

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re: : Chapter 11
FLEMING COMPANIES, INC., et al. : Case No. 03-10945 (MFW)
Debtors. : Jointly Administered
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: :
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re. 2917, 3253, & 3294

**SECOND SUPPLEMENTAL ORDER APPROVING ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS
AND UNEXPIRED LEASES TO PURCHASER OR ITS DESIGNEES
AS OF SEPTEMBER 4, 2003**

Upon the motion¹ (the "Sale Motion") dated July 11, 2003 of Fleming Companies, Inc., Fleming Transportation Service, Inc., Piggly Wiggly Company, RFS Marketing Services, Inc., Fleming International, Ltd., Fleming Foods of Texas, L.P., and Fleming Foods Management Co., LLC (collectively, the "Selling Debtors"), seven of the above-captioned debtors and debtors in possession (collectively, the "Debtors")² in the above-captioned cases, for entry of an order, under sections 105(a), 363(b), (J), and (m), 364, 365, and 1146(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (A) approving the asset purchase agreement (as amended, the "APA") by and among the Selling Debtors, C&S Acquisition LLC, as Purchaser (including

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined herein) and the Sale Motion, and to the extent of any inconsistency, the APA shall govern.

² The Debtors are the following entities: Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASJ Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

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any affiliated assignee or designee of such company, the "Purchaser") and C&S Wholesale Grocers, Inc. ("C&S"), and such other agreements to be entered into among the parties thereto as contemplated therein, (B) authorizing (i) the sale (the "Sale") of substantially all of the Selling Debtors' assets and business operations relating to their Wholesale Distribution Business and certain other assets designated in the APA (the "Acquired Assets") free and clear of all liens, claims, Encumbrances, Offset Rights, and Interests (except the Permitted Encumbrances and Assumed Liabilities under the APA), pursuant to and as described in the APA to Purchaser, any Purchaser Assignee or any Third Party Purchaser (as such terms are defined therein), as the case may be, and (ii) the assumption and assignment to Purchaser, any Purchaser Assignee or any Third Party Purchaser, as the case may be, of executory contracts and unexpired leases under sections 365(a) and (f) of the Bankruptcy Code both as of the Initial Closing Date and during the Option Period, and (C) granting related relief; and upon the Order of this Court dated July 18, 2003, approving the bidding procedures in connection with the Sale and notice of the hearing with respect to the Sale (the "Bidding Procedures Order"); and upon the Order of this Court dated August 15, 2003 approving the APA and the Sale (the "Sale Order"), and upon the Order of this Court dated August 19, 2003 approving the assumption and assignment of the Purchaser Initial Acquired Contracts as defined therein; and upon the record made at the hearing held before this Court with respect to relief sought in the Sale Motion in connection with assumption and assignment of certain Acquired Contracts on September 4, 2003 (the "Assumption and Assignment Hearing"), including the relevant pleadings, the evidence proffered or adduced and arguments of counsel; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned as of September 4, 2003 to Purchaser or any Purchaser Assignee and set forth on

Exhibit A attached hereto (the "Purchaser Acquired Contracts"); and it appearing from the affidavits of service filed with the Court that due and sufficient notice of the Sale Motion, the Initial Assignment List (as defined in the Bidding Procedures Order) and the relief granted by this Order, have been provided to all parties affected thereby; and it further appearing that no other or further notice hereof is required; and upon the Court record of these cases; and it appearing that the relief requested in the Sale Motion regarding the assumption and assignment of the Purchaser Acquired Contracts is in the best interests of the Selling Debtors, their estates, creditors, and other parties-in-interest; and after due deliberation and good and sufficient cause appearing therefor, this Court hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6006(d), the parties may consummate the assumption and assignment of the Purchaser Acquired Contracts immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Assumption and Assignment Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the extent not inconsistent herewith.

finds that there is no just reason for delay in the implementation of this Order

C. The statutory predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code, as complemented by Rules 2002, 6006(a) and (c) and 9014 of the Bankruptcy Rules.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the assumption and assignment of the Purchaser Acquired Contracts.

