

**SINGLE-TENANT
INDUSTRIAL GROSS LEASE**

By and Between:

**Fleming Companies, Inc,
an Oklahoma Corporation
as "Tenant"**

and

**Berendo Property ,
a California General Partnership
as "Landlord"**

SINGLE-TENANT INDUSTRIAL GROSS LEASE

ARTICLE ONE: BASIC TERMS

This Article One contains the Basic Terms of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. Date of Lease: March 14, 2000

Section 1.02. Landlord : Berendo Property , a California General Partnership

Address of Landlord: 8222 Melrose Avenue, Suite 202
Los Angeles, CA 90046

Section 1.03. Tenant: Fleming Companies, Inc., an Oklahoma Corporation

Address of Tenant: P.O. Box 26647
Oklahoma City, OK 73126-0647

Section 1.04. Property: The Property is part of Landlord's multi-tenant real property development known as 435 South 59th Avenue, Phoenix, Arizona and described or depicted in Exhibit "A" (the "Project"). The Project includes the land, the buildings and all other improvements located on the land. The Property is: The land and the approximately 472,949 square feet of improvements located thereon as depicted on Exhibit 'A'. The "Remaining Property" is all of the Project except the Property. In addition, the Tenant shall have non-exclusive access rights to the Remaining Property as provided in Section 5.06.

Section 1.05. Lease Term: 7 years and 5 months beginning on May 1, 2000 or such other date as is specified in this Lease, and ending on September 30, 2007.

Section 1.06. Permitted Uses: (See Article Five): Storage and distribution

Section 1.07. Tenant's Guarantor: None

Section 1.08. Brokers: (See Article Fourteen)

Landlord's Broker: None

Tenant's Broker: Cushman & Wakefield, Inc.; R. Leighton Fisk; 1850 North Central
Avenue, Phoenix, AZ 85018

Section 1.09. Commission Payable to Tenant's Broker: (See Article Fourteen) \$300,000

Section 1.10. Initial Security Deposit: None

Section 1.11. Common Areas: There will be no common areas shared with the Landlord or other tenants of the Project, except for the limited rights of Landlord and Tenant specified herein.

Section 1.12. Rent and Other Charges Payable by Tenant:

- (a) **BASE RENT:** One hundred five thousand and No/100ths Dollars (\$105,000.00*) per month for the first five (5) months, as provided in Section 3.01, and shall be increased on the first day of the sixth (6th) month after the Commencement Date, pursuant to Article Eighteen. (*Plus any applicable sales and/or rental taxes)
- (b) **OTHER PERIODIC PAYMENTS:** (i) Real Property Taxes above the "Base Real Property Taxes" (See Section 4.02); (ii) Utilities (See Section 4.03); (iii) Increased Insurance Premiums above "Base Premiums" (See Section 4.04); (iv) Maintenance, Repairs and Alterations (See Article Six).

Section 1.13. Costs and Charges Payable by Landlord: (a) Base Real Property Taxes and certain increases (See Section 4.02); (b) Base Insurance Premiums (See Section 4.04(c)); (c) Maintenance and Repair (See Article Six).

Section 1.14. Riders: The following Riders are attached to and made a part of this Lease: (if none, so state)

Exhibit "A" Site Plan

Exhibit "B" Landlord's Work

Exhibit "C" Tenant's Work

ARTICLE TWO: LEASE TERM

Section 2.01. Lease of Property For Lease Term. Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the period stated in Section 1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The "Commencement Date" shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.02 Delay in Commencement. Landlord shall be liable to Tenant if Landlord does not deliver possession of the Property to Tenant on the Commencement Date. If Landlord fails to deliver the Property to Tenant on that date as provided in this Lease, Tenant may give Landlord written notice of (a) intent to terminate this Lease if possession is not delivered within ten (10) days of such written notice or (b) election to delay the Commencement Date until Landlord delivers possession of the Property to Tenant. In the latter event the Lease Term shall be extended for a period equal to the delay in delivery of possession of the Property to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month. If the Tenant gives written notice of election to delay the Commencement Date and Landlord does not deliver possession of the Property to Tenant within sixty (60) days after the scheduled Commencement Date, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after the period ends. If Tenant gives such notice, the Lease shall be canceled and neither Landlord nor Tenant shall have any further obligations to the other. If Tenant does not give such notice,

Tenant's right to cancel the Lease shall expire and the Lease Term shall commence upon the delivery of possession of the Property to Tenant. If delivery of possession of the Property to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Commencement Date and expiration date of the Lease. Failure to execute such amendment shall not affect the actual Commencement Date and expiration date of the Lease.

Section 2.03. Early Occupancy. Upon the execution of this Lease, Landlord shall deliver possession of the Property to Tenant (which shall satisfy the delivery of possession as provided in Section 2.02). The delivery of possession shall be subject to all of the provisions of this Lease, but Tenant shall not be obligated to pay any Base Rent or Additional Rent for the period prior to the Commencement Date, nor shall such early possession change the commencement or termination dates applicable to this Lease.

Section 2.04. Holding Over. Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all actual direct damages that Landlord incurs from Tenant's delay in vacating the Property. Tenant shall have no liability for consequential damages arising from its delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant's occupancy of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased after 60 day grace period by twenty-five percent (25%).

ARTICLE THREE: BASE RENT

Section 3.01. Time and Manner of Payment. Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1. 12(a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing.

