlord shall under no circumstances

whatsoever be responsible for any loss or damage occurring to any Personalty

Section 6 02 - Removal Upon the expiration or earlier termination of this Lease, Tenant shall remove any and all Personalty and repair any damage to the Demised Premises caused thereby. Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor or wall coverings, paneling, tile or other materials on the walls, floors or ceilings, any fixtures or appurtenances included within the definition of Demised Premises or any fixtures or machinery that were furnished or paid for by Landlord or any replacements thereof required by Tenant hereunder, all of which shall be deemed to constitute a part of Landlord's estate. The Demised Premises shall be left in a broom-clean condition. If Tenant shall fail to so remove its Personalty at the termination of this Lease, such Personalty not removed by Tenant shall be deemed abandoned by Tenant, and, at the option of Landlord, (i) shall become the property of Landlord or (ii) may be disposed of without accountability in such manner as Landlord may see fit, and Tenant shall pay to Landlord the cost and expense of removal and repair of all damage to the Demised Premises which is caused by such removal.

ARTICLE 7 - MAINTENANCE, REPAIR, UTILITIES

Section 7 01 - Repairs and Maintenance Landlord shall have no obligation to repair or replace any part of the Demised Premises

Tenant shall, at its sole cost, promptly make all repairs and replacements to all of the Demised Premises necessary to keep the same clean and in good condition and repair, including, but not limited to, all of the building's roof, drainage systems, structure, walls, all exterior and interior lighting facilities, exterior and interior doors and windows, loading docks, all utility equipment, systems and installations including, without limitation, air conditioning, heating, ventilating, water heating, plumbing and electrical, all glass and show windows, moldings and bulkheads, all partitions and surfaces, floor surfaces and subsurfaces, ceilings, fixtures, equipment and appurtenances thereto, paving, curbs, sidewalks, fencing and landscaping. Tenant shall at its expense maintain and operate all of its interior and exterior signs, and shall keep the outside surfaces of the building on the Demised Premises, including signs, in good, sightly and clean condition, and freshly painted. Any damage to the exterior walls to which any sign may be attached, including but not limited to rust stains and structural cracking of the facia, caused by Tenant's use of such sign, shall be repaired by Tenant at its own cost. Tenant shall make such repairs and replacements in and to the Demised Premises promptly as needed, and in any event upon demand of Landlord. In addition to the foregoing, Tenant shall repair, replace and maintain the fire sprinkling system, fire extinguishers and other

fire preventive equipment in the Demised Premises in accordance with all present and future Legal Requirements

Section 7 02 - Utilities Tenant shall promptly pay for all utility services rendered or furnished to, or used by, the Demised Premises, including without limitation, electrical, natural gas, telephone, fire protection, water and sewer charges, from and after the Commencement Date

ARTICLE 8 - CONSTRUCTION OF IMPROVEMENTS AND ALTERATIONS

Section 8 01 - Tenant Leasehold Improvements and Alterations

- (a) Tenant hereby takes possession of the Demised Premises in strictly "AS IS" condition, regardless of whether the Demised Premises are satisfactory for Tenant's purposes. Tenant expressly agrees that this Lease is not conditioned on Tenant being able to make any Alterations other than Alterations specified in Section 8 01 (d)
- (b) Other than Alterations specified in Section 8 01 (d), Tenant shall not make any structural or expansion Alterations, or any other Alterations costing in excess of \$250,000 00, to, or raze or demolish any portion of, the Demised Premises without the prior written consent of Landlord, which consent (i) may be withheld by the Landlord for any reason or for no reason if Alterations are structural in nature, or consist of an expansion or demolition or razing of any portion of the Demised Premises, and (ii) will not otherwise be unreasonably withheld
- (c) All Alterations are subject to the following requirements
 - (i) All Alterations, once commenced, shall proceed in good faith and promptly to completion,
 - (ii) No Alterations shall be undertaken until Tenant shall have procured all required permits and authorizations of all municipal departments,
 - (iii) Any Alterations, when completed, shall be of such a character as not to reduce the value of the Demised Premises below its value immediately before such Alterations,
 - (iv) Any Alterations shall be made in a good and workmanlike manner and in compliance with all applicable permits, authorizations, Legal Requirements and provisions of this Lease,

- (v) At least 30 days before the commencement of any Alterations, Tenant shall notify Landlord of its intention to commence the same so that Landlord may post or record notices of nonresponsibility
- (vi) No Alterations shall be undertaken until Tenant furnishes Landlord with detailed plans, specifications and cost estimates relating to such Alterations, if the cost of such Alteration is less than \$250,000 00, Tenant shall furnish such items if actually prepared,
- (vii) Upon expiration or earlier termination of this Lease for any reason, Tenant shall remove all Alterations which are inconsistent with warehouse use of the Demised Premises
- (d) Anything in this Lease to the contrary notwithstanding, Tenant may, at its option, take the following actions subject, however, to all Tenant requirements herein relating to Alterations
 - (i) acquire, and if actually acquired then at Landlord's option acquire in Landlord's name, the additional land shown on the Site Plan as "To Be Acquired" at no cost or expense to Landlord, provided, however, that Landlord shall exercise such option and accept title to such additional land if Landlord is reasonably satisfied with the title to, and environmental condition of, such additional land,
 - (ii) construct a connection to the adjacent Metro Park warehouse building as shown on the Site Plan,
 - (iii) construct an addition to the Demised Premises as shown on the Site Plan (the "Addition")

Section 8 02 - Ownership and Maintenance All Alterations, including, without limitation, all lighting fixtures, intercom systems, installations and fixtures (other than trade fixtures) are and shall be deemed to be and immediately become part of the realty and the sole and absolute property of Landlord. Notwithstanding the foregoing, Tenant shall maintain insurance coverage with respect to same, and shall maintain, repair and replace same, all as more particularly provided for in this Lease. Notwithstanding the foregoing, at the time the Lease Term ends or otherwise terminates for any reason, the Landlord may elect to have the Tenant remove any Alterations and restore the Demised Premises to its prior condition as to any Alterations or demolition not previously approved, or approved with a proviso relating to removal by Landlord, which shall be fully completed within 30 days of the

end or other termination of the Lease Term, provided, however, that Tenant shall in any event (i) remove any Alteration related to the connection to the adjacent Metro Park warehouse building, (ii) remove the Addition unless the underlying land was purchased in Landlord's name pursuant to Section 8 01(d)(1), and (iii) restore the Demised Premises to useable condition consistent with the provisions of this Lease, both with regard to any removal required in the foregoing (i) and (ii), and to the extent that any Alterations or demolition detract from the value of the Demised Premises

Section 8 03 - No Liability Landlord's approval rights as provided for herein are solely for Landlord's benefit and shall not give rise to any liability whatsoever on the part of Landlord

ARTICLE 9 - COMPLIANCE WITH LEGAL REQUIREMENTS

Section 9 01 - Legal Requirements This Lease is subject to all Legal Requirements now or hereafter applicable to the Demised Premises. Tenant shall promptly and fully comply with all Legal Requirements provided, however, that Tenant's obligations hereunder, pertaining to Environmental Laws shall not extend to matters other than those as to which it has indemnified Landlord under Section 21 01 below. Upon termination of the Lease for any reason other than Tenant default, Landlord shall reimburse Tenant for that portion, if any, of the expense of any Legal Requirement which is then not fully amortized or depreciated (for purposes of the foregoing, the cost of compliance with any Legal Requirements shall be amortized or depreciated, as applicable, over the economic useful life of the Alteration or improvement made to effect such compliance), provided, however, as a condition of such reimbursement, Tenant shall obtain Landlord's written consent, which consent shall not be unreasonably withheld, prior to incurring any costs in connection with compliance with any Legal Requirement for which the economic useful life as reasonably determined by Landlord extends beyond the end of the Lease Term.

ARTICLE 10 - DISCHARGE OF LIENS

Section 10 01 - No Liens Permitted, Removal Tenant shall not permit to be filed by any person (i) any claim of lien under any (x) mechanics' lien statute, (y) materialmen's lien statute, or (z) Environmental Law, to the extent such lien results from any violation of any Environmental Law by Tenant or its successors, assigns, subtenants, licensees, concessionaires and occupants and their agents, employees, contractors, invitees, servants or customers, or (ii) other liens against the Demised Premises arising from any act or omission of Tenant or its successors, assigns, subtenants, licensees, concessionaires and occupants and their agents, employees, contractors, invitees, servants or customers. If any such claim of lien shall be filed against the Demised Premises, Tenant shall cause the lien to be discharged, provided, however, that Tenant may contest any such lien, so long as the enforcement thereof is stayed and the lien is removed of record by

means of a bond or any other lawful means. If Tenant shall fail to cause said lien to be released of record within 30 days after notice to Tenant from Landlord, then Landlord may, but shall not be obligated to, discharge the same by deposit or bonding. Any amount paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall constitute Additional Rent and shall be paid by Tenant to Landlord on demand, along with interest at the rate of 18%.

Nothing herein shall be deemed to subject Landlord's estate in the Demised Premises to any lien or liability under any law relating to liens. Tenant shall indemnify Landlord from and against all liabilities, damages, losses, costs and expenses resulting from any lien filed against the Demised Premises claimed to have resulted from Tenant's actions.

ARTICLE 11 - DAMAGE OR DESTRUCTION

Section 11 01 - Election to Terminate Lease In the event the Demised Premises shall be damaged as a result of a risk not covered by insurance described in Section 5 01, then

- (a) if the damage exceeds 35% of the replacement cost of the Demised Premises and the Tenant is not in default under this Lease at the time of the damage, the Tenant shall have the right to terminate this Lease as herein provided, or
- (b) if the damage exceeds 25% of the replacement cost of the Demised Premises, occurs during the final two (2) years of the Initial Term or any Option Term and the Tenant is not in default under this Lease at the time of the damage, the Tenant shall have the right to terminate this Lease as herein provided.

Upon the occurrence of the damage described above, the Tenant shall have the option, which shall be exercised within 60 days following such damage, of terminating this Lease, effective 30 days after the date of giving notice thereof. If this Lease is terminated under the preceding sentence, Tenant shall nevertheless be obligated to pay, upon demand by Landlord, for the cost and expense of repair, restoration and reconstruction of the Demised Premises to the extent that proceeds of insurance are insufficient to pay for such cost and expense but Tenant shall have no responsibility to undertake such repair, restoration or reconstruction in such event.