Notice of the Assumption and Assignment

E. As evidenced by the affidavits of service previously filed with this Court, (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the Assumption and Assignment Hearing and the assumption and assignment of the Purchaser Acquired Contracts has been provided in accordance with sections 102(1) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6006, and 9014 and, to the extent applicable, in substantial compliance with the Bidding Procedures Order.

F. Actual written notice of the Assumption and Assignment Hearing, the Sale Motion, and the assumption and assignment of the Purchaser Acquired Contracts and a reasonable opportunity to object or be heard with respect to the Sale Motion and the assumption and assignment of the Purchaser Acquired Contracts has been afforded to all interested persons and entities, including, but not limited to: (i) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (ii) counsel to the Agents for the Debtors' pre-petition lenders and post-petition lenders; (iii) counsel to Purchaser; (iv) all non-debtor counterparties to the Purchaser Acquired Contracts; (v) counsel to the United States Trustee; (vi) any entity that has

filed a notice of appearance and demand for service of papers in these bankruptcy cases pursuant to Bankruptcy Rule 2002; and (vii) all parties holding Liens against the Selling Debtors' estates.

G. In accordance with the provisions of the Bidding Procedures Order and the hearing held on July 17, 2003, the Debtors served the Initial Assignment List (as defined in the Bidding Procedures Order) upon each non-debtor counterparty to a Purchaser Acquired Contract set forth thereon, and the Debtors have further provided notice of the continuance until the Assumption and Assignment Hearing of the motion to assume and assign any such Purchaser Acquired Contract. With respect to any Purchaser Acquired Contract not included on such Initial Assignment List, the Debtors have served upon each non-debtor counterparty to such Purchaser Acquired Contract, in accordance with applicable provisions of the Bankruptcy Code, appropriate and adequate notice of the Debtors' intent to assume and assign each such Purchaser Acquired Contract at the Assumption and Assignment Hearing. In each case, the service of such notice, in connection with service of the Original Cure Notice (as defined in the Sale Order), the Supplemental Cure Notice (as defined in the Sale Order), notice of the Sale Motion, notice of the Assumption and Assignment Hearing and, with respect to counterparties of Purchaser Acquired Contracts that had not been served the Original Cure Notice or the Supplemental Cure Notice, other notice regarding Cure Amount served by the Debtors on the counterparties to such Acquired Contracts, was good and sufficient and appropriate under the circumstances and no further notice need be given in respect of the assumption and assignment of the Purchaser Acquired Contracts. Such non-debtor counterparties have had an opportunity to object to the assumption and assignment of their respective Purchaser Acquired Contracts, including without limitation the cure amounts due and adequate assurance of future performance in respect thereof.

II. Based on the findings set forth in paragraphs E through G above, such notice was

good and sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Initial Assignment List, the Assumption and Assignment Hearing or the assumption and assignment of the Purchaser Acquired Contracts shall be required.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Sale Motion with respect to the assumption and assignment of the Purchaser Acquired Contracts is granted and approved to the extent provided herein, and the assumption and assignments contemplated thereby are hereby approved to the extent provided herein.
2. Attached hereto as Exhibit A is a schedule setting forth the Purchaser Acquired Contracts that the Selling Debtors are authorized to assume and assign to Purchaser (or its applicable affiliated designee as set forth on Exhibit A) as of September 4, 2003.
3. The Selling Debtors and Purchaser have cured or have provided adequate assurance of a prompt cure of, all defaults arising under the Purchaser Acquired Contracts that are required to be cured by section 365(b)(1)(A) of the Bankruptcy Code (after giving effect to section 365(b)(2) of the Bankruptcy Code).
4. As to each Purchaser Acquired Contract noted thereon, Exhibit A also sets forth the amount payable under section 365(b)(1)(B) of the Bankruptcy Code (the "Cure Amount") for such Purchaser Acquired Contract in the column headed "Cure Amount". As to all specified Cure Amounts, Purchaser shall pay, or cause to be paid from Purchaser's allocable portion of the Cure Escrow, the applicable Cure Amount by September 18, 2003. Paragraphs 15, 16 and 17 of the Sale Order regarding Cure Amounts are hereby incorporated by reference as if fully set forth herein. The provisions of this paragraph 4 satisfy the requirements under section 365(b)(1)(B) of

