

69547-9

69547-9  
ORIGINAL

**COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON  
Case No. 695479**

---

**Radiance Capital, L.L.C., a Washington limited liability company,**

**Appellant,**

**v.**

**CIRCLE S FOODS, Inc., a foreign corporation, dba CIRCLE S.  
MARKET AND DAILY; SUBHASH CHANDER SHARMA and  
"JANE DOE" SHARMA, husband and wife; JAGTAR SINGH and  
"JANE DOE" SINGH, husband and wife; and NAVJIT SINGH and  
"JANE DOE" SINGH, husband and wife,  
Respondent.**

---

**Brief of Appellant  
(Amended)**

---

Talis M. Abolins  
WSBA #21222  
of Campbell, Dille, Barnett & Smith, PLLC  
317 South Meridian  
P.O. Box 488  
Puyallup, WA 98371  
(253) 848-3513  
Attorneys for Appellant

2017 JUN -2 PM 1:29  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

## TABLE OF CONTENTS

| <u>Description</u>  | <u>Page No.</u> |
|---|-----------------|
| <b>I. <u>ASSIGNMENTS OF ERROR</u></b>   | 1               |
| <b>II. <u>ISSUES</u></b>  | 4               |
| <b>III. <u>STATEMENT OF THE CASE</u></b>  | 5               |
| Statement of Facts  | 5               |
| Statement of Procedure  | 20              |
| <b>IV. STANDARD OF REVIEW</b>   | 32              |
| <b>V. ARGUMENT</b>  | 33              |
| A. The Trial Court Erred By Adopting An Unreasonable Contract Interpretations That Are Inconsistent With The Actual Contract Documents.   | 33              |
| 1. The Trial Court erred by ruling that Circle S did not have an obligation to provide satisfactory evidence that Radiance was covered as both “Loss Payee” and “Additional Insured”. | 35              |
| 2. Radiance proved a breach of Circle S’ dual contractual obligations to maintain and provide proof of “Loss Payee” and “Additional Insured” coverage.                                | 39              |
| 3. The Trial Court erred by ruling that lack of notice was a defense under the contract.  | 41              |
| B. The Trial Court Should Have Granted Reconsideration Based On Newly Discovered Documentary Evidence Of Notice.  | 43              |
| C. Circle S’ Fee Award Should Be Reversed And Radiance Should Be Awarded Its Reasonable Fees And Costs  | 45              |

VI. CONCLUSION

46

## TABLE OF AUTHORITIES

| <u>CASES</u>  | <u>Page Nos.</u> |
|---|------------------|
| <u>Adler v. Fred Lind Manor,</u><br>153 Wn.2d 331, 351-352, 103 P.3d 773 (2004)   | 34               |
| <u>Berg v. Hudesman,</u><br>115 Wn.2d 657, 667, 801 P.2d 222 (1990)   | 33               |
| <u>Go2Net, Inc. v. C I Host, Inc.,</u><br>115 Wn. App. 73, 85, 60 P.3d 1245 (2003)  | 32, 34, 44       |
| <u>Hegwine v. Longview Fibre Co.,</u><br>132 Wn. App. 546, 555, 132 P.3d 789 (2006)   | 32               |
| <u>Holaday v. Merceri,</u><br>49 Wn.App. 321, 329, 742 P.2d 127 (1987)  | 44               |
| <u>James S. Black &amp; Co. v. P &amp;R Co.,</u><br>12 Wn. App. 533, 535, 530 P.2d 722 (1975)   | 33,34            |
| <u>King County v. Wn. State Boundary Review Bd,</u><br>122 Wn.2d 648, 675, 860 P.2d 1024 (1993)   | 32               |
| <u>Northwest Independent Forest Manufacturers v. Department of<br/>Labor &amp; Industries,</u><br>78 Wn. App. 707, 712, 899 P.2d 6 (1995) | 35               |
| <u>State v. Rowe,</u><br>93 Wn.2d 277, 280, 609 P.2d 1348 (1980)  | 32               |
| <u>Sunnyside Valley Irrigation Dist. v. Dickie,</u><br>149 Wn.2d 873, 880, 73 P.3d 369 (2003)   | 32               |
| <u>Tanner Elec. Coop. v. Puget Sound Power &amp; Light Co.,</u><br>128 Wn.2d 656, 674, 911 P.2d 1301 (1996)                               | 32,34, 43        |
| <u>Weems v. N. Franklin Sch. Dist.,</u><br>109 Wn. App. 767, 777, 37, P.3d 354 (2002).  | 33               |

| <u>RCW</u>   | <u>Page No.</u> |
|--|-----------------|
| RCW 62A.2A-502   | 41              |
| <br><u>CIVIL RULES</u>   |                 |
| CR59A  | 43              |
| CR 59(a)9  | 44              |
| <br><u>RAP</u>   |                 |
| RAP18.1  | 45              |
| <br><u>OTHER</u>   |                 |
| 25 <u>David K. Dewolf &amp; Keller W. Allen,</u><br>Washington Practice, Contract Law And<br>Practice § 5.5 (1998) | 34              |
| <br><u>APPENDICES</u>  |                 |
| Appendix A- Equipment Financing Agreement (Exhibit 1)<br>(Selected paragraphs retyped)                             |                 |
| Appendix B-Notice to Provide Insurance/Insurance Authorization (Exhibit 3)   |                 |
| Appendix C-Certificates of Insurance (Exhibit 16)  |                 |
| Appendix D-Farmers' Insurance Policy Endorsements (from Exhibit 40)  |                 |

## **I. ASSIGNMENTS OF ERROR**

The trial court erred in:

1. Misinterpreting the contract documents as not requiring Circle S Foods, Inc. (hereafter "Circle S") to provide Radiance Capital, LLC ("Radiance") proof that the required insurance was continuously maintained with respect to the collateral.
2. Failing to recognize that Circle S Certificates of Insurance and Insurance Policies were facially inadequate under the contract documents, and justified Radiance's Forced Place coverage. Finding 22.
3. Failing to change its decision when, after trial, Circle S clarified that the trial court's decision erroneously assumed that Circle S' Insurance Policies from 2009 and 2010 contained the required Loss Payee endorsements. Finding 22.
4. Concluding that Radiance did not satisfy its burden of proving a breach of the contract documents, and did not owe the insurance premiums that Radiance had invoiced for years without Circle S objection.
5. Concluding that, despite contract documents to the contrary, Radiance had the burden of proving: (1) an absence of required insurance; and (2) a written notice and opportunity to cure.

6. Concluding there was an inconsistency between the Financing Agreement and the Notice to Provide Insurance Authorization, where both documents required liability insurance in such amount and form as Radiance reasonably requires. Conclusion 2.
7. Concluding that the Financing Agreement did not require proof of liability insurance, even though Circle S is expressly required to maintain liability insurance in such amount and form as Radiance reasonably requires. Conclusion 2.
8. Concluding that: (1) the Financing Agreement required written notice that Circle S' evidence of insurance was not satisfactory; and (2) there was no evidence Radiance notified Circle S of unsatisfactory insurance. Conclusion 3 and 4.
9. Concluding that: (1) it was not proper for Radiance to charge Circle S for its Forced Place insurance without further explanation of insurance inadequacies; (2) Radiance' breach of contract claim failed in the absence of such notice; (3) Plaintiff had a burden of proving inadequate coverage, and failed to meet that burden; (4) Radiance never informed Circle S that its insurance was not satisfactory, and not in a reasonably required form; (5) Circle S would have cured ongoing deficiencies if additional notice had been provided; (6) Circle S did not have an opportunity to cure

insurance problems; (7) Circle S was charged twice for insurance it was already paying for; (8) Circle S provided Certificates of Insurance that evidenced regular maintenance of the required insurance. Conclusion 4.

10. Finding that Radiance failed to provide Circle S with proper notice and an opportunity to cure. Finding 12.
11. Finding that Radiance never advised Circle S that its payments were inadequate, and never declared default. Findings 14 and 15.
12. Finding that Circle S had paid its obligations in full under the Financing Agreement. Finding 16.
13. Finding that Radiance did not expressly demand payment for insurance premiums until the January 13, 2011 letter. Finding 17.
14. Finding that: (1) Radiance for the first time advised Circle S of its default pursuant to the Financing Agreement on February 8, 2011; and (2) that there was no provision for assessing default and collection fees. Finding 19.
15. Finding that Radiance never responded to Circle S' Certificates of Insurance, and never questioned the insurance information provided. Finding 21.

16. Denying Radiance's motion for reconsideration, which provided newly discovered evidence documenting the notices of default and opportunities to cure given to Circle S in 2007.

**II. ISSUES**

1. Whether Circle S was contractually obligated to maintain and provide satisfactory evidence of insurance naming Radiance as both a "Loss Payee" and "Additional Insured."
2. Whether Radiance, as a matter of law, proved Circle S breached its contractual obligations to maintain and provide satisfactory evidence of the insurance.
3. Whether Radiance was entitled to add the \$7.81 cost of the Forced Place insurance to the installment payment amounts due from Circle S.
4. Whether Circle S received adequate notice of its insurance deficiencies when, in 2007, Circle S specifically inquired about the \$7.81 charge and assured Radiance that the insurance problem would be cured by his agent, Jim Short.
5. Whether this matter should be reversed and remanded for a judgment in Radiance favor and an award of attorney's fees, including fees arising from the Oregon lawsuit in which Radiance was deemed the prevailing party.

### III. STATEMENT OF THE CASE

#### A. **Material Facts.**

**Radiance Capital.** Radiance Capital, LLC (“Radiance”) is a Washington State Limited Liability Company. Radiance provides financing to businesses to allow the purchase of equipment. VRP 41. Radiance is owned by Thomas Price. VRP 42. Thomas Price’ father, Mike Price, served as Radiance Director. VRP 41-42. With the help of its small office staff, Radiance carefully tracks customers’ accounts and invoices on a daily basis, to protect itself from the risks of default and liability. VRP 46-47.

**Radiance Contract Documents.** When a potential customer seeks financing, Radiance provides two contract documents for contemporaneous review and signature: (1) an Equipment Financing Agreement, and (2) a Notice to Provide Insurance and Insurance Authorization (“Insurance Notice”). Exhibits 1 and 3 (attached as Appendix A and Appendix B); VRP 49, 151-152.

Under the contract documents, a customer who desires financing must protect Radiance by granting a UCC Security Interest in the equipment, as collateral. App. A (Ex. 1), par. 1 (Security Agreement) and par. 12 (Limited Power of Attorney). Radiance is granted a power of attorney to file and record on the customer’s behalf any document deemed

necessary to perfect or protect Radiance' interest in the collateral, or to otherwise comply with the UCC. App. A (Ex. 1), par. 12 (Limited Power of Attorney). The Radiance customer also accepts responsibility for expenses and fees associated with ensuring its compliance under the contract. See, e.g., App. A (Ex. 1), par. 14 (Creditor's Payment), par. 11 (Taxes), par. 15 (Indemnity), par. 18 (Litigation Expenses), 23 (Additional Documents).

**Proof of Insurance.** In addition to a UCC Security Interest, a customer must agree to protect Radiance by providing "evidence satisfactory" to confirm that required insurance coverages are in place. App. A (Ex. 1), par. 13. Under the contract documents, the customer must provide Radiance with satisfactory proof that Radiance has been properly named as: (1) "Loss Payee", for replacement value of the collateral; and (2) "Additional Insured", for public liability and property damage. App. A (Ex. 1), par. 13 (Insurance) and App. B (Ex. 3) (Insurance Notice).

**Loss Payee.** To protect against damage to its collateral, Radiance requires customers to obtain and provide proof of insurance naming Radiance as a "Loss Payee." App. A (Ex. 1), par. 13 (Insurance); VRP 60. As a Loss Payee, Radiance has the right to receive payment directly if its security interest in the collateral is destroyed. Specifically, the customer agrees to "maintain and provide Creditor evidence satisfactory to

Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral ... naming Creditor as Loss Payee.” App. A (Ex. 1), par. 13. The insurance “shall be in an amount and form ... approved by Creditor.” App. A (Ex. 1), par. 13. The amount and form of the Loss Payee coverage is specified in the Insurance Notice, which requires that Radiance “must be named as Loss Payee” for not less than the aggregate equipment cost / advance. App. B (Ex. 3), paragraph a.

**Additional Insured.** By requiring coverage as an Additional Insured, Radiance protects itself from the risk of liability that might arise from injury or damage caused by the equipment. This liability coverage is specifically referenced in paragraph 13, which provided that the customer “shall maintain public liability and property damage coverage in such amounts and in such forms as Creditor shall reasonably require.” App. A (Ex. 1), par. 13. Like Loss Payee coverage, the required amount and form of Additional Insured liability coverage is specified in the Insurance Notice. The Insurance Notice specifies that Radiance “must be named as Additional Insured” with respect to public liability and property damage insurance with a limit of not less than \$500,000. App. B (Ex. 3), paragraph b.

**Satisfactory Evidence.** Per the contract documents, Radiance regularly requests proof that the required coverages are maintained

throughout the life of the customer's contract. VRP 126-126. In lieu of actual policy endorsements, Radiance will sometimes accept the customer's "Certificate of Insurance" as satisfactory evidence certifying that the two necessary coverages are in place. See VRP 106-108, 118.

**Force Placed Coverage.** If a customer is unable to confirm the required insurance has been maintained, Radiance is authorized to protect itself with a forced placement of insurance. Under the contract, if the customer does not provide the required insurance, Radiance may:

buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service for such insurance, to the Installment Payment amount due from the Debtor.

App. A (Ex. 1), par. 13 see Exhibit 10 (Forced Place Insurance Agreement). Radiance right to place insurance at the customer's expense applies when a customer fails to provide any required insurance or fails to continue such insurance in force. App. B (Ex. 3) ("FAILURE TO PROVIDE INSURANCE"). In such cases, the Forced Place policy ensures that Radiance's financial interest in the equipment / collateral is protected. The contract documents do not identify conditions or time frames for advance notice of insurance defaults or opportunities to cure.

**Enforcement and Jurisdiction.** Radiance's contract documents also set forth provisions on default, remedies, and for recovery of reasonable expenses associated with enforcement of the contract, such as default notices, attorney's fees and court costs. App. A (Ex. 1), Paragraphs 15, 16, 17 and 18. A default includes the Debtor's default in performing any obligation under the Equipment Financing Agreement "or under any other agreement between Debtor and Creditor." App. A (Ex. 1), par. 16(b). Default also includes a situation in which Creditor "shall in good faith deem itself insecure as a result of a material adverse change in Debtor's financial condition or otherwise." App. A (Ex. 1), par. 16(j).

With respect to remedies for a default Radiance has broad rights, including the right to declare all of the customer's obligations immediately due and payable "without notice or demand to Debtor and without setoff." App. A (Ex. 1), par. 17(a) ("Remedies"). In the event of a legal action, the customer waives the right to a jury trial and submits to the jurisdiction of the State of Washington, King County. App. A (Ex. 1), par. 26.