Section 11 02 - Repair If this Lease shall not be terminated as provided in Section 11 01 above, this Lease shall continue in full force and effect, there shall be no abatement of Base Rent, Additional Rent or any other sum payable under this Lease, except as provided below, and Tenant shall (promptly and diligently) proceed with the repair or restoration of the Demised Premises and return the Demised Premises to substantially the same condition

they were in immediately preceding the damage or destruction, provided, however, that if any of the Demised Premises shall be rendered unusable on account of such damage, Base Rent shall be abated for the portion of the Demised Premises as rendered unusable, commencing one year after such portion is rendered unusable, until the same is again usable by Tenant. Tenant shall be responsible for payment of any sums in excess of the net insurance award which are required to restore the Demised Premises to substantially the same condition as prior to the damage.

Notwithstanding any provision herein to the contrary, Tenant, shall be responsible for all damages resulting from, and shall make all repairs and replacements necessitated by, any damage caused by the negligent or intentional tortious acts or omissions of Tenant and its agents, employees, invitees and contractors.

Section 11 03 - Waiver of Subrogation In the event the Demised Premises, any part thereof or the fixtures or merchandise therein are damaged or destroyed by fire or other casualty that is covered by insurance of Tenant, Landlord or the tenants, subtenants, concessionaires or licensees of Tenant or Landlord, regardless of cause or origin, including negligence, then the rights, if any, of any party against the other, or against the employees, agents, subtenants, concessionaires or licensees of any party, with respect to such damage or destruction and with respect to any loss resulting therefrom, including the interruption of the business of any of the parties, are hereby waived to the extent of any recovery under said insurance.

ARTICLE 12 - CONDEMNATION

Section 12 01 - Entire Demised Premises If the whole of the Demised Premises shall permanently be taken or damaged by any competent authority, this Lease shall terminate as of the date physical possession of the Demised Premises is taken or damaged or immediate possession is ordered. Base Rent, Additional Rent, and all other charges payable hereunder shall be apportioned and paid up to said date.

Section 12 02 - Partial Taking

- (a) If there is a taking of or damage to less than the entire Demised Premises, this Lease shall terminate as to the portion of the Demised Premises so taken or damaged, as of the date physical possession of the Demised Premises is taken or damaged or immediate possession is ordered and the Base Rent, Additional Rent and all other charges payable by Tenant hereunder allocable to the portion taken or damaged shall be prorated to a date which is one year after the date of such termination. With respect to that portion of the building on the Demised Premises not taken or damaged, this Lease shall continue in effect and the Base Rent shall be reduced proportionately to reflect

such taking commencing one year from the date of such taking or damage

- (b) Tenant, at its sole cost and expense (except to the extent that any award relates to restoration costs and expenses, in which event such award shall be applied to restoration expenses not withstanding the provisions of Section 12 03 below), shall promptly restore, repair and replace that portion of the Demised Premises not so taken or damaged to a complete architectural unit or units for the use and occupancy of Tenant and, as nearly as possible, to the condition existing prior to the taking or damaging
- (c) Notwithstanding the foregoing, Tenant, if Tenant is not in default under this Lease, may elect, within 30 days after the taking or damaging, to terminate the Lease if so much of the ground floor area of building upon the Demised Premises is taken or damaged so that Tenant cannot reasonably operate as contemplated by this Lease, or if so much of the land and grounds is taken or damaged such that Tenant cannot reasonably continue to do business at the Leased Premises due to lack of access or available parking and/or loading areas (other than if caused by a street widening), upon written notice to Landlord, which notice shall specify a termination date at least 30 days and not more than 90 days from the date thereof. In such event, Tenant shall not be obligated to repair, restore or reconstruct any damage to the Demised Premises which results from any such taking

Section 12 03 - Allocation of Award The entire award or compensation, including interest, whether for a total or partial taking or damaging or for a diminution in the value of Tenant's leasehold or Landlord's leasehold or other interest, shall belong to and be the property of Landlord, and Tenant hereby assigns to Landlord all of Tenant's interest in any award. Tenant shall have the right to prove in separate proceedings and to receive any separate award which may be made for damage to or condemnation of Tenant's equipment, trade fixtures, furniture and furnishings, and for relocation costs

Section 12 04 - Temporary Taking: If there is a temporary taking or damaging of the use of the Demised Premises, Tenant shall give prompt notice thereof to Landlord. The Lease Term shall not be reduced or affected in any way by such temporary taking or damaging, and the Base Rent and Additional Rent shall not be abated during such period, provided that Base Rent shall be abated for such time as such taking renders any of the Demised Premises unusable by Tenant in proportion to that amount so rendered unusable. Subject to the next sentence hereof, Landlord shall be entitled to and shall receive the entire award for such taking or damaging during the Lease Term (whether paid by way of damages, rent or otherwise). At the termination of any such use or

occupation of the Demised Premises during the Lease Term, Tenant shall, promptly repair and restore the Demised Premises as nearly as reasonably possible to its condition immediately prior to such taking or damaging, and any award or compensation for the partial taking shall be applied to the cost of such repairs and restoration. Landlord shall be entitled to claim, sue for and recover from the governmental authority all damages and awards arising out of the failure of the governmental authority to repair and restore the Demised Premises at the expiration of such temporary taking or damaging. Subject to the foregoing, any recovery or sum received as an award or compensation for physical damage to the Demised Premises caused by and during the temporary taking or damaging shall be paid to the Landlord and will be made available to Tenant for the payment of any restoration required of Tenant hereunder.

Section 12 05 - Definitions As used in this Article 12, (1) the term "taking or damaging" shall mean any taking of or damage to all or any part of the Demised Premises or any interest therein because of the exercise of the power of eminent domain, whether by condemnation proceedings or otherwise, including acts or omissions constituting inverse condemnation, or any transfer of any part of the Demised Premises or any interest therein made in avoidance of the power of eminent domain, and (11) the "award" shall include, without limitation, all monies awarded for the taking or damaging of the Demised Premises and all estates or interests therein occurring before or after the commencement of litigation proceedings.

Section 12 06 - Waiver Each party waives the provisions of any law or statute which otherwise allows either party to petition a court to terminate this Lease in the event of a partial taking of the Demised Premises, and elects to be governed by the terms of this Lease.

ARTICLE 13 - NOTICE

Section 13 01 - Notice Notice from Tenant to Landlord shall be properly given if delivered in hand (with evidence of receipt) or by nationally recognized overnight courier service such as Federal Express to Landlord, as follows: Shadrall Associates, c/o Auburndale Properties, Inc., 372 Washington Street, Wellesley, Massachusetts 02181 with a copy to Shadrall Associates, c/o Auburndale Properties, Inc., 50 Tice Boulevard, Woodcliff Lake, New Jersey 07675. Notice from Landlord to Tenant shall be properly given if delivered in hand (with evidence of receipt) or by such nationally recognized overnight courier service to the Tenant, as follows: Fleming Companies, Inc., 6301 Waterford Boulevard, Oklahoma City, Oklahoma 73126, Attention: Executive Vice President-Distribution.

Section 13 02 - Environmental Notice If any notice is given to Landlord by a governmental agency pursuant to the Environmental Laws, or if any action is required by a governmental agency

pursuant to Environmental Laws in a period or time which is less than thirty (30) days, then the notice and time periods provided for in Section 14 01(b) and 18 01 shall be reduced to a time period equal to the statutory time less two (2) days, the provision of this Section shall prevail over the time periods provided for in Sections 14 01(b) and 18 01

ARTICLE 14 - TENANT'S DEFAULT, LANDLORD'S REMEDIES

Section 14 01 - Events of Default Each of the following events shall be a default by Tenant and breach of this Lease

- (a) If Tenant fails to pay Landlord any Base Rent within 5 days after receipt of notice of such failure, or fails to pay Landlord any Additional Rent or other charges required to be paid by Tenant under this Lease within 10 days after receipt of written notice to Tenant of such failure, which notice shall be in lieu of and not in addition to any notice required by law, provided, however, that notice shall not be required more than twice each Lease Year for failure to pay any sum
- (b) If Tenant fails to perform any of the agreements, terms, covenants or conditions of this Lease to be performed by Tenant other than the payment of Base Rent or Additional Rent or other charges, and such non-performance continues for a period of 30 days after receipt of written notice by Landlord to Tenant, which notice shall be in lieu of and not in addition to any notice required by law, or if such performance cannot be completed within such 30 day period, Tenant shall not in good faith have commenced such performance within such 30 day period and diligently proceeded therewith to completion
- (c) If a levy under execution or attachment shall be made against Tenant of all or substantially all of Tenant's property in or at the Demised Premises and such execution or attachment shall not be satisfied, stayed, vacated or removed by payment, court order, bonding or otherwise within a period of 30 days after entry of such execution or attachment
- (d) The filing of an involuntary petition against Tenant under the Bankruptcy Code or any other state or federal law relating to bankruptcy or insolvency that is not dismissed within 60 days after being filed or the making or entry of a decree or order by a court or determination by any regulatory or governmental agency, if any, having jurisdiction over Tenant (i) that Tenant is a bankrupt or is insolvent, or (ii) approving as properly filed a petition seeking reorganization of Tenant under the Bankruptcy Code or any other state or federal law relating to bankruptcy or insolvency, or (iii) appointing a receiver or liquidator or trustee in bankruptcy or

insolvency of Tenant or of all or any substantial portion of its property, or (iv) constituting the winding up or liquidation of the affairs of Tenant

- (e) If Tenant shall (i) institute proceedings to be adjudged a voluntary bankrupt, or (ii) consent to the filing of a bankruptcy proceeding against it, or (iii) file a petition or answer or consent seeking reorganization or readjustment under the Bankruptcy Code or any other state or federal law relating to a comprehensive debt relief scheme, or consent to the filing of any such petition, or (iv) consent to the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of it or of all or any substantial portion of its property, or (v) make an assignment for the benefit of the creditors, or (vi) admit in writing its inability to pay its debts generally as they become due, or (vii) take any corporate action in furtherance of any of the aforesaid purposes or (viii) be unable to meet current obligations as they mature, even though its assets may greatly exceed its liabilities