the Bankruptcy Code that the Selling Debtors compensate or provide adequate assurance of prompt compensation for any defaults as to each of the Purchaser Acquired Contracts. The non-debtor parties to the Purchaser Acquired Contracts shall not be entitled to any further or additional compensation other than as provided in this paragraph 4 on account of defaults under their respective Purchaser Acquired Contracts accruing, arising or otherwise relating to the period prior to September 4, 2003.

5. With respect to each Purchaser Acquired Contract, the Purchaser or its designee, as the case may be, has provided adequate assurance of future performance under such Purchaser Acquired Contract pursuant to Section 365(b)(1)(C) of the Bankruptcy Code in that, among other things (x) Purchaser's affiliates have a long history of successful operations in the wholesale distribution business, (y) Purchaser has provided a guarantee for the payment and performance obligations of all its subsidiaries that are the assignees of Purchaser Acquired Contracts and (z) Purchaser and the other affiliated assignees demonstrated sufficient operating cash flow to meet obligations under the Purchaser Acquired Contracts.

6. All objections to the assumption and assignment of the Purchaser Acquired Contracts listed on Exhibit A that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits, provided that Cure Amount objections shall be preserved as provided in paragraph 4 above.

7. With respect to those Acquired Contracts being assigned to a Third Party Purchaser, none of C&S, Purchaser or any of their affiliates shall have any liability or obligations, and the Third Party Purchaser who is the assignee of such Acquired Contract shall be the sole party responsible for the liabilities and obligations under such Acquired Contract arising or relating to the period from and after the effective date of such assignment to such

Third Party Purchaser.

8. Any provision restricting the assignment of or the effectiveness of any Purchaser Acquired Contract shall be null, void and of no force and effect in connection with the assignment to Purchaser or any of its designees, including without limitation, the following provisions:

(i) any provision of any Purchaser Acquired Contract or any agreement ancillary thereto that purports to prohibit, condition, or otherwise restrict the assignment by the Selling Debtors to Purchaser or its designees;

(ii) any provision of any Purchaser Acquired Contract or agreement ancillary thereto that permits the landlord at any time after closing to declare a default, terminate, modify, or cancel the lease, increase the payments or obligations thereunder (including without limitation, increasing the rent), exercise a right (whether based in law, equity, or otherwise) of recapture or termination, require the payment of any fee, impose any penalty, prevent the assignee from exercising any renewal options, seek damages, or seek other relief by reason of (a) the assignment of the lease to Purchaser or its designee(s) or (b) a change of control of the Selling Debtors;

(iii) any provision of any Purchaser Acquired Contract or agreement ancillary thereto that purports to terminate or modify the applicable agreement (including without limitation, by increasing the rental obligations) if any of the Selling Debtors cease to be a party to such agreement; or

(iv) any provision that requires a payment to any entity, including without limitation, the non-debtor party, as a result of, as a condition to, or relating to the transfer or assignment of such agreement.

9. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall have no liability under any Purchaser Acquired Contract (that has not been deferred or revoked) following September 4, 2003 and each non-debtor party to a Purchaser Acquired Contract is hereby barred and permanently enjoined from asserting against Debtors or their successors any default, claim or liability existing, accrued, arising or relating to a period after September 4, 2003.