**Circle S Foods, Inc.** Circle S Foods, Inc. is an Oregon corporation doing business as "Circle S. Market." CP 13-14. The corporation owns a convenience store and gas station in Oregon. VRP 149. The Circle S owners include Subhash Chander Sharma, Navjit Singh, and Jagtar Singh. CP 2. Mr. Sharma is the company President.

VRP 151. Another owner, Jagtar Singh manages the Circle S store and gas station. He did so with the assistance of his wife, and two other employees. VRP 149-150.

In addition to working long hours managing the store, Jagtar Singh is responsible for all of Circle S' paperwork and bookkeeping. VRP 149. For Circle S' insurance needs, Jagtar Singh relies on Jim Short, a Farmers Insurance agent in Oregon. VRP 154. Jim Short provides copies of the insurance policies to Circle S, and he was the individual Circle S relied upon to produce satisfactory Certificates of Insurance for the applicable Farmers Insurance coverages. VRP 153-154, 170-173, 178-179; Exhibit 40 (Circle S policies from 2009 and 2010).

**The Commercial Fryer Transaction.** In 2005, Circle S decided to purchase a piece of restaurant equipment known as a "ventless fryer" from seller Northwest Soft Serve & Sales. See VRP 150, Exhibit 4. The fryer cost \$5,950. In order to acquire the fryer, Circle S sought financing from Radiance Capital. App. A (Ex. 1); CP 2 and 14.

On October 7, 2005, Circle S' President Subhash Sharma executed the Radiance Equipment Financing Lease Agreement, along with the Insurance Notice. Exhibits 1 and 3 (attached as Appendices A and B); CP 274-275. Circle S' President signed both contract documents in the

presence of his business partner, Jagtar Singh. VRP 152. The Circle S owners also signed personal guarantees. App. A (Ex. 1); CP 14.

Radiance signed the Agreement on November 29, 2005. App. A (Ex. 1). That same day, Radiance issued a check to Northwest Soft Serve for \$5,950. Exhibit 4. Through this financing, Circle S obtained and began using its commercial fryer.

**Security Interest.** As required, Circle S granted Radiance a security interest in the commercial fryer. Ex. 1, par. 1. Full performance of the Agreement was secured by the equipment, and the appropriate UCC Financing Statement was recorded with the Secretary of State in Oregon (where the equipment is located). Exhibit 2.

**Farmer's Insurance.** By signing the contract documents, Circle S agreed to continuously maintain and provide satisfactory evidence of the required insurance coverages, naming Radiance as: (1) Loss Payee on all risk coverage, and (2) Additional Insured for public liability and property damage. App. A (Ex. 1), par. 13; App. B (Ex. 3), par.s a and b. Per the contract documents, the Circle S Insurance Notice was faxed to its agent, Jim Short of Farmer's Insurance. App. B (Ex. 3); VRP 153. In response, Jim Short provided Radiance with the first Certificate of Insurance in place under the contract. See App. B (Ex. 16). This first Certificate of Insurance certified that: "RADIANCE CAPITAL, LLC IS LOSS PAYEE,

ADDITIONAL INSURED AND CERTIFICATE HOLDER” with respect to a policy effective “03/20/2007” to “03/20/2008.” App. B (Ex. 16). Radiance found this Certificate of Insurance satisfactory evidence that the required insurance was being maintained, per the contract terms. VRP 105, 124-125, 128, 131-132; App. A (Ex. 1), par. 13; App. B (Ex. 3).

During the term of the contract, Radiance requested and received updated certifications of the insurance that Circle S was maintaining for its collateral. VRP 125-126. However, Circle S’ Certificates of Insurance began to fall short. Radiance deemed the Certificates deficient because they ceased to evidence that both Loss Payee and Additional Insured coverage was being maintained for Radiance. Appendix B (Ex. 16); see VRP 107-108; 118, 131-132; see also Defendants’ Exhibit 40, Appendix D (Radiance not listed under the “LOSS PAYABLE ENDORSEMENTS”).

**Notifications of Insurance Deficiencies.** Radiance notified Circle S of the insurance deficiency in multiple ways. See VRP 45, 50-52, 99-102, 133-136; 156-157; Exhibits 5-9; see also CP 296-298. First, on February 23, 2006, Radiance Insurance Administrator Sally Schuette notified Jim Short at Farmer’s Insurance that the required coverages were due to expire. She asked for a “Renewal Certificate” identifying the minimum required coverage per the contract, including the required

specifications for “**Certificate Holder, Additional Insured, and Loss Payee**” that was properly certified in the original Certificate. CP 296. Although Jim Short continued to send Certificates of Insurance, the required coverage was missing from every subsequent Certificate that he sent. App. B (Ex. 16); CP 296.

On January 19, 2007, Sally Schuette notified Circle S that the records on file indicated the required coverage was no longer in effect. CP 297. The form notification asked Circle S to have Jim Short send a Reinstatement or Renewal Certificate specifying the required coverage per the contract, including: “**Certificate Holder, Additional Insured, and Loss Payee.**” CP 297. However, once again, Circle S and Jim Short failed to provide any evidence indicating that both Loss Payee and Additional Insured coverage was being maintained for Radiance.

On June 20, 2007, Radiance’s Gina McNamee sent another written notification to Circle S. This time the notice declared Circle S in “Default”, due to its “failure to maintain the required insurance coverage in full force and effect.” CP 298. The notification further specified: “Your contract requires that you provide insurance protection for Radiance Capital LLC as loss payee and additional insured.” CP 298. The letter provided Circle S with 10 days within which to “provide proof of adequate coverage.” CP 298. However, once again, neither Jim Short

nor Circle S ever provided documentation certifying that both Loss Payee and Additional Insured coverage was back in place for Radiance.

While Jim Short never provided Radiance with the actual policy endorsements, he had been sending policies to his insured, Jagtar Singh at Circle S. Jagtar Singh said he “never paid attention” to the actual policies. However, he did request an additional copy when his attorney’s needed the exhibit on the eve of trial. See VRP 179; Exhibit 40.

**Radiance Force Places Insurance.** In order to protect itself against loss and liability Radiance determined it was necessary to obtain the insurance coverages at its own expense pursuant to the contract documents. App. A (Ex. 1), par. 13 and App. B (Ex. 3) (“Failure To Provide Insurance” clause). Radiance invoked its Forced Place insurance coverage, and began charging Circle S \$7.81 each month, to cover the coverage gaps appearing in Jim Short’s deficient Certificates. The \$7.81 monthly premium paid by Radiance was billed to Circle S on its regular monthly invoices. See Exhibits 6, 7, 8 and 9.

Jagtar Singh admits that by 2007 he was on notice that Circle S had deemed his insurance coverages deficient, and was invoicing him for “Insurance Premiums” for Forced Place coverage. See VRP 156; Exhibits 6-9. When the \$7.81 charge first started to appear on the Circle S invoice, Jagtar Singh called Radiance and was told that his insurance was

inadequate. VRP 156-157. At that point Jagtar Singh told Radiance he would call his insurance agent to correct the deficiency in the Certificate. VRP 157. Jagtar Singh called Jim Short at Farmer's Insurance to correct the problem. VRP 157. Apparently, Jagtar was having similar problems with another finance company – "Highline Capital Corp." See Exhibit 18 (attached Ex. B); VRP 157 (lines 7 through 10).

Despite Jagtar Singh's request for correction, Jim Short continued to send Certificates of Insurance which failed show Radiance was named as both Loss Payee and Additional Insured. App. B (Ex. 16).

As a result, from August 2007 through October 2010, Radiance paid \$7.81 each month for Forced Place insurance. At contract maturity, a total of \$381.78 in insurance premiums was actually paid by Radiance, and invoiced to Circle S. Each month, Radiance provided an invoice to Circle S notifying Jagtar Singh that the insurance premiums were continuing to accrue. Exhibits 5-9.

Although Jagtar Singh told Radiance he would correct the problem with Jim Short, he did not do so. And although his invoices continued to notify him that the problem was not solved, Jagtar Singh did not call or take any further action to correct the ongoing problem with his insurance. VRP 156-157, VRP 162-163. He just continued to receive the invoices showing the accruing insurance fees associated with the same insurance

problem that he had unsuccessfully attempted to correct with Jim Short back in 2007. Exhibits 5-9.

**Agreement Maturity.** The Agreement matured in January of 2011, when Circle S made the final payment of principal and interest. On January 13, 2011, Radiance's Mike Price notified Circle S' Subhash Sharma that the fryer would be released upon payment of the \$531.78 balance. Exhibit 15. This balance included a total of \$381.78 for the past due Insurance Fees, and the \$150.00 equipment Transfer Fee, which covered the cost for releasing the UCC-1 security interest on the Circle S fryer. See Exhibit 15; CP 281, Conclusion 9.

Mike Price spoke to Jagtar Singh and reiterated that the \$381.78 covered the Forced Place insurance, and the Transfer Fee for a release of the UCC Security Interest. VRP 163-164. When Mr. Singh indicated he wanted a waiver, Mike Price advised him that the amount would not be waived, and was secured by Radiance's security interest in the collateral. See VRP 163-164.

To the very end, Jagtar Singh's insurance agent, Jim Short, never understood the need to provide both Loss Payee and Additional Insured coverage, as originally specified. App. B (Ex. 3) and Exhibit 16; VRP 54-57, 59; see Exhibit 40 (omitting Radiance as Loss Payee). On January 24, 2011, Mike Price faxed Jim Short copies of his own Certificates,

explaining how his first Certificate of Insurance properly certified: “RADIANCE CAPITAL, LLC IS LOSS PAYEE, ADDITIONAL INSURED AND CERTIFICATE HOLDER.” App. B (Ex. 16). Mike Price pointed out that all subsequent Certificates of Insurance were facially “incorrect.” To try and help Jim Short’s confusion, Mike Price attached examples of the facially deficient Certificates and wrote “NO LP or AI” on the Certificates that had neither Loss Payee or Additional Insured coverage, and “NO AI” on the Certificates that specified Loss Payee coverage, but lacked Additional Insured coverage. App. B (Ex. 16); VRP 54-57; compare Exhibit 40, Appendix D (Jim Short’s policies omitting Radiance as Loss Payee). Mike Price asked Jim Short to call his direct line if he had any further questions. App. B (Ex. 16). A copy of this fax to Jim Short was also e-mailed to Circle S. Exhibit 17.

On January 28, 2011, Farmers’ Jim Short wrote to Circle S’ Jagtar Singh. In his letter, Jim Short acknowledged he had been in correspondence with Radiance “on numerous occasions”, and complained that he was still unclear what insurance requirements needed to be satisfied on his Certificates of Insurance. Exhibit 36. With respect to the type of insurance, Mr. Short stated that he and Farmers “have had” both Radiance and Highline Capital (another concerned financing company) identified as both Loss Payee and Additional Insured. Jim Short also

stated that coverage for business personal property always existed on the policy. Exhibit 36; compare Exhibit 40. However, like his inconsistent Certificates, Jim Short could not truthfully specify that both required coverages had been maintained continuously during the term of the contract. Exhibit 18; Exhibit 40.

**Circle S Refuses Payment.** Between February 1 and February 18, 2011, Radiance attempted to resolve the situation with Oregon attorney Paul Connolly, who appeared on behalf of Circle S. Exhibits 18-20, 22 – 24, 26-30. On February 1, 2011, Paul Connolly advised Mike Price that he represented Circle S, and any further communications from Radiance should be with his office. Exhibit 18. He indicated that: (1) Circle S was willing to “pay the Agreement Transfer Fee of \$150 per the contract terms covering the Fryer at issue” to effect a release of the Security Interest; (2) Circle S “provided continuous insurance coverage on the Fryer at issue (See Exhibit B), naming your firm as the “Loss Payee” (See Exhibit C), which is exactly what your contract requires”; and (3) “Additional Insured” coverage was not required by the contract, and “it seems to me that you are in a better position as “Loss Payee” then you would be as “Additional Insured.” Exhibit 18.

The next day Mike Price responded to Mr. Connolly by providing the Notice to Provide Insurance Form that had been signed by his client,

and which specified clearly both Loss Payee and Additional Insured requirements. Exhibit 19. Mr. Price tried to explain (again) that the proper Certificate of Insurance had been received for July 11, 2006 through July 11, 2007, but thereafter the Certificates failed to evidence the two required coverages. Exhibit 19.

On February 4, 2011, Mr. Connolly wrote back to Mr. Price and stated that his client's records indicated that the fryer "was covered" for the full time. However, like Mr. Short, Mr. Connolly was unable to specify the actual coverages, the terms, or the Endorsements or Certificates relied on. Exhibit 20; compare Appendix D, Exhibit 40. Mr. Connolly went on to tender a \$150 check for the release of the Security Interest, and a demand for the bill of sale on the fryer. He also threatened Mike Price with arrest and prosecution if there was an effort to enforce the Security Interest in the fryer. Exhibit 20.

On February 8, 2011, Radiance notified Circle S that it had incurred an additional \$480 in Default and Collection Fees, and would need to pursue legal action if \$861.78 were not paid within ten days. Ex. 21. Circle S Foods responded, through its Oregon counsel, by forwarding a payment of only \$150.00 and disputing the insurance fees. See Exhibits 18 and 20. Radiance rejected the tender of \$150.00, because it failed to pay the past due insurance premiums. See Exhibit 22. Circle S then filed

suit against Radiance in Oregon, and demanded a jury. Exhibit 30; compare App. A (Ex. 1), paragraph 26 (jurisdiction and jury waiver).

**B. Statement of Procedure**

**The Oregon Litigation.** In response to Radiance's continued insistence on insurance reimbursement, Circle S Foods filed suit against Radiance in Oregon. See Exhibit 30. Circle S requested a jury trial and a declaratory judgment that, among other things, insurance listing Radiance only as "Loss Payee" was sufficient under the Agreement. Exhibit 30.

Radiance retained Oregon counsel to defend the Oregon suit. The Circuit Court of Oregon, Marion County, dismissed Circle S' suit for lack of jurisdiction and referred to this pending action which concerned the same claims. See Exhibit 31. Radiance incurred \$5,555.00 in attorney fees to defend the Oregon suit. Exhibit 33; VRP 79. Radiance was awarded a \$300.00 "prevailing party fee" and \$522.00 in costs and disbursements. See Exhibit 32.

**King County Litigation.** A week after Circle S misfiled in Oregon, Radiance filed its own suit in King County Superior Court. Radiance requested judgment for insurance premiums paid, default and collection costs, for reasonable attorney fees and costs, and for a Writ of Replevin. CP 1-10. Circle S answered. CP 13-16. Although Circle S was unable to demand jury in Washington, it nonetheless staffed the

lawsuit with multiple attorneys, including a team of Oregon lawyers, clerks, paralegals and a secretary working out of Salem for the Washington lawyers. See CP 231-234, 186-224; VRP 11-14.

