

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
FLEMING COMPANIES, INC., <u>et al.</u> ,) C.A. No. 03-10945 (MFW)
) (Jointly Administered)
)
Debtors.) Objection Deadline: July 28, 2003
) Hearing Date: August 4, 2003 @ 11:30 a.m.
) Related Docket No. 1906 and 2002

PLANVIEW, INC.'S LIMITED OBJECTION TO DEBTORS' (1) NOTICE AND SUPPLEMENTAL NOTICE RE POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE MOTION, (2) MOTION FOR ORDER (A) APPROVING ASSET PURCHASE AGREEMENT WITH C&S WHOLESALE GROCERS, INC. AND C&S ACQUISITION, L.L.C., AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS AND UNEXPIRED LEASES, AND (3) PROPOSED CURE AMOUNT

PlanView, Inc. ("PlanView"), a creditor and party of interest of Fleming Companies, Inc. ("Fleming"), and/or Core-Mark International, Inc., ABCO Food Group, Inc., ABCO Markets, Inc., ABCO Realty Corp., ASI 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., (collectively, "Debtors"), by and through its undersigned counsel, hereby files this its Limited Objection to Debtors' (1) Notice and Supplemental Notice Re Potential Assumption and Assignment of

Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion, (2) Motion for Order (A) Approving Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition, L.L.C., and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (3) Proposed Cure Amount (the “Objection”), and, in support thereof, would respectfully show unto the Court the following:

A. PROCEDURAL BACKGROUND

1. On or about April 1, 2003 (the “Filing Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “Bankruptcy Code”).

2. On or about July 7, 2003, the Debtors filed their Motion for Order (A) Approving Bidding Procedures and Bid Protection in Connection with the Sale of the Wholesale Distribution Business, (B) Approving Assignment Procedures for Affected Executory Contracts and Unexpired Leases, (C) Approving the Form and Manner of Notice, and (D) Setting Sale Hearing Dates (the “Bid Procedures Motion”). On or about July 11, 2003, the Debtors filed their Motion for Order (A) Approving Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition LLC, (B) Authorizing (I) Sale of Substantially All of Selling Debtors’ Assets Relating to the Wholesale Distribution Business to Purchaser or Its Designee(s) or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases and (C) Granting Related Relief (the “Sale Motion”). Pursuant to the Sale Motion, the Debtors are seeking authority to sell substantially all of their assets to C&S Acquisition, L.L.C. (“Purchaser”), a subsidiary of C&S Wholesale Grocers or its

designee ("C&S"), or any other successful bidder at the auction ("Other Purchaser"). The Debtors have entered into an Asset Purchase Agreement with Purchaser (the "Asset Purchase Agreement").

3. On or about July 18, 2003, this Court signed that certain Order (A) Approving Bidding Procedures and Bid Protection in Connection with the Sale of the Wholesale Distribution Business, (B) Approving Assignment Procedures for Affected Executory Contracts and Unexpired Leases, (C) Approving the Form and Manner of Notice, and (D) Setting Sale Hearing Dates (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, the Debtors have sent a Notice and Supplemental Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion (the "Cure Amount Notice"). The Debtors have alleged that the proposed cure amount with respect to PlanView, Inc. ("PlanView") is \$0.00 (the "Debtors' Cure Amount").¹ The Debtors have identified the Software License Agreement (as hereinafter defined) with PlanView as Contract No. 1180.

4. The Bidding Procedures Order and the Cure Amount Notice provide that any objections to the Debtors' Cure Amount must be received before 4:00 p.m. (Eastern Time) on July 28, 2003. Accordingly, this Objection is timely filed.

5. The Cure Amount Notice provides, *inter alia*, that the Debtor shall serve their Initial Assignment List indicating which contracts it will seek to assign to the Purchaser or Other Purchaser on the Initial Closing Date. PlanView does not know whether the Software License Agreement (as hereinafter defined) will be listed on the Initial Assignment List. Although PlanView does not know whether the Debtors intend to assume or assign the Software License

¹ Notably, the vast majority of the contracts are listed with \$0.00 cure amounts.

Agreement, PlanView is required to object to the “possible” assignment and the cure amount stated by the Debtor. Accordingly, this Objection is filed.

B. FACTUAL BACKGROUND

6. PlanView is a software development and programming company. On or about June 27, 2002, PlanView and Fleming Companies, Inc.² entered into that certain Software License Agreement (the “Software License Agreement”). A true and correct copy of the Software License Agreement is attached hereto as Exhibit “A” and made a part hereof for all purposes. Pursuant to the Software License Agreement, Debtors licensed that certain software know as *PlanView*TM (the “PlanView Software”) from PlanView.

7. The Debtors owe at least \$121,691.06 under the Software License Agreement (as of July 21, 2003), plus attorneys’ fees, costs and other charges that continue to accrue thereunder (the “Cure Amount”). The Cure Amount includes pre-petition amounts due of \$116,691.06 plus attorneys’ fees and expenses estimated at \$5,000.00. Paragraph 6.0 of the General Provisions of the Software License Agreement provides for the payment of reasonable attorneys’ fees. Additional amounts will continue to be due and payable under the Software License Agreement for maintenance, service and other charges.

8. As set forth in the Sale Motion and the Cure Amount Notice, the Debtors have proposed a six-month “option period” in which the Purchaser or Other Purchaser will determine which executory contracts are to be assumed and/or assigned to the Purchaser or Other Purchaser (the “Option Period”).

C. OBJECTION

² Fleming Companies, Inc. includes any entity that indirectly or directly controls, is controlled by, or is under common control with Fleming Companies, Inc., as the same may exist from time to time.

9. The Option Period should not be approved and the Debtors should be required to determine whether they will assume and/or assign the Software License Agreement as of the Initial Closing Date. The Debtors have failed to disclose whether the Purchaser will receive the benefits of the Software License Agreement during the Option Period, which should not be permitted. Since the PlanView software is likely installed on computers being sold to the Purchaser, the PlanView Software would have to be removed from these computers prior to the sale; otherwise, the Debtor would be violating the terms of the Software License Agreement. The Purchaser should not be allowed to use the Software License Agreement or receive any benefits of it unless the Court approves the assumption and assignment of the Software License Agreement, with the consent of PlanView. If the Purchaser or Other Purchaser is allowed to obtain the benefits of the Software License Agreement and use the software without a formal assumption and assignment in accordance with Section 365 of the Bankruptcy Code, the interests of PlanView are not being adequately protected and PlanView hereby requests adequate protection.