Section 3.02. Termination; Advance Payments. Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall refund or credit to Tenant (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR: OTHER CHARGES PAYABLE BY TENANT

Section 4.01. Additional Rent. All charges payable by Tenant to Landlord other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

Section 4.02. Property Taxes

- (a) Real Property Taxes. Landlord shall pay the Real Property Tax on the Property during the Lease Term. Subject to the provisions herein, beginning in 2002 and thereafter, the Tenant shall reimburse the Landlord for that portion of the Real Property Tax applicable to the

Property which exceed the "Base Real Property Tax." The "Base Real Property Tax" shall be the Real Property Tax applicable to the Property for 2001. The Real Property Tax applicable to the Property for 2001 shall be that portion of the Real Property Tax for the Project that is in the same proportion as the square feet of improvements that are on the Property bears to the square feet of improvements that are on the Project at the end of the tax year (presently 97.03%). This proportion shall be adjusted if, when and as the Real Property Tax applicable to the Project is modified to take into account improvements to the Remaining Property. Tenant shall have no liability for any increase in Real Property Tax attributable to any improvements to or uses of the Remaining Property. Tenant shall make such payments within fifteen (15) days after receipt of copies of the tax statements issued by the Maricopa County Assessor's office showing the amount and computation of such excess. Tenant shall have no liability for, and not be required to make any payment in respect of, any Real Property Tax covering any period of time prior to or after the Lease Term. If the Lease Term expires other than on a calendar year end, Tenant's liability shall be pro rated on an annual basis.

- (a) Definition of "Real Property Tax." "Real property tax" means: (I) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, or tax imposed by any taxing authority against the Property; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Property; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Real property tax" does not, however, include Landlord's federal, state, or local income, franchise, inheritance or estate taxes. Tenant shall have no liability for any penalty, fine, charge, interest, or additional amount due as a result of Landlord's failure to pay real property taxes when required by law.

- (b) Personal Property Taxes.

- (i) Landlord shall not be liable for any taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall use reasonable efforts to cause its personal property to be taxed separately from the Property.

- (ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

Section 4.03. Utilities. Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. Upon occupancy of or improvements to any of the Remaining Property, such services or utilities shall not be jointly metered with other property and Landlord, at its expense, shall provided separate metering for the Property.

Section 4.04. Insurance Policies.

- (a) **Liability Insurance.** During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be One Million Dollars (\$1,000,000) per occurrence and shall be subject to reasonably periodic increases based upon inflation, increased liability awards, recommendation of Landlord's professional insurance advisers and other relevant factors. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability endorsements; and (iii) may be effected through blanket policies carried by Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.
- (b) **Property and Rental Income Insurance.** During the Lease Term, Landlord, at its sole expense, shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall have the right to obtain flood and earthquake insurance if required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall not do or permit anything to be done on the Property that invalidates any such insurance policies. Upon the execution of this Lease, Landlord shall deliver to Tenant a certificate of insurance and such other evidence of the existence of the insurance coverage required of Landlord as Tenant may reasonably request.
- (c) **Payment of Premiums.**

(i) Landlord shall pay the "Base Premiums" for the insurance policies maintained by Landlord under Paragraph 4.04(b). The Base Premiums are the annual premiums obtained for the required insurance for the Property as of the Commencement Date after giving effect to Tenant's occupancy and intended use of the Property.

(ii) Tenant shall pay Landlord the amount, if any, by which the insurance premiums for all policies maintained by Landlord under Paragraph 4.04(b) increase over the Base Premiums, whether such increases result from the nature of Tenant's occupancy, any act or omission of Tenant, the increased value of the Property or general rate increases. Tenant shall have no liability for any increase in Base Premiums attributable to any improvements to or uses of the Remaining Property. However, if Landlord increases the amount of insurance carried or the percentage of insured value after the period during which the Base Premiums were calculated, Tenant shall only pay Landlord the amount of increased premiums

which would have been charged by the insurance carrier if the amount of insurance or percentage of insured value had not been increased by Landlord. Tenant shall pay Landlord the increases over the Base Premiums for which Tenant is liable under this Lease within fifteen (15) days after receipt by Tenant of a copy of the premium statement or other evidence of the amount due. If the insurance policies maintained by Landlord cover improvements or real property other than the Property, Landlord shall also deliver to Tenant a statement of the amount of the premiums applicable to the Property showing, in reasonable detail, how such amount was computed. If the Lease Term expires before the expiration of the insurance period, Tenant's liability shall be pro rated on an annual basis. If at any time during the term of this Lease Tenant is able to provide the insurance coverage required by Section 4.04(b) under Tenant's blanket policies, Tenant may elect to provide such coverage and Landlord shall pay to Tenant an amount equal to the Base Premiums within 15 days after receipt by Landlord of a copy evidence of the cost to Tenant of such coverage; provided however, that any such election by the Tenant shall be subject to such blanket policies satisfying all of the following conditions: (i) the policy provisions shall include the coverage, deductibles, exclusions and co-insurance requirements consistent with the policy provided by the Landlord; (ii) the blanket policy shall satisfy the terms, conditions and requirements of any lender to the Tenant whose loan is secured, in whole or in part, by the Property; and (iii) the blanket policy shall either include such other insurance provided by the Landlord with respect to the Property or such other insurance is available to the Landlord through other policies, with a net cost to the Landlord equal to or less than that which existed prior to the election by the Tenant to provide blanket policies.

(d) General Insurance Provisions.