Section 14 02 - Remedies Upon default by Tenant under this Lease, Landlord may, at its option, take any or all of the following actions

- (a) Elect not to terminate this Lease or Tenant's right to possession of the Demised Premises, and enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due and payable by Tenant. No acts by Landlord to maintain, preserve or re-let the Demised Premises, or to appoint a receiver to protect Landlord's interest under this Lease, or to remove property or store it at a public warehouse or elsewhere at the cost of and for the account of Tenant, or otherwise, shall constitute an election to terminate this Lease or Tenant's right of possession unless written notice of such intention is given by Landlord to Tenant. Landlord may elect to terminate this Lease upon a re-letting of the Demised Premises or at any other time after electing the remedy provided by this Subsection, in which event the Rent shall cease to accrue and the damages provided by subsection (b) shall become available to Landlord

During the period Tenant is in default, Landlord may enter the Demised Premises and re-let them, or any part of them, to third parties for Tenant's account. Re-letting may be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, plus the amounts necessary to compensate Landlord as specified in subparagraphs (i) through (iii) below, less the rent Landlord receives from any

re-letting. If Landlord re-lets the Demised Premises as provided in this subsection, rent that Landlord receives from re-letting shall be applied to the payment of (i) first, all costs incurred by Landlord for re-letting as described in subparagraph (c), (ii) second, any indebtedness from Tenant to Landlord other than Rent due from Tenant, and (iii) finally, Rent due and unpaid under this Lease. After deducting the payments referred to in this subsection, any sum remaining from the rent Landlord receives from re-letting shall be held by Landlord and applied in payment of future rent as Rent becomes due under this Lease. If, on the date Rent is due under this Lease, the rent received from the re-letting and applied to Rent due is less than the Rent due on that date, Tenant shall pay to Landlord the remaining Rent due.

- (b) Terminate this Lease and all rights of Tenant and any subtenants, licensees or concessionaires hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to terminate this Lease as provided in this subsection, then Landlord may recover from Tenant
 - (i) The worth at the time of award of any unpaid Rent which has been earned at the time of such termination,
 - (ii) The worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such Rental loss that the Tenant proves could have been reasonably avoided,
 - (iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rental loss that Tenant proves could have been reasonably avoided,
 - (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, and
 - (v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Kansas.

As used in subparts (i) and (ii) of this subsection (b), the "worth at the time of award" is computed by allowing interest at the rate of 15% per annum. As used in subpart (iii) of this subsection (b), the "worth at the

time of award" is computed by discounting such amount at the prime, or base, lending rate of The First National Bank of Boston (or any successor thereto) then in effect at the time of award plus one percent

- (c) Upon the occurrence of a breach or default occasioning the remedies referred to in Section 14 02(a) or 14 02(b), the Landlord shall be entitled to its expenses incurred in preparing and offering the Demised Premises for re-rent, including (but not limited to) costs of cleaning, remodeling, painting, resurfacing of parking areas and walks, broker's commissions and fees, advertising and marketing costs and attorneys' fees
- (d) Take any and all other action and pursue all other rights and remedies provided at law, in equity (including moving to enjoin a breach or threatened breach) or under this Lease Efforts by Landlord to mitigate the damages caused by Tenant's default shall not constitute a waiver of Landlord's right to recover damages hereunder

Section 14 03 - Bankruptcy Nothing in this Article 14 shall limit or prejudice the right of Landlord to prove or obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceedings and in effect at the time when such damages are to be proved, whether or not such amount is greater, equal to or less than the amount of the damages referred to in any of the preceding sections

Section 14 04 - Survival The rights of Landlord as contained in this Article 14 shall survive any termination of this Lease

ARTICLE 15 - TENANT'S NOTICE TO LANDLORD OF DEFAULTS

Section 15 01 - Landlord's Default Landlord shall not be in default of this Lease for failure to perform any of the agreements, terms, covenants or conditions of this Lease to be performed by Landlord unless such non-performance continues for a period of 30 days after notice by Tenant to Landlord or, if such performance cannot be completed within such 30 day period, Landlord shall not in good faith have commenced such performance within such 30 day period and diligently proceeded therewith to completion

ARTICLE 16 - ASSIGNMENTS AND SUBLEASES

Section 16 01 - Restrictions on Assignment and Subletting Subject to the provisions of Section 16 02, Tenant may assign this Lease or sublet the Demised Premises upon prior written notice to Landlord Notwithstanding the preceding sentence, however, (i) an assignment to a parent, wholly-owned subsidiary or affiliate of Tenant, or (ii) a subletting of the Demised Premises shall not be subject to Landlord's termination right set forth in Section 16 02,

provided that the use of the Demised Premises does not violate the terms of this Lease (nothing herein being deemed a waiver by Landlord of Tenant's obligations under Section 2.02 (a) of this Lease) and Tenant supplies to Landlord the information required by Section 16.02(a) regarding the assignee. Anything in this Lease to the contrary notwithstanding, any assignment of Tenant's rights to less than all of the Demised Premises shall be ineffective and void ab initio. No reference in this Lease to assignees, subtenants or licensees of Tenant shall imply that Tenant has a right to assign or sublease this Lease which is not subject to the Provisions of this Article 16.

Section 16.02 - Notice of Offer, Right to Terminate

- (a) Whenever Tenant has obtained an offer, from other than a parent, wholly-owned subsidiary or affiliate of Tenant to assign this Lease, Tenant shall provide to Landlord the name and address of said proposed assignee, the rent offered, the proposed use by the proposed assignee, the proposed effective date of the assignment, and any other business terms which are material to the offer and which differ from the provisions of this Lease ("Notice of Offer"). Tenant shall also provide to Landlord the nature of business, financial statement and business experience resume for the immediately preceding five (5) years of the proposed assignee and such other information concerning such proposed assignee as Landlord may require. The foregoing information shall be in writing and shall be received by Landlord no less than 60 days prior to the effective date of the proposed assignment.
- (b) Within 30 days after receiving a Notice of Offer for the proposed assignment of this Lease, Landlord shall be entitled to terminate this Lease as to all of the Demised Premises by written notice to Tenant ("Termination Notice"), and such termination shall be effective as of the proposed effective date of the proposed assignment. If Landlord does not provide a Termination Notice within 30 days after receiving a Notice of Offer, Landlord shall be deemed to have consented to the proposed assignment, on the same terms as disclosed to Landlord and for that specific occasion only.
- (c) Any consent, actual or deemed, by Landlord to any assignment shall not constitute a waiver of the necessity for consent to any subsequent assignment. Anything herein contained to the contrary notwithstanding, Tenant shall not enter into any assignment or subletting if same would violate any of the terms of this Lease or any Legal Requirement.
- (d) Upon any assignment of this Lease or subletting of all or any portion of the Demised Premises, Tenant (1) shall pay the Landlord its costs, expenses and attorneys' fees

incurred in investigating and approving the assignment, (ii) shall deliver to Landlord a copy of such assignment or sublease, and (iii) shall pay Landlord, as and when received, an amount equal to 50% of the excess of all net rentals and other monetary compensation paid by the assignee or subtenant to the Tenant over the Base Rent due to the Landlord from the Tenant hereunder (prorated as to the portions of the Demised Premises sublet, if less than all) "Net rentals" as used herein shall mean rentals received by Tenant from the assignee or subtenant after the payment to Tenant for actual out-of-pocket expenses incurred by Tenant relating directly to such assignment or subletting

Section 16 03 - Liability Continues: Tenant shall perform and observe each and every term and condition to be performed or observed by Tenant as assignor or sublessor under all present and future assignments or subleases. Tenant shall be responsible for and be liable to Landlord for all acts and omissions on the part of any assignee or subtenant of Tenant in the Demised Premises. Any violation of any of the terms, provisions or conditions of this Lease, whether by act or omission, by any assignee or subtenant shall constitute a breach of this Lease by Tenant. Permission is hereby granted to Tenant to bring proceedings to enforce the terms, provisions and conditions of this Lease against assignees and subtenants in Tenant's own name or in the name of Landlord, provided, however, that Tenant shall keep Landlord fully informed of such proceedings, Landlord shall incur no cost or expense thereby or liability or obligation in connection therewith, and Tenant shall indemnify, defend and hold Landlord harmless from any such costs, liabilities and expenses. Notwithstanding anything to the contrary in this Lease, no assignment or subletting, with or without consent, shall release Tenant from any of its obligations and liabilities under this Lease.

ARTICLE 17 - TERMINATION OF LEASE, SURRENDER

Section 17 01 - Surrender, Holding Over:

- (a) On the last day of the Lease Term or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Demised Premises pursuant to Article 14, Tenant shall (i) surrender and deliver the Demised Premises free and clear of all subtenancies, occupancies, liens and encumbrances created by Tenant to the possession and use of Landlord without delay and in good order, condition and repair, reasonable wear and tear excepted, and restored as provided in Section 8 02 hereof, and (ii) promptly surrender all keys for the Demised Premises to Landlord at the place then fixed for the payment of Rent and inform Landlord of all combinations and access codes on locks, safes and vaults, if any, in the Demised Premises.

- (b) In the event Tenant remains in possession of the Demised Premises after the expiration of the Lease Term, whether or not with the consent or acquiescence of Landlord, and without the execution of a new Lease, Tenant shall be deemed to be occupying the Demised Premises on a month to month tenancy only. Upon notice given by Landlord to Tenant, Rent during this month to month tenancy shall be payable monthly in advance in an amount equal to 200% of the Base Rent and other charges due and payable immediately prior to the expiration of the Lease Term without prejudice to Landlord's right to any damages which Landlord may suffer if Tenant fails to vacate upon the expiration of the Lease Term or the earlier termination of this Lease. The terms of such month to month tenancy shall be otherwise the same as the terms, conditions, covenants, provisions and obligations contained in this Lease.

