

FACILITY STANDBY AGREEMENT

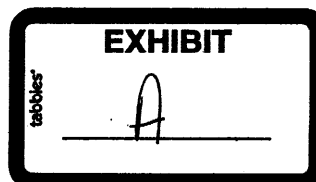
THIS FACILITY STAND BY AGREEMENT (the "Agreement") is made as of the 4th day of April, 2000, (the "Effective Date"), by FLEMING COMPANIES, INC., an Oklahoma corporation ("Fleming"), and BENJAMIN KIMBALL, a sole proprietor d/b/a KIMBALL'S SUPER FOODS ("Retailer"), with reference to the following circumstances:

- (i) Fleming is a full-line wholesale supplier of food, grocery, and related products through its product supply center at 10 East Memorial Road, Oklahoma City, Oklahoma, and other locations; and
- (ii) Retailer is a retailer of food, grocery, and related products and operates a retail grocery store at 812 South Dallas Highway, Talihina, Oklahoma (the "Store"); and
- (iii) Retailer contemplates acquiring and/or developing additional retail grocery stores from time to time during the term of this Agreement and desires that the additional stores be subject to this Agreement; and
- (iv) By a concurrent transaction, Fleming has made a loan to Retailer; and
- (v) Retailer has requested that Fleming be prepared to supply to Retailer a certain amount of food, grocery, and related products, and to be able to do so Fleming will have to commit certain resources, including capital, employees, inventory, equipment, and facilities; and
- (vi) Retailer acknowledges that but for Retailer's covenants and agreements in this Agreement, Fleming would not have agreed to commit its resources for the benefit of Retailer, entered into this Agreement, and/or made the loan to Retailer.

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

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

-1-



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

3. (a) Amount. By entering into this Agreement, Fleming has committed to devote such capital, employees, inventory, equipment, and facilities as are required to supply Retailer with the quantity of Products necessary for Retailer to maintain the minimum Teamwork Score (defined in Section 3(b) hereof) for the term of this Agreement. Fleming is willing to so commit such resources because of the return it will realized from sale of Products in the quantities necessary for Retailer to meet the minimum Teamwork Score during the term of this Agreement.

(b) Teamwork Score. The "Teamwork Score" will be determined by dividing the amount of purchases of all Products sold to Retailer by Fleming for the Store by Retailer's total retail sales for the Store. The Teamwork Score will be calculated by Fleming and written notice thereof shall be given to Retailer within a reasonable time after the expiration of each Period during the term of this Agreement. Retailer shall provide to Fleming on a timely basis such information, including total retail sales, to enable Fleming to make the calculation contemplated by this provision. The minimum Teamwork Score for each year of this Agreement shall be sixty percent (60%). For internal accounting purposes, Fleming divides the year into thirteen (13) periods, each containing four weeks. A "Period", for purposes of this Agreement, means any of such periods, as reasonably established by Fleming for accounting purposes from time to time. The term "Fiscal Year" shall herein mean a year comprised of the thirteen (13) periods ending on the last Saturday in December in each such year. The term "Anniversary Year" shall mean a year beginning on the Effective Date, and on each anniversary of the Effective Date after the first year of this Agreement and ending exactly one year later.

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

4. **Term.** Unless terminated sooner in accordance with this Agreement, the term of this Agreement will commence on the date hereof and will extend until the date which is five (5) years following the date hereof; at the end of such term, this Agreement will automatically be extended for additional one (1) year terms until terminated on an anniversary date by either party on six (6) months' prior written notice; provided however, such termination by Retailer shall not occur until (i) Retailer is no longer obligated under any agreement with Fleming, or any affiliate of Fleming; and (ii) all of Retailer's financial obligations to Fleming, and all affiliates of Fleming, have been fully paid and satisfied; provided further, however, in no event will the term of this Agreement extend beyond twenty (20) years from the date hereof.