(i) Any insurance that a party is required to maintain under this Lease shall include a the carrier's commitment to give the other party not less than thirty (30) days written notice prior to any cancellation or modification of such coverage.

(ii) If a party fails to provide evidence of any insurance coverage that the party is required to carry during the Lease Term, the other party may obtain such insurance. In such event, the party failing to provide the evidence shall reimburse the other for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A- 1 2 or better, as set forth in the most current issue of "Best Key Rating Guide". Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in Section 4.04(b) is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to maintain the insurance required under Section 4.04(a), Tenant shall nevertheless maintain insurance coverage that is customary and commercially reasonable in the insurance industry for Tenant's type of business on the Property, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance that Tenant deems necessary to protect Landlord and Tenant.

(iv) Landlord and Tenant each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of such other party, for any loss or damage to such waiving party arising from

any cause covered by any insurance required to be carried by such party pursuant to this Article 4 or any other insurance actually carried by such party to the extent of the limits of such policy. Landlord and Tenant from time to time will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all insurance policies carried in connection with this Lease.

Section 4.05 Late Charges. Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, Tenant shall pay Landlord a late charge of \$500. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Landlord's acceptance of the late charge will constitute a waiver of all other rights and remedies arising from such late payment of rent; provided that the payment of the late charge is clearly designated as such and then only to such late payment.

Section 4.06 Interest on Past Due Obligations. Any amount owed by Tenant to Landlord which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

ARTICLE FIVE: USE OF PROPERTY

Section 5.01. Permitted Uses. Tenant may use the Property only for the Permitted Uses set forth in Section 1.06, above.

Section 5.02. Manner of Use. Tenant shall not cause or permit the Property to be used in any way that constitutes a violation of any law, ordinance, or governmental regulation or order, annoys or interferes with the rights of tenants of the Project, or constitutes a nuisance or waste.

Section 5.03. Hazardous Materials. As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Material to be brought upon or used or stored on the Property except in compliance with all applicable laws and regulations. Tenant shall not cause or permit any Hazardous Material to be generated, produced, treated or disposed of on the Property by Tenant, its agents, employees, contractors, subleases or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account such other factors or facts as Landlord may reasonably determine to be relevant in determining whether to grant or withhold

consent to Tenant's proposed activity with respect to Hazardous Material. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks on the Property.

Section 5.04. Signs and Auctions. Tenant may place any signs on the Property that relate to or are beneficial to its use of the Property without Landlord's prior written consent, provided that the costs of such signs are paid entirely by the Tenant and all such signs fully comply with the requirements of any governmental entity having jurisdiction over the same. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property.

Section 5.05. Indemnity. Except for any injury or damage to persons or property on the Property that is proximately caused by or results proximately from the negligence or willful misconduct of Landlord, its employees, or agents, and subject to the provisions of Sections 4.04(d)(iv), Tenant will indemnify and hold harmless Landlord, its employees, and agents from and against, any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from any injury or damage to the person, property, or business of Tenant, its employees, agents, contractors, or invitees occurring on the Property. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any reasonable out-of-pocket legal fees and costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's negligence or willful misconduct.

Section 5.06. Mutual Access: The Tenant shall have exclusive possession of the Property, while the Landlord retains exclusive possession of the Remaining Property. However, notwithstanding such possession, the Landlord and Tenant shall each be entitled to limited access to the Property and the Remaining Property as provided herein:

- (a) Landlord's Access. Landlord or its agents may enter the Property at all reasonable times to:
 - (i) show the Property to potential buyers, investors or tenants or other parties;
 - (ii) do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material;
 - (iii) during the last six months of the term of this Lease, place customary "For Sale" or "For Lease" signs on the Property;
 - (iv) to complete any obligations of the Landlord for the maintenance of the foundation, roof or structural portions of the Property as specified in Section 6.03, or repair or modification required under Articles Seven or Eight;
 - or (v) address utility and governmental needs for the Property or the Remaining Property, including the construction, reconstruction, maintenance, of utility services to the Property or the Remaining Property, provide access for emergency vehicles as may be necessary to comply with governmental rules or regulations. Landlord shall have no access to the Property in connection with the construction of any improvements to the Remaining Property. Tenant, at its expense, may erect fences and other barriers to entry to the Property.

- (b) **Tenant's Access.** Correspondingly, the Tenant shall have reasonable access to the Remaining Property to (i) complete any obligations of the Tenant for the maintenance of the Property or security for the Property; or (ii) address utility and governmental needs for the Property including the construction, reconstruction, maintenance, of utility services to the Property or provide access for emergency vehicles as may be necessary to comply with governmental rules or regulations.
- (c) **Conditions to Access.** The party desiring access hereunder shall give the other party reasonable prior notice of such entry, except in the case of an emergency. Such party shall use, and shall cause its agents to use, reasonable efforts to minimize the disruption of the other's business. Any access to the Property shall be subject to Tenant's security rules and procedures (including, without limitation, searches of vehicles, packages, and persons) in effect from time to time during the term of this Lease.

Section 5.07. Quiet Possession. If Tenant pays the rent and complies with all other terms of this Lease, Landlord covenants and agrees with Tenant that Tenant may peaceably and quietly enjoy the premises subject, and Tenant's possession will not be disturbed by anyone claiming by, through, or under Landlord.

ARTICLE SIX: CONDITION OF PROPERTY, MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.01. Existing Conditions.