10. The Software License Agreement may not be assumed without the consent of PlanView under Section 365 of the Bankruptcy Code since it is not assumable because applicable law (i.e. federal patent law) precludes the assignment. See, In re West Elec., 852 F.2d 79, 82-83 (3d. Cir. 1988) (holding that consent is necessary for assignment), *In re Golden Books Family Ent'mt.*, 269 B.R. 300, 308-310 (Bankr. D. Del. 2001) (holding that federal copyright law precludes the assignment of non-exclusive executory contracts without the consent of the debtor), *In re Valley Media, Inc.*, 279 B.R. 105, 135-136 (Bankr. D. Del. 2002), *Institut Pasteur v. Cambridge Biotech Corp.*, 104 F.3d 489, 493 (1st Cir. 1997), *In re Catapult Entertainment, Inc.*, 165 F. 3d. 747 (9th Cir. 1999). The Software License Agreement is an executory contract

that includes nonexclusive copyright licenses and therefore may not be assumed, assigned or otherwise transferred without the consent of PlanView, which consent has only been obtained as to an assignment to Purchaser subject to the conditions set forth herein. See, *In re Golden Books Family Entert., Inc.*, 269 B.R. 300, 310 (Bankr. D. Del. 2001); *In re Access Beyond Technologies, Inc.*, 237 B.R. 32, 48-49 (Bankr. D. Del. 1999) (citing *In re West Elec., Inc.*, 852 F.2d 79 (3d Cir. 1988)); *In re Patient Educ. Media*, 210 B.R. 237, 243 (Bankr. S.D.N.Y. 1997) (holding that debtor could not assume and assign nonexclusive license without copyright owner's consent); See also, *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1334 (9th Cir. 1984).

11. PlanView does not oppose the assumption and assignment of the Software License Agreement to Purchaser provided (i) the assumption and assignment occurs on the Initial Closing Date of the sale to Purchaser, (ii) Purchaser expressly agrees to be bound by the terms and conditions of the Software License Agreement and assumes all obligations thereunder, and in connection therewith, executes and delivers a new Software License Agreement in the same form as the existing Software License Agreement and/or executes and delivers an Assumption and Reaffirmation Agreement, (iii) Purchaser provides adequate assurance of future performance; and (iv) all defaults owed under the Software License Agreement are cured, including the payment of charges accrued and attorneys' fees, by the payment in cash of the Cure Amount (\$121,691.06) to PlanView at or prior to the closing and assumption and assignment of the Software License Agreement but in no event later than the closing of the sale to Purchaser. The Bankruptcy Code requires that all defaults under the Software License Agreement be cured, and that the Debtors and assignee provide adequate assurance of future performance. Unless the foregoing requirements are met, PlanView objects to any assignment of the Software License Agreement.

12. PlanView objects to the Debtors' Cure Amount since the Debtors' Cure Amount does not include the amounts owing under the Software License Agreement, including charges accrued, attorneys' fees, and other charges and expenses that would be due under the Software License Agreement through the date of assumption and assignment. Accordingly, the Debtors' Cure Amount is incorrect and will need to be increased to include all of these amounts. PlanView states that the correct Cure Amount is approximately \$121,691.06 (through July 21, 2003) subject to increase as further charges accrue. For further details concerning the Cure Amount, see paragraph 7 above.

13. If (i) the Cure Amount is paid in full and (ii) the assumption and assignment occurs on the Initial Closing Date, PlanView does not intend to assert a claim for Consequential Damages (as defined in the Supplemental Notice) that must be paid to cure any non-monetary defaults provided all of such non-monetary defaults are also cured. PlanView expressly reserves its claims for any consequential damages. PlanView also reserves its claims for an adjustment to the Cure Amount to include any actual pecuniary loss incurred by PlanView between the date of the Cure Notice and the date of any hearing on the assumption and assignment, including, without limitation, any additional charges that may accrue and be due under the Software License Agreement.

14. Furthermore, PlanView reserves the right to object to any assumption and assignment to any other party that may be the successful bidder at the auction, including any Other Purchaser. PlanView does not at this time consent to any such assignment. Since the other bidders have not been identified to PlanView and since it is unknown whether such bidder intends to have the Debtors assume and assign the Software License Agreement, PlanView reserves the right to object to any assignment of the Software License Agreement to any other

successful bidder/purchaser under the provisions of the Bankruptcy Code and applicable law. Specifically, consent to the assignment to Purchaser shall not constitute consent to the assignment to any other party. If PlanView does consent, PlanView will require that any purchaser satisfy the conditions set forth in paragraph 11 above, including payment of the Cure Amount and the cure of all defaults under the Software License Agreement and providing of adequate assurance of future performance.

15. PlanView also objects to the Sale Motion to the extent that the sale may be construed to be any attempt to sell any property owned by PlanView, which property is subject to the Software License Agreement and may not be sold by the Debtors. The definition of the assets to be sold by the Debtors should exclude any assets owned by PlanView, including the PlanView Software subject to the Software License Agreement, which must constitute an excluded asset, although the Debtors may assign their rights in the Software License Agreement if and only if the conditions set forth herein are satisfied and subject to the required consent of PlanView.

16. PlanView objects to the proposed Debtors' Cure Amount because the Debtors' Cure Amount does not include charges accrued and attorneys' fees due under the Software License Agreement, and other costs and charges that may be due after July 21, 2003.

17. PlanView expressly reserves all of its claims against any third parties that may be liable on this claim, and/or against any property (if any) that may be available to satisfy this claim.

18. PlanView also reserves the right to raise further objections at the hearing on the Sale Motion or at any hearing set to consider issues related to the assumption and assignment of the Software License Agreement.

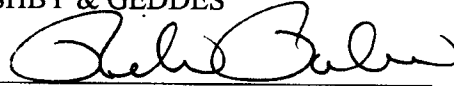
19. The Debtors have indicated that they may subsequently file a motion to assume and assign various contracts, including, perhaps, the Software License Agreement. PlanView reserves the right to object to any assumption or assignment of the Software License Agreement on any legal basis.