5. **Default.**

(a) **Default by Retailer.** If Retailer fails to perform in any material respect any of its obligations under this Agreement, then Retailer shall be in default and Fleming shall have all rights and remedies available under law, including, without limitation, the right to immediately stop shipment of Products, the right to immediately terminate this Agreement by written notice, and the right of specific enforcement of the obligations of Retailer. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Retailer shall have five (5) days from receipt of the notice of termination from Fleming within which to cure the monetary default. Fleming shall not be obligated to ship any Products to Retailer during such five days. Fleming's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Fleming. In no event whatsoever shall Retailer be liable to Fleming for, and Fleming waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), unless such limitation, under the circumstances, is unconscionable or violates public policy.

(b) **Default by Fleming.** If Fleming fails to perform in any material respect any of its obligations under this Agreement, then Fleming shall be in default and Retailer shall have the right to immediately terminate this Agreement by written notice and pursue all remedies available under this Agreement or law by reason of such default, including, without limitation, specific enforcement of the obligations of Fleming. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Fleming shall have five (5) days from receipt of the notice of termination from Retailer within which to cure the monetary default. Retailer's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Retailer. In no event whatsoever shall Fleming be liable to Retailer for, and Retailer waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), unless such limitation, under the circumstances, is unconscionable or violates public policy.

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

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

The parties hereby WAIVE THE RIGHT TO SEEK OR RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES unless, the arbitrator(s) or a court of competent jurisdiction determines that this limitation, under the circumstances, is unconscionable or violates public policy.

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

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

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

8. **Right of First Refusal.** Subject to the written consent of Fleming as may be required under any other agreement between Fleming and Retailer, (including without limitation, under any security agreement or lease/sublease between Fleming or its affiliate and Retailer), in the event Retailer desires to lease/sublease and/or sell, assign or otherwise transfer, other than in the ordinary course of its business, (a) all or any part of its Assets, or (b) any Equity Owner desires to sell, assign or otherwise transfer in excess of fifty percent (50%) of an Equity Interest in Retailer or otherwise transfer in excess of fifty

percent (50%) of the ownership or control of Retailer and in the event Retailer/Equity Owner shall have received a bona fide offer for such lease/sublease and/or sale, Retailer/Equity Owner shall promptly notify Fleming in writing of such offer. The notice shall state the name and address of the proposed lessee/sublessee and/or purchaser and the terms of the proposed lease/sublease or sale, including the price and manner and time of payment and other terms and conditions of such proposed lease/sublease or sale and shall be accompanied by a complete copy of the offer. Within thirty (30) days after receipt of such notice, Fleming may elect to lease/sublease and/or purchase as the case may be, the Assets or the Equity Interest, which is the subject of such offer, upon the terms and conditions as are contained in the offer by providing Retailer/Equity Owner with a written notice of election to lease/sublease and/or purchase. Retailer/Equity Owner shall thereupon lease/sublease and/or sell as the case may be, the Assets or Equity Interest to Fleming upon the same terms and conditions as are contained in the offer from such third party, except that in the event of a sale of the Assets or Equity Interest, Retailer/Equity Owner agrees that it shall be bound to comply with the applicable laws in the State of Oklahoma, to pay or otherwise satisfy any and all claims, liens, taxes and encumbrances in connection therewith and to deliver to Fleming good and marketable title for the Assets or Equity Interest being conveyed to Fleming.