**Circle S' Evidence of Insurance.** After an unsuccessful attempt at mediation, the parties designated and exchanged exhibits and proposed witnesses in advance of trial. CP 21-33; CP 35; CP 37-40; CP 60-67; VRP 11. In its ER 904 notice and Joint Statement of Evidence, Circle S indicated it would be providing the actual Farmer's Insurance Policy. CP 32, 39; Exhibit 40. Initially, Circle S provided a 2012 policy which was objectionable because it did not address the coverage period in dispute. See VRP 176.

According to Circle S' attorney, Mr. Kinstler, obtaining satisfactory evidence of Farmers' insurance coverages from Jim Short was a frustrating and uncertain experience. VRP 210 (Mr. Kinstler: "We had a heck of a time trying to get policies out of Mr. Jim Short, as you can probably tell ..."). However, days before trial, Circle S was able to substitute the irrelevant 2012 policy in Exhibit 40, with the 2009 and 2010 policies that were actually in effect during the time Radiance was invoicing for Forced Place insurance. VRP 175-179. The policy transmittal sheets confirmed they had been printed by Jim Short on August 10, 2012, and indicate direct mailing to Circle S' address. Exhibit 40;

VRP 178.

**Trial.** On August 14, 2012, a non-jury trial was held before Judge Joan Dubuque in King County Superior Court. There were only two witnesses who testified: (1) Radiance's President, Mike Price; and (2) Circle S' Manager, Jagtar Singh. VRP 2; CP 60.

Radiance opened its case by pointing out that this was a simple commercial contract case, involving a five-year contract under which Circle S agreed to provide Radiance with proof that the collateral was continuously insured, with Radiance as both Loss Payee and Additional Insured. VRP 31-32 (citing Exhibit 1, par. 13 and Exhibit 3). Radiance outlined the evidence it would present confirming that Circle S was aware of the insurance deficiencies, and did not dispute years' of monthly invoices charging Circle S for insurance premiums that Radiance paid for. VRP 32-33. The only dispute came at contract maturity, when Circle S balked and improperly filed suit in Oregon, forcing Circle S to incur escalating fees and expenses associated with its effort to receive the payments due. VRP 33-36.

In its opening, Circle S agreed it was required to continuously protect the collateral with the required liability and property damage insurance specified in the Insurance Notice. See VRP 36-37. Circle S also agreed that through the Insurance Notice, Radiance "communicated

exactly what it required,” and that Circle S initially responded to this Notice with proof that both insurance requirements had been satisfied. VRP 37; see App. B (Ex. 3). However, Circle S argued that to prevail on a breach of contract, Radiance had the burden of proving a “change” in the proper policy coverage, and that the Circle S coverages were no longer in effect. VRP 37-38 (“The financing company cannot provide proof that my client’s coverage ever changed”).

**Mike Price Testimony.** In his testimony, Mike Price described the standard contract documents and procedures used by Radiance, including the provisions that require continuance protection of Radiance as a Loss Payee and Additional Insured. See, e.g., VRP 45, 48-49, 60. He explained how Radiance regularly requested evidence from its customer, Circle S (and its agent Jim Short), to confirm renewals of the two required coverages. See, e.g., VRP 54-59; App. B (Ex. 16). Mr. Price explained how Jim Short responded with updated Certificates of Insurance that were inconsistent and facially deficient; as a result Radiance exercised its right to obtain Forced Place insurance, and regularly paid for and invoiced Circle S for the modest monthly charge, which at contract maturity totaled \$381.78. VRP 50-51; 54-63; Exhibit 15.

During his testimony Mike Price was very clear that in addition to the invoices adding insurance premiums, Circle S had been given an additional written notice of default, using standard forms and operating procedures. VRP 53-56, 99-104. However, Mike Price also acknowledged that at the time of trial he was unable to locate the additional written notifications that would have been given. VRP 102 (“He says we don’t have a copy in here, so we must not.”). Long before trial, Radiance specifically requested all available documents related to the transaction, including documents possessed by third party service agents, including US Bank. CP 347-350. Unfortunately, the US Bank employee failed to produce the corroborating documentation in advance of trial. See CP 376-379 (written notices of default).

**Directed Verdict.** At the close of Radiance’ case, Circle S moved for directed verdict, arguing that Radiance did not meet its burden of proving a breach of contract. VRP 139-140. Specifically, Circle S argued that despite inconsistencies in the Certificates of Insurance, Radiance “is not aware of whether the Defendant had insurance covering the fryer or not.” VRP 139. Circle S reiterated its legal theory that Radiance had the burden of proving, as an element of its claim, “the absence of insurance.” VRP 143. Radiance’ attorney, Mr. Kinstler, argued that because “no policies of insurance have been put before this

Court”, there is an “absence of evidence” to indicate that Circle S breached its contract. VRP 143. According to Circle S, the Certificates of Insurance were not evidence of a breach because they were “confusing and provide no information whatsoever other than compliance with respect to loss payee and additional insured at times.” VRP 144.

The Court denied the motion for directed verdict. VRP 146-147. The Court interpreted the contract as imposing an obligation on Circle S “to maintain and provide adequate proof” of insurance. VRP 147. The Court observed that Radiance provided evidence that it was not satisfied with Circle S’ proof of insurance, and that for more than three years Radiance procured and billed Circle S for the forced placement coverage. For that reason, the Court denied the motion. VRP 146-147.

**Jagtar Singh.** Next, Circle S called Jagtar Singh to testify. VRP 148, et seq. With his testimony, Mr. Singh confirmed his direct participation in executing the contract documents with Radiance, his discussions with Jim Short of Farmer’s Insurance. VRP 151-154. Mr. Singh acknowledged receiving notice that his evidence of insurance was not correct, and that he told Radiance he would have Jim Short correct it. VRP 156-157. Thus, while he claimed he never received a formal notice that insurance was deficient, Jagtar Singh acknowledged that by 2007 he was communicating with both Radiance and Jim Short at Farmers’ in an

effort to cure the problem with respect to Jim Short's Certificates of Insurance and the ongoing invoices from Radiance. VRP 156-157; VRP 196.

Echoing his attorney's argument, Jagtar Singh also testified that his insurance never changed. The only change in insurance coverage he ever made was to increase the policy limits. VRP 155-156. When Radiance asked for the total premiums due at contract maturity, Jagtar once again called his insurance agent, Jim Short. VRP 166. Mr. Singh testified that Jim Short verbally assured that the collateral had been "continuous fully covered," and provided the letter dated January 28, 2011. VRP 166; Exhibit 36. Jagtar testified that he relied on Jim Short to correct the problem with Radiance, and believed Jim Short's assurances that the two required coverages were in place. See VRP 187-188, 195.

**Exhibit 40 – Actual Policies Admitted.** On cross examination, Jagtar Singh mentioned that actual copies of the insurance policies were in the exhibit notebook. VRP 173; Exhibit 40. At that point, Circle S' attorney tried to "quickly object," trying to suggest that her client might be confused because of a language barrier. VRP 173-174. As the testimony continued, it immediately became clear that Jagtar Singh was not confused – the Circle S insurance policies were in the court room. VRP 174-175. Still, counsel for Circle S persisted with objections, trying to convince

Judge Dubuque that she should not consider Exhibit 40 -- even though Jagtar Singh had already placed his hand on the Exhibit and confirmed that it consisted of actual Circle S insurance policies from the time frame in question. See VRP 173-180.

Judge Dubuque was surprised: “So am I understanding correctly that this is your exhibit that you’re now objecting to?” VRP 176. Ultimately Judge Dubuque overruled the Circle S objection to its own exhibit: “I’m going to admit the document.” VRP 181.

With admission, the court had before it the Circle S insurance policies that Jim Short had assembled on August 10, 2012, and forwarded directly to the Circle S Market (not to counsel for Circle S). Exhibit 40. The policy packages are essentially identical for both years, and reveal the actual Endorsements for Loss Payee and Additional Insured. See Exhibit 40, “**LOSS PAYABLE PROVISIONS**” for March 20, 2009 through March 20, 2010, and March 20, 2010 through March 20, 2011 (attached as Appendix D). While the policies reflect a series of Loss Payee endorsements for other third parties, there is no Loss Payee endorsement for Radiance in the Circle S insurance policy. In addition, Radiance was only named as an Additional Insured with respect to leased “office equipment.” *Id.*; VRP 203.

**Closings.** Mr. Singh's testimony concluded, and the parties gave closing arguments. Radiance pointed out that neither Circle S nor Jim Short ever provided copies of the Loss Payee or Additional Insured endorsements, as was required in the contract documents. VRP 202. Instead, Circle S was relying on inconsistent arguments which were contradicted by its own evidence. First, Circle S misfiled an Oregon lawsuit, claiming that the contract only required Loss Payee coverage. Now, in Washington Superior Court, Circle S was confronted with its own policy exhibits, showing that the Loss Payee endorsement did not exist. VRP 197-199; Exhibit 40. Radiance requested an award reimbursing for the Force Placed insurance and other expenses associated with the defaults, including the attorney's fees and costs incurred in defending against an Oregon lawsuit that was dismissed under the jurisdiction provision in its contract.

In response, Circle S argued that the confusing and inconsistent nature of Jim Short's Certificates of Insurance somehow prevented Radiance from affirmatively proving that proper coverage was not continuously in place. VRP 205-206. Circle S also argued that Radiance could not establish a breach because Circle S was not notified that there was a problem with the insurance. VRP 207-208, 2010. Next, Circle S argued that the contract did not require ongoing proof of coverage beyond

the original insurance that is effective on the date of the agreement. VRP 209. Finally, Circle S claimed that Radiance could not recover its fees and costs, including fees for the dismissed Oregon suit. VRP 214-216

**The Oral Ruling.** On August 16, 2012, Judge Joan Dubuque gave for her oral ruling. Judge Dubuque ruled that Radiance failed to prove a breach of contract, and dismissed Radiance' claims. VRP (August 16, 2012). In the ruling, Judge Dubuque concluded that the contract documents only required proof of Loss Payee coverage, and not Additional Insured coverage. The court reasoned that the contract documents were inconsistent, and that nothing in the Equipment Financing Agreement (Exhibit 1) authorized designation of the Additional Insured coverage set forth in the Insurance Notice (Exhibit 3). VRP 5 (August 16, 2012). The court also found that Radiance never informed Circle S that the insurance was inadequate or needed to be cured, and never issued a formal notice of default. VRP 6-7 (August 16, 2012). Relying on Exhibits 16 and 40, the court found that Radiance had received Certificates of Insurance for the entire contract period, and that the actual insurance policy "reflects that the Plaintiff was a loss payee on the premiums on the insurance policies for 2009 and 2010." VRP 8-9 (August 16, 2012).

Based on the foregoing analysis, the court ruled that Radiance failed to satisfy its burden of proving a breach of contract. “There is no evidence before this Court that the Defendants were ever notified that the insurance was not satisfactory until after the conclusion and final payment of the contract amounts. ...” The Court found that the invoicing of insurance premiums without any explanation was not adequate notice. Therefore, Radiance claims were dismissed. VRP 9 (August 16, 2012). The court also ruled that Radiance was not entitled to fees associated with Circle S Oregon litigation, but nonetheless awarded a recovery of fees incurred by the Oregon legal team. VRP 11 (August 16, 2012).

**Motion for Fees and Costs.** On September 12, 2012, Circle S moved for an award of \$43,320.86 in fees and costs. 178-183. Radiance opposed the motion on the grounds that the request was excessive and unreasonable. CP 227-240.

**Findings and Conclusions.** On September 17, 2012, the trial court reviewed proposed findings of fact and conclusions of law, and related objections. See VRP (September 17, 2012). After a lengthy hearing, an Amended set of Findings of Fact and Conclusions of Law were finalized and entered by the court, and defendant’s motion for fees was granted. VRP (September 17, 2012); CP 273-282. During the hearing, Circle S quickly clarified for the court that its initial finding that

Radiance was a Loss Payee under the policy was an error, and therefore that aspect of the court's original ruling should be stricken from the findings. VRP 6-7 (September 17, 2012). The court also confirmed that its analysis assumed Radiance had a burden of proving an absence of proper insurance, as well as a burden of proving written notice of default and opportunity to cure. VRP 7-8 (September 17, 2012).

**Motion for Reconsideration.** Shortly after trial, Radiance received an apologetic e-mail from US Bank, forwarding copies of the actual written notices of insurance deficiency which Mike Price testified would have provided additional notification to Circle S of the deficiencies in its insurance coverages. See CP 376-379 (written notices). Radiance promptly moved for reconsideration based on this newly discovered evidence, which further undermined the court's ruling that there was no evidence Circle S was not notified of insurance deficiency. CP 285-315 (Motion for Reconsideration); CP 347-379 (Declaration of Jody Burleigh); CP 589-594 (Plaintiff's Strict Reply). The trial court denied the motion on October 16, 2012. CP 595-597.

Radiance timely appealed the decisions of the trial court on November 12, 2012. CP 604-623. Thereafter, Circle S applied for and was granted a supplemental award of attorney's fees. Judgment was entered, and Radiance filed an Amended Notice of Appeal.

#### **IV. STANDARD OF REVIEW**

On appeal from a bench trial, conclusions of law are reviewed de novo. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). Interpretation of a contract provision is a question of law when the interpretation does not depend on extrinsic evidence, or only one reasonable inference can be drawn from extrinsic evidence. Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003), *quoting* Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). Where interpretation of a document must be made from the face of the instrument itself, the appellate court is in as good a position as the trial court to interpret its meanings. State v. Rowe, 93 Wn.2d 277, 280, 609 P.2d 1348 (1980).

Findings of fact are reviewed to determine whether they are supported by substantial evidence and, if so, whether the findings support the conclusions of law. Hegwine v. Longview Fibre Co., 132 Wn. App. 546, 555, 132 P.3d 789 (2006). Substantial evidence exists "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." King County v. Wn. State Boundary Review Bd, 122 Wn.2d 648, 675, 860 P.2d 1024 (1993).

A trial court's ruling on a motion for reconsideration is reviewed for an abuse of discretion. Go2Net, Inc. v. C I Host, Inc., 115 Wn. App.

73, 88, 60 P.3d 1245 (2003); Weems v. N. Franklin Sch. Dist., 109 Wn. App. 767, 777, 37 P.3d 354 (2002).

V. **ARGUMENT**

**A. The Trial Court Erred By Adopting An Unreasonable Contract Interpretations That Are Inconsistent With The Actual Contract Documents.**

The trial court's decision should be reversed because it is based on a fundamentally flawed interpretation of the contract documents. This interpretation is flawed because it ignores the plain and unambiguous language of the contract, and defeats the parties' expressed intent.

Washington courts apply three basic rules to construe written contracts: (1) the intention of the parties must control; (2) the intent must be ascertained from reading the contract as a whole; and (3) where the language used is not ambiguous, ambiguity will not be read into the contract. James S. Black & Co. v. P & R Co., 12 Wn. App. 533, 535, 530 P.2d 722 (1975). To interpret the meaning of a contract's terms, Washington courts employ the context rule. Berg v. Hudesman, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). Under the context rule, the court determines the parties' intent by viewing the contract as a whole, which includes the contract's subject matter and intent, the circumstances surrounding its formation, the parties' subsequent acts and conduct, the reasonableness of the respective interpretations advanced, and trade usage

and/or course of dealing. Adler v. Fred Lind Manor, 153 Wn.2d 331, 351-352, 103 P.3d 773 (2004), *citing* 25 DAVID K. DEWOLF & KELLER W. ALLEN, WASHINGTON PRACTICE, CONTRACT LAW AND PRACTICE § 5.5 (1998).