Section 17 02 - Survival The provisions of this Article 17 shall survive any termination of this Lease

ARTICLE 18 - LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 18 01 - Right to Perform If Tenant, at any time after the lapse of 30 days from the receipt of written notice from Landlord, shall fail to make any payment or perform any other act on its part to be made or performed, then Landlord, without waiving Tenant's default, may (but shall be under no obligation to) make any payment or perform any other act on Tenant's part to be made or performed as provided in this Lease. All sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, including, without limitation, reasonable attorneys' fees, shall constitute Additional Rent and shall be paid by Tenant to Landlord within 30 days after receipt of an invoice. Landlord in its sole discretion may, without any liability whatsoever to the Tenant or any person or entity claiming through or under the Tenant, cease the performance of any act commenced hereunder, at any time. There shall be no warranty, either express or implied, with respect to any such act performed by Landlord.

In case of a situation which the Landlord reasonably believes to be an emergency, the Landlord may avail itself of its rights under this Section 18 01 immediately, giving notice to Tenant within 48 hours thereafter.

ARTICLE 19 - INSPECTION BY LANDLORD

Section 19 01 - Inspection Tenant will permit Landlord and its authorized representatives to enter the Demised Premises upon reasonable notice at all reasonable times for the purpose of (i) inspecting the same, (ii) making any necessary repairs in accordance with Article 18 hereof, which entry may be made at any time in the event of an emergency, (iii) showing the same to

prospective purchasers or Mortgagees, (iv) showing the same to prospective tenants, and (v) conducting any environmental testing, sampling, borings, and analyses it reasonably deems necessary (and Landlord agrees to promptly repair any damage to the Demised Premises resulting from such environmental inspections), such environmental testing and all repairs and restoration of the Demised Premises relating to such testing shall be (x) at Tenant's expense if Tenant has breached its Hazardous Materials covenant contained in Section 2 02(c) of this Lease or if Hazardous Materials are present in the Demised Premises or the soil or surface or ground water in, on, under, about or near the Demised Premises due to acts or omissions of Tenant or its successors, assigns, subtenants, licensees, concessionaires or occupants of the Demised Premises or their agents, contractors, employees and invitees, and (y) otherwise at Landlord's expense

ARTICLE 20 - SUBORDINATION, ATTORNMEN

Section 20 01 - Relationship to Mortgage This Lease and the rights of Tenant shall, at Landlord's option, be at all times subject and subordinate to any Mortgage (as same may be renewed, replaced, modified, extended or consolidated) hereafter encumbering the Demised Premises, provided that the Mortgagee agrees to execute a subordination, nondisturbance and attornment agreement substantially in the form of Exhibit C attached hereto. Tenant agrees to attorn to any Mortgagee, purchaser in a foreclosure sale or grantee of a deed in lieu of foreclosure. Any Mortgagee may at any time elect to cause this Lease to have priority over its Mortgage by executing unilaterally an instrument subordinating its Mortgage to this Lease, or accepting a Mortgage containing a clause providing for such subordination. Tenant shall within 15 days after request, execute, acknowledge and deliver any and all instruments necessary or proper to ratify or confirm the foregoing.

Section 20 02 - Effect on Mortgage Until it shall enter and take possession of the Demised Premises for the purpose of foreclosure, the holder of a Mortgage shall have only such rights of Landlord as are necessary to preserve the integrity of this Lease as security. Upon entry and taking possession of the Demised Premises for the purpose of foreclosure, such holder shall have all the rights of Landlord, but only for so long as the holder of said Mortgage shall be in possession of the Demised Premises. No such holder of a Mortgage shall be liable either as Mortgagee or as assignee, to perform, or be liable in damages for failure to perform, any of the obligations of Landlord unless and until such holder shall enter and take possession of the Premises for the purpose of foreclosure. Upon entry for the purpose of foreclosure, such holder shall be liable to perform all of the obligations of Landlord, subject to and with the benefit of the provisions of this Article 20, provided that a discontinuance of any foreclosure proceeding shall be deemed a conveyance under said provisions to the owner of the equity of the Demised Premises. No Base Rent shall be paid more than 30 days prior to the due dates thereof and payments made in violation of this provision shall (except to the

extent that such payments are actually received by a Mortgagee in possession or in the process of foreclosing its mortgage) be a nullity as against such Mortgagee and Tenant shall be liable for the amount of such payments to such Mortgagee. The covenants and agreements contained in this Lease with respect to the rights, powers and benefits of a Mortgagee (particularly, without limitation thereby, the covenants and agreements contained in this Article 20) constitute a continuing offer to any person, corporation or other entity, which by accepting a Mortgage subject to this Lease assumes the obligations herein set forth with respect to such Mortgagee, such Mortgagee is hereby constituted a party of this Lease as an obligee hereunder to the same extent as though its name was written herein as such, and such Mortgagee shall be entitled to enforce such provisions in its own name. Tenant agrees on request of Landlord to execute and deliver from time to time any agreement which may be necessary to implement the provisions of these Sections 20 01 and 20 02.

ARTICLE 21 - INDEMNIFICATION

Section 21 01 - Tenant's Indemnification Tenant shall indemnify, defend and hold Landlord harmless from and against any and all actions, claims, demands, penalties, liabilities or costs (including reasonable attorneys' fees) incurred in connection with any loss, damage or injury to persons or property occurring in or on the Demised Premises (and in the event of any claims under Environmental Laws resulting from a breach by Tenant or anyone claiming under or through Tenant of Tenant's covenant in Section 2 02(c) of this Lease, this shall also include any loss, damage or injury to persons or property under, about or near the Demised Premises) or the operations or activities of Tenant and its subtenants, concessionaires, licensees or occupants of the Demised Premises or any of their contractors, agents, employees or invitees, or arising out of Tenant's and their use of the Demised Premises, or caused by the acts or negligence of Tenant, its subtenants, concessionaires, licensees or occupants and their contractors, agents, employees or invitees.

Section 21 02 - Environmental Matters The obligation of Tenant to indemnify, defend, and hold harmless Landlord for claims under Environmental Laws, which claims result from Tenant's occupancy and/or use of the Demised Premises and/or failure to comply with the requirements of this Lease, includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by Landlord, any Mortgagee or any federal, state or local governmental agency or political subdivision because of any Hazardous Materials occurring or present in the Demised Premises, the soil or surface or ground water in, on, under, about or near the Demised Premises, diminution in value of the Demised Premises, damages for the loss or restriction on use of rentable or useable space or of any amenity of the Demised Premises, damages arising from any adverse impact on marketing of space in the Demised Premises, and sums paid in settlement of claims, penalties,

attorneys' fees, court costs, consultant and laboratory fees and expert's fees. Without limiting the foregoing, if any Hazardous Materials are found in the soil or surface or ground water in, on, under, about or near the Demised Premises, the introduction of which is caused by Tenant, its employees, successors, assigns, licensees or invitees, Tenant shall promptly take all actions required by Landlord, Mortgagee or governmental agencies, at Tenant's sole expense, necessary to return the Demised Premises to the condition existing prior to the introduction of Hazardous Materials in, on, under, about or near the Demised Premises in accordance with Legal Requirements, any action undertaken by Tenant shall be subject to Landlord's prior approval of such actions, which approval shall not be unreasonably withheld.

Section 21 03 - Survival The provisions of this Article 21 shall survive any termination of this Lease as to matters or occurrences which preceded the termination and Tenant's surrender and delivery of the Demised Premises to Landlord.

ARTICLE 22 - LANDLORD EXCULPATION

Section 22 01 - Limitation of Liability: Notwithstanding anything to the contrary in this Lease, any judgment obtained by Tenant against Landlord shall be satisfied only out of Landlord's interest in the Demised Premises and the rents receivable by Landlord therefrom. Neither Landlord nor any of its general or limited partners, officers, directors, shareholders, trustees, beneficiaries or employees shall have any personal liability for any matter in connection with this Lease or its obligations as Landlord of the Demised Premises, except as provided above. Tenant shall not institute, seek or enforce any personal or deficiency judgment against Landlord or any of its general or limited partners, officers, directors, shareholders, beneficiaries or employees, and none of their property, except the Demised Premises and the rents receivable by Landlord therefrom, shall be available to satisfy any judgment hereunder.

Section 22 02 - Sale of Demised Premises In the event of any sale or transfer of the Demised Premises, the seller, transferor or assignor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord thereafter to be performed, provided that such purchaser, transferee or assignee has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder arising after the effective date of such assumption.

Section 22 03 - Survival The provisions of this Article 22 shall survive any termination of this Lease.

ARTICLE 23 - CERTIFICATES, FINANCIAL STATEMENTS

Section 23 01 - Lease Status Certificates: Each party (the "Certifying Party") shall from time to time, within 15 days after receipt of written request therefor, execute, acknowledge and

deliver to the requesting party (the "Requesting Party") or any existing or proposed Mortgagee or purchaser or assignee of the Demised Premises or of any Mortgage, without charge, a duly executed recordable certificate prepared by the Requesting Party certifying all of the following to the best of the knowledge of the Certifying Party (i) that this Lease is valid, subsisting, in full force and effect and unmodified (or, if modified, that the Lease as modified is valid, subsisting and in full force and effect and stating with specificity all modifications), (ii) the dates to which the rent and other charges have been paid, (iii) the Lease Term, (iv) that all conditions to Tenant's possession of the Demised Premises and commencement of the Lease Term have been satisfied, if accurate, and if not, stating those conditions which have not been satisfied, (v) that the Requesting Party is not in default under any provisions of this Lease, if accurate, and if not, stating any defaults, (vi) that there are no offsets or defenses which the Certifying Party then has against Requesting Party (or if there are any offsets or defenses then claimed, stating the nature of same with specificity), and (vii) such other information as may be reasonably requested. It is intended that any such statement delivered pursuant to this Article may be relied upon by the parties for whom it is intended.