- (a) As is. The Buildings on the Property were constructed in approximately 1974. They include improvements such as racking that are materially beneficial to the Tenant. However, because of the date of construction, the state of the improvements and changes in practical and legal requirements since construction and limited information available to the Landlord concerning the status of the improvements, the Landlord has proposed and the Tenant has agreed to accept the Property as is, without warranties as to the improvements being in compliance with building codes, zoning ordinances and other laws and regulations, including but not limited to those relating to human health and safety. The foregoing notwithstanding, at any time during the term of this Lease Landlord shall be responsible for bringing the Property into compliance with all applicable laws, regulations, ordinances, codes, covenants, and restrictions as the same exist as of the date of this Lease, other than the Federal Americans with Disabilities Act, but including, but not limited to, those relating to human health and the environment (collectively, "Applicable Laws"). Landlord represents and warrants to Tenant that: (i) to the best of Landlord's knowledge there are no lawsuits or other legal proceeds pending or threatened relating in any way to the Property; (ii) Landlord has good, marketable and indefeasible fee simple title to the Property (including, without limitation, the racking); and (iii) the Landlord has not been cited for nor received notice of violations of any federal, state or local laws, ordinances or regulations concerning the condition or operation of the Property. Landlord shall indemnify and hold Tenant harmless from and against any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from any noncompliance of the Property with Applicable Laws. Notwithstanding the foregoing, the Landlord shall not be obligated to indemnify the Tenant against nor pay the expenses, if any

there be, for the modification, maintenance or repair of the Property to comply with the federal, state or local laws, ordinances or regulations that are not applicable to warehouse space in general, but apply to the Property because of laws peculiar to the operation of the warehouse for food storage, processing, sale or other similar use, special cleaning, fire protection or insurance issues.

Landlord has provided Tenant with a written report as to certain Hazardous Materials conditions created by a prior user of the Property, which includes proposed remediation of such conditions. Landlord is and shall continue to be obligated to complete such remediation and shall hold Tenant harmless from any and all obligations concerning the same. Moreover, while at present such Hazardous Materials conditions and anticipated remediation are not likely to materially interfere with or impair Tenant's use of the Property and the conduct of Tenant's business on the Property, if, at any time, such Hazardous Materials conditions or any remediation work materially interferes with the Tenant's use of the Property and/or conduct of its business on the Property, at such time and continuing until such material interference is eliminated, it shall be treated the same as Damage to the Property as provided in Article Seven, including rights to abatement and/or termination of the Lease, depending upon the severity of the interference.

- (b) Subject to Landlord's representations and warranties in Section 6.01(a) and Landlord's performance of its covenants in Section 6.01(a) and subject to Landlord's completion of Landlord's Work identified in Article Sixteen, Tenant accepts the Property in its condition as of the execution of the Lease, subject to all laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto, except as stated in this Lease.

Section 6.03. Landlord's Obligations. Subject to the provisions of Article Seven (Damage or Destruction) and Article Eight (Condemnation), and except for damage caused by any negligence or willful misconduct of Tenant, or Tenant's employees, agents, contractors or invitees, Landlord shall keep the foundation, roof and structural portions of the Property in good order, condition and repair. However, Landlord shall not be obligated to maintain or repair windows, doors, plate glass or the surfaces of walls unless the need for maintenance or repair arises from the negligence or willful misconduct of Landlord or its employees, agents, contractors, or invitees. Landlord shall not be obligated to make any repairs under this Section 6.03 until a reasonable time after receipt of a written notice from Tenant of the need for such repairs. Landlord shall also be responsible to maintain the exterior asphalt and driveways in good condition, including periodic seal-coat and repair of faults.

Section 6.04. Tenant's Obligations.

- (a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including interior, systems and equipment and the parking lot) in good order, condition and repair (including interior

repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term. In addition, Tenant shall, at Tenant's expense, repair any damage to the roof, foundation or structural portions of walls caused by Tenant's negligence or willful misconduct.

- (b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04, Landlord may, upon ten (10) days prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all reasonable out-of-pocket costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.05. Alterations, Additions, and Improvements.

- (a) Other than Tenant's Work identified in Article Seventeen and Exhibit "C" to which Landlord hereby consents and the construction of fences and other barriers contemplated by Section 5.06(a), Tenant shall not make any other alterations, additions, or improvements to the Property without Landlord's prior written consent (which Landlord shall not unreasonably withhold), except for non-structural alterations that do not exceed Fifty Thousand Dollars (\$50,000) in cost and that are not visible from the outside of any building on the Property. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount reasonably satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6.05(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.
- (b) Tenant shall pay when due all claims for labor and material furnished to the Property pursuant to a contract with Tenant. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06. Condition upon Termination. Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and tear, damage from casualty or condemnation, and any unperformed obligations of Landlord. In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent), other than the Tenant's Work identified in Article Seventeen and Exhibit "C" and any fences or other barriers constructed pursuant to Section 5.06(a), prior to the expiration of the Lease and to restore the Property to its prior condition, ordinary wear and tear, damage from casualty or condemnation, and any unperformed obligations of Landlord excepted, all at Tenant's expense. All alterations, additions and improvements that Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the

Lease, except that Tenant may remove any of Tenant's machinery , equipment and trade fixtures that can be removed without material and unrepairable damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

ARTICLE SEVEN: DAMAGE OR DESTRUCTION

Section 7.01. Partial Damage to Property.