When interpreting a contract courts may not consider evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term; evidence that would show an intention independent of the contract; or evidence that varies, contradicts or modifies written contract language. Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 84, 60 P.3d 1245 (2003). Thus, the courts endeavor to ascertain "what is written in the contract, and not what the parties intended to be written." Id. at 85. Where the contract language is not ambiguous, ambiguity will not be read into the contract. James S. Black & Co. v. P &R Co., 12 Wn. App. 533, 535, 530 P.2d 722 (1975).

In this case, the trial court's contract interpretation is flawed in multiple ways. First, the trial court erred by ruling that Circle S was not required to provide both insurance coverages called for in the Financing Agreement and the Insurance Notice (Loss and Liability). App.s A and B (Ex.s 1 and 3). Second, the trial court erred by ruling that Radiance was not entitled to insist on proof that both coverages were continuously maintained by Circle S. Third, the trial court erred by not recognizing that

Radiance met its burden of proving a breach of contract with irrefutable documentary evidence. Fourth, the trial court erred by ruling that Circle S did not have proper notice of the insurance deficiencies, even though: (1) the contract documents did not specify any more notice than what Circle S received; and (2) Circle S admitted that it was on notice of the insurance problem in 2007, attempted to cure the problem with Jim Short, and then continued to receive invoices for the insurance for years without complaint or correction. As will be explained more fully below, Radiance asks that the trial court's inequitable ruling be reversed and this matter be remanded for a ruling that is consistent with the parties' contractual agreement.

**1. The Trial Court erred by ruling that Circle S did not have an obligation to provide evidence that Radiance was covered as both "Loss Payee" and "Additional Insured."**

A breach of contract is actionable where the contract imposes a duty, the duty is breached, and the breach proximately causes damages to the claimant. Northwest Independent Forest Manufacturers v. Department of Labor & Industries, 78 Wn. App. 707, 712, 899 P.2d 6 (1995). In this case, Radiance provided contract documents which set forth a series of powerful protections, including the right to be protected under two specified insurance coverages, and the right to receive satisfactory proper proof of the specified insurance coverages.

The contract documents required maintenance and proof of two

types of insurance coverage: (1) coverage for loss or damage to the collateral itself, naming Radiance as Loss Payee; and (2) coverage for public liability and property damage arising from the collateral, naming Radiance as Additional Insured. App. A (Ex. 1), par. 13; and App B (Ex. 3), par.s a and b. Both types of coverage are identified in Paragraph 13 of the Equipment Financing Agreement:

**13. INSURANCE. Debtor shall maintain and provide Creditor evidence satisfactory to Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value thereof naming Creditor as Loss Payee. Such insurance shall be in an amount and form and with companies approved by Creditor, shall provide at least thirty (30) days advance written notice to Creditor of material change or cancellation, shall provide full breach of warranty protection, if appropriate, and shall provide that coverage is "primary." In the event of any assignment of this Agreement of which Debtor receives notice, Debtor shall cause such insurance to provide the same protection to the assignee as its interest may appear. The proceeds of such insurance, at the option of the Creditor, shall be applied toward (a) the repair and replacement of the appropriate Item or Items of Collateral, (b) payment of the remaining balance, or (c) payment of any other accrued obligations of Debtor hereunder. Any excess of such proceeds remaining shall belong to Debtor. Debtor shall maintain public liability and property damage coverage in such amounts and in such forms as Creditor shall reasonably require. If Debtor does not provide the insurance described in this section, Creditor may, but will not be required to, buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service for such insurance, to the Installment Payment amount due from the Debtor.**

App. A (Ex. 1), par. 13 (emphasis added). In unambiguous terms, Paragraph 13 indicates that the specific "amounts" and "forms" for the

loss and liability coverages must satisfy Radiance's requirements. Thus, the Equipment Financing Agreement obviously contemplates a separate procedure for confirming the specific "amounts" and "forms" of insurance that Circle S must maintain for Radiance.

This separate agreement is the Notice to Provide Insurance and Insurance Authorization ("Insurance Notice"). The Insurance Notice was contemporaneously presented and signed by Circle S' President with the Equipment Financing Agreement. Appendices A and B (Ex.s 1 and 3). Consistent with the Financing Agreement, the Insurance Notice sets forth the forms and amounts for the two required forms of coverage, and also authorizes and requires Circle S and/or its agents to provide proof of the two coverages. In accordance with the contractual obligations, the insurance agent is asked to provide Radiance with "evidence of insurance" including:

- a. An endorsement showing primary all risk or its equivalent coverage for the equipment (the Company must be named as Loss Payee) for not less than the aggregate Equipment Cost/Advance shown on the agreement [ . . . ].
- b. An endorsement showing combined public liability and property damage insurance with a single limit of not less than \$500,000 per occurrence, or such other amount as the Company may require on notice to Lessee, the Company must be named as Additional Insured.

Appendis B (Ex. 3). Consistent with the Financing Agreement, the Insurance Notice sets forth Circle S' contemporaneous agreement to supply proof of the required insurance to Radiance, and to be responsible for the cost of any insurance Radiance is forced to place if the required insurance does not remain in force:

Grantor [Circle S] acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, the Company may do so at Grantor's expense. The cost of any such insurance, at the option of the Company, shall be added to the indebtedness or lease balance.

App. B (Ex. 3). The foregoing contractual provisions are consistent, and establish the parties' clear and logical intention to insure and assure Radiance that the two required coverages are being maintained until the collateral has been paid for.

The trial court erroneously refused to recognize Circle S' clear and logical obligations to maintain and provide proof of the two insurance coverages. The error was apparently based on the assumption that the Financing Agreement and Insurance Notice are inconsistent with one another. As outlined above, the two contract documents are not inconsistent. These documents expressly contemplate and complement one another, and they are explicit about the forms and amounts of insurance – including the simple and obvious requirement that Radiance

be names as both “Loss Payee” and “Additional Insured.” The trial court’s interpretation is unreasonable in that it ignores the agreed upon language and defeats the expressed intention of the parties.

**2. Radiance proved a breach of Circle S’ dual contractual obligations to maintain and provide proof of “Loss Payee” and “Additional Insured” coverage.**

With respect to insurance, the contract documents expressly and clearly establish dual contractual obligations: an obligation to insure Radiance, and an obligation to provide proof of insurance of Radiance. Under its first obligation, the contract clearly required Circle S to obtain and maintain both of the required insurance coverages for the benefit of Radiance – in a form naming Radiance as “Loss Payee” and “Additional Insured.” Second, and just as logically, Circle S was obligated to provide Radiance with evidence proving that those two coverages were being maintained. If Circle S failed to provide proof of continuing insurance, Radiance had the contractual right to protect itself independently, and to pass on the reasonable monthly expense (\$7.81) to Circle S.

On the record of this case, there is no genuine factual dispute that Circle S breached both of its dual obligations. From the very beginning, Circle S understood what its obligations were. After the contract documents were signed, Circle S communicated the insurance requirements to its agent, Jim Short at Farmers’ Insurance. App. B. In

accordance with the contract, Jim Short provided proof in the form of a formal Certificate of Insurance showing that, for one policy period, Radiance was protected as “Loss Payee” and “Additional Insured.” Exhibit 16 (initial Certificate of Insurance). The record also confirms that Circle S and Jim Short understood the obligation to continue maintaining and providing proof of insurance to Radiance. See Exhibit 16 (Certificates of Insurance). However, the record also confirms a fundamental change in all subsequent Certificates of Insurance. For the rest of the contract period Jim Short provided Certificates that were facially inadequate, and which indicated that the required coverage was missing. Exhibit 16. Despite years of problems with these Certificates, Circle S did not discover that the insurance was in fact deficient until the eve of trial – when it desperately attempted to withhold the actual insurance policies from the court’s review. See Exhibit 14. This documentation was before the trial court and demonstrated in no uncertain terms that Circle S had breached both of its contractual obligations. The documents are now before this court and, under the standards for review of contract documents, this court should reverse and remand for a ruling confirming the patent breach of contract. Ever since 2007, Circle S realized there was on notice of the insurance problem, was regularly invoiced \$7.81 for the insurance problem, and failed to correct the problem. While Jim

Short's shocking confusion seems to be the source of the problem, Jim Short's confusion is not a defense. Since 2007, Radiance has properly invoiced Circle S for its insurance expenses, and it is entitled to recover those premiums under the contract.

**3. The Trial Court erred by ruling that lack of notice was a defense under the contract.**

The trial court also erred by ruling that Circle S was not liable because it did not receive adequate notice and an opportunity to cure. There is no contractual or legal basis for a defense premised on the notion that Circle S did not get adequate notice or an opportunity to cure. The contract provisions which authorize Radiance to charge back for insurance do not impose such a requirement. See App. 1, par. 13; App. B. When asked about the basis for this ruling, the trial court alluded to unspecified provisions of the Uniform Commercial Code (UCC). See VRP 10-11 (September 17, 2012). The UCC, however, does not support the ruling either. See RCW 62A.2A-502 (generally, notice not required).

Although the contract did not require it, Mike Price testified that Circle S was in fact given written notice and an opportunity to cure, pursuant to standard Radiance practice. Importantly, by his own admission, Jagtar Singh was on actual notice of the insurance problem in 2007. VRP 156-157; see also CP 296-298. That was the year he called

Radiance and clarified that Radiance had not been properly named on his insurance. Jagtar Singh assured Radiance that he would “correct” the problem by calling Jim Short. Jagtar Singh then called Jim Short. See VRP 156-157, 162-163. For reasons unfathomable, and despite “numerous communications” with financing companies and his own insured, Jim Short was never able to correct the facial inconsistencies in the Circle S insurance policies and the Circle S Certificates of Insurance. See Appendix C (Ex. 16); Exhibit 36; Appendix D (Exhibit 40, relevant Endorsements). Given the ongoing breach, Radiance continued to invoice Jagtar Singh for the \$7.81 insurance premium. This went on for years without any further effort by Circle S to correct the problem. See Exhibits 5-9; VRP 162-163, 179 (he “never paid attention” to the inadequate policies).

In this case, the contract documents did not require Radiance to provide any more notice than what was admittedly provided. Circle S was adequately notified of insured deficiencies in 2007, attempted to cure those deficiencies, and failed to do so. From that point forward Circle S did nothing but acquiesce in regular monthly reminders that Radiance had finally addressed the problem by invoking its right to Force Place insurance.

**B. The Trial Court Should Have Granted Reconsideration Based On Newly Discovered Documentary Evidence Of Notice.**

As explained above, the trial court's rulings on notice and an opportunity to cure do not provide Circle S with a defense. There is no such requirement under the contract, and Jagtar Singh admitted he had notice and an opportunity to cure in 2007.

However, even if notice and an opportunity to cure was a dispositive issue, it was further undermined by Radiance's production of the actual written notices and opportunities to cure. See CP 296-298. This documentation was produced by a third party, which prompted a timely motion for reconsideration by Radiance. CP 285-315 (motion); 347-379 (supporting declaration); CP 376-379; 589-594 (strict reply). The motion should have been granted, as it provided newly discovered evidence that further demonstrated Radiance right to recover.

CR 59(a)(4) authorizes new trial or reconsideration on the basis of "newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial." A new trial or reconsideration may be granted when the new evidence meets the following five requirements:

- (1) will probably change the result of the trial;
- (2) was discovered since the trial;

- (3) could not have been discovered before trial by due diligence;
- (4) is material; and
- (5) is not merely cumulative or impeaching.

GO2NET, Inc. v. C 1 Host, Inc., 115 Wn.App. 73, 88, 60 P.3d 1245 (2003), citing Holaday v. Merceri, 49 Wn.App. 321, 329, 742 P.2d 127 (1987). CR 59(a)(9) allows for new trial or reconsideration if substantial justice has not been done.

All of the five factors required to consider the three letters as “newly discovered evidence” were present here. To the extent that the trial court believed notice was a defense, the letters were crucial. Rather than cumulative or impeaching, they corroborated Mike Price’s testimony that formal written notices and opportunities were given to Circle S, along with a formal notice of default. CP 296-298. These documents directly undermined multiple findings and conclusions which the court relied on to deny relief. There was no dispute that the documents were only discovered after trial, when a third party bank officially apologetically informed Radiance they had been found. While the notice issue was not a proper basis for denying relief, the trial court abused its discretion by not considering the newly discovered evidence that so unequivocally undermined Circle S’ factually baseless arguments about lack of notice.

**C. Circle S' Fees Should Be Reversed, And Radiance Should Be Awarded Its Reasonable Fees And Costs.**

For the reasons stated, Radiance asks this court to reverse and remand. The undisputed documentary evidence in the record shows that Radiance may be deemed a prevailing party as a matter of law, without need for retrial. As prevailing party, the award of fees under the contract's enforcement provision should be reversed, and Radiance will be entitled to seek its reasonable fees and costs. In addition, pursuant to RAP 18.1, Radiance also asks for reasonable attorney's fees associated with this appeal.

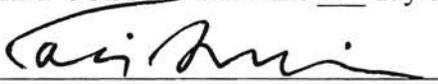
This brief explains why Circle S' fee award should be reversed because it should not have prevailed. However, the fee award is also an abuse of discretion because it awarded fees for time spent on the meritless Oregon litigation, that was dismissed for lack of jurisdiction. See CR 601-602; Exhibits 30-32. As discussed, the parties' contract contained a bold-faced, ALL CAPS provision, on a page initialed by the individual defendants, which stated that King County, Washington was the required jurisdiction and venue for any action involving the contract. Add. A. The defendants ignored this provision and filed an Oregon lawsuit. Exhibit 30. No findings were made on the merits in the Oregon case, and the suit was dismissed for lack of jurisdiction. Indeed, Radiance was awarded a flat

“prevailing party” fee in the action and costs. Exhibit 31 and 32. The Oregon action was unnecessary and unsuccessful. The trial court abused its discretion by granting defendants’ request for \$6,054.50 in fees relative to that unsuccessful case. See CP 227-231; CP 602.

**VII. CONCLUSION**

Based on the foregoing, Radiance respectfully asks that this case be reversed and remanded so that the contract can be properly and equitably enforced. Radiance will also request an award of its reasonable fees and costs in pursuing its rights.

**RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of May, 2013.

  
Talis M. Abolins, WSBA #21222 of  
Campbell, Dille, Barnett, & Smith, PLLC  
Attorneys for Appellant, Radiance Capital, LLC

## **APPENDICES**

**Radiance Capital L.L.C. v. Circle S. Foods  
dba Circle S. Market and Daily et al  
Washington Appellate Court Division I  
Case No. 695479**

- A. Equipment Financing Agreement (Exhibit 1)**
- B. Notice to Provide Insurance/Insurance  
Authorization (Exhibit 3)**
- C. Certificates of Insurance (Exhibit 16)**
- D. Farmers' Insurance Policy Endorsements:  
March 20, 2009-March 20, 2010; and  
March 20, 2010-March 20, 2011  
(from Exhibit 40)**

## **APPENDIX A**

**Radiance Capital L.L.C. v. Circle S Foods  
dba Circle S Market and Daily et al  
Washington Appellate Court Division I  
Case No. 695479**

### **A. Equipment Financing Agreement (Exhibit 1)**

## EQUIPMENT FINANCING AGREEMENT - CONTRACT No.

|  |  |
|--|--|
| <b>CREDITOR:</b> Radiance Capital LLC        | <b>DEBTOR:</b> Circle S. Foods Inc. dba Circle S. Market and Dairy |
| <b>Address:</b> 2505 Third Avenue, Suite 200 | <b>Address:</b> 2525 W. Harvard Ave.                               |
| <b>City/State/Zip:</b> Seattle, WA 98121     | <b>City/State/Zip:</b> Roseburg, OR 97470                          |

1. **SECURITY AGREEMENT:** Debtor hereby grants Creditor a security interest under the Uniform Commercial Code in the property (collectively the "Collateral" and individually in "Item" or "Item of Collateral") described in Schedule A attached hereto and incorporated herein. Such security interest is granted to secure performance by Debtor of its obligations hereunder and under any other present or future agreement with Creditor. Debtor shall insure that such security interest is and shall remain a sole first lien security interest.
2. **PAYMENTS:** Debtor shall repay Creditor the "Total Advance" shown in Schedule A together with interest in the number of periodic installments shown in Schedule A. The initial installment payment shall be deemed due as of the date indicated on Schedule A and subsequent installment payments shall be due on the same day of each month thereafter until paid, whether or not an invoice is rendered. Advance Payments, if any are shown in Schedule A, will be used for the first payment and any balance will be used for the last payment(s), provided that if there is a default, any payments under this Agreement may be applied to Debtor's obligation to Creditor in such order as Creditor chooses.
3. **NO AGENCY:** DEBTOR ACKNOWLEDGES THAT NO SUPPLIER OF ANY ITEM OR INTERMEDIARY NOR ANY AGENT OF EITHER THEREOF IS AN AGENT OF CREDITOR AND FURTHER THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT. NO REPRESENTATION AS TO ANY MATTER BY ANY SUCH PARTY SHALL BIND CREDITOR OR AFFECT DEBTOR'S DUTY TO PAY THE INSTALLMENT PAYMENTS AND PERFORM ITS OTHER OBLIGATIONS HEREUNDER.
4. **NON-CANCELABLE AGREEMENT; REPAYMENT; NO OFFSET:** THIS AGREEMENT IS NON-CANCELABLE BY DEBTOR FOR ANY REASON WHATSOEVER; DEBTOR MAY REPAY THE INSTALLMENT PAYMENTS ONLY IN ACCORDANCE HERewith. ALL PAYMENTS HEREUNDER ARE TO BE MADE WITHOUT OFFSET.
5. **FINANCING:** THIS AGREEMENT IS SOLELY A FINANCING AGREEMENT. CREDITOR HAS HAD NO INVOLVEMENT IN THE SELECTION OR PURCHASE OF AND HAS MADE AND HEREBY MAKES NO AGREEMENT, REPRESENTATION OR WARRANTY AS TO ANY ITEM OF COLLATERAL.
6. **LOCATION; INSPECTION; USE:** Debtor shall keep, or as to an item which is moveable, permanently garage and not remove from the United States, as appropriate, each item of Collateral in Debtor's possession and control at the Collateral Location specified in Schedule A or at such other locations to which such item may have been moved with prior written consent of Creditor. Upon request, Creditor may inspect the Collateral during normal business hours and enter the premises where the Collateral may be located for such purposes. Each item shall be used solely for commercial or business purposes and operated in a careful and proper manner in compliance with all applicable governmental requirements and all requirements of insurance policies carried hereunder and all manufacturer's instructions and warranty requirements.
7. **ALTERATIONS; SECURITY INTEREST COVERAGE:** Without Creditor's prior written consent, Debtor shall not make any alterations, additions or improvements to an item of Collateral that detract from its economic value or functional utility. All additions and improvements made to an item shall be deemed accessories thereto, and shall not be removed if removal would impair the item's economic value or functional utility. Creditor's security interest shall cover all modifications, accessories, additions to and replacements and substitutions for the Collateral. Debtor will not make any replacements or substitutions without Creditor's prior written consent.
8. **MAINTENANCE:** Debtor shall maintain the Collateral in good repair, condition and working order. Debtor shall cause all repairs required to maintain the Collateral in such condition to be made promptly by qualified parties. Debtor will cause each item of Collateral for which a service contract is generally available to be covered by such a contract that provides coverage typical as to property of the type involved and is issued by a competent servicing entity.
9. **LOGS AND DAMAGE, CASUALTY VALUE:** Debtor will bear all risk of loss, theft, destruction or requisition of or damage to any item. Debtor shall give Creditor prompt notice of a casualty occurrence and shall thereafter place the item in good repair, condition and working order; provided however, that if such item is determined by Creditor to be lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive total loss under an insurance policy carried hereunder, Debtor shall pay Creditor all remaining payments of such item to satisfy the debt.
10. **TITLING:** If requested by Creditor, Debtor shall cause an item of Collateral subject to title registration laws to be titled as directed by Creditor. Debtor shall advise Creditor promptly as to any necessary titling. Debtor shall cause all documents of title to be furnished to Creditor within sixty (60) days of the date on any titling done by Debtor.
11. **TAXES:** Unless otherwise directed in writing by Creditor, Debtor shall pay when due and make filings with respect to all taxes, fees, including registrations, fines, penalties, and other governmental assessments with respect to the Collateral and shall pay all other governmental assessments (including gross receipt taxes but exclusive of Federal and State taxes based on Creditor's net income) related to amounts due hereunder, the Collateral or otherwise related hereto.
12. **LIMITED POWER OF ATTORNEY:** Debtor hereby irrevocably appoints Creditor as Debtor's attorney-in-fact for the following limited purposes: (1) to sign and to file or record on Debtor's behalf and in Debtor's name any document Creditor deems necessary to perfect or protect Creditor's interest in the Collateral or pursuant to the UCC, and (2) to sign, endorse and/or negotiate, on Debtor's behalf and in Debtor's name, for Creditor's benefit, any instrument representing proceeds from any policy of insurance covering the Collateral.
13. **INSURANCE:** Debtor shall maintain and provide Creditor evidence satisfactory to Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value thereof naming Creditor as Loss Payee. Such insurance shall be in an amount and form and with companies approved by Creditor, shall provide at least thirty (30) days advance written notice to Creditor of material change or cancellation, shall provide full benefit of warranty protection, if appropriate, and shall provide that coverage is "primary." In the event of any assignment of this Agreement of which Debtor receives notice, Debtor shall cause such insurance to provide the same protection to the assignee as its interest may appear. The proceeds of such insurance, at the option of the Creditor, shall be applied toward (a) the repair or replacements of the appropriate item or items of Collateral, (b) payment of the remaining balance, or (c) payment of any other accrued obligations of Debtor hereunder. Any excess of such proceeds remaining shall belong to Debtor. Debtor shall maintain public liability and property damage coverage in such amounts and in such forms as Creditor shall reasonably require. If Debtor does not provide the insurance described in the section, Creditor may, but will not be required to, buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service for such insurance, to the installment payment amount due from the Debtor.
14. **CREDITOR'S PAYMENT:** If Debtor fails to perform any of its obligations hereunder, Creditor may perform such obligation, and Debtor shall (a) reimburse Creditor the cost of such performance and related expenses and (b) pay Creditor the late charge contemplated in Paragraph 21 on the cost and expense of such performance.
15. **INDEMNITY:** Debtor shall indemnify, defend and hold harmless Creditor against any claim, action, liability or expense, including attorney's fees and court costs, incurred by Creditor related to this Agreement.
16. **FAULT:** Any of the following constitutes an event of default hereunder: (a) Debtor's failure to pay any amount hereunder, within ten (10) business days of when due; (b) Debtor's default in performing any other obligation hereunder or under any other agreement between Debtor and Creditor; (c) Debtor changes its name, state of incorporation, chief executive officer and/or place of business without providing Creditor with thirty (30) days written notice of such change; (d) death or judicial declaration on incompetency of Debtor, if an individual or partner; (e) the filing by or against Debtor of a petition under the Bankruptcy Code or under any insolvency law or law providing for the relief of debtors, including without limitation, a petition for reorganization, arrangement or extension; (f) the making of an assignment of a substantial portion of its assets by Debtor for the benefit of creditors, appointment of a receiver or trustee for Debtor or for any Debtor's assets, institution by or against Debtor of any other type of insolvency proceeding or other proceeding contemplating settlement of claims against or winding up of the affairs of Debtor, Debtor's cessation of active business affairs or the making by Debtor of a transfer of a material portion of Debtor's assets or inventory not in the ordinary course of business; (g) the occurrence of an event described in (d), (e) or (f) as to a guarantor or other surety of Debtor's obligations hereunder; (h) any misrepresentation of a material fact in connection herewith by or on behalf of Debtor; (i) Debtor's default under a lease or agreement providing financial accommodations with a third party or (j) Creditor shall in good faith deem itself insecure as a result of a material adverse change in Debtor's financial condition or otherwise.

Initial

EJS

**17. INCENTIVES:** Upon the occurrence of an event of default Creditor shall have the right, option, strike and remedy of a secured party, and Debtor shall have the rights and duties of a Debtor, under the Uniform Commercial Code of Washington (provisions of whether such Code or law, whether there has been enacted in a jurisdiction wherein the rights or remedies are asserted). Without limiting the generality of the foregoing, Creditor shall have the right to (a) at Creditor's option, declare immediately due and payable the entire amount of all of Debtor's obligations hereunder, without notice or demand to Debtor and without setoff; (b) take possession of any, if deemed appropriate, tangible assets or all items of Collateral, without demand or notice whenever located, without any process of law and without liability for any damages incurred by such taking of possession including damages to constitute; (c) require Debtor to assemble any or all items of Collateral at a location in reasonable proximity to their designated location hereunder; (d) upon demand to Debtor required by law, sell or otherwise dispose of any items of Collateral, whether or not in Creditor's possession, in a commercially reasonable manner at public or private sale at any place designated in such notices and comply the net proceeds of such sale after deducting all costs of such sale, including, but not limited to, costs of transportation, repossession, storage, rebuilding, advertising and brokers fees, to the obligations of Debtor hereunder with Debtor remaining liable for any deficiency and with any surplus, being returned to Debtor or (e) within any other remedy available under the Uniform Commercial Code or otherwise to Creditor. All remedies are cumulative. Any sale may be adjourned by announcement at the time and place specified for such sale without further published notice, and Creditor may if permitted by law but not because the purchaser at any such sale.

**18. LITIGATION EXPENSES:** Debtor shall pay Creditor the costs and expenses, including repossession and attorney's fees and court costs, incurred by Creditor in enforcing this Agreement. This obligation includes the payment of such expenses whether an action is filed and whether an action shall be filed to enforce.

**19. ASSIGNMENTS:** Without the prior written consent of Creditor, Debtor shall not sell, lease or convey or allow any third other than Creditor's security interest system an item of Collateral or assign any of Debtor's obligations hereunder. Debtor's obligations are not assignable by operation of law. Consent to any of the foregoing options only in the given business. Creditor may assign, pledge or otherwise transfer any of its rights hereunder without notice to Debtor. If Debtor is given notice of any such assignment, Debtor shall acknowledge receipt thereof in writing and shall thereunder pay any amounts due hereunder as directed in this notice. The rights of an assignee to enforce the hereunder shall be free of any claim or defense Debtor may have against Creditor, and Debtor agrees not to assert against an assignee any claim or defense which Debtor may have against Creditor. Subject to the foregoing, this Agreement becomes to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties.

**20. WARNINGS, PERSONAL PROTECTIVE:** Debtor shall mark the Collateral or its location as requested by Creditor to indicate Creditor's security interest. Debtor will provide Creditor any real property notices requested by Creditor as to the real property where an item of Collateral is or is to be located.

**21. LATE PAYMENT AND NSF FEES:** In the event a payment is not made within ten (10) days when due hereunder, the Debtor promises to (a) pay a late charge to Creditor at its option and later than ten days thereafter, of up to 10% of the payment or, twenty-five dollars (\$25.00), whichever is greater and (b) pay Creditor amounts paid to others in connection with collection of the account. The late charge and/or for the interest payment set forth in this Agreement shall apply only when permitted by law, and if not permitted by law, the late charge and/or interest payments shall be substituted at the maximum rate permissible by law. If a check or other instrument tendered for payment is dishonored, Debtor shall be liable for a fifty dollar (\$50.00) fee.

**22. COMPLIANCE WITH LAW:** Debtor and Creditor intend to comply with all applicable law. If it is determined that payments under this Agreement result in an interest payment higher than that allowed by applicable law, then any excess interest collected will be applied to the repayment of principal and interest will be changed to the rate allowed by law.

**23. ADDITIONAL DOCUMENTS:** Debtor shall provide to Creditor such financing statements and other documents as Creditor shall request. Debtor understands Creditor values provided by law to such filings of such documents without Debtor's signature. Debtor further shall furnish Creditor (a) a fiscal year-end financial statement including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year and (b) such other information and documents not specifically mentioned herein relative to this Agreement as Creditor may request. Debtor shall reimburse Creditor for all search and filing fees incurred by Creditor related thereto.

**24. CROSS COLLATERAL/CROSS DEFAULT:** All Collateral shall secure the payment and performance for all of Debtor's obligations and obligations to Creditor hereunder, under any other agreement between Debtor and Creditor, and under any of the loan documents relating hereto, including but not limited to all Equipment Finance Agreement, Lease Agreement, Inventory Pledge Agreement and all other documents (referred to herein collectively as the "Documents"). Creditor's security interest in the Collateral shall not be terminated until and unless all of Debtor's obligations to Creditor under any of the Documents are fully paid and performed. The occurrence of an event of default under any other of the Documents shall be deemed to be an Event of Default hereunder and an Event of Default hereunder shall be deemed to be an Event of Default under the Documents.

**25. NOTICE:** Notices shall be in writing and addressed if mailed to the party involved. United States mail first class postage prepaid, at its respective address set forth above or at such other address as such party may provide in writing in accordance herewith. Notices so given shall be effective when mailed. Debtor shall promptly notify Creditor of any change in Debtor's address.