WHEREFORE, PlanView hereby requests that the Court (i) require Debtors to determine whether they will assume or assign the Software License Agreement as part of the Initial Assignment List, (ii) require any assignee of the Software License Agreement to provide adequate assurance of future performance under the Software License Agreement as a condition to any assignment and assumption contracts, (iii) subject any assumption and assignment to the conditions set forth in paragraph 11 hereof, (iv) require Purchaser to assume all obligations in the Software License Agreement, and to pay the Cure Amount (\$121,691.06) at or prior to closing; (v) require any assignee to execute the Software License Agreement or Assumption and Reaffirmation Agreement in PlanView's favor, and to pay the correct cure amount as a condition to assignment, (vi) only allow the assumption and assignment of the Software License Agreement with the consent of PlanView, (vii) determine the Cure Amount at \$121,691.06, subject to increase for charges accruing through the closing, (viii) grant adequate protection in favor of PlanView, and (ix) grant PlanView such other and further relief as is just and equitable.

Respectfully submitted this 25th day of July 2003.

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ASHBY & GEDDES



William P. Bowden (#2553)

Ricardo Palacio (#3765)

222 Delaware Avenue, 17th Floor

P.O. Box 1150

Wilmington, DE 19899

Telephone: (302) 654-1888

Facsimile: (302) 654-2067

-and -

BOYAR & MILLER, P.C.

Trent L. Rosenthal

4265 San Felipe, Suite 1200

Houston, Texas 77027

(713) 850-7766

(713) 552-1758 (fax)

ATTORNEYS FOR PLANVIEW, INC.

EXHIBIT A

SOFTWARE LICENSE
AGREEMENT

Number 02-0206-TE-1

This AGREEMENT dated as of 27 June 2002, is between PlanView, Inc., 7320 North Mopac, Suite 312, Austin, Texas 78731 (hereinafter called "PlanView"), and Fleming Companies, Inc., 5701 N. Shartel, Oklahoma City, Oklahoma, 73118. (Fleming Companies, Inc. and any entity that directly or indirectly controls, is controlled by, or is under common control with Fleming Companies, Inc., as the same may exist from time to time hereinafter called "CUSTOMER").

SOFTWARE LICENSE

1.0 GRANT OF LICENSE

1.1 PlanView hereby grants to CUSTOMER, on the terms and conditions hereinafter set forth, a non-exclusive, perpetual, irrevocable license to use the Licensed Programs in the normal course of CUSTOMER's business. The license granted hereunder shall not be deemed to authorize CUSTOMER to change or modify in any way any Licensed Program, except as permitted under this Agreement.

1.2 "CUSTOMER" means Fleming Companies, Inc. as defined above. CUSTOMER may: (a) use the Software on any CPU, wherever located, that is used in the normal course of CUSTOMER's business, including home and portable computers used by employees and contract personnel when working outside the office; (b) permit use of the Software by one or more third parties to perform information processing, disaster recovery or disaster recovery testing services only for CUSTOMER, provided such third parties agree to keep the Software confidential; and (c) permit use of the Software by persons with authorized access to CUSTOMER's computer system, including auditors, temporary personnel, contracted personnel, customers, consultants and suppliers. In all cases, CUSTOMER must own licenses sufficient to support all persons accessing the Software.

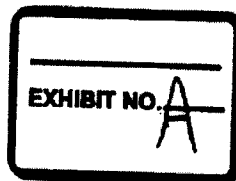
1.3 For purposes of this AGREEMENT, "Licensed Programs" means those computer software programs marketed as PlanView SoftwareTM (as well as any updates thereof furnished by PlanView pursuant to the terms of this AGREEMENT) and in any amendments thereto, in machine readable, printed or other form, including but not limited to instructional and operational manuals, flow charts, logic diagrams, file layouts and listings, whether developed pursuant to this Agreement or otherwise. The term Licensed Program does not include source code in any form.

2.0 CONDITIONS OF LICENSE

CUSTOMER may copy, for backup purposes only, any portion of Licensed Programs provided in machine readable form. CUSTOMER may not copy any portion of Licensed Programs provided in printed form.

2.2 The license granted hereunder may under no circumstances be sublicensed, transferred or assigned by CUSTOMER without written approval of PlanView which shall not be unreasonably withheld.

2.3 Within thirty (30) days after CUSTOMER has permanently discontinued the use of any Licensed Program or immediately upon the termination or expiration of this AGREEMENT and any written Addenda thereto, CUSTOMER shall return to PlanView the original and all copies of the Licensed Programs in any form and shall certify in writing to PlanView that it has done so. In addition, PlanView and CUSTOMER will assist each other in the orderly termination of this AGREEMENT and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, nondisruptive business continuation of each party.



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3.0 PRICE AND PAYMENT TERMS

3.1 Licensee shall pay Licensor the license fees set forth in the License Schedules within the time frames set forth in such License Schedules. Licensee shall be responsible for any applicable sales and use taxes on the Software; provided, however, that Licensor shall, to the extent required by law or customary practice, be required to timely invoice Licensee for such taxes and remit the same to the applicable taxing authorities.

3.2 PlanView will invoice the CUSTOMER for software upon shipment.

3.3 Interest will be charged on overdue amounts at a rate of one and one-half percent (1 1/2%) per month or at the maximum legal rate, whichever is less.

4.0 DELIVERY AND INSTALLATION

4.1 Any shipping times quoted by PlanView or its personnel are estimates only and PlanView will not be liable for any delays in the arrival of shipment.

4.2 Title to the Licensed Programs will at all times remain with PlanView.

4.3 Risk of loss of Licensed Programs shall transfer to CUSTOMER upon receipt.

4.4 It is the responsibility of the CUSTOMER, without charge to PlanView, to provide and prepare, at the location stated in this Agreement, the computer system upon which the Licensed Programs are to be installed.