Section 23 02 - Tenant Environmental Certificate Tenant, in writing to Landlord, within fifteen (15) days after receipt of request therefor, shall execute, acknowledge and deliver to Landlord or any existing or proposed Mortgagee or purchaser or assignee of the Demised Premises or any Mortgage, without charge, a certificate stating that, to Tenant's knowledge (i) Tenant, its subtenants, concessionaires, licensees, occupants and their contractors, agents, employees and invitees, have complied with the requirements of all Environmental Laws, (ii) Tenant, its subtenants, concessionaires, licensees, occupants and their contractors, agents, employees and invitees have not disposed of Hazardous Materials on, in, under, about or near the Demised Premises, (iii) Tenant, its subtenants, concessionaires, licensees, occupants and their contractors, agents, employees and invitees have not released Hazardous Materials on, in, under, about or near the Demised Premises, and (iv) no soil or surface or ground water contamination has occurred during the Lease Term on, in, under, about or near the Demised Premises or, if any such statements are inaccurate, specifying the necessary qualifications. At any time during the Initial Term and any Option Term, Tenant shall, if requested by Landlord, promptly remove any and all equipment, materials and other items which may cause, contribute to or result in Hazardous Material contamination of the Demised Premises (the soil or surface or ground water in, on, under, about or near the Demised Premises), and investigate, remedy and clean up any Hazardous Material contamination if Landlord or any governmental agency reasonably suspects contamination is present or has occurred. Tenant shall promptly (and in all events not later than two (2) business days) notify Landlord of any release of Hazardous Materials on, in, under, about or near the Demised Premises, specifying the nature and quantity of the release, the location of

the release, and the measures taken to contain and clean up the release and ensure that future releases do not occur

Section 23 03 - Tenant's Business Activities Tenant hereby certifies that the business activities which it intends to conduct in the Demised Premises do not use any Hazardous Materials, other than cleaning supplies and inventory in normal quantities to be used and stored in accordance with Legal Requirements, and are in full compliance with Environmental Laws

Section 23 04 - Tenant's Financial Statements At least annually during the term which Tenant occupies the Demised Premises, within thirty (30) days of request therefor by Landlord, Tenant shall furnish Landlord at no cost Tenant's most recent annual form 10K as filed with the SEC, provided, however, Tenant, if Tenant ceases to be a publicly owned company, and each assignee and sublessee of Tenant, shall furnish Landlord at no cost within thirty (30) days of Landlord's request therefor, a year-end balance sheet and income and expense statement relating to the most recently ended fiscal year of the furnishing party's fiscal year, accompanied by a certification of Tenant's or such assignee's or sublessee's chief financial officer that said financial statements are true, accurate and complete

ARTICLE 24 - SECURITY DEPOSIT

Section 24 01 - Security Deposit There is no security deposit required of Tenant under this Lease

ARTICLE 25 - BROKERS

Section 25 01 - Warranty Tenant and Landlord each represent and warrant that it has dealt with no broker, agent or finder on account of this Lease and agrees, subject to the limitations set forth in Article 22 hereof, to defend, indemnify and hold harmless each other from and against any and all claims, damages and costs, including attorneys' fees, in connection with any claim for brokerage, finder's or similar fees, or compensation related to this Lease, which may be made or alleged as a result of acts or omissions of the indemnifying party

Section 25 02 - Survival The provisions of this Article 25 shall survive any termination of this Lease

ARTICLE 26 - OVERLEASE

Section 26 01 - Lease as Sublease: Anything in this Lease to the contrary notwithstanding, Tenant acknowledges that Landlord's interest in the Demised Premises is the ownership of a leasehold estate pursuant to the Overlease hereto and not ownership of a fee simple interest in the real property described in Exhibit A. Accordingly, this lease is a sublease and is subject to all terms and conditions of the Overlease. Tenant acknowledges receipt of a complete copy of the Overlease and agrees, (i) to perform all of

the obligations of the overlessee under the Overlease as they relate to the Demised Premises, (subject, however, to Landlord's right as contained in this Lease to elect from time to time to perform certain obligations with respect to the Demised Premises) with the sole exception of the payment to the lessor in the Overlease of amounts becoming due to such lessor under the Overlease, and (ii) not to commit or permit to be committed any act or omission which would violate any term, provision or condition of the Overlease. Landlord hereby agrees to and shall timely pay the overlessor all amounts becoming due the overlessor under the Overlease and perform all obligations thereunder except as set forth above, Landlord further agrees that Tenant shall not be subject to any modification of the Overlease which would increase Tenant's obligations or reduce Tenant's rights hereunder. Tenant acknowledges that Landlord shall have the right to exercise its option to purchase pursuant to the Overlease, Landlord agrees not to terminate the Overlease (either pursuant to any option to terminate set forth in the Overlease or otherwise) except upon Landlord's acquisition of the Demised Premises. Notwithstanding the foregoing, if any portion of the Demised Premises is no longer subject to the Overlease, then this Section 26 01 and Section 26 02 shall no longer apply to such portion.

Section 26 02 - Tenant's Waiver of Right to Purchase
Landlord shall enforce its rights under the Overlease and shall acquire from the overlessor of the Overlease the fee estate upon such terms as Landlord and such overlessor may mutually agree. Tenant hereby agrees, on behalf of itself and any successor, assign or sublessee, subject to Section 26 01, not to communicate directly with the overlessor or any of its representatives with respect to the Overlease, this Lease, the real property described in Exhibit A, or any matter related to any of the foregoing without the prior written consent of Landlord, which consent may be withheld for any reason. In addition to the foregoing, Tenant agrees that neither it nor any successor, assign or subtenant of Tenant shall, under any circumstances, acquire the fee estate or any portion thereof without Landlord's prior written consent, which may be given or withheld in Landlord's absolute and sole discretion with or without cause, notwithstanding the foregoing, in the event that Tenant or any successor, assign or subtenant of Tenant and overlessor enter an agreement for Tenant or any successor, assign or subtenant of Tenant to acquire the fee estate or any portion thereof, Tenant or such successor, assign or subtenant of Tenant shall promptly notify Landlord thereof and, at Landlord's option to be exercised within twenty (20) days after receipt of such notice, Tenant, such successor, assign or subtenant shall assign or caused to be assigned to Landlord all Tenant's and/or such successor's, assign's or subtenant's rights under any such agreement at no cost or expense to the Landlord and with no compensation to the Tenant or such successor, assign or subtenant.

ARTICLE 27 - MISCELLANEOUS PROVISIONS

Section 27 01 - Invalidity of Certain Provisions: If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law

Section 27 02 - Captions and Table of Contents The captions and table of contents appearing in this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, or in any way affect this Lease

Section 27 03 - Independent Operation Nothing in this Lease shall cause Landlord in any way to be construed as a partner, joint venturer or an associate of Tenant in the operation or use of the Demised Premises or subject Landlord to any obligations, losses, charges or expenses connected with or arising from the operation or use of the Demised Premises

Section 27 04 - Time of the Essence Time is of the essence of this Lease as to each of the terms, conditions, obligations and performances contained herein or required hereunder of which time is a factor

Section 27 05 - Waiver No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy following a breach or default thereof, no forbearance by either party to enforce one or more of the remedies herein provided upon an event of default, and no acceptance of full or partial rent during the continuance of any such breach or default, shall constitute a waiver of any such breach or default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with and no breach or default thereof shall be waived, altered or modified except by a written instrument. No waiver of any breach or default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach or default thereof. The maintenance of any action or proceeding to recover possession of the Demised Premises or any installment or installments of Base Rent or any other monies that may be due or become due from Tenant to Landlord shall not preclude Landlord from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the Demised Premises or of Base Rent or any other monies that may be due or become due from Tenant, including all expenses, court costs and attorneys' fees and disbursements incurred by Landlord. An entry or re-entry by Landlord shall not be deemed to absolve or discharge Tenant from liability hereunder

Section 27 06 - Counterparts This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument

Section 27 07 - Short Form Lease Landlord and Tenant agree that if either party so desires, they will execute a Short Form Lease setting forth the existence of this Lease and the Lease Term, which may be recorded. The party so requesting such Short Form Lease shall pay the recording charges and documentary transfer taxes associated therewith

Section 27 08 - Covenants to Bind and Benefit Respective Parties The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and permitted assigns, provided that this section shall not constitute a permission or authorization by Landlord to Tenant to assign or in any way transfer its interest in this Lease

Section 27 09 - Integration, No Oral Modifications Tenant hereby acknowledges that except as and to the extent specifically provided for in this Lease, neither Landlord, nor any of its agents, representatives or employees, have made any representations, warranties, agreements or promises, and none shall be implied by law. This Lease is intended by the parties to be a final expression and a complete and exclusive statement of the agreement of the parties regarding the subject matter hereof, and all negotiations between the parties are merged herein. This Lease cannot be changed, modified or terminated orally, but may be amended only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought

Section 27 10 - Gender, Number The use of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual landlord or tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual landlord or tenant. The use of the plural shall include the singular, and the use of the singular shall include the plural, as the context may require or permit

Section 27 11 - Rights and Remedies Cumulative Each right and remedy of Landlord and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity. The exercise or beginning of the exercise by Landlord or Tenant of any one or more rights or remedies shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies, nor shall it constitute a forfeiture or waiver of any amounts owed to Landlord or Tenant

Section 27 12 - Covenants Independent Each and every covenant and agreement contained in this Lease shall be deemed separate and independent and not dependent upon any other provisions of this Lease, and the damages for failure to perform the same shall be deemed in addition to and separate and independent of the damages accruing by reason of the breach of any other covenant contained in this Lease

Section 27 13 - Corporate Authority and Status

- (a) If Tenant is a corporation, the person(s) signing this Lease on behalf of Tenant warrant(s) that such person(s) is (are) authorized to execute this Lease on behalf of Tenant, that no other signature is required, Tenant's corporate status is in good standing and that this Lease shall be binding on Tenant. Said authority shall be further evidenced by a certificate of Tenant's clerk or secretary, delivered contemporaneously with Tenant's execution hereof. Tenant shall continuously keep its corporate status throughout the Lease Term in good standing, active and current with the state of its incorporation and shall be and remain licensed to do business in the state in which the Demised Premises is located. From and after the time the Tenant enters into possession of any part of the Demised Premises, it shall conclusively be presumed that the person(s) executing this Lease on Tenant's behalf did so with full and proper authority of the Tenant.
- (b) The person(s) signing this Lease on behalf of Landlord warrant(s) that such person(s) is (are) authorized to execute this Lease on behalf of Landlord, no other signature is required, Landlord's legal status is in good standing and this Lease shall be binding on Landlord.