**26. CHOICE OF LAW; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY, EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS AGREEMENT.**

**27. GENERAL:** This agreement constitutes the entire agreement of the parties as to the subject matter and shall not be amended, altered or changed except by a written agreement signed by the parties. Any notice by Creditor must be in writing, and communications shall not constitute a notice. Wherever the context of this Agreement requires, this word includes the masculine or feminine and the singular includes the plural. If there is more than one Debtor named in this Agreement, the liability of each shall be joint and several. The title to the paragraph of this Agreement are solely for the convenience of the parties and are not in all in this Agreement. Any provision declared invalid shall be deemed severable from the remaining provisions that shall remain in full force and effect. This is of the essence of this Agreement. The obligations of Debtor shall survive the release of security interest in the Collateral.

**28. DEBTOR'S WARRANTS, DEBTOR CERTIFICATES AND WARRANTS:** (a) THE FINANCIAL AND OTHER INFORMATION WHICH DEBTOR HAS SUBMITTED, OR WILL SUBMIT, TO CREDITOR IN CONNECTION WITH THIS AGREEMENT IS OR SHALL BE AT THIS OF WASHINGTON, TIME AND CONSULTER. (b) THE DEBTOR'S EXACT LEGAL NAME, STATE OF INCORPORATION, LOCATION OF ITS CHIEF EXECUTIVE OFFICE AND/OR ITS PLACE OF RESIDENCE AS APPLICABLE, HAVE BEEN CORRECTLY IDENTIFIED TO CREDITOR. (c) THIS AGREEMENT HAS BEEN DULY AUTHORIZED BY DEBTOR AND UPON EXECUTION BY DEBTOR, SHALL CONSTITUTE THE LEGAL, VALID AND BINDING OBLIGATION, CONTRACT AND AGREEMENT OF DEBTOR INCORPORABLE AGAINST DEBTOR IN ACCORDANCE WITH ITS TERMS; AND (d) EACH SIGNING PROVIDED BY DEBTOR IN CONNECTION HERewith MAY BE FULLY RELIED UPON BY CREDITOR NOTWITHSTANDING ANY TECHNICAL DEFICIENCY IN ATTESTATION OR OTHERWISE. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE DEBTOR WARRANTS THAT THE DEBTOR'S SIGNATURE IS THE AUTHENTIC AND SO. DEBTOR FURTHER WARRANTS THAT EACH ITEM OF COLLATERAL, SHALL, AT THE TIME CREDITOR FUNDS THE TOTAL ADVANCE BE OWNED BY DEBTOR FREE AND CLEAR OF LIENS AND ENCUMBRANCES AND BE IN GOOD CONDITION AND WORKING ORDER.

Witnessed SP JS MC

**29. NO WARRANTIES BY CREDITOR** CREDITOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE CONDITION, DESIGN, OR QUALITY OF THE EQUIPMENT; THE FITNESS OF THE EQUIPMENT FOR USE OR FOR A PARTICULAR PURPOSE; THE MERCHANTABILITY OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS; THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO; THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. NO DEFECT OR UNFITNESS OF THE EQUIPMENT SHALL RELIEVE DEBTOR OF THE OBLIGATION TO PAY RENT OR OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT. THE DEBTOR ALSO ACKNOWLEDGES THAT THE CREDITOR HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT. CREDITOR SHALL HAVE NO LIABILITY TO DEBTOR OR ANY PERSON WHOMSOEVER FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE (INCLUDING ATTORNEY FEES) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALY, OR CONSEQUENTIALY BY THE EQUIPMENT OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE EQUIPMENT OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE, FROM CREDITOR'S OR DEBTOR'S NEGLIGENCE OR OTHERWISE, BY THE USE OR MAINTENANCE THEREOF, OR FOR REPAIR, SERVICING OR ADJUSTMENT THERETO, OR FOR ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF THE EQUIPMENT, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT OF THIS AGREEMENT. DEBTOR SHALL INDEMNIFY AND HOLD CREDITOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS COSTS EXPENSES, DAMAGES, LOSSES, LIABILITIES INCURRED OR SUFFERED BY THE CREDITOR, DEBTOR, OR ANY OTHER PARTY IN CONNECTION WITH THE DELIVERY, OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT, OR AS A RESULT OF ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT.) FURTHER, DEBTOR UNDERSTANDS AND AGREES THAT THERE SHALL BE NO ABATEMENT OF RENT DURING ANY PERIOD OF BREAKDOWN OR NONUSE OF THE EQUIPMENT.

This Agreement is effective only upon execution by an authorized officer of Creditor following Debtor's execution hereof. Debtor hereby authorizes Creditor to disburse the Total Advance as reflected on the Pay Proceeds Direction attached to each Schedule A.

CREDITOR: Radiance Capital LLC

DEBTOR: Circle S. Foods, Inc. dba Circle S. Market and Dairy

By: [Signature]

By: [Signature]

Title: CFO

Title: President

Date: 11/29/05

Date: 10/7/05

**SCHEDULE "A" to Equipment Financing Agreement**

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. \_\_\_\_\_  
 DATED: \_\_\_\_\_

CREDITOR: Radiance Capital LLC DEBTOR: Circle S. Foods Inc. dba Circle S. Market and Dairy

CREDITOR AND DEBTOR HAVE ENTERED INTO THE EQUIPMENT FINANCING AGREEMENT DESCRIBED ABOVE (THE "AGREEMENT"), THE TERMS OF WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. THIS IS A SCHEDULE A TO THE AGREEMENT. ALL WORDS AND TERMS USED HEREIN AND NOT DEFINED HEREIN SHALL HAVE MEANINGS SPECIFIED IN THE AGREEMENT.

**TERMS**

|                              |                    |                                |                                |                                 |
|------------------------------|--------------------|--------------------------------|--------------------------------|---------------------------------|
| TOTAL ADVANCE<br>\$ 5,950.00 | TERM OF LOAN<br>60 | MONTHLY PAYMENT<br>\$ 148.83   | ADVANCE PAYMENTS<br>2          | INITIAL AMOUNT DUE<br>\$ 397.66 |
| BALLOON PAYMENT<br>\$ N/A    | DUE DATE           | TOTAL NUMBER OF PAYMENTS<br>60 | DOC FEE/OTHER FEE<br>\$ 100.00 | SECURITY DEPOSIT<br>\$ N/A      |

**COLLATERAL DESCRIPTION**

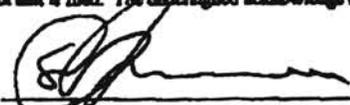
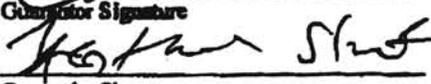
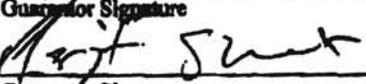
| QUANTITY  | SERIAL NO. | DESCRIPTION     | ITEMIZED ADVANCE             |
|---|------------|-----------------|------------------------------|
| PFC-1AT703V   | SN#70911   | 5708 Fryer 208V | \$5,950.00                   |
| If collateral description is of length where it would not fit in this section, then use "COLLATERAL DESCRIPTION EXHIBIT" attached hereto or through our fax at length hereto. |            |                 | TOTAL ADVANCE<br>\$ 5,950.00 |

| SUPPLIER  | COLLATERAL LOCATION (IF DIFFERENT THAN BUSINESS ADDRESS) |
|---|--|
| Northwest Soft Serve & Sales<br>2006 196th St. SW 117<br>Lynnwood, WA 98036 |  |

This agreement is effective only upon execution by an authorized officer of Creditor following Debtor's execution hereof, and upon execution Creditor shall fund the Total Advance. Debtor hereby authorizes Creditor to disburse the Total Advance as identified in the PAY PROCEEDS DIRECTION. Creditor reserves the right to pay the applicable portion of the Total Advance jointly to any party not specified in the preceding sentence with a security interest in an item of collateral.

**PERSONAL GUARANTEE(S)**

The undersigned guarantee and promise to make all of the payments and perform all Debtors' obligations as specified in this Equipment Financing Agreement. Each of our liabilities is primary and joint and several and shall not be affected by any assignment, extension, renewal or modification of the Agreement, by the discharge or release of the Debtor's obligations or by the taking or release of additional guarantors or security for the performance of the Agreement. The undersigned waive any rights we may have to (a) presentment, demand, protest, notice of protest, notice of dishonor, notice of default under the Agreement any other notices related to this guaranty or the Agreement and (b) the right to require Creditor to proceed against Debtor or to pursue any other remedy in Creditor's power. The undersigned also waive any other rights and defenses available to a guarantor by reason of application case or statutory law. The undersigned agree that we are liable for Creditor's attorney's fees and costs in enforcing this guaranty, whether or not suit is filed. The undersigned acknowledge that this guaranty inures to the benefit of Creditor's assignee.

|   |   |                         |
|---|---|-------------------------|
| <u>Subhash Chander Sharma</u><br>Guarantor name (printed) | <br>Guarantor Signature | <u>11/20/05</u><br>Date |
| <u>Jagtar Singh</u><br>Guarantor name (printed)           | <br>Guarantor Signature | <u>11-19-05</u><br>Date |
| <u>Navjit Singh</u><br>Guarantor name (printed)           | <br>Guarantor Signature | <u>11-18-05</u><br>Date |
| _____<br>Guarantor name (printed)                         | _____<br>Guarantor Signature  | _____<br>Date           |

## APPENDIX A

13. **INSURANCE.** Debtor shall maintain and provide Creditor evidence satisfactory to Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value thereof naming Creditor as Loss Payee. Such insurance shall be in an amount and form and with companies approved by Creditor, shall provide at least thirty (30) days advance written notice to Creditor of material change or cancellation, shall provide full breach of warranty protection, if appropriate, and shall provide that coverage is "primary." In the event of any assignment of this Agreement of which Debtor receives notice, Debtor shall cause such insurance to provide the same protection to the assignee as its interest may appear. The proceeds of such insurance, at the option of the Creditor, shall be applied toward (a) the repair and replacement of the appropriate Item or Items of Collateral, (b) payment of the remaining balance, or (c) payment of any other accrued obligations of Debtor hereunder. Any excess of such proceeds remaining shall belong to Debtor. Debtor shall maintain public liability and property damage coverage in such amounts and in such forms as Creditor shall reasonably require. If Debtor does not provide the insurance described in this section, Creditor may, but will not be required to, buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service for such insurance, to the Installment Payment amount due from the Debtor.

14. **CREDITOR'S PAYMENT:** If Debtor fails to perform any of its obligations hereunder, Creditor may perform such obligation, and Debtor shall (a) reimburse Creditor the cost of such performance and related expenses and (b) pay Creditor the late charge contemplated in Paragraph 21 on the cost and expense of such performance.

15. **INDEMNITY:** Debtor shall indemnify, defend and hold harmless Creditor against any claim, action, liability or expense, including attorney's fees and court costs incurred by Creditor related to this Agreement.

16. **FAULT:** Any of the following constitutes an event of default hereunder: (a) Debtor's failure to pay any amount hereunder, within ten (10) business days of when due; (b) Debtor's default in performing any other obligation hereunder or under any other agreement between Debtor and Creditor, (c) Debtor changes its name, state of incorporation, chief executive officer and/or place of business without providing Creditor with thirty (30) days written notice of such change; (d) death or judicial declaration on incompetency of Debtor, if an individual or partner; (e) the filing by or against Debtor of a petition under the Bankruptcy Code or under any insolvency law or law providing for the relief of debtors, including without limitation, a petition for reorganization, agreement or extension; (f) the making of an assignment of a substantial portion of its assets by for the benefit of creditors, appointment of a receiver or trustee for Debtor or for any Debtor's assets, institution by or against Debtor of any other type of insolvency

proceeding or other proceeding contemplating settlement of claims against or winding up of the affairs of Debtor, Debtor's cessation of active business affairs or the making by Debtor of a transfer of a material portion of Debtor's assets or inventory not in the ordinary course of business; (g) the occurrence of an event described in (d), (c) or (f) as to a guarantor or any other surety of Debtor's obligations hereunder, (h) any misrepresentation of a material fact in connection herewith by or on behalf of Debtor, (Debtor's default under a lease or agreement providing financial accommodations with a third party or (i) Creditor shall in good faith deem itself insecure as a result of a material adverse change in Debtor's financial condition or otherwise.

17. REMEDIES: Upon the occurrence of an event of default Creditor shall have the rights, options, duties and remedies of a secured party, and Debtor shall have the rights and duties of a Debtor, under the Uniform Commercial Code of Washington (regardless of whether such Code or law similar thereto has been enacted in a jurisdiction wherein the right or remedies are asserted. Without limiting the generality of the foregoing, Creditor shall the right to (a) at Creditor's option, declare immediately due and payable the active amount of all of Debtor's obligations hereunder, without notice or demand to Debtor and without setoff, (b) take possession of any, if deemed appropriate, render unusable any or all items of Collateral without demand or notice wherever located, without any process of law and without liability for any damages occasioned by such taking of possession including damages to contents; (c) require Debtor to assemble any or all items of Collateral at a location in reasonable proximity to their designated location hereunder; (d) upon notice to Debtor required by law, sell or otherwise dispose of any items of Collateral, whether or not in Creditor's possession in a commercially reasonable manner at public or private sale at any place designated in such notice and apply the net proceeds of such sale after deducting all costs of such sale, including but not limited to, costs of transportations, repossession, storage, refurbishing, advertising and brokers fees, to the obligations of debtor hereunder with remaining liable with any deficiency and with any excess being returned to Debtor or (e) utilize any other remedy available under the sale without further published notice. And Creditor may if permitted by law bid and become the purchaser at any such sale.

18. LITIGATION EXPENSES: Debtor shall pay Creditor for costs and expenses. Including repossession, and attorney fees and court costs incurred by Creditor in enforcing this agreement. This obligation includes the payment of such amounts whether a notice to find and whether an action that is filed is determined.

## **APPENDIX B**

**Radiance Capital L.L.C. v. Circle S Foods  
dba Circle S Market and Daily et al  
Washington Appellate Court Division I  
Case No. 695479**

### **B. Notice to Provide Insurance/Insurance**

**Authorization (Exhibit 3)**

**NOTICE TO PROVIDE INSURANCE  
INSURANCE AUTHORIZATION**  
(To be completed and signed by the customer)



To: **Jim Short**

Insurance Agents Name

**Farmers**

Insurance Company Name

**1655 Barnes Rd. SE, Salem, OR 97306**

Insurance Company Address

Insurance Agents Fax Number

*503-673-2433*  
*581-0349*

Insurance Agents Telephone Number (503)363-4521

We have entered into an Equipment Lease or Equipment Finance Agreement with Radiance Capital LLC ("Company") under which the Company will lease or finance property described in the agreement attached hereto. In accordance with our obligations, please provide:

**Radiance Capital LLC**  
Attn: Betty Temple  
2121 SW Broadway, Suite 200  
Portland, OR 97201  
800-547-4905

With evidence of insurance including:

- a. An endorsement showing primary all risk or its equivalent coverage for the equipment (the Company must be named as Loss Payee) for not less than the aggregate Equipment Cost/Advance shown on the agreement (for vehicles comprehensive and collision coverage with deductibles of not more than \$1,000).
- b. An endorsement showing combined public liability and property damage insurance with a single limit of not less than \$500,000 per occurrence, or such other amount as the Company may require on notice to Lessee, the Company must be named as Additional Insured.
- c. A standard 10-days notice of cancellation or revision in our coverage in favor of the Company.
- d. An endorsement providing the Company full breach of warranty protection, if applicable.