5.0 MAINTENANCE

For fourteen (14) months after the Effective Date, which shall be the later of the dates this Agreement signed by the parties, of this Agreement, and for each one year thereafter provided only that CUSTOMER has elected to contract for and has prepaid the applicable annual Maintenance Fees as set forth in Schedule A Notes and Provisions, PlanView will provide Maintenance Modifications and Enhancements, if and when available, to CUSTOMER, and support services to CUSTOMER, collectively referred to as "Maintenance Services", for the one (1) year period during which CUSTOMER prepays for such Maintenance Services. All maintenance and support communications will be between PlanView and the persons designated by as the support contact ("Designated Support Contact"). Maintenance Services will be automatically renewed for subsequent annual periods at a rate equal to 15% of the discounted sales price of all software purchased, unless either party cancels by giving the other one (1) month's written notice prior to the anniversary date or renewal date of the Maintenance. In the event CUSTOMER elects to renew the Maintenance Services after they have been cancelled, CUSTOMER will pay to PlanView the prorated amount for the period from the date of such cancellation or non-renewal to the date Maintenance Services recommence. Maintenance Services do not cover hardware, operating systems, networks, or third party software not provided to CUSTOMER by PlanView. Additional fees will be charged for troubleshooting such third party products. PlanView shall provide CUSTOMER 90 days written notice prior to end of current term. PlanView agrees to continue to make such services available to CUSTOMER on these terms and conditions for all facilities of CUSTOMER so long as it offers such services to its customers' generally. The parties acknowledge and agree that CUSTOMER is not obligated to contract for maintenance for the Software licensed under this Agreement. The parties further acknowledge and agree that the portion of the Maintenance Fee attributable to maintenance and related services is 70% of the total Maintenance Fee and the remaining 30% of the total Maintenance Fee is attributable to the right to receive updates for such Software. PlanView shall invoice CUSTOMER separately for the respective portions of the Maintenance Fee, however, CUSTOMER must pay for all portions of Maintenance Services.

6.0 PATENTS AND COPYRIGHTS

PlanView warrants that the Licensed Programs do not infringe upon or violate any patent, copyright, trade secret or other proprietary right of any third party. In the event of any claim by any third party against the CUSTOMER, the CUSTOMER will promptly notify PlanView and PlanView shall defend such claim, in the CUSTOMER's name, but at PlanView's expense and shall indemnify the CUSTOMER against any loss, cost, expense, including attorneys fees, or liability arising out of such claim, whether or not such claim is successful. In all such claims, PlanView will use legal counsel acceptable to the CUSTOMER. If PlanView does not initiate defense of the CUSTOMER within thirty (30) days of notification of a claim, then the CUSTOMER may retain legal counsel at PlanView's expense for the purpose of defending CUSTOMER in such claim.

7.0 LIMITED WARRANTY

7.1 For a period of ninety (90) days from initial installation of the Licensed Programs, PlanView will warrant that the Licensed Programs shall function in conformance to documented specifications. CUSTOMER will notify PlanView in writing of any such failure to perform to documented specifications and include a written explanation of each such occurrence. PlanView will promptly repair any such noted and documented defect during the warranty period to conform to documented specifications. PlanView shall have thirty (30) days after receipt of written notice in which to cure the stated nonconformance. PlanView will make its best efforts to provide a patch or workaround to remedy the situation prior to formal release by PlanView. PlanView may request additional time as needed to cure said condition, provided PlanView is working diligently toward a cure.

7.2 PlanView warrants that the Licensed Programs will record, store, process, and present calendar dates falling on or after January 1, 2000, and leap year in the same manner, and with the same functionality, as such software on or before December 31, 1999.

8.0 DISCLAIMER OF ALL OTHER WARRANTIES

EXCEPT AS SET FORTH ABOVE, THE PARTIES HERETO MAKE NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND DISCLAIM ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9.0 TRADE SECRETS - INTELLECTUAL PROPERTY RIGHTS

9.1 CUSTOMER acknowledges that Licensed Programs, and the original and any copies thereof, in whole or part, and all copyright, patent, trade secret, trademark and other intellectual and proprietary rights thereto which now or hereafter may exist, are owned by and remain the exclusive valuable property of PlanView and embody substantial creative efforts, ideas, and expressions.

10.0 NONDISCLOSURE

Each party agrees to take all necessary steps to hold in trust and confidence all information disclosed to them by regarding each parties business strategies and products, provided that such information is not already known to the general public.

11.0 TITLE

The source code of the Licensed Programs, all related written materials, training materials and supporting tools prepared by PlanView in fulfillment of this AGREEMENT shall be the sole and exclusive property of PlanView, free from any claim or retention of rights thereto on the part of the CUSTOMER.

12.0 TERMINATION OF AGREEMENT

12.1 Either party may terminate this AGREEMENT if either party shall fail to perform its obligations under this Agreement and such failure shall continue for thirty (30) days after written notice thereof from the other party.

12.2 CUSTOMER's obligation to pay PlanView amounts due hereunder shall survive any expiration or termination of this AGREEMENT.

13.0 SOURCE CODE ESCROW

13.1 PlanView agrees to place the Software and any upgrades supplied to CUSTOMER under this Agreement in escrow with a third party reasonably acceptable to CUSTOMER and to enter into a customary source code escrow agreement providing, among other things, that CUSTOMER shall be entitled to receive everything held in escrow upon the occurrence of the release conditions defined in the source-code escrow agreement. Additionally, if PlanView ceases to maintain and support the Licensed Programs, CUSTOMER may (in addition to any other rights it may have under this Agreement or applicable law) make written request for prorated refund of maintenance fees. The fees of any such third party escrow agent shall be borne by PlanView.

IMPLEMENTATION ASSISTANCE SERVICES

1.0 ENGAGEMENT OF SERVICES

1.1 INTENT AND SCOPE

During the term of the AGREEMENT, CUSTOMER and PlanView mutually agree to undertake to install, implement and provide training for PlanView Software. The requirements of the implementation are outlined in Exhibit A of this Agreement.

1.2 PLANVIEW RESPONSIBILITIES

PlanView is responsible for performing the number of service days purchased in Schedule A. PlanView's responsibility is exclusive of all external software licenses required to process PlanView's code (e.g., browser tools, operating systems, etc.)

1.3 CUSTOMER RESPONSIBILITIES

CUSTOMER is responsible for the functional specification of its requirements and for making CUSTOMER personnel reasonably available to work with PlanView personnel in order to facilitate progress of the project.