In the event such offer is not accepted by Fleming within thirty (30) days from the date of delivery of the notice of the written offer and provided the written consent of Fleming as required by any lease/sublease or other agreement between Fleming and Retailer has been given, Retailer shall have the right for a period of ninety (90) days to lease/sublease or sell, as the case may be, the Assets or Equity Interest in Retailer to the third party specified in the written notice at a price not less than and upon terms and conditions no more favorable than offered to Fleming. If the proposed sale or lease/sublease is not consummated within such ninety (90) day period, the Assets and Equity Interest in Retailer shall again become subject to the restrictions of this right of first refusal. Notwithstanding the foregoing, nothing herein shall be construed as allowing Retailer to lease/sublease any store premises or transfer any leasehold interest therein through an assignment or otherwise, without the prior written consent of Fleming if any store premises are being leased/subleased by Retailer from Fleming or its affiliates. Furthermore, in order to preserve Fleming's right of first refusal in the Equity Interest, each Equity Owner shall, contemporaneously with the execution of this Agreement, provide evidence to Fleming that the following restrictive legend has been conspicuously stated on the face of all certificates of stock or other similar type documents evidencing the Equity Interest in Retailer:

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

Notwithstanding anything contained in this Agreement to the contrary, the right of first refusal granted hereunder shall not apply to any proposed transfer to an immediate family member of Retailer, which would otherwise be covered by this Paragraph. The provisions of this Paragraph 8 shall survive any termination of this Agreement unless Fleming specifically terminates such right of first refusal in writing. Furthermore, Fleming may assign this right of first refusal to any person or entity independent of or with any assignment of this Agreement.

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

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

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

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

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

(a) Notices to Fleming:

Fleming Companies, Inc.
10 East Memorial Road
P.O. Box 26028
Oklahoma City, Oklahoma 73126
Attn: Division President

With copies to:

Fleming Companies, Inc.
6301 Waterford Boulevard
Oklahoma City, Oklahoma 73118
Attn: Associate General Counsel

(b) Notices to Retailer:

Kimball's Super Foods
812 South Dallas Highway
Talihina, Oklahoma 74571
Attn: Mr. Benjamin Kimball

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

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

15: Miscellaneous.

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

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

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

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

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

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

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

(h) **Limitation of Actions.** An action for breach of this Agreement must be commenced within two (2) years after the cause of action has accrued by sending the other party a statement of claim and demand for arbitration. A cause of action is accrued when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(i) **Cross Default.** Any material breach of this Agreement by Retailer will be deemed to be a breach of any and all other agreements by and between Retailer and Fleming and its affiliates, whether now in existence or hereafter entered into, including, with limitation, any and all lease agreements, franchises, licenses, sublease agreements, promissory notes, loan agreements, security agreements, deeds of trust, leasehold deeds of trust, and pledge agreements. Upon breach of any of the agreements referenced in the preceding sentence, Fleming may pursue all remedies legally available

to it under those other agreements, including, without limitation, terminating those agreements, accelerating Retailer's obligations pursuant to those agreements, seeking monetary damages, and seeking equitable relief.

(j) Force Majeure. Fleming shall not be deemed in default of this Agreement if Fleming's non-performance is the result of a condition beyond Fleming's control," including, but not limited to, labor strikes, government rationing or other regulations, flood, fuel shortages, earthquake, acts of God, drought, and other weather conditions.

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

(l) Partial Invalidity. Should any clause or provision of this Agreement be determined to be invalid, void or unenforceable for any reason, such invalid, void or unenforceable clause or provision shall not affect the balance of this Agreement, but such balance of this Agreement shall remain in full force and effect.

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

"Additional Stores" means additional retail grocery stores acquired or developed by Retailer during the term of this Agreement.

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

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

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

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

"Equity Interest" means, in the case of a corporation, the voting capital preferred or common stock or other voting security of the corporation, and in the case of a limited liability company or partnership, any membership, partnership, or other economic interest in the entity.

"Equity Owner" means any person or entity owning any Equity Interest in Retailer.

"Initial Term" shall have the meaning stated in Section 4 of this Agreement.

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

"Period" means any of the 13 four-week periods into which Fleming divides each calendar year for Fleming's internal accounting purposes.

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

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

FLEMING COMPANIES, INC., an Oklahoma corporation

By _____
"FLEMING"

KIMBALL'S SUPER FOODS, a Sole Proprietorship

By _____
Benjamin Kimball, Sole Proprietor
"RETAILER"