10. Each non-debtor party to a Purchaser Acquired Contract is hereby barred and permanently enjoined from asserting against C&S, Purchaser or any designee any default, claim or liability existing, accrued, arising or relating to a period prior to September 4, 2003.

11. The failure (if any) of the Selling Debtors or C&S, Purchaser, or any designee to enforce at any time one or more terms or conditions of any Purchaser Acquired Contract shall not be a waiver of such terms or conditions, or of any of the rights of any such party to enforce each and every term and condition of such Purchaser Acquired Contract.

12. Unless and until, and except to the extent, actually assumed and assigned to Purchaser or any designee none of C&S, Purchaser or any of its designees shall have any liability under any Acquired Contract, including any Purchaser Acquired Contract.

13. This Court retains jurisdiction, even after the closing of these chapter 11 cases, to:
- (a) interpret, implement and enforce the terms and provisions of this Order;
 - (b) enter orders in aid or furtherance of the assumption and assignment of the Purchaser Acquired Contracts;
 - (c) compel delivery of all Purchaser Acquired Contracts to Purchaser or the applicable designee noted on Exhibit A;
 - (d) adjudicate any and all remaining issues concerning the Selling Debtors'

right and authority to assume and assign the Purchaser Acquired Contracts and the rights and obligations of C&S, Purchaser, or any designee with respect to such assignment and the existence of any default under any such Purchaser Acquired Contract;

- (c) adjudicate any and all issues and/or disputes relating to the Debtors' right, title or interest in the Purchaser Acquired Contracts and the proceeds thereof; and
- (l) re-open the Debtors' chapter 11 case to enforce the provisions of this Order.

14. This Order shall be effective immediately upon entry and Bankruptcy Rule 6006(d) shall not apply.

15. The provisions of this Order are non-severable and mutually dependent.

Dated: Wilmington, Delaware
September 4, 2003


UNITED STATES BANKRUPTCY JUDGE

Exhibit A to Second Supplemental Sale Order

Purchaser Acquired Contracts

C&S Logistics of Sacramento/Tracy LLC

| MASTER TYPE | CONTRACT NUMBER | LEASE ID | CREDITOR NAME | DESCRIPTION | CURE AMOUNT |
|-------------|-----------------|----------|------------------------|----------------------------|-------------|
| | ←333→ | | Save Mart Supermarkets | Facility Standby Agreement | \$0.00 |

NOT INCLUDED

C&S Acquisition LLC

| MASTER TYPE | CONTRACT NUMBER | LEASE ID | CREDITOR NAME | DESCRIPTION | CURE AMOUNT |
|-------------|-----------------|----------|---|----------------------------|-------------|
| FSA | 2386 | | PJ Hawaii, LLC | Facility Standby Agreement | \$0.00 |
| FSA | 4593 | | Jerry's Foodland | Facility Standby Agreement | \$0.00 |
| FSA | 4372 | | Big Save Value Centers, Ltd. | Facility Standby Agreement | \$0.00 |
| FSA | 4323 | | Berry Joe, Inc. dba Foods Etc. | Facility Standby Agreement | \$0.00 |
| FSA | 1993 | | Drug Emporium | Facility Standby Agreement | \$0.00 |
| FSA | 1995 | | Food World, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2013 | | DMLS, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2025 | | Northgate Market II, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2032 | | Leonard & Barbara Whitney | Facility Standby Agreement | \$0.00 |
| FSA | 2033 | | Leonard & Barbara Whitney | Facility Standby Agreement | \$0.00 |
| FSA | 2034 | | Leonard Whitney Company dba Food 4 Less | Facility Standby Agreement | \$0.00 |
| FSA | 2036 | | Don Gardner | Facility Standby Agreement | \$0.00 |
| FSA | 2039 | | Big John's Food King, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2045 | | Berry, Joe Corporation | Facility Standby Agreement | \$0.00 |
| FSA | 2056 | | Kaybrands, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2077 | | Il Porte, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2053 | | Rebrmart Foods, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2111 | | PRS Company, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2187 | | Just Pepper, LLC | Facility Standby Agreement | \$0.00 |
| FSA | 2200 | | Northgate Market, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2208 | | Rubco Foods, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2224 | | West Pac Pacific Foods | Facility Standby Agreement | \$0.00 |
| FSA | 2249 | | McBride & Shaw, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2262 | | Stille Company | Facility Standby Agreement | \$0.00 |