- (a) Tenant shall notify Landlord in writing immediately upon the occurrence of any material damage to the Property of which Tenant becomes aware. If less than fifty percent (50%) of the Property is untenable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.
- (b) If the insurance proceeds received by Landlord plus the amount of the deductible under Landlord's policies are not sufficient to pay the entire cost of repair or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Paragraph 4.04(b), Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Landlord shall promptly commence and diligently complete the repair and rent shall abate proportionately to that portion of the Property (on a square foot of improvements basis) that is not reasonably useable by the Tenant from the date of the damage until substantial completion of the repairs. If Landlord elects to terminate the Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Property and Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice. If Landlord elects to terminate the Lease and Tenant does not elect to repair the Property, this Lease shall terminate as of the date of the damage, rent shall be prorated as of such date, and Tenant shall have a reasonable period of time to vacate the Property.
- (c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage. Upon such termination, rent

shall be prorated as of such date of termination, and Tenant shall have a reasonable period of time to vacate the Property.

Section 7.02. Substantial or Total Destruction. If more than 50% of the Property becomes untenantable as a result of damage to the Property, and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred, rent shall be prorated as of such date, and Tenant shall have a reasonable period of time to vacate the Property. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect, Landlord shall promptly commence and diligently complete the repair at Landlord's expense and rent shall abate proportionately to that portion of the Property (on a square foot of improvements basis) that is not reasonably useable by the Tenant from the date of the damage until substantial completion of the repairs. Landlord shall notify Tenant of such election within thirty (30) days after Tenant's notice of the occurrence of total or substantial destruction.

Section 7.03. Temporary Reduction of Rent. Except for the abatement of rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property.

ARTICLE EIGHT- CONDEMNATION

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE: ASSIGNMENT AND SUBLETTING

Section 9.01. Landlord's Consent Not Required. Tenant may assign this Lease or sublease all or any portion of the Property without Landlord's consent. Promptly after any assignment or subletting, Tenant shall provide Landlord with a copy of the executed assignment or sublease.

Section 9.03. No Release of Tenant. No transfer permitted by this Article Nine shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Subsequent assignments or modifications of this Lease by Tenant's transferee shall not relieve Tenant's liability under this Lease.

ARTICLE TEN: DEFAULTS; REMEDIES

Section 10.01. Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. Defaults. Each of the following occurrences shall constitute an "Event of Default" after the Landlord has given the applicable written notice of default and the Tenant has failed to cure the default within the applicable time specified under this Section 10.02 (a-c):

- (a) Tenant's failure to pay Base Rent or Additional Rent when due, which failure remains uncured for ten (10) days after Landlord has delivered written notice thereof;
- (b) Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease, which failure remains uncured for a period of thirty (30) days after Landlord delivers to Tenant written notice thereof and provided further that if such failure cannot reasonably be cured within such thirty (30) day period, the length of such period shall be extended for the period reasonably required if Tenant commences to cure such failure within such thirty (30) day period and continues to take action to cure such failure with reasonable diligence and continuity; or
- (c) Tenant's becoming the subject of any bankruptcy or other insolvency proceeding without the proceeding being dismissed within 90 days after filing.

Section 10.03. Remedies. Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any of the following actions:

- (a) Terminate this Lease by giving Tenant written notice thereof, in which event, Tenant shall pay to Landlord the sum of (i) all rent accrued hereunder through the date of termination and (ii) an amount equal to (A) the total Base Rent that Tenant would have been required to pay for the remainder of the term (without consideration of unexercised rights to renew) discounted to present value at a per annum rate equal to the prime rate published on the last

business day prior to the date of termination as the “prime rate” in *The Wall Street Journal*, minus (B) the then present net fair rental value of the Property (net of expenses that would be incurred to relet the Property, such as rental commissions, rental concessions, necessary alterations or improvements) for such period, similarly discounted.

- (b) Terminate Tenant's right to possession of the Premises without terminating this Lease by giving written notice thereof to Tenant in which event Tenant shall pay to Landlord (i) all Rent accrued hereunder through the date of termination of possession and (ii) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period. To the extent required by law, Landlord shall use reasonable efforts to relet the Premises on such terms and conditions as Landlord in its sole discretion may determine (including a term different from the term provided herein, rental concessions, and alterations to, and improvement of, the Premises). Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of Landlord's failure, after reasonable efforts to do so, to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired term; rather, Landlord may, from time to time, bring action against Tenant to collect amounts due by Tenant without the necessity of Landlord's waiting until the expiration of the term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to exclude or dispossess Tenant of the Premises shall be deemed to be taken under this section. If Landlord elects to proceed under this section, it may at any time thereafter elect to terminate this Lease.