Section 27 14 - Cost of Performance: Whenever it is indicated in this Lease that Landlord or Tenant may, shall or will perform any act, then such act shall be performed at the sole cost and expense of the performing party unless otherwise specifically indicated to the contrary.

Section 27 15 - Attorneys' Fees If either party becomes a party to any litigation instituted by a party other than Landlord, Tenant or their respective successors or assigns concerning this Lease or the Demised Premises, by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees, court costs, investigation expenses, discovery costs, and costs of appeal incurred by it in the litigation. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, court costs, investigation expenses, discovery costs and costs of appeal.

Section 27 16 - No Offer The delivery of an unsigned copy of this Lease to Tenant shall not constitute an offer to Lease the Demised Premises or grant any rights to Tenant as a result thereof, and this Lease shall not be binding on Landlord or Tenant until executed by Landlord and Tenant and delivered

Section 27 17 - Reasonableness, Construction This Lease shall be construed fairly as between both Landlord and Tenant and without regard to which party drafted the same To the extent that there are certain provisions of this Lease in which Landlord may withhold its consent "for any reason" and other provisions which prohibit certain assignments or allow Landlord in certain circumstances to terminate this Lease in lieu of permitting an assignment of this Lease, or share profit upon an assignment or subletting of all or any portion of the Demised Premises, such specific provisions, which may be viewed as allowing Landlord to deviate from a standard of reasonableness which is imposed on Landlord and Tenant in connection with other provisions of this Lease, have been lengthily negotiated and bargained for and represent a material part of the consideration to be received by each party The parties specifically acknowledge and agree

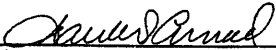
- 1 Both Landlord and Tenant are sophisticated parties,
- 2 Neither party has unequal bargaining power,
- 3 Tenant, as of the date of execution of this Lease, is a corporation, and Landlord is a general partnership, each being sophisticated with regard to business and real estate matters,
- 4 Each party has been represented by counsel of their own choosing who have advised the parties,
- 5 The parties, bearing in mind the rights, duties and obligations of the parties to honor the implied covenants of good faith and fair dealing, have specifically bargained for and agreed that it is the intent of the parties that Landlord in circumstances in which this Lease provides Landlord may withhold its consent "for any reason", or may terminate this Lease, may exercise its consent authority or its right to so terminate pursuant to a subjective standard of sole discretion, and further that it is the intent of the parties that in such circumstances no person interpreting this Lease shall have the right to impose any standard on, or restriction of, Landlord's rights set forth in this Lease or permitted as a matter of law to withhold consent for any reason whatsoever, or to restrict or condition Landlord's consent on payment being made to Landlord, or to terminate this Lease, and
- 6 The parties acknowledge that the provisions in favor of Landlord may constitute a restraint on alienation,

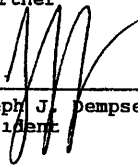
however, the parties agree that if they are restraints,
then they are reasonable restraints on alienation

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

LANDLORD

SHADRALL ASSOCIATES, a New York
general partnership
By Shadrall Corp , a
Massachusetts corporation,
its managing general
partner


Witness

By 
Joseph J. Dempsey, Jr ,
President

TENANT

FLEMING COMPANIES, INC


Witness

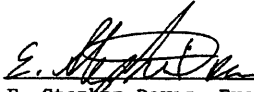
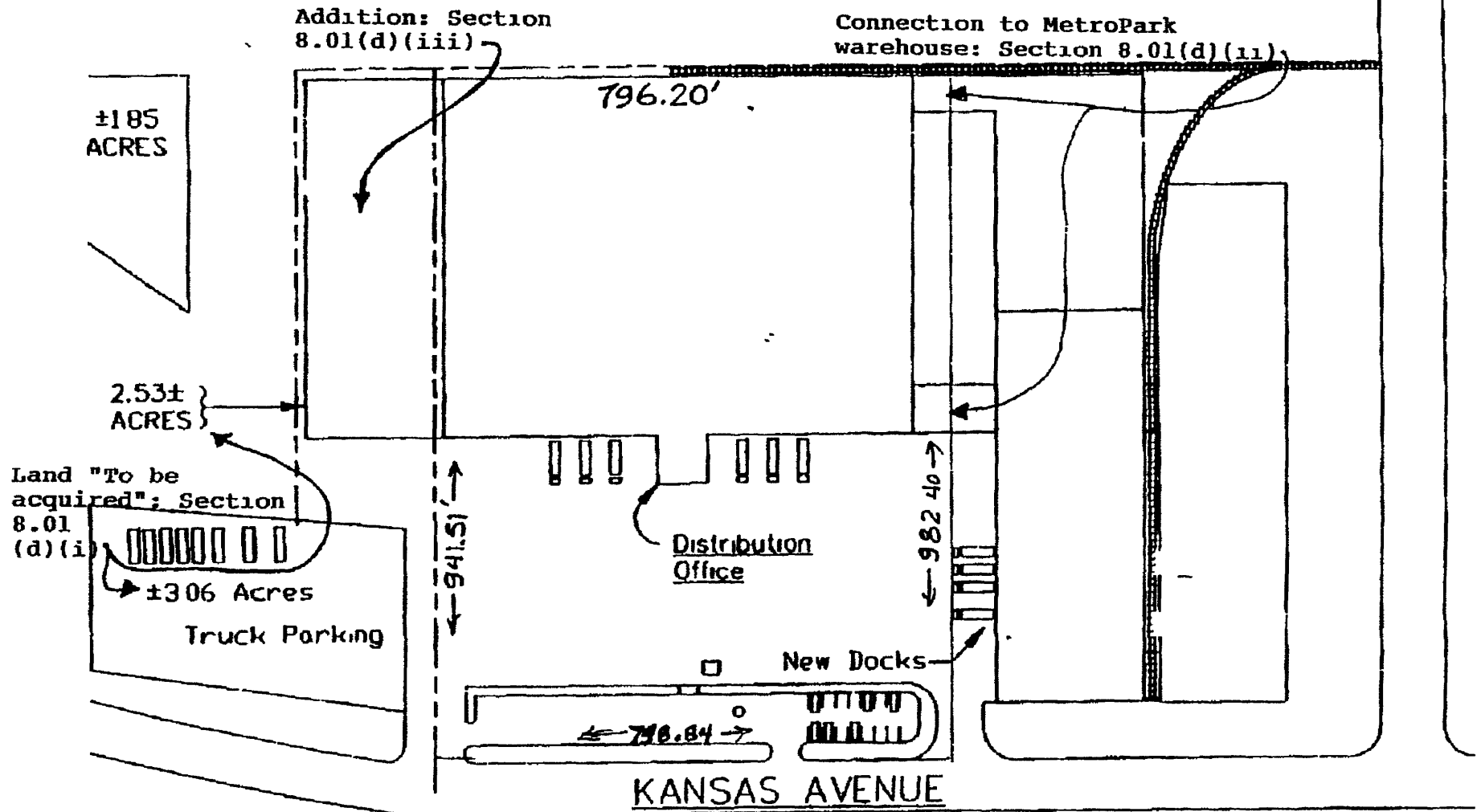
By 
E Stephen Davis, Executive
Vice President - Distribution

EXHIBIT A - LEGAL DESCRIPTION

Lot 6, Block 4, Santa Fe Lands Plat, a subdivision in Kansas City, Wyandotte County, Kansas.

EXHIBIT B



FLEMING KANSAS AVENUE

EXHIBIT C

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT is made and entered into as of this day of , 19 , by and among THE FIRST NATIONAL BANK OF BOSTON, a national banking association (hereinafter called the "Bank"), FLEMING COMPANIES, INC., an Oklahoma corporation (hereinafter called the "Tenant") and SHADRALL ASSOCIATES, a New York general partnership (hereinafter called the "Landlord").

W I T N E S S E T H:

WHEREAS, Landlord has acquired certain rights by virtue of two leases (the "Overleases") in and to certain real property located at 5300 Kansas Avenue, Kansas City, Kansas, and more particularly described in Exhibit A attached hereto and made a part hereof (such property being hereinafter called the "Property"); and

WHEREAS, Landlord and Tenant made and entered into that certain Lease, dated the day of , 19 , with respect to the Property, as evidenced by a memorandum of lease recorded in Wyandotte County Registry of Deeds (hereinafter called the "Registry") in Book , Page as Document No. (such Lease being hereinafter called the "Lease" and such premises being hereinafter called the "Leased Premises"); and

WHEREAS, prior to the date hereof, Landlord has entered into and delivered that certain Kansas Leasehold Mortgage and Security Agreement in favor of the Bank recorded in the Registry in Book 3511, Page 68, as Document No. 1122385 and further evidenced by the Financing Statement filed with the Registry as Document No. E049063 (such Kansas Leasehold Mortgage and Security Agreement being hereinafter called the "Security Deed"), conveying the Landlord's interest in the Property to secure the payment of the indebtedness described in the Security Deed; and

WHEREAS, prior to the date hereof, Landlord has entered into and delivered that certain Collateral Assignment of Leases and Rents in favor of the Bank recorded in the Registry in Book 3511, Page 724 as Document No. 1122386 (such Collateral Assignment of Leases being hereinafter called the "Assignment of Leases"), assigning all of Landlord's right, title and interest as lessor under the Lease to further secure the indebtedness described in the Security Deed; and

WHEREAS, the parties hereto desire to enter into this Subordination, Attornment and Non-Disturbance Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the Bank, Tenant and Landlord hereby covenant and agree as follows:

1. Estoppel. Tenant hereby certifies to the Bank that (i) the Lease, as described above, is the true, correct and complete Lease, and has not been modified or amended and constitutes the entire agreement between Landlord and Tenant, and (ii) as far as is known to Tenant, there are no defaults of Landlord under the Lease and there are no existing circumstances which with the passage of time, or giving of notice, or both, would give rise to a default under the Lease and/or allow Tenant to terminate the Lease.

2. Subordination. Tenant hereby subordinates all of its right, title and interest as lessee under the Lease to the right, title and interest of the Bank under the Security Deed, and Tenant further agrees that the Lease now is and shall at all times continue to be subject and subordinate in each and every respect to the Security Deed and to any and all increases, renewals, modifications, extensions, substitutions, restatements, replacements and/or consolidations of the Security Deed, all subject to the terms of this Agreement.