| FSA | 2269 | PAQ, Inc. | Facility Standby Agreement | \$0.00 |
|-----|------|--|----------------------------|--------|
| FSA | 2311 | United Markets Incorporated | Facility Standby Agreement | \$0.00 |
| FSA | 2316 | Two C's, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2347 | Petaluma Market Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 2357 | Rebello Brothers Inc | Facility Standby Agreement | \$0.00 |
| FSA | 2352 | John P. Worlton and Susan Worlton | Facility Standby Agreement | \$0.00 |
| FSA | 2363 | Livingston Liberty Market, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 4655 | L&V, Inc. dba Vic's IGA | Facility Standby Agreement | \$0.00 |
| FSA | 4711 | DeHoff Enterprises, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 4811 | Howe, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 4992 | Strickler Enterprises | Facility Standby Agreement | \$0.00 |
| FSA | 5085 | Webber Group, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 5098 | Marin Scotty's Market | Facility Standby Agreement | \$0.00 |
| FSA | 5105 | Vic's Land Park IGA | Facility Standby Agreement | \$0.00 |
| FSA | 5158 | Molsberry Markets, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 5236 | Pittsburg Wholesale Grocers, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 5253 | White Foods, Inc. | Facility Standby Agreement | \$0.00 |
| FSA | 4596 | JJ Foods, LLC | Facility Standby Agreement | \$0.00 |
| FSA | 4657 | RELM Corporation dba Gresham Food 4 Less | Facility Standby Agreement | \$0.00 |
| FSA | 5197 | Richmar, Inc. | Facility Standby Agreement | \$0.00 |

C&S RE LLC

| MASTER TYPE | CONTRACT NUMBER | LEASE ID | CREDITOR NAME | DESCRIPTION | CURE AMOUNT |
|-------------|-----------------|----------|---|------------------------|-------------|
| REAL ESTATE | 6445 | CA-012 | Castroville Station Shopping Center | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6762 | CA-244 | John K. Sheehan | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6355 | CA-005 | McCall Village Investors | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6441 | CA-006 | Cameo Homes | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6541 | CA-031 | Eastland Plaza | Real Estate: Lessor | \$7,727.66 |
| REAL ESTATE | 6959 | CA-014 | Mevin S. Spears, Trustee of the Elizabeth | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 7255 | CA-100 | William E. Palton | Real Estate: Lessor | \$5,909.50 |
| REAL ESTATE | 7208 | HI-005 | Unicoid Corporation | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6518 | CA-115.a | Deuxe Foods of Aptos, Inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 6786 | CA-014.a | L & V Incorporated | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 6941 | CA-031.a | PAQ, Inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 7072 | CA-008.a | S.P.D. Market, Inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 7195 | CA-100.a | Tom and Panny Honer | Real Estate: Sublessee | \$0.00 |

| | | | | | |
|-------------|------|----------|-------------------------|------------------------|--------|
| REAL ESTATE | 6687 | CA-021 | Harnel Plaza Associates | Real Estate: Lessor | \$0.00 |
| REAL ESTATE | 6689 | CA-021 a | Fairway Stores, Inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 6688 | CA-012 a | Fairway Stores, Inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 6674 | CA-244 a | Grocery One, inc. | Real Estate: Sublessee | \$0.00 |
| REAL ESTATE | 6808 | CA-006 a | Lowe Corporation | Real Estate: Sublessee | \$0.00 |