**FAILURE TO PROVIDE INSURANCE:** Grantor agrees to deliver to the Company proof of the required insurance as provided above, with an effective date as shown on the date below or earlier. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, the Company may do so at Grantor's expense. The cost of any such insurance, at the option of the Company, shall be added to the indebtedness or lease balance. GRANTOR ACKNOWLEDGES THAT IF THE COMPANY SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBTOR LEASE BALANCE, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

**AUTHORIZATION:** For purposes of insurance coverage on the Collateral, Grantor authorizes the Company to provide to any person (including any insurance agent or company) all information the Company deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS.**

Date: *10-7-05*

GRANTOR: **Subhash Chander Sharma**

Circle S. Foods Inc. dba Circle S. Market and Daily  
PRINT LEGAL NAME OF LESSEE/DEBTOR ABOVE

By:

President  
Title

## **APPENDIX C**

**Radiance Capital L.L.C. v. Circle S Foods  
dba Circle S Market and Daily et al  
Washington Appellate Court Division I  
Case No. 695479**

**C. Certificates of Insurance (Exhibit 16)**

**RADIANCE CAPITAL, LLC**  
**VOICE: 866-702-2748**  
**FAX: 888-298-0259**

---

**MEMO**

---

**TO:** Jim Short  
**FROM:** Mike Price

---

**COMPANY:** Farmers Insurance  
**DATE:** 1/24/2011

---

**FAX NUMBER:** 503-581-~~3049~~ 0349  
**TOTAL NO. OF PAGES INCLUDING COVER:** 9

---

**PHONE NUMBER:** 603-363-4521  
**CC:**

---

**RE: CIRCLE S FOODS, INC.**

---

URGENT    FOR REVIEW    PLEASE COMMENT    PLEASE REPLY    PLEASE RECYCLE

---

Jim:

As indicated the one that is correct is 7/11/06 - 7/11/07 (that has us listed as both Additional Insured and Loss Payee). But also not the next certificate issued was for 3/20/07 that was incorrect. So in essence we had the correct insurance for 9 months.

Please review and give me a call if you have any questions on my direct line of 206-391-4907.

Thanks.

Mike

---

**820 A STREET SUITE 300, TACOMA, WA 98402**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**4277**  
1st Edition

Policy Number: 03506-91-80

**POLICY CHANGES**

Effective Date of Change: 12/09/05

Expiration Date: 07/11/06

Change Endorsement No.: 003

Agent: 73-07-358

Named Insured: CIRCLE S HOODS INC  
2525 W HARVARD AVE  
ROSEBURG OR 97470

261388484

The following item(s):

|  |   |
|--|---|
| Insured's Name   | Insured's Mailing Address   |
| Policy Number  | Company   |
| Effective / Expiration Date                                    | Insured's Legal Status / Business of Insured                        |
| Payment Plan   | Premium Determination   |
| <input checked="" type="checkbox"/> Additional Insured Parties | <input checked="" type="checkbox"/> Coverage Forms and Endorsements |
| Limits / Exposures   | Deductibles   |
| Covered Property / Location Description                        | Classification / Class Codes  |
| Risks  | Underlying Insurance  |

is (are) changed to read (See Additional Page(s)):

NO AI

The above amendments result in a change in the premium as follows:

| <input checked="" type="checkbox"/> No Changes | To Be Adjusted At Audit | Additional Premium | Return Premium |
|--|-------------------------|--------------------|----------------|
|  |                         | \$                 | \$             |
| Authorized Representative Signature            |                         |                    |                |



**FARMERS**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## OREGON LOSS PAYABLE PROVISIONS (INCLUDES RESTRICTIONS OR ABRIDGMENTS)

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS POLICY

#### SCHEDULE:

| Prem. No. | Bldg. No. | Description of Property | Loss Payee (Name & Address)   | Provision Applicable (Indicate Paragraph A, B or C) |
|-----------|-----------|-------------------------|---|---|
| 001       | 001       | PERSONAL PROPERTY       | RADIANCE CAPITAL LLC<br>ATTN: ESTY TERPHE<br>2121 SW BROADWAY, SUITE 200<br>PORTLAND OR 97201 | A   |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

#### A. LOSS PAYABLE

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

#### B. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading; or
- d. Financing statements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

*Attn: Sally*

**Commercial Certificate of Insurance**



Agency  
 Name  
 Address

JIM HENRY  
 1655 HAINES RD SE  
 SALEM, OR 97306  
 503-363-4321

Issue Date (MM/DD/YY) 07/11/2006

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

Re: 73 Dist. 07 Agent 258

**Companies Providing Coverage**

- Company A: Truck Insurance Exchange
- Company B: Farmers Insurance Exchange
- Company C: CMAA-Canary Insurance Company
- Company D:

Insured  
 Name  
 Address

CIRCLE K MARKET  
 2225 WEST HARVARD AVE  
 ROSSBORO, OR 97470  
 541-672-4482

*2613884801*

**Coverages**  
 Please be sure that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Note: Coverage may be provided, terms or conditions of any contract or other document with respect to which this certificate may be issued or any proceeds, the amounts payable by the policies described herein, are subject to all the terms, conditions and conditions of each policy. Limits shown may have been reduced by prior claims.

| Co. No. | Type of Insurance  | Policy Number | Policy Effective Date (mm/dd/yyyy) | Policy Expiration Date (mm/dd/yyyy) | Policy Limits  |
|---------|--|---------------|------------------------------------|-------------------------------------|--|
| B       | General Liability<br>Commercial General Liability<br>- Occurrence Versus<br>Contractual - Indemnity Only<br>Owners & Contractors Prot. | 033069 LEO    | 07/11/2006                         | 07/11/2007                          | General Aggregate<br>Products-Completed Operations Aggregate<br>\$ 1,000,000<br>Fire and Advertising Injury<br>\$<br>Work Products<br>\$<br>Thefts<br>\$<br>Money and Securities<br>\$ 75,000<br>Medical Expense<br>\$ 5,000 |
|         | Automobile Liability<br>All Other Commercial Autos<br>Scheduled Autos<br>Non-Scheduled Autos<br>Camp Liability                         |               |                                    |                                     | Combined Single Limit<br>\$<br>Single Injury<br>(Per Person)<br>\$<br>Single Injury<br>(Per Vehicle)<br>\$<br>Damage Damage<br>\$<br>Damage Aggregate<br>\$  |
|         | Umbrella Liability   |               |                                    |                                     | Limit \$   |
|         | Workers' Compensation and Employers' Liability   |               |                                    |                                     | Sickness<br>\$<br>Death - Total Payout<br>\$<br>Death - Single Limit<br>\$   |

**Description of Operations/Vehicles/Restrictions/Special Items**

POLICY INCLUDES BUSINESS PERSONAL PROPERTY COVERAGE OF \$100,000, WHICH INCLUDES COVERAGE FOR LEASEholdERS, 5700 NEVILL, 97471. COVERAGE HAS A \$500 DEDUCTIBLE. RANCH CAPITAL, LLC IS LOSS PAYEE. ADDITIONAL ENDORSEMENTS AND CERTIFICATES INCLUDE:

Certificate Holder *LEASE# 2613884801*  
 Name  
 Address

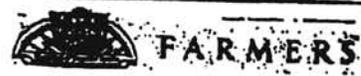
LOSS PAYEE  
 RANCH CAPITAL, LLC  
 2111 SW BROADWAY 2ND FLOOR  
 PORTLAND, OR 97201

**Conditions**  
 Specify any of the above described policies be amended before the expiration date stated, the issuing company will endeavor to meet 30 days prior notice to the certificate holder named in the list, but failure to meet such notice shall impose no obligation or liability of any kind upon the company for coverage or operations.

*[Signature]*

*John Kimbörner*

# Commercial Certificate of Insurance



Agency Name & Address:  
 • JIM SHORT  
 • FARMERS INSURANCE  
 • 1655 BARNES RD SE  
 • SALEM, OR 97306

Issue Date (MM/DD/YY) **01/15/2008**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

St. 73 Dist. 07 Agent 358

### Companies Providing Coverage

- Company A Truck Insurance Exchange
- Company B Farmers Insurance Exchange
- Company C Mid-Century Insurance Company
- Company D

Insured Name & Address:  
 • CIRCLE S MARKET  
 • 1082 MONMOUTH ST  
 • INDEPENDENCE, OR 97351

### Coverages

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any agreement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

| Co. Lr. | Type of Insurance  | Policy Number | Policy Effective Date (MM/DD/YY) | Policy Expiration Date (MM/DD/YY) | Policy Limits   |
|---------|--|---------------|----------------------------------|-----------------------------------|---|
| A       | General Liability<br>Commercial General Liability<br>- Occurrence Version<br>Contractual - Incidental Only<br>Owners & Contractors Prot. | 035069181     | 03/20/2007                       | 03/20/2008                        | General Aggregate: \$ 2,000,000<br>Products-Comp/OPS Aggregate: \$ 2,000,000<br>Personal & Advertising Injury Each Occurrence: \$ 2,000,000<br>Fire Damage (Any one fire): \$ 2,000,000<br>Medical Expenses (Any one person): \$ 75,000<br>\$ 5,000 |
|         | Automobile Liability<br>All Owned Commercial Autos<br>Scheduled Autos<br>Hired Autos<br>Non-Owned Autos<br>Garage Liability              |               |                                  |                                   | Combined Single Limit: \$<br>Bodily Injury (Per person): \$<br>Bodily Injury (Per accident): \$<br>Property Damage: \$<br>Garage Aggregate: \$  |
|         | Umbrella Liability   |               |                                  |                                   | Limit: \$   |
|         | Workers' Compensation and Employers' Liability   |               |                                  |                                   | Statutory: \$<br>Each Accident: \$<br>Disease - Each Employee: \$<br>Disease - Policy Limit: \$   |

### Description of Operations/Vehicles/Restrictions/Special Items:

**POLICY INCLUDES BUSINESS PERSONAL PROPERTY COVERAGE OF \$121,600, WITH \$500 DEDUCTIBLE.**  
**PROPERTY INSURED FOR THIS CERTIFICATE HOLDER, #810 OVEN, SERIAL # 70911 & 5708 FRYER 208V**

### Certificate Holder

Name & Address:  
 • CONTRACT # 261388480  
 • RADIANCE CAPITAL LLC  
 • FILE 50173  
 • LOS ANGELES, CA 90074-0173

### Cancellation

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

*[Signature]*  
 Authorized Representative

NO CP OR PI

*Udon Cindy*

**Commercial Certificate of Insurance**



Agency Name & Address:  
 • JIM SHORT  
 • FARMERS INSURANCE  
 • 1655 BARNES RD SE  
 • SALEM, OR 97306

Issue Date (MM/DD/YY) **03/28/2008**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

St. 73 Dist. 07 Agent 358

**Companies Providing Coverage:**

Insured Name & Address:  
 • CIRCLE 5 MARKET  
 • 1082 MONMOUTH ST  
 • INDEPENDENCE, OR 97351

- Company A Track Insurance Exchange
- Company B Farmers Insurance Exchange
- Company C Mid-Century Insurance Company
- Company D

**Coverages**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any endorsement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by prior claims.

| Co. Ltr. | Type of Insurance   | Policy Number | Policy Effective Date (MM/DD/YY) | Policy Expiration Date (MM/DD/YY) | Policy Limits   |
|----------|---|---------------|----------------------------------|-----------------------------------|---|
| A        | General Liability<br>Commercial General Liability<br>- Occurrence Version<br>Contractual - Incidental Only<br>Owners & Construction Prot. | 035069181     | 03/20/2008                       | 03/20/2009                        | General Aggregate: \$ 2,000,000<br>Products-Comp/OPS Aggregate: \$ 2,000,000<br>Personal & Advertising Injury Each Occurrence: \$ 2,000,000<br>Fire Damage (Any one fire): \$ 2,000,000<br>Medical Expenses (Any one person): \$ 75,000<br>\$ 5,000 |
|          | Automobile Liability<br>All Owned Commercial Autos<br>Scheduled Autos<br>Hired Autos<br>Non-Owned Autos<br>Gauge Liability                |               |                                  |                                   | Combined Single Limit: \$<br>Bodily Injury (Per person): \$<br>Bodily Injury (Per accident): \$<br>Property Damage: \$<br>Gauge Aggregate: \$   |
|          | Umbrella Liability  |               |                                  |                                   | Limit: \$   |
|          | Workers' Compensation and Employers' Liability  |               |                                  |                                   | Statutory<br>Each Accident: \$<br>Disease - Each Employee: \$<br>Disease - Policy Limit: \$   |

**Description of Operations/Vehicles/Restrictions/Special Items:**

*NO AI*

Certificate Holder Name & Address:  
 • LOSS PAYEE CONTRACT #261388480  
 • RADIANCE CAPITAL LLC  
 • FILE 50173  
 • LOS ANGELES, CA 90074-0173

**Cancellation**  
 Should any of the above described policies be amended before the expiration date thereof, the issuing company will endeavor to send 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

*[Signature]*  
 Authorized Representative

*John Kimbörner*

**Commercial Certificate of Insurance**



Agency Name & Address:  
 • JIM SHORT  
 • FARMERS INSURANCE  
 • 1655 BARNES RD SE  
 • SALEM, OR 97306

Issue Date (MM/DD/YY) **01/15/2008**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

St. 73 Dist. 07 Agent 358

**Companies Providing Coverage**

- Company A Truck Insurance Exchange
- Company B Farmers Insurance Exchange
- Company C Mid-Century Insurance Company
- Company D

Insured Name & Address:  
 • CIRCLE S MARKET  
 • 1082 MONMOUTH ST  
 • INDEPENDENCE, OR 97351

**Coverages**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any agreement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

| Co. Ltr. | Type of Insurance  | Policy Number | Policy Effective Date (MM/DD/YY) | Policy Expiration Date (MM/DD/YY) | Policy Limits  |
|----------|--|---------------|----------------------------------|-----------------------------------|--|
| A        | General Liability<br>Commercial General Liability<br>- Occurrence Version<br>Contractual - Incidental Only<br>Owners & Contractors Prot. | 035069181     | 03/20/2007                       | 03/20/2008                        | General Aggregate: \$ 2,000,000<br>Products-Comp/OPS Aggregate: \$ 2,000,000<br>Personal & Advertising Injury: \$ 2,000,000<br>Each Occurrence: \$ 2,000,000<br>Fire Damage (Any one fire): \$ 75,000<br>Medical Expenses (Any one person): \$ 5,000 |
|          | Automobile Liability<br>All Owned Commercial Autos<br>Scheduled Autos<br>Hired Autos<br>Non-Owned Autos<br>Garage Liability              |               |                                  |                                   | Combined Single Limit: \$<br>Bodily Injury (Per person): \$<br>Bodily Injury (Per accident): \$<br>Property Damage: \$<br>Garage Aggregate: \$   |
|          | Umbrella Liability   |               |                                  |                                   | Limit: \$  |
|          | Workers' Compensation and Employers' Liability   |               |                                  |                                   | Serious Injury: \$<br>Each Accident: \$<br>Disease - Each Employee: \$<br>Disease - Policy Limit: \$   |