Section 10.06. Cumulative Remedies. Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

ARTICLE ELEVEN: PROTECTION OF LENDERS

Section 11.01. Subordination. Landlord has borrowed approximately \$3,700,000 and granted a deed of trust against the Property to the lender to secure the repayment of such loan (the “Existing Lien”). Landlord shall have the right to further subordinate this Lease to any future ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded (collectively, with the Existing Lien, a “Prior Lien”). Such subordination shall be subject to Tenant’s receipt from the holder of the Prior Lien a Subordination and Non-Disturbance Agreement (an “SNDA”) that if Tenant shall have performed and shall continue to perform all of Tenant’s obligations under this Lease and no Event of Default shall have occurred, (i) the rights of Tenant under the Lease shall remain in full force and effect and its possession of the Property thereunder shall remain undisturbed during the term of the Lease and any renewals thereof pursuant to the Lease in accordance with the terms of the Lease, and (ii) insurance proceeds and condemnation award arising from casualty to or taking of the Property shall be available for restoration of the Property as provided in the Lease. Moreover, the Landlord shall have the obligation to obtain and deliver to the Tenant an SNDA from the beneficiary of the deed of trust securing the Existing Lien, within fourteen days of the execution of this Lease. The

failure to timely deliver such agreement shall constitute grounds for termination of this Lease on not less than 10 days written notice. It is the intent of the parties that any such SNDA shall be binding upon any purchaser of the Property in any foreclosure or any transferee of the Property in lieu of any such foreclosure. Tenant shall cooperate with Landlord and any lender acquiring a security interest in the Property or the Lease. Tenant shall execute such further documents and assurances as such lender may reasonably require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Property during the Lease Term shall not be disturbed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Section 11.02. Attornment. If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease.

Section 11.04. Estoppel Certificates.

- (a) Upon a party's written request, the other party shall execute, acknowledge and deliver to the requesting party a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of the Base Rent and Additional Rent and the time period covered by such payment; (iv) that no Event of Default exists (or, if an Event of Default is claimed, stating why); and (v) such other representations or information with respect to the parties or the Lease as may be reasonably requested or which any prospective purchaser or encumbrancer of the Property or the leasehold may reasonably require. Such statement shall be delivered to the requesting party within twenty (20) days after receipt of the request. A party may give any such statement to any prospective purchaser or encumbrancer of the Property or the leasehold. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

ARTICLE TWELVE: LEGAL COSTS

Section 12.01. Legal Proceedings. In any action between Landlord and Tenant to protect or enforce rights under this Lease, the prevailing party will be entitled to an award of its reasonable attorneys' fees and costs.

Section 12.02. Landlord's Consent. Tenant shall pay Landlord's reasonable attorneys fees incurred in connection with Tenant's request for Landlord's consent under this Lease.

ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13.02. Landlord's Liability; Certain Duties.

- (a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or Project or the leasehold estate under a ground lease of the Property or Project at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.
- (b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) -day period and thereafter diligently pursued to completion.
- (c) Notwithstanding any term or provision here into the contrary the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property and the Project, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.03. Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.04. Interpretation. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Property with Tenant's expressed or implied permission.

Section 13.05. Incorporation of Prior Agreements; Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06. Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by FedEx or other national overnight courier. Notices to Tenant shall be delivered to the Property and to the address specified in Section 1.03 above. Notices to Landlord shall be delivered to the address specified

in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. Waivers. All waivers must be in writing and signed by the waiving party. A party's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent the party from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08. No Recordation. Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. Binding Effect; Choice of Law. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.11. Joint and Several Liability. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

Section 13.12. Force Majeure. If a party cannot perform any of its obligations (except for payment obligations hereunder) due to events beyond its control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. A party's financial condition is not a condition beyond its control.

Section 13.13. Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. Survival. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

Section 13.14. Landlord's Lien. Landlord hereby waives, disclaims, and releases any lien, claim, security interest, or other encumbrance on Tenant's trade fixtures, product, and other personal property in, on or about the Property. Within 20 days after written request by Tenant, Landlord shall execute and deliver to Tenant a written confirmation of the foregoing waiver of rights in Tenant's personal property.

ARTICLE FOURTEEN: BROKERS

Section 14.01. Broker's Fee. When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Tenant's Broker named in Section 1.08 above, in the sum stated in Section 1.09 above for all services rendered to Tenant by Tenant's Broker in this transaction. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Tenant's Broker. In no event shall Tenant have any liability for any commission or fee to any party.

Section 14.02. Agency Disclosure; No Other Brokers. Landlord and Tenant each warrant that they have dealt with no other real estate broker(s) in connection with this transaction except: Cushman & Wakefield, Inc., who represents the Tenant.

ARTICLE FIFTEEN: COMPLIANCE

Tenant's occupancy of the Property shall comply with all applicable federal, state, and local laws, regulations, codes, ordinances, and administrative orders.

ARTICLE SIXTEEN: LANDLORD'S WORK

Landlord will provide certain improvements to the property outlined in and at the times specified on Exhibit "B" at Landlord's sole cost and expense ("Landlord's Work"). The Landlord's Work shall be done in a good and workmanlike manner, in conformity with all applicable laws, regulations, codes, and ordinances, with new materials and by the contractor which has been approved by Tenant. Tenant's acceptance of possession of the Property shall not be deemed acceptance of Landlord's Work as performed in accordance with the foregoing requirement.

ARTICLE SEVENTEEN: TENANT'S WORK

Tenant may perform certain improvements to the Property outlined in Exhibit "C" at Tenant's sole cost and expense ("Tenant's Work"). A portion of Tenant's Work is the repair and start-up of the perishable HVAC equipment (the "Perishable Equipment") used to operate the freezer and cooler portions of the Property. Tenant may contract for directly all required repairs, maintenance and upgrades to the Perishable Equipment to bring the perishable areas into operating condition (the "Perishable Equipment Repairs"). Tenant shall pay directly contractors and materialmen and obtain necessary lien releases in form and amount reasonably satisfactory to Landlord.