2.0 TRAINING

2.1 PlanView will make available to CUSTOMER training courses in the operation of the Licensed Programs as shown in Schedule A hereto. PlanView reserves the right to, in consultation with the CUSTOMER, (i) establish the dates and times of any training course, (ii) specify the content of any training course, (iii) limit the number of students attending any training course based on adequacy of computer equipment provided by CUSTOMER for the training, and (iv) designate the instructor for any training course.

2.2 Additional training services will be available to CUSTOMER at the daily rates as published in Schedule A.

2.3 No representations or guarantees of any kind are made by PlanView with respect to the results of any training services furnished hereunder.

3.0 PRICE AND PAYMENT TERMS

PlanView will invoice CUSTOMER for services as outlined in Schedule A. The cost of any additional services purchased by the CUSTOMER will be invoiced as outlined in Schedule A. CUSTOMER will be responsible for PlanView's reasonable travel and subsistence expenses incurred in providing training, implementation assistance or maintenance services in association with this AGREEMENT. All expenses shall be documented by receipt. CUSTOMER shall be responsible for any applicable taxes on the services (other than income or corporate franchise taxes); provided, however, that PlanView shall, to the extent required by law or customary practice, be required to timely invoice CUSTOMER for such taxes and remit the same to the applicable taxing authorities.

CUSTOMER's obligation to pay PlanView amounts due hereunder shall survive any expiration or termination of this AGREEMENT.

4.0 CANCELLATION

CUSTOMER may cancel any scheduled service, with no obligation to PlanView, if written cancellation is received 5 days before the scheduled date of the service. If CUSTOMER fails to cancel within this time frame, PlanView reserves the right to invoice, or deduct from the prepaid service balance 25% of the amount of the canceled service including any non-recoverable expenses. Such expenses are, but are not limited to, airfare, lodging, and rental car. CUSTOMER's obligation as outlined hereunder shall survive any expiration or termination of this AGREEMENT.

5.0 TRADE SECRETS - INTELLECTUAL PROPERTY RIGHTS

5.1 CONFIDENTIAL INFORMATION

PlanView and CUSTOMER agree during the term of this AGREEMENT, and thereafter, to take all steps reasonably necessary to hold in trust and confidence confidential information. The obligation with respect to confidential information also extends to proprietary or confidential information of any third party who may disclose such information to CUSTOMER or PlanView in the course of CUSTOMER's business.

5.2 COPYRIGHTED WORKS

(A) CUSTOMER recognizes that it is the nature of PlanView's services that they produce ideas and concepts and other intellectual services that may produce computer programs, notes, reports, presentations, documents, ideas, or inventions relating or useful to CUSTOMER's business under this AGREEMENT.

(B) PlanView has the right to copyright or patent, or cause to be copyrighted or patented, or produce products that are copyrighted or patented or considered proprietary, related to the contributions by PlanView under this AGREEMENT.

(C) CUSTOMER further agrees that said ideas, concepts, or other intellectual products produced by PlanView under the AGREEMENT shall also remain the property of PlanView for past, concurrent, or future use in the pursuance of PlanView's business. CUSTOMER shall, however, have a non-exclusive, non-transferable license to use such work product for its own internal purposes. CUSTOMER may not transfer or disclose such work product to any other person or party.

(D) CUSTOMER further agrees to assist PlanView, to the point that it is professionally reasonable and at the cost and expense of Plan View, to obtain and enforce PlanView's benefit copyrights or other property rights or damages. The CUSTOMER further agrees that the obligations of this paragraph shall continue beyond the term of this AGREEMENT. Such participation by the CUSTOMER must be explicitly requested by PlanView, and will be at the reasonable convenience of the CUSTOMER.

6.0 DISCLAIMER

This part of the AGREEMENT is strictly one for implementation assistance and training services. ACCORDINGLY, PLANVIEW MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH REGARD TO THE SERVICES PROVIDED OR PROGRAMS DEVELOPED HEREUNDER.

7.0 RESPONSIBILITIES UPON TERMINATION

Upon termination or other expiration of this AGREEMENT, each party shall forthwith return to the other all papers, materials and other properties of the other held by each for purposes of execution of the contract. In addition, each party will assist the other party in the orderly termination of this AGREEMENT and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly business continuity of each party.

8.0 NONSOLICITATION

Both parties hereby agree that neither it nor its subsidiaries or affiliated companies will directly or indirectly solicit for employment any of the other parties personnel during the term of this AGREEMENT for a period of one (1) year after the expiration of this AGREEMENT.

9.0 INDEMNIFICATION

Both parties agree, at their own cost and expense, to defend, indemnify and hold the other party harmless from and against any claims by any other person or party arising out of or in connection with any services provided or programs written hereunder, regardless of whether such claims are founded in contract, tort or warranty.

GENERAL PROVISIONS

1.0 GOVERNING LAW

The validity, construction and performance of this AGREEMENT, and the rights and obligations of the parties arising in connection therewith, shall be governed in all respects and for all purposes by and construed in accordance with the laws of the State of Texas, United States of America. Such law shall apply to all claims arising out of or in connection with the performance or breach of this AGREEMENT whether such claims are characterized as contractual, tortious or otherwise. The parties hereto expressly exclude from such applicable law the conflict of law rules of the State of Texas, and the U.N. Convention on Contracts for the International Sale of Goods.

2.0 ENTIRE AGREEMENT

This AGREEMENT sets forth the entire understanding and AGREEMENT between CUSTOMER and PlanView as to the subject matter of their AGREEMENT.

3.0 SUCCESSORS AND ASSIGNS

Neither this AGREEMENT, nor any of the rights and obligations of PlanView or the CUSTOMER arising out of this AGREEMENT, may be assigned to or transferred without the other's prior written consent.

4.0 HEADINGS

Titles or headings to the sections of this AGREEMENT are not part of the terms of this AGREEMENT and are inserted only for convenience.

5.0 NOTICES

All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be directed to PlanView or CUSTOMER at their respective addresses set forth herein unless otherwise specified in writing, and shall be given by certified mail, return receipt requested, or by recognized overnight delivery service. Any such notice, request, demand, or communication shall be deemed given on receipt or refusal thereof.