**Description of Operations/Vehicles/Restrictions/Special Items:**

**POLICY INCLUDES BUSINESS PERSONAL PROPERTY COVERAGE OF \$121,600, WITH \$500 DEDUCTIBLE.**  
**PROPERTY INSURED FOR THIS CERTIFICATE HOLDER, ES10 OVEN, SERIAL # 70911 & 5708 FRYER 208V**

**Certificate Holder**

Name & Address:  
 • CONTRACT # 261388480  
 • RADRANCE CAPITAL LLC  
 • FILE 90173  
 • LOS ANGELES, CA 90074-0173

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

*[Signature]*  
 Agent Representative

NO LP OR AI

# Commercial Certificate of Insurance



**FARMERS**

**Agency**  
 Name: Jim Short  
 Address: 1655 BARNES RD SE, Salem, OR 97306, 503-363-4521

Issue Date (MM/DD/YY) **02/26/2010**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

St. 73 Dist. 07 Agent 358

**Companies Providing Coverage:**

- Company A Truck Insurance Exchange
- Company B Farmers Insurance Exchange
- Company C Mid-Century Insurance Company
- Company D

**Insured**  
 Name: CIRCLE S MARKET, JAGTAR SUBHASH LLC  
 Address: 1082 MONMOUTH ST, INDEPENDENCE, OR 97351

**Coverages**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

| Co. Ltr. | Type of Insurance   | Policy Number | Policy Effective Date (MM/DD/YY) | Policy Expiration Date (MM/DD/YY) | Policy Limits  |
|----------|---|---------------|----------------------------------|-----------------------------------|--|
| B        | General Liability<br>Commercial General Liability<br>- Occurrence Version<br>Contracted - Incidental Only<br>Owners & Contractors Prot. | 035069181     | 03/20/2009                       | 03/20/2010                        | General Aggregate: \$4,000,000<br>Products-Comp/OPS Aggregate: \$2,000,000<br>Personal & Advertising Injury: \$2,000,000<br>Each Occurrence: \$2,000,000<br>Fire Damage (Any one fire): \$75,000<br>Medical Expenses (Any one person): \$5,000 |
| B        | Automobile Liability<br>All Owned Commercial Autos<br>Scheduled Autos<br>Hired Autos<br>Non-Owned Autos<br>Garage Liability             | 035069181     | 03/20/2009                       | 03/20/2010                        | Combined Single Limit: \$0<br>Bodily Injury (Per person): \$<br>Bodily Injury (Per accident): \$<br>Property Damage: \$0<br>Garage Aggregate: \$   |
|          | Umbrella Liability  |               |                                  |                                   | Limit: \$  |
|          | Workers' Compensation and Employers' Liability  |               |                                  |                                   | Statutory: \$<br>Sickness - Non Employees: \$<br>Disease - Policy Limit: \$  |

Description of Operations/Vehicles/Restrictions/Special Items:  
 1082 MONMOUTH ST, INDEPENDENCE, OR 97351

**NO AI**

**Certificate Holder**  
 Name: LOBB PAYEE, RADIANCE CAPITAL, LLC  
 Address: 1310 MADRID ST SUITE 103, MARSHALL, MN 56258

**Cancellation**  
 Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

*[Signature]*  
 Authorized Representative

# Commercial Certificate of Insurance



Agency Name & Address  
 • Jim Short  
 • 1655 BARNES RD SE  
 • Salem, OR 97306  
 • 503-363-4521

Issue Date (MM/DD/YY) 02/26/2010

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverages afforded by the policies stated below.

St. 73 Dist. 07 Agent 358

Insured Name & Address  
 • CIRCLE S MARKET,  
 • JAGTAR SUBHASH LLC  
 • 1082 MONMOUTH ST  
 • INDEPENDENCE, OR 97351

**Companies Providing Coverage:**  
 Company A Truck Insurance Exchange  
 Company B Perennial Insurance Exchange  
 Company C Mid-Century Insurance Company  
 Company D

**Coverages**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

| Co. Ltr. | Type of Insurance  | Policy Number | Policy Effective Date (MM/DD/YY) | Policy Expiration Date (MM/DD/YY) | Policy Limits   |
|----------|--|---------------|----------------------------------|-----------------------------------|---|
| B        | General Liability<br>Commercial General Liability<br>- Occurrence Version<br>Contractual - Incidental Only<br>Owners & Contractors Prot. | 035069181     | 03/20/2010                       | 03/20/2011                        | General Aggregate \$ 4,000,000<br>Products-Comp/OPS Aggregate \$ 2,000,000<br>Personal & Advertising Injury \$ 2,000,000<br>High Occupants \$ 2,000,000<br>Fire Damage (Any one fire) \$ 75,000<br>Medical Expenses (Any one person) \$ 5,000 |
| B        | Autobile Liability<br>All Owned Commercial Autos<br>Scheduled Autos<br>Hired Autos<br>Non-Owned Autos<br>Garage Liability                | 035069181     | 03/20/2010                       | 03/20/2011                        | Combined Single Limit \$ 0<br>Bodily Injury (Per person) \$<br>Bodily Injury (Per accident) \$<br>Property Damage \$ 0<br>Garage Aggregate \$   |
|          | Umbrella Liability   |               |                                  |                                   | Limit \$  |
|          | Workers' Compensation and Employers' Liability   |               |                                  |                                   | Statutory \$<br>With Accident \$<br>Disease - Non employees \$<br>Disease - Policy Limit \$   |

Description of Operations/Vehicles/Restrictions/Special Items:  
 1082 MONMOUTH ST, INDEPENDENCE, OR 97351

*NO AI*

Certificate Holder Name & Address  
 • LOSS PAYEE  
 • RADIANCE CAPITAL, LLC  
 • 1310 MADRID ST SUITE 103,  
 • MARSHALL, MN 56258

**Cancellation**  
 Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

*[Signature]*  
 Authorized Representative

**APPENDIX D**

**Radiance Capital L.L.C. v. Circle S Foods  
dba Circle S Market and Daily et al**

**Washington Appellate Court Division I  
Case No. 695479**

**D. Farmers' Insurance Policy Endorsements:**

**March 20, 2009-March 20, 2010; and**

**March 20, 2010-March 20, 2011  
(from Exhibit 40)**

**PREMIUM IS > \$5000**

## **INSURED**

|                                    |                |
|------------------------------------|----------------|
| <b>This section is for policy:</b> | 03506-91-81    |
| <b>Assembled-on Date:</b>          | 08/10/12       |
| <b>Assembled-on Time:</b>          | 02:21:59       |
| <b>Full Policy Number:</b>         | A0350691810010 |
| <b>Transaction Number:</b>         | 001            |
| <b>Operator id:</b>                | RH107          |

**TRANSACTION:**

RENEWAL

\*\* REPRINT REQUEST \*\*

23175 NW BENNETT ST  
HILLSBORO, OR 97124

PRODUCER#: 03 73 07 358  
JIM SHORT  
1655 BARNES RD SE  
SALEM OR 97306

JIM SHORT  
1655 BARNES RD SE  
SALEM OR 97306  
PRODUCER#: 03 73 07 358

JAGTAR SUBHASH LLC  
CIRCLE S MARKET  
1082 MONMOUTH ST  
INDEPENDENCE OR 97351-1323



**IMPORTANT NOTICE**  
(Please keep for your records)

**Subscription Agreement Notice**

By payment of the policy premium, you acknowledge that you have received and read the Farmers Insurance Exchange Subscription Agreement (the terms of which are provided below), and that you understand and agree to all the terms and conditions of the Subscription Agreement.

---

**SUBSCRIPTION AGREEMENT**

For and in consideration of the benefits to be derived therefrom the subscriber covenants and agrees with Farmers Insurance Exchange and other subscribers thereto through their and each of their attorney-in-fact, the Farmers Underwriters Association, to exchange with all other subscribers' policies of insurance or reinsurance containing such terms and conditions therein as may be specified by said attorney-in-fact and approved by the Board of Governors or its Executive Committee for any loss insured against, and subscriber hereby designates, constitutes and appoints Farmers Underwriters Association to be attorney-in-fact for subscriber, granting to it power to substitute another in its place, and in subscriber's name, place and stead to do all things which the subscriber or subscribers might or could do severally or jointly with reference to all policies issued, including cancellation thereof, collection and receipt of all monies due the Exchange from whatever source and disbursement of all loss and expense payments, effect reinsurance and all other acts incidental to the management of the Exchange and the business of interinsurance; subscriber further agrees that there shall be paid to said Association, as compensation for its becoming and acting as attorney-in-fact, the membership fees and twenty per centum of the Premium Deposit for the insurance provided and twenty per centum of the premiums required for continuance thereof.

The remaining portion of the Premium Deposit and of additional term payments made by or on behalf of the subscriber shall be applied to the payment of losses and expenses and to the establishment of reserves and general surplus. Such reserves and surplus may be invested and reinvested by a Board of Governors duly elected by and from subscribers in accordance with provisions of policies issued, which Board or its Executive Committee or an agent or agency appointed by written authority of said Executive Committee shall have full powers to negotiate purchases, sales, trades, exchanges, and transfers of investments, properties, titles and securities, together with full powers to execute all necessary instruments. The expenses above referred to shall include all taxes, license fees, attorneys' fees and adjustment expenses and charges, expenses of members' and governors' meetings, agents' commissions, and such other specified fees, dues and expenses as may be authorized by the Board of Governors. All other expenses incurred in connection with the conduct of the Exchange and such of the above expenses as shall from time to time be agreed upon by and between the Association and the Board of Governors or its Executive Committee shall be borne by the Association.

The principal office of the Exchange and its attorney-in-fact shall be maintained in the City of Los Angeles, County of Los Angeles, State of California.

This agreement can be signed upon any number of counterparts with the same effect as if the signatures of all subscribers were upon one and the same instrument, and shall be binding upon the parties thereto, severally and ratably as provided in policies issued. Wherever the word "subscriber" is used the same shall mean members of the Exchange, the subscriber hereto, and all other subscribers to this or any other like agreement. Any policy issued hereon shall be non-assessable.

## **Important Information About Your Policy**



**FARMERS**

E0022, 1st Edition - Monthly Payment Plan Endorsement - is removed from and not applicable to your policy. Your billing and payment methods remain the same. There is no coverage or premium impact resulting from this change.

If you have any questions concerning this information please contact your Farmers® agent.

**FARMERS INSURANCE EXCHANGE  
(A RECIPROCAL COMPANY)**

**MEMBERS OF THE FARMERS INSURANCE GROUP OF COMPANIES  
HOME OFFICE: 4680 WILSHIRE BLVD., LOS ANGELES, CALIFORNIA 90010**

**COMMON POLICY DECLARATIONS  
RETAIL SERVICE - PREMIER**

|         |                                     |                   |                    |
|---------|-------------------------------------|-------------------|--------------------|
| 1.      | <b>JAGTAR SUBHASH LLC</b>           | <b>FQ33406</b>    |                    |
| Named   | · <b>CIRCLE S MARKET</b>            | EasyPay Acct. No. | Prod. Count        |
| Insured | · <b>1082 MONMOUTH ST</b>           | <b>73-07-358</b>  | <b>03506-91-81</b> |
| Mailing | ·                                   | Agent No.         | Policy Number      |
| Address | · <b>INDEPENDENCE OR 97351-1323</b> |                   |                    |

The named insured is an individual unless otherwise stated:

Partnership  Corporation  Joint Venture  Organization (Any other)

Type of Business **FOOD STORE**

2. Policy Period from 03/20/10 (not prior to time applied for) to 03/20/11 12:01 a.m. Standard Time

If this policy replaces other coverage that ends at noon standard time of the same day this policy begins, this policy will not take effect until the other coverage ends. **This policy will continue for successive policy periods as follows:** If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums, rules and forms then in effect.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS LISTED BELOW AND FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO CHANGE.

|   | Premium After Applicable Discount and Modification |
|---|--|
| <b>BUSINESSOWNERS POLICY</b>                                    | <b>\$5,878.00</b>                                  |
| <b>BUSINESS AUTO POLICY</b>                                     | <b>\$269.00</b>                                    |
| <b>EMPLOYMENT PRACTICES INSURANCE COVERAGE</b>                  | <b>INCLUDED</b>                                    |
| <b>CERTIFIED ACTS OF TERRORISM - SEE DISCLOSURE ENDORSEMENT</b> | <b>INCLUDED</b>                                    |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
| <b>TOTAL</b>  | <b>SEE INVOICE ATTACHED</b>                        |

Forms applicable to all Coverage Parts:

**E0002-ED1 IL00030498 IL00171198 56-5166ED3**

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
(Date) (Authorized Representative)

Agent: **JIM SHORT**  
Agent Phone: **503-363-4521**



**FARMERS**

**ENDORSEMENT**

Effective

Date 03/20/10

03506-91-81

Policy Number  
of the Company designated  
in the Declarations

**NAMED INSURED(S)  
JAGTAR SINGH  
SUBHASH SHARMA  
JAGTAR SUBHASH LLC  
DBA CIRCLE S MARKET**

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

COUNTERSIGNED \_\_\_\_\_

(Date)



**FARMERS INSURANCE EXCHANGE**

MEMBERS OF THE FARMERS INSURANCE GROUP OF COMPANIES  
HOME OFFICE: 4680 WILSHIRE BLVD., LOS ANGELES, CALIFORNIA 90010

**POLICY DECLARATIONS**

1. **RETAIL SERVICE - PREMIER**

|         |                              |                   |                    |
|---------|------------------------------|-------------------|--------------------|
| Named   | : JAGTAR SUBHASH LLC         | <b>FQ33406</b>    |                    |
| Insured | : CIRCLE S MARKET            | EasyPay Acct. No. | Prod. Count        |
| Mailing | : 1082 MONMOUTH ST           | <b>73-07-358</b>  | <b>03506-91-81</b> |
| Address | : INDEPENDENCE OR 97351-1323 | Agent No.         | Policy Number      |

The named insured is an individual unless otherwise stated:

Partnership  Corporation  Joint Venture  Organization (Any other)

Type of Business **FOOD STORE**

2. Policy Period from 03/20/10 (not prior to time applied for) to 03/20/11 12:01 a.m. Standard Time

If this policy replaces other coverage that ends at noon standard time of the same day this policy begins, this policy will not take effect until the other coverage ends. **This policy will continue for successive policy periods as follows:** If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums, rules and forms then in effect.

3. Insured location same as mailing address unless otherwise stated:

4. We provide insurance only for those coverages described below and for which a specific limit of insurance is shown.

**PROPERTY**

**COVERAGES AND LIMITS OF INSURANCE**

| COVERAGES                      | PREM NO. 001 001 | PREM NO. 001 002 