Upon completion of the Perishable Equipment Repairs, Tenant shall provide Landlord with copies of all invoices paid by Tenant in connection with Perishable Equipment Repairs and a request for reimbursement (the "PER Reimbursement Notice"). Landlord shall, within thirty (30) days of receipt of the PER Reimbursement Notice reimburse Tenant for actual cost of repairs (the "Perishable Equipment Repair Reimbursement"). Landlord's obligation to make the Perishable Equipment Repair Reimbursement shall be limited to a maximum of One Million Dollars (\$1,000,000) and any costs over this limit shall be borne by Tenant and to a reimbursement requested on or before December 31, 2000. The Perishable Equipment Repairs shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, and Tenant shall provide Landlord copies of all specifications and 'As-Built' drawings of the repairs. If and to the extent that the

PER Reimbursement Notice submitted by Tenant exceeds the sum of One Hundred Fifty Thousand Dollars, (the excess to be referred to as the "Rent Adjustment Amount"), it shall constitute Tenant's exercise of Option 1 under Article Nineteen and the Base Rent Charge shall be increased each month (the "PER Increase") by the product of the Rent Adjustment Amount and the "Rent Adjustment Factor." The PER Increase shall be paid each month during the ten (10) year period beginning October 1, 2000 and extending to September 30, 2010. The PER Increase shall be in addition to the Base Rent provided in Article Eighteen and Article Nineteen (for the first 3 year Option period). The Rent Adjustment Factor is the factor which amortizes an amount of principal in equal monthly installments over a ten (10) year period at 11% per annum and consists of the following percentage: 1.3775%.

ARTICLE EIGHTEEN: BASE RENT CHANGE

\$130,000* per month for October 1, 2000 through September 30, 2005

\$149,500* per month for October 1, 2005 through September 30, 2007

*plus any applicable sales and/or rental taxes.

ARTICLE NINETEEN: OPTION

Landlord grants Tenant two 3-year options to renew this Lease. Provided no Event of Default exists, Tenant may exercise each option by giving Landlord written notice of such exercise not less than six (6) months prior to the end of the then current term. In the renewal terms the base rent will increase as follows:

Option 1 - October 1, 2007 through September 30, 2010 - Base Rent \$158,500* per month

Option 2 - October 1, 2010 through September 30, 2013 - Base Rent \$172,765* per month

*Plus any applicable sales and/or rental taxes.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders and Exhibits which are attached to or incorporated by reference in this Lease.

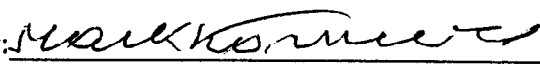
"LANDLORD"

Berendo Property, a California General Partnership

By:  _____

David Hagar

Its: General Partner

By:  _____

Mark Kornwasser

Its: General Partner

Signed on March 16, 2000
At Los Angeles, California

"TENANT"