6.0 LEGAL FEES

In the event that legal action is instituted by either party to enforce the terms and conditions of this AGREEMENT against the other party, the party which is unsuccessful in the suit will pay all reasonable legal fees incurred by the prevailing party.

7.0 FORCE MAJEURE

PlanView's performance hereunder is subject to force majeure, including but not limited to wars, riots, failure of contractors and subcontractors to perform, strikes, labor disturbances, acts of God, fires, floods, explosions, civil disturbances, inability to obtain required material or transportation, and acts of governmental authorities.

8.0 TIMELY CLAIMS

No action for breach of this AGREEMENT or any other action to enforce any claim arising out of or in connection with the subject matter of this AGREEMENT shall be brought by either party more than one (1) year after the cause of action has accrued.

9.0 ACCESS BY PlanView

CUSTOMER agrees to provide PlanView with secured timely access to the CUSTOMER's computer equipment and Licensed Programs at all reasonable times for the purpose of fulfilling its obligations hereunder.

10.0 CUSTOMER ACKNOWLEDGMENT

CUSTOMER acknowledges that, prior to execution of this AGREEMENT, it has had an opportunity to determine for itself the characteristics and capabilities of the Licensed Programs and is satisfied that the Licensed Programs fulfill CUSTOMER's requirements. PlanView makes no representations of any kind beyond those contained in this AGREEMENT and no agent of PlanView has the authority to make any representations beyond those contained in this AGREEMENT.

11.0 ARBITRATION

All disputes between the parties, 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"). In any dispute involving a claim in excess of \$100,000, three arbitrators shall be employed. Otherwise, a single arbitrator shall 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. Depositions, other than those taken in lieu of live testimony, shall not be taken except upon the arbitrator(s) finding of special need. The 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.

**CUSTOMER CERTIFIES THAT IT HAS
READ THE FOREGOING AGREEMENT AND
AGREES TO BE BOUND BY ITS TERMS**

Accepted By:

CUSTOMER:

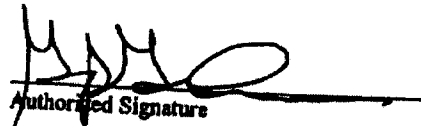

Authorized Signature

Typed Name Joseph M. Fleckinger
Director, I/T Administration &
Quality Assurance

Title _____

Date 6-28-2002

PlanView:


Authorized Signature

**Gregory S. Gilmore
Chief Operating Officer
PlanView, Inc.**

Typed Name _____

Title _____

Date 6/28/02

PLANVIEW INC

7320 North Mopac, Suite 300
Austin, Texas 78731

Phone: (512) 346-8600

Fax: (512) 346-9180

www.planview.com

Schedule A

To:	Fleming Companies 5701 North Shartel Oklahoma City, OK 73118 Attention: Lori Garcia
Contract #:	02-0208-TE-1

Quantity	Description	Price
Repositories	PlanView Software	
500 Level	PlanView Central Repository	\$52,500 ✓
	✓ CPM & Resource Scheduling Engines	
	✓ Skills Search & Resource Availability Engines	
	✓ Time, Billing & Expense Tracking & Approval	
	✓ Work Progressing Engine	
	✓ Issues, Risks, & Changes Tracking	
	✓ Opportunity & Contract Tracking	
	✓ Collaboration, Doc Mgmt & Reporting	
500 Level	PlanView Data Mart w/ Universe	\$33,750 ✓
500 Level	Budget Repository	\$22,500 ✓
1	Financial Repository	\$25,000 ✓
Roles		
15	Stakeholder w/Viewer	\$6,675 ✓
50	Managers w/Pilot	\$124,750 ✓
435	Contributor	\$128,325 ✓
0	Supervisor	\$0
	Software Subtotal	\$393,500
	Software Discount of 49.25% valid through June 28, 2002	(\$193,799)
	Discounted Software Total	\$199,701
	Software Maintenance	\$29,955
31	Consulting days @ \$1,525 per day	
6	Training days @ \$1,950 per day	
	Total	\$229,656



Schedule A

7320 North Mopac, Suite 300
Austin, Texas 78731
Phone: (512) 348-8600
Fax: (512) 348-8180
e-mail: market @ planview.com
Web: www.planview.com

page 2

Fleming Companies, Inc.
5701 North Shartel
Oklahoma City, OK 73118
Attention: Lori Garcia
Contract #:02-0206-TE-1

Notes and Provisions:

- 1) PlanView will ship and invoice for products and maintenance as outlined in this schedule, total due on July 15, 2002.
- 2) Training and consulting services will be available for one (1) year from date of this AGREEMENT at a daily rate of \$1525 for consulting services and \$1950 for training services. The then current listed rates will apply thereafter. This does not include reasonable travel and living.
- 3) CUSTOMER will be invoiced on a monthly basis for services provided, as well as reasonable travel and living expenses. Payment terms are net thirty (30) days from date of invoice.
- 4) The purchase of future user role licenses listed in Schedule A are available in the following minimum blocks:

➤ Manager	10
➤ Supervisor	10
➤ Stakeholder	10
➤ Contributor	50
➤ Administrator	no minimum required

PLANVIEW_{INC}

7320 North Mopac, Suite 300
Austin, Texas 78731

Phone: (512) 346-8600

Fax: (512) 346-9180

www.planview.com

Schedule B

To: Fleming Companies, Inc.
5701 North Shartel
Oklahoma City, OK 73118
Attention: Lori Garcia

Contract #: 02-0206-TE-1

Quantity	Description	Price
Repository 1000 Level	PlanView Software PlanView Limited Enterprise Software License PlanView Central Repository <ul style="list-style-type: none"> ✓ CPM & Resource Scheduling Engines ✓ Skills Search & Resource Availability Engines ✓ Time, Billing & Expense Tracking & Approval ✓ Work Progressing Engine ✓ Issues, Risks, & Changes Tracking ✓ Opportunity & Contract Tracking ✓ Collaboration, Doc Mgmt & Reporting PlanView Data Mart w/ Universe Budget Repository Financial Repository	\$700,000
Roles 1,000 30 100	PlanView Role Licenses Scoreboard Viewer Scoreboard Pilot	
Enterprise Software Discount of 57% valid through June 28, 2002		
	Software Subtotal	\$700,000
		(\$400,000)
	Discounted Software Total	\$300,000
	Schedule A Software Credit	(\$189,701)
	Software Total	\$100,299
	Software Maintenance	\$15,045
	Schedule Total	\$115,344



Schedule B

7320 North Mopac, Suite 300
Austin, Texas 78731

Phone: (512) 346-8600

Fax: (512) 346-9180

e-mail: market@planview.com

Web: www.planview.com

page 2

Fleming Companies, Inc.

5701 North Shartel

Oklahoma City, OK 73118

Attention: Lori Garcia

Contract #: 02-0206-TE-1

Notes and Provisions:

- 1) PlanView will invoice for products as outlined in this schedule on December 31, 2002, or upon CUSTOMER's earlier written request of shipment. Payment terms will be net thirty (30) days from invoice date.
- 2) Upon product shipment, the software licensing in this Schedule replaces the software licensing in Schedule A.

10/1

Exhibit A

Implementation Requirements

CUSTOMER and PlanView mutually agree to customize the standard implementation plan previously provided by PlanView, with activities as outlined in Exhibit B, to meet the defined requirements listed below, including definition of PlanView's and Fleming's responsibilities, to install, implement and provide training for PlanView Software. The requirements listed below will be further defined and scoped during the implementation planning and business needs analysis activities listed in Exhibit B.

SECURITY

- New hire, change and termination data successfully provisioned to PlanView system
- User access to PlanView system authenticated by Policy Director
- Fleming roles / hierarchy implemented based on Central User Administration (CUA) repository / SAP HR

RESOURCE / STAFFING MANAGEMENT

- Skills tracking and resource pool database populated and functional

TIME TRACKING

- Time tracking available for internal and external associates for project, non-project, administration and support activities

BUDGET

- Expense tracking (internal billable, capitalized, non-capitalized) fully functional, with Fleming account codes where applicable
- Budget preparation templates and functionality implemented

INTERFACES

- Time Tracking to SAP interface developed, tested and validated
- Export interface to MS Project implemented, tested and validated
- Import interface from MS Project implemented, tested and validated
- CUA (provisioning) interface developed, tested and validated (see Security above)
- Peregrine interface for import of work orders developed, tested and validated

SYSTEM

- CUSTOMER and PlanView will work together to define the optimal technical environment necessary to meet CUSTOMER's reasonable requirements
- Reporting and ad hoc query performance measured and validated
- Optimum database schema has been successfully modeled, implemented and validated

FAILOVER

- Web server failover and recovery, based on Windows 2000 Advanced Server Network Load Balancing, tested and validated
- Application server manual failover and recovery tested and validated
- Database server failover and recovery tested and validated

CONTENT MANAGEMENT

- All applicable project templates developed and available for use

TRAINING

- PlanView administrators, project managers, contributors and stakeholders have received appropriate level of training as defined in the training plan provided by PlanView.

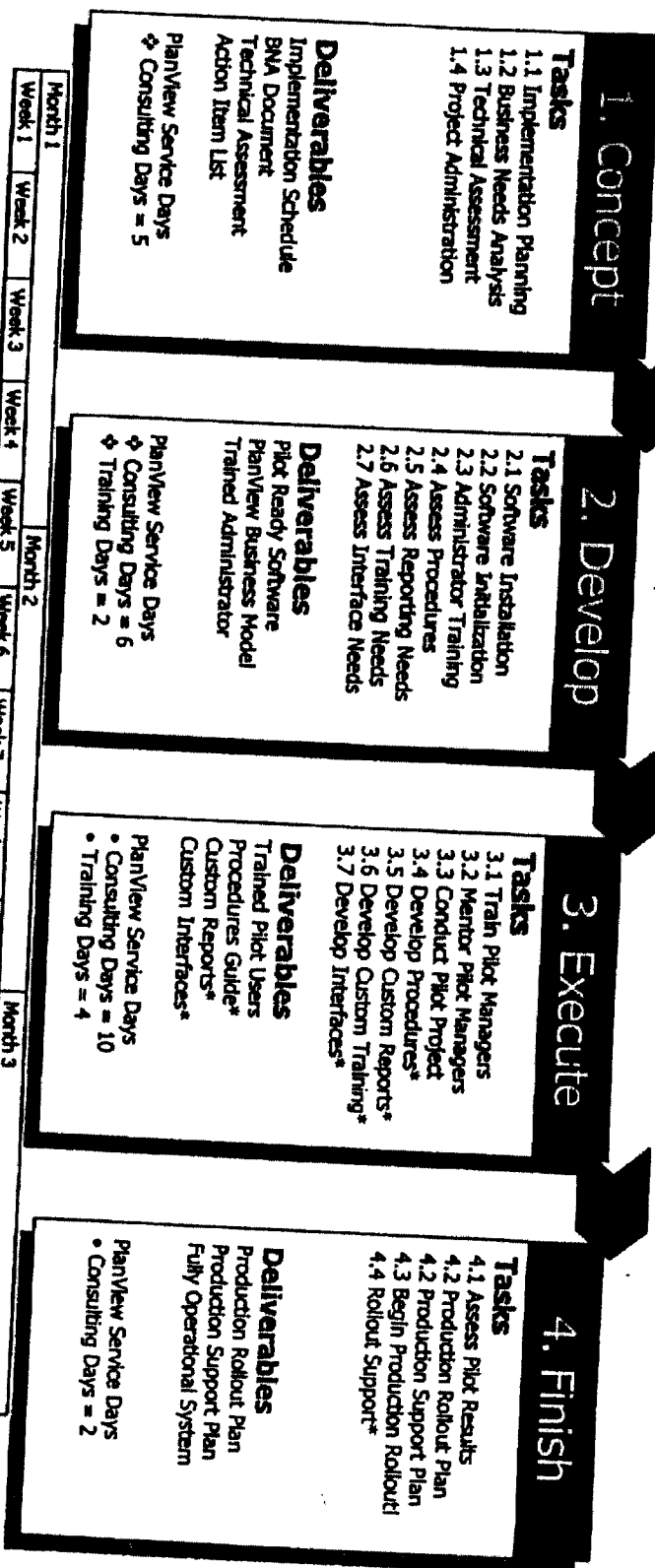
WORKFLOW

- Project initiation workflow has been developed, tested and validated
- Project management tracking workflow (i.e., time sheet approval, documentation review and approval) has been developed, tested and validated

10/1



Exhibit B - PlanView Standard Implementation The Key to Success!