3. Attornment. Unless the Lease is terminated in accordance with Paragraph 4, if the interests of the lessor under the Lease shall be transferred by reason of the exercise of the power of sale contained in the Security Deed (if applicable), or by any foreclosure or other proceeding for enforcement of the Security Deed, or by deed in lieu of foreclosure or such other proceeding, or if the Bank takes possession of the Property pursuant to any provisions of the Security Deed or the Assignment of Leases, the lessee thereunder shall be bound to the Bank or the person acquiring the interest of the lessor under the Lease as a result of any such action or proceeding (hereinafter called the "Purchaser"), as the case may be, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser or the Bank were the lessor under the Lease, and Tenant, as lessee under the Lease, does hereby agree to attorn to the Purchaser or the Bank, if and when it takes possession of the Property, as its lessor under the Lease. Such attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of the lessor under the Lease or the taking of possession of the Property by the Bank. Nevertheless, Tenant shall, from time to time, execute and deliver such instruments evidencing such attornment as Purchaser or the Bank may require. The respective rights and obligations of Purchaser or the Bank and of the lessee under the Lease upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now

set forth in the Lease except as otherwise expressly provided in Paragraph 4.

4. Non-Disturbance. So long as no default exists, nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle the lessor under the Lease to terminate the Lease or would cause, without any further action on the part of such lessor, the termination of the Lease or would entitle such lessor to dispossess the lessee thereunder, the Lease shall not be terminated, nor shall such lessee's use, possession or enjoyment of the Leased Premises or rights under the Lease be interfered with in any foreclosure or other action or proceeding in the nature of foreclosure instituted under or in connection with the Security Deed or the Assignment of Leases or in case the Bank takes possession of the Property pursuant to any provisions of the Security Deed or the Assignment of Leases, unless the lessor under the Lease would have had such right if the Security Deed or the Assignment of Leases had not been made, except that neither the Purchaser, nor the Bank if the Bank takes possession of the Property, shall be: (a) liable for any act or omission of any prior lessor under the Lease; or (b) liable for the return of any security deposit which lessee under the Lease has paid to any prior lessor under the Lease; or (c) subject to any offsets or defenses which the lessee under the Lease might have against any prior lessor under the Lease; or (d) bound by any base rent which the lessee under the Lease might have paid for more than one month in advance to any prior lessor under the Lease; or (e) bound by any amendment or modification of the Lease made without the Bank's prior written consent; or (f) personally liable for any default under the Lease or any covenant or obligation on its part to be performed thereunder as lessor, it being acknowledged that Tenant's sole remedy in the event of such default shall be to proceed against Purchaser's or the Bank's interest in the Property and the rents receivable therefrom.

5. Assignment of Leases. Tenant hereby acknowledges that all of Landlord's right, title and interest as lessor under the Lease has been duly assigned to the Bank pursuant to the terms of the Security Deed and the Assignment of Leases, and that pursuant to the terms thereof all rental payments under the Lease shall continue to be paid to Landlord in accordance with the terms of the Lease unless and until Tenant is otherwise notified in writing by the Bank. Upon receipt of any such written notice from the Bank, Tenant covenants and agrees to make payment of all rental payments then due or to become due under the Lease directly to the Bank or to the Bank's agent designated in such notice, whether or not the Bank has made entry or become mortgagee in possession pursuant to the Security Deed, and to continue to do so until otherwise notified in writing by the Bank. Landlord hereby irrevocably directs and authorizes Tenant to make rental payments directly to the Bank following receipt of such notice, and covenants and agrees that Tenant shall have the right to rely on such notice without any

obligation to inquire as to whether any default exists under the Security Deed or the Assignment of Leases or the indebtedness secured thereby, and notwithstanding any notice or claim of Landlord to the contrary, and that Landlord shall have no right or claim against Tenant for or by reason of any rental payments made by Tenant to the Bank following receipt of such notice. Tenant further acknowledges and agrees: (a) that under the provisions of the Security Deed and the Assignment of Leases, the Lease cannot be terminated prior to the end of the Lease term, as the same may be extended (nor can Landlord accept any surrender of the Lease) or modified in any of its terms, or consent be given to the waiver or release of Tenant from the performance or observance of any obligation under the Lease, without the prior written consent of the Bank, and without such consent no base rent may be collected or accepted by Landlord more than one month in advance; and (b) that the interest of lessor under the Lease has been assigned to the Bank for the purposes specified in the Security Deed and the Assignment of Leases, and the Bank assumes no duty, liability or obligation under the Lease, except only under the circumstances, terms and conditions specifically set forth in the Security Deed, the Assignment of Leases, and herein.

6. Notice of Default by Lessor. Tenant, as lessee under the Lease, hereby covenants and agrees to give the Bank written notice properly specifying wherein the lessor under the Lease has failed to perform any of the covenants or obligations of the lessor under the Lease, simultaneously with the giving of any notice of such default to the lessor under the provisions of the Lease. Tenant agrees that the Bank shall have the right, but not the obligation, within the time afforded Landlord under the Lease to correct or remedy, or cause to be corrected or remedied, each such default before the lessee under the Lease may take any action under the Lease by reason of such default. All notices hereunder shall be delivered in duplicate as follows:

If to the Bank:	The First National Bank of Boston 100 Federal Street Boston, MA 02110 ATTN: Real Estate Division
If to the Tenant:	Fleming Companies, Inc. 6301 Waterford Boulevard Oklahoma City, OK 73126 ATTN: Vice President - Distribution
In each case with a copy to Landlord:	Shadrall Associates c/o Auburndale Properties, Inc. 372 Washington Street Wellesley, MA 02181

or to such other address as a party hereto shall have designated to the others by giving written notice thereof to such parties.

7. No Further Subordination. Landlord and Tenant covenant and agree with the Bank that there shall be no further subordination of the interest of lessee under the Lease to any lender or to any other party, other than the interest of the lessor under the Overleases described above, without first obtaining the prior written consent of the Bank. Any attempt to effect a further subordination of lessee's interest under the Lease without first obtaining the prior written consent of the Bank shall be null and void.

8. Insurance and Condemnation Proceeds. The Bank agrees that notwithstanding any term or provision to the contrary contained in the Security Deed or Assignment of Leases, the Bank will allow all insurance proceeds and all condemnation proceeds to be utilized for restoration of the Property following any casualty or condemnation unless the Lease is terminated as a result of such event. This paragraph shall not prevent the Bank from holding any such proceeds and disbursing the same for restoration purposes under terms reasonably necessary to assure proper application of the same.

9. Consent to Lease. The Bank hereby consents to the execution and delivery by the Landlord and the Tenant of this Lease and to the transactions described therein including, without limitation, any alterations and improvements to the Property which are made by the Tenant in accordance with the terms of the Lease.

10. As to Landlord and Tenant. As between Landlord and Tenant, Landlord and Tenant covenant and agree that nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Lease.

11. As to Landlord and Bank. As between Landlord and the Bank, Landlord and the Bank covenant and agree that nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Security Deed or the Assignment of Leases.

12. Titles of Paragraphs. The titles of the paragraphs of this agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this agreement.

13. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

14. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of the Bank, Tenant and Landlord. The reference contained to successors and assigns of Tenant is not intended to constitute and does not constitute a consent by Landlord or the Bank to an assignment by Tenant except as provided in the Lease.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals as of the day, month and year first above written.

THE FIRST NATIONAL BANK OF
BOSTON, a national banking
association

By: _____
Title: _____

TENANT

FLEMING COMPANIES, INC.

By: _____
Title: _____

LANDLORD:

SHADRALL ASSOCIATES
By: Shadrall Corp., a
Massachusetts corporation,
its managing general
partner

By: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 1993

Then personally appeared the above-named _____,
and acknowledged that [he] [she] is the [title of officer] of the
above-named [entity] and that [he] [she] executed this Agreement as

[his] [her] free act and deed and the free act and deed of such [entity], before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 1993

Then personally appeared the above-named and acknowledged that [he] [she] is the [title of officer] of the above-named [entity] and that [he] [she] executed this Agreement as [his] [her] free act and deed and the free act and deed of such [entity], before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 1993

Then personally appeared the above-named and acknowledged that [he] [she] is the [title of officer] of the above-named [entity] and that [he] [she] executed this Agreement as [his] [her] free act and deed and the free act and deed of such [entity], before me,

Notary Public
My Commission Expires:

EXHIBIT A - LEGAL DESCRIPTION

Lot 6, Block 4, Santa Fe Lands Plat, a subdivision in Kansas City, Wyandotte County, Kansas.

1136533

BOOK 3740 PAGE 718

FIRST AMENDMENT TO LEASE AND MEMORANDUM

This First Amendment to Lease and Memorandum is made and entered into this 28th day of January, 1995, by and between SHAD-RALL ASSOCIATES, a New York general partnership, 372 Washington Avenue, Wellesley, Massachusetts 02181 (the "Landlord") and FLEMING COMPANIES, INC, an Oklahoma corporation, 6301 Waterford Boulevard, Oklahoma City, Oklahoma 73126 (the "Tenant") with reference to the following:

(1) Landlord and Tenant are parties to a Lease dated September 20, 1993 (the "Lease"), covering certain real property located in Wyandotte County, Kansas, more particularly described on Exhibit A hereto, and the improvements thereon.

(ii) The Lease is evidenced by a Memorandum of Sublease between Landlord and Tenant dated September 24, 1993, filed in the office of the Register of Deeds of Wyandotte County, Kansas and recorded in Book 3642 beginning at Page 76 (the "Memorandum")

(iii) As contemplated by the Lease, the Tenant has acquired certain real property adjacent to the property described on Exhibit A hereto, which adjacent property is described on Exhibit B hereto (the "Adjacent Land"), constructed certain improvements on the Adjacent Land and conveyed the Adjacent Land and the improvements thereon to Landlord. The parties have agreed that the Adjacent Land and the improvements thereon shall be subjected to the terms of the Lease.

NOW THEREFORE, in consideration of the foregoing and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows.