Fleming Companies, Inc., an Oklahoma Corporation

By: Ron J. [Signature]
Its: VP Logistics
MN 3/14/00

Signed on 3/14, 2000
At: OK Sheraton Office

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

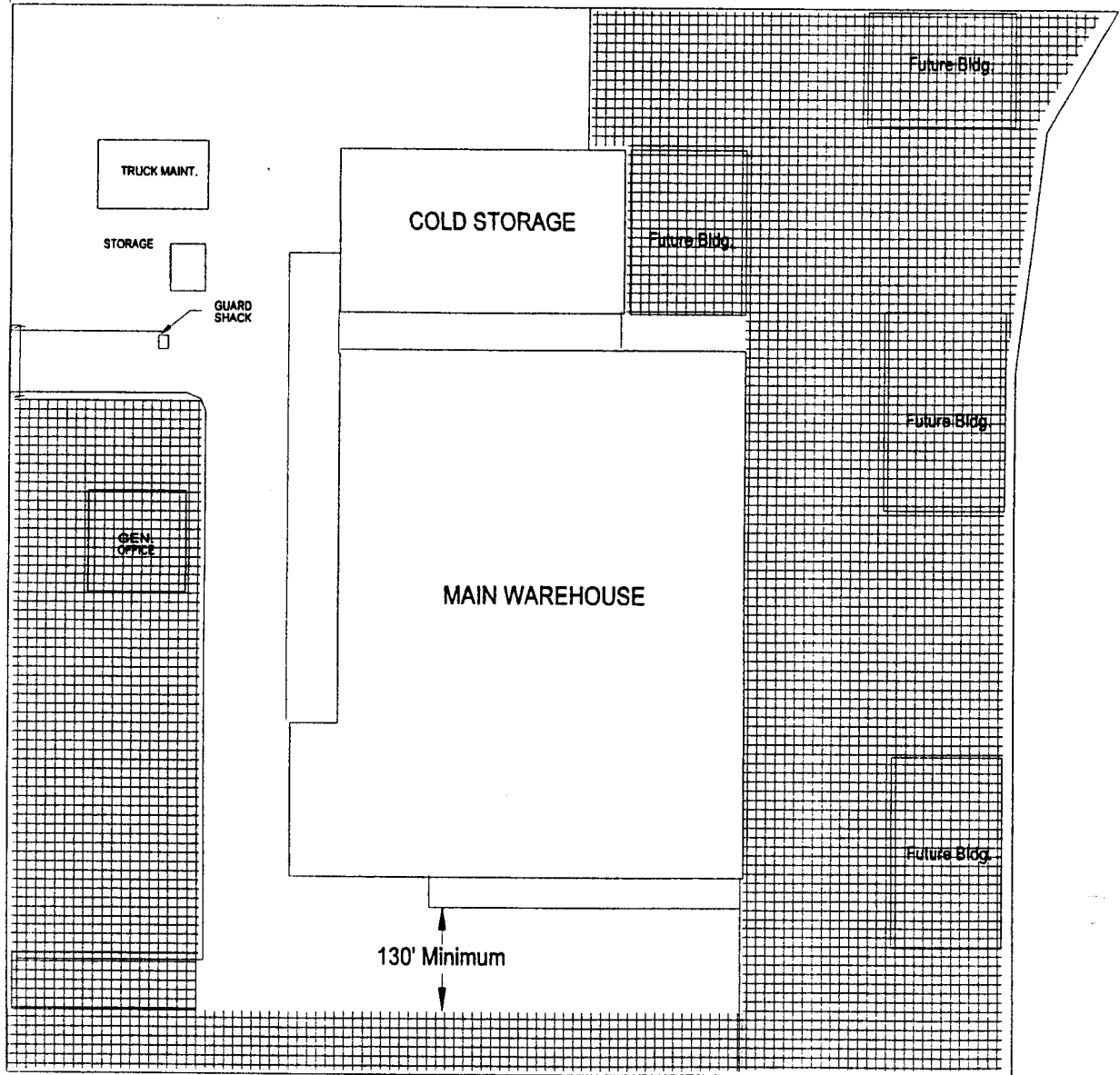
Exhibit 'A' Site Plan

59TH AVENUE

VAN BUREN STREET



= Areas excluded from Lessee's "Property"



4
N

Lessor's "Project"

EXHIBIT 'B'
"Landlord's Work"

Prior to the commencement of the Lease, Landlord shall complete, at Landlord's sole expense, the following improvements to the Property:

FIRE PROTECTION

- 1) Install new fire extinguishers to comply with NFPA and Factory Mutual standards;
- 2) Remove all fire hoses leaving the hose valves for possible Fire Department use;
- 3) All fire sprinkler systems and backflow prevention valves will be tested and certified by a licensed fire protection contractor;
- 4) Install and certify a tamper and water flow alarm system to all of the sprinkler system of the facility. The system will provide for on-site alarming and central station monitoring to comply with Factory Mutual Standards. Tenant shall be responsible for the cost of ongoing monitoring following installation of the system;

DOCK AND DOOR EQUIPMENT

- 5) Bring all dock lights into operable condition;
- 6) Service, inspect and repair all dock levelers to bring the levelers to operable condition;
- 7) Check and repair as necessary all overhead doors;
- 8) Inspect and modify all building openings and doorways to pest-proof the facility;

CONCRETE AND ASPHALT

- 9) Repair concrete floor inside the warehouses to prevent damage to forklift and pallet jack wheels (primarily in the Southeast corner of the warehouse);
- 10) Remove the trailer ramp at the west dock area;
- 11) Repair existing faults in the site asphalt and seal-coat the driveways and site asphalt;
- 12) Repaint the striping on the interior and exterior concrete and asphalt;

HVAC

- 13) Check and service, making all necessary repairs, to all ventilation and air conditioning equipment at the Property (excluding equipment servicing the perishable foods space);

OTHER REPAIRS

- 14) Repair all lighting as necessary;
- 15) Repair the roof to provide complete weather protection;
- 16) Perform an infrared scan of all major electrical panels while electrical systems are in operation. Repair any identified hot spots;
- 17) Alleviate the pigeon infestation;
- 18) Check and repair all plumbing systems;
- 19) Re-key all locks with master and grand master keys;
- 20) Enclose the rail dock between the main building and perishable building; and
- 21) Make any additional repairs to the building systems and to any of the items identified in this Exhibit C which are not caused by Fleming's negligence within the first 90 days of occupancy.

The foregoing repairs shall be made by reputable contractors licensed in the State of Arizona.

EXHIBIT 'C'

"Tenant's Work"

Landlord hereby consents to performance of the following Tenant's Work, which shall be completed by Tenant:

- 1) Install new wheel chocks at each dock position;
- 2) Install any internal separations needed for aerosols, vegetable oils, liquor, cigarettes, etc. within the warehouse;
- 3) Repair any damaged racking;
- 4) Install an intercom system in the warehouse areas;
- 5) Install a KRONOS time clock system with modem(s);
- 6) Perform all required telecommunication systems installations to suit Tenant's needs;
- 7) Replace any missing 2 X 4's for pallet supports;
- 8) Tag all internal racking;
- 9) Adjust load beam height as needed;
- 10) Install any site or building signage needed by Tenant, provided that such signage is in accordance with all laws and ordinances, and is permitted by the governing municipality;
- 11) Make any other non-structural repairs and additions to the Property needed by Tenant to accommodate its use;
- 12) Make any needed repairs to perishable cooling equipment and systems and start-up the perishable systems as needed;
- 13) Check and repair as necessary insulated dock curtains, and walk-through doors;
- 14) Remove any refrigerants identified as ozone-depleting by the EPA, replacing same with approved long-term replacement refrigerants; and
- 15) Service, clean and make all necessary repairs to cooling towers.

The foregoing work shall be performed by Tenant or Tenant's licensed contractors at Tenant's sole expense, provided however that Tenant shall have the right to receive the Perishable Equipment Repair Reimbursement applicable to items 12 through 15 above, as outlined in Article Seventeen of the Lease.