• Project Management & Administration = 8 Days

- PlanView Professional Services Group has Experience with 300+ Customers.

NOTE: Items highlighted with an asterisk may require additional PlanView service days based on customer's requirements.



Exhibit B - PlanView Standard Implementation

1. Concept Phase

Description: Establishes project plan parameters (scope, schedule, objectives, etc.) to form the basis for the PlanView Implementation. Reviews business needs and requirements (methods, processes, procedures) with key customer representatives. Technical review and preparation to ensure the customer's IT environment is properly installed, setup, and configured.

Duration: 2 to 4 weeks

Billable Effort: 1 Day - Initial Planning Meeting
2 to 4 Days - Business Needs Analysis Session
1 to 2 Days - Technical Review and Preparation

Deliverables: PlanView Implementation Plan and Schedule
Business Needs Analysis Document
Technical Assessment
Action Item List

PlanView Resources: Implementation Manager, Implementation Consultant, Technical Consultant

Customer Resources: Executive Sponsor, Project Manager, PlanView Administration, Key Management Representatives, Technical Representatives

3. Execute Phase

Description: Conduct the PlanView Pilot Project. Provide continuing PlanView education through individual user mentoring. Validate PlanView Business Model setup and configuration. Prepare PlanView Procedures Guides, develop and test custom reports, develop and test interfaces, and develop custom training course and material.

Duration: 3 to 6 weeks

Billable Effort: 10 Days - Implementation Consulting
4 Days - Training Services

Deliverables: Trained Pilot Users
Procedures Guides*
Custom Reports*
Custom Training Course*

PlanView Resources: Implementation Manager, Trainer, Implementation Consultant

Customer Resources: Pilot Team Members, Project Manager, PlanView Administrator

2. Develop Phase

Description: Installation and initialization of PlanView software at customer's location. Develop the PlanView Business Model based on stated business needs. Provide comprehensive training, user mentoring, and support for a Pilot Team. Further define the customer's needs for reporting, supporting procedures, specialized training, and system interface. Preparations for organizational change management and communications plan.

Duration: 6 to 8 weeks

Billable Effort: 6 Days - Implementation Consulting
2 Days - Application Administration Training

Deliverables: PlanView Software Operational for Pilot Team
PlanView Business Model
Trained PlanView Administrator

PlanView Resources: Implementation Manager, Implementation Consultant, Trainer, Technical Consultant

Customer Resources: Project Manager, PlanView Administrator, Pilot Team Members, Technical Staff

4. Finish Phase

Description: Verify results of PlanView Implementation Project. Validate all required data needed to production startup has been entered into the PlanView Production database. Confirm all preparations for production startup and rollout have been completed.

Duration: 1 to 2 weeks

Billable Effort: 2 Days - Implementation Consulting

Deliverables: Production Rollout & Support Plans
Fully Operational System

PlanView Resources: Implementation Manager

Customer Resources: Executive Sponsor, Project Manager, PlanView Administrator, Technical Representatives

Project Management and Administration across all Phases - 8 Days

PlanView, Inc. will provide Implementation Project Management, Project Planning, PlanView Resource Management, Change Control Management, Project Risk Management, Engagement Management, and Implementation Reporting throughout the life of the PlanView Implementation Project.

CERTIFICATE OF SERVICE

I, Ricardo Palacio, Esquire hereby certify that on July 25, 2003, I caused one copy of the foregoing **Planview, Inc.'s Limited Objection to Debtors' (1) Notice and Supplemental Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion, (2) Motion for Order (A) Approving Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition, L.L.C., and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (3) Proposed Cure Amount** to be served upon the parties on the attached list by first class United States mail, postage prepaid, unless otherwise indicated.

A handwritten signature in black ink, appearing to read 'Ricardo Palacio', written over a horizontal line.

Ricardo Palacio

Fleming Companies Service List
129773.1

HAND DELIVERY

Joseph McMahon, Esq.
Office of the United States Trustee
844 King St., Room 2313
Wilmington, DE 19801

I. William Cohen, Esq.
Robert S. Hertzberg, Esq.
Pepper Hamilton, LLP
100 Renaissance Center, 36th Floor
Detroit, MI 48243-1157

Dennis F. Dunne, Esq.
Milbank Tweed Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005

Dana B. Geyer
Trustee for E.B. Geyer Testamentary Trust
Geyer & Associates CPA's P.C.
125 South Howes Street, Suite 910
Fort Collins, CO 80521

Kenneth S. Ziman, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017

HAND DELIVERY

Laura Davis Jones, Esq.
Pachulski Stang Ziehl Young & Jones
919 N. Market St., 16th Floor
Wilmington, DE 19801

HAND DELIVERY

Scott D. Cousins, Esq.
Greenberg Traurig LLP
1000 West Street, Suite 1540
Wilmington, DE 19801

HAND DELIVERY

David Fournier, Esq.
Pepper Hamilton LLP
1201 N. Market Street, Suite 1600
Wilmington, DE 19899

Fleming Companies, Inc.
Attn: Contracts Dept.
1945 Lakepointe Drive
Lewisville, TX 75057

Richard J. Grossman, Esq.
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036

HAND DELIVERY

Sheldon K. Rennie
Fox Rothschild O'Brien & Frankel LLP
919 Market Street, 16th Floor
Wilmington, DE 19801

Andrew P. DeNatale, Esq.
Lenders White & Case
1155 Avenue of the Americas
New York, NY 10036-2787

Paul S. Aronzon, Esq.
Milbank Tweed Hadley & McCloy LLP
601 South Figueroa St
Los Angeles, CA 90017

Geoffrey Richards, Esq.
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, IL 60601

Richard L. Wynne
Shirley S. Cho
Kirkland & Ellis
777 South Figueroa St.
Los Angeles, CA 90017