1. Demised Premises The parties agree that the property covered by the Lease (identified as the "Demised Premises" in the Lease and identified as the "Property" in the memorandum) shall include, in addition to the property described therein, the Adjacent Land, together with all improvements thereon and appurtenances thereunto belonging. The rights and obligations of Landlord and Tenant with respect to such property shall be subject to all the terms, conditions and provisions of the Lease. The inclusion of such additional property as a portion of the premises covered by the Lease shall not affect the rent payable under Section 3.01(a) of the Lease

2. Lease The third paragraph of the Memorandum incorrectly identifies the Lease as being dated "September 17, 1993" and is hereby amended to revise the reference to the date of the Lease to be "September 20, 1993 "

BOOK 3740 FILE 719

3. Term. The last two sentences of Section 2.01(a) of the Lease are hereby deleted and the date "November 30, 2003" in the first sentence of such Section is hereby revised to "October 31, 2004." The first sentence of the second paragraph of the Memorandum is hereby amended to read, in its entirety, "To have and to hold the Property for a term commencing on December 1, 1993 and extending to October 31, 2004."

4. Ratification. Except as hereby modified the Lease and the Memorandum are hereby ratified and shall remain in full force and effect.

EXECUTED AND DELIVERED as of the day and year first above written.

SHADRALL ASSOCIATES, a New York general partnership

By: Shadrall Corp., a Massachusetts corporation, its Managing General Partner

By [Signature]
JAMES J. DEMISEY, Jr. President

FLEMING COMPANIES, INC., an Oklahoma corporation

By [Signature]
Gary Capshaw Vice President

STATE OF MASSACHUSETTS

COUNTY OF MIDDLESEX

)
) ss
)

This instrument was acknowledged before me on February 11, 1995, by James J. Demisey, Jr., as President of Shadrall Corp., a Massachusetts corporation as Managing General Partner of Shadrall Associates, a New York general partnership

[SEAL]

[Signature]
Notary Public
My commission expires. 9/13/2000

FRANK P CONRAD
Notary Public
My Commission Expires Sept 13 2000

WYANDOTTE COUNTY REAL ESTATE TAX STATEMENT FOR 2002 03/21/03

VOL. 38 **T.D.** 188 **BK** 6 **REFERENCE** 3796-7-17-1
ITEM NO. 258227-9 **TAX UNIT** 050 **STATE I.D.** 105-056-13-0-30-02-004-01-0

LOAN CO **ACCOUNT NO.**

PROPERTY DESCRIPTION
 SANTA FE LANDS PLAT
 B4 E 185FT L4

X DELOITTE & TOUCHE
 SHADRALL ASSOCIATES
 PO BOX 811280
 CHICAGO, IL 60681-1280

PAY ON-LINE AT WWW.WYCDCKCK.ORG

SPECIAL DETAIL	PAYOUT	AMOUNT
APPRAISED/ASSESSED VALUATIONS		
RES		TOTAL
OTHER		2122900
AGRI		530725
EXEMPT		1050000
TOTAL		1122900

TAXABLE VALUATION	TOTAL LEVY	GENERAL TAX
530725	180 0430	95553 32
SPECIALS		
ADVERTISING		
1ST YEAR INTEREST		
EXT AMOUNT		
EXT INTEREST		
TOTAL TAX DUE		

TAX LEVY BREAKDOWN	
STATE	796 08
CITY/TOWNSHIP	25965.72
JR COLLEGE	10177 71
SCHOOL	33250.47
COUNTY	19283 89
OTHER	6079 45
TOTAL	95553.32

237340

2001
2/15



SEE BACK FOR FURTHER INSTRUCTIONS

PLEASE ATTACH BOTTOM PORTION WITH PAYMENT. KEEP TOP PORTION FOR YOUR RECORDS.

WYANDOTTE COUNTY REAL ESTATE TAX STATEMENT FOR 2002 03/21/03

DUPLICATE

PARCEL 237340 **ITEM NO.** 258227 9 **LOAN CO.**
GENERAL TAX 95553 32
SPECIALS
ADVERTISING
1ST YEAR INTEREST
EXT AMOUNT
EXT INTEREST
TOTAL TAX DUE 95553 32



38 188 6 3796-7-17-1

X DELOITTE & TOUCHE
 SHADRALL ASSOCIATES
 PO BOX 811280
 CHICAGO, IL 60681-1280

UNIFIED GOVERNMENT TREASURY
 P.O. BOX 175013
 KANSAS CITY, KS 66117-5013

001237340200225822790000000000000477766600



WYANDOTTE COUNTY REAL ESTATE TAX STATEMENT FOR 2002 03/21/03

DUPLICATE

VOL 38 **T.D.** 188 **BK** 6 **REFERENCE** 3796-7-19 **LOAN CO.** **ACCOUNT NO**
ITEM NO. 258229-5 **TAX UNIT** 050 **STATE I.D.** 105-056-13-0-30-02-007-00-0

PROPERTY DESCRIPTION
 SANTA FE LANDS PLAT
 B4 L6

Z DELOITTE & TOUCHE
 SHADRALL ASSOCIATES
 PO BOX 811280
 CHICAGO, IL 60681-1280

PAY ON-LINE AT www.wycokck.org

SPECIAL DETAIL	PAYOUT	AMOUNT
APPRAISED/ASSESSED VALUATIONS		
RES		TOTAL
OTHER		8183800
AGRI		2045950
EXEMPT		
TOTAL		8183800

TAKABLE VALUATION	TOTAL LEVY	GENERAL TAX
2045950	180 0430	368358 98
SPECIALS		
ADVERTISING		
1ST YEAR INTEREST		
EXT AMOUNT		
EXT INTEREST		
TOTAL TAX DUE		368358 98

TAX LEVY BREAKDOWN	
STATE	3068 92
CITY/TOWNSHIP	100098.10
JR COLLEGE	39235 18
SCHOOL	128180 84
COUNTY	74339 59
OTHER	23436.35
TOTAL	368358 98

237318

2007
2150



SEE BACK FOR FURTHER INSTRUCTIONS
 ATTACH BOTTOM PORTION WITH PAYMENT. KEEP TOP PORTION FOR YOUR RECORDS.

WYANDOTTE COUNTY REAL ESTATE TAX STATEMENT FOR 2002 03/21/03

DUPLICATE

PARCEL 237318 **ITEM NO.** 258229-5 **LOAN CO**
GENERAL TAX 368358 98
SPECIALS
 ADVERTISING
 1ST YEAR INTEREST
 EXT AMOUNT
 EXT INTEREST
TOTAL TAX DUE 368358 98

38 LEV 6 3796-7-19

Z DELOITTE & TOUCHE
 SHADRALL ASSOCIATES
 PO BOX 811280
 CHICAGO, IL 60681-1280

UNIFIED GOVERNMENT TREASURY
 P O. BOX 175013
 KANSAS CITY, KS 66117-5013

001237318200225822950000000000001841794900000000009

TOTAL P 03

X-1 21

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Chapter 11

Fleming Companies, Inc , et al

Case No 03-10945 (MFW)

Debtors

Deadline file December 24, 2003 at 4 00 p m

Hearing date January 5, 2004 at 2 00 p m

ORDER

The Court, having considered the Motion of Order Under 11 U S C §§ 105, 365 (d)(3) and 503(b) Directing Debtors to Pay Unpaid Administrative Lease Obligations,

IT IS ORDERED that the attached Motion is approved and ordered to have the force of an order of this Court

THE HONORABLE MARY F WALRATH
Chief United States Bankruptcy Court Judge

Dated

CERTIFICATE OF SERVICE


I Michael F Duggan Esquire hereby certify that on December 16 2003 a copy of the attached was served upon to all parties on the service list attached and the following counsel via first class postage prepaid mail

Laura Davis Jones Esquire
Chris J Lhulier Esquire
Pachulski Stang Ziehl Young Jones & Weintraub P C
919 N Market Street 16th Floor
Wilmington DE 19801

Ira D Kharasch Esquire
Pachulski Stang Ziehl Young Jones & Weintraub P C
10100 Santa Monica Blvd #1100
Los Angeles CA 90067

Julie Compton Esquire
Office of the U S Trustee
Caleb Boggs Federal Building
44 N King Street Suite 2313
Lockbox 35
Wilmington DE 19801

Aaron A Garber Esquire
Pepper Hamilton LLP
1201 Market Street Suite 1600
P O Box 1709
Wilmington DE 19899 1709



MICHAEL F DUGGAN ESQUIRE (#3269)



Jay L. Margulies Esquire
Thelen Reid & Priest LLP
225 West Santa Clara Street Suite 1200
San Jose CA 95113

Bernard and Sons Inc
Dennis Bernard
P O Box 81797
Bakersfield CA 93380 1797

Bernard and Sons Inc
c/o Frame & Matsumoto
Ted R. Frame Esquire
P O Box 895
Coalinga CA 93210

U S Department of Agriculture
National Finance Center
P O Box 61770
New Orleans Louisiana 70161



Coca Cola Enterprises Inc
c/o Miller & Martin LLP
Attn Shelley D. Rucker
832 Georgia Avenue
Suite 1000
Chattanooga TN 37402 2289

Amy Pritchard Williams
Hearst Tower 47th Floor
214 North Tryon Street
Charlotte North Carolina 28202

Leslie Beth Baskin Esquire
SPECTOR GADON & ROSEN P C
1635 Market Street 7th Floor
Philadelphia PA 19103 3913

George M. Geeslin
3355 Lenox Road Suite 875
Atlanta Georgia 30326 1357

Fife M. Whiteside
Box 5383
Columbus Georgia 31906

Debra Taylor Lewis
Balch & Bingham, LLP
2 Dexter Avenue
Post Office Box 78
Montgomery Alabama 36101

Westwood Financial Corp
Randy Banchik
Bill Schinderman Esquire
11440 San Vicente Boulevard
Second Floor
Los Angeles CA 90049

William B. Freeman Esquire
Avisha A. Patel Esquire
Pillsbury Winthrop LLP
725 South Figueroa Street
Suite 2800
Los Angeles California 90017 5406

Cathy Touchet
P O Box 60757
Lafayette LA 70596

Patrick J. Keating Esquire
Buckingham, Doolittle & Burroughs LLP
P O Box 1500
Akron Ohio 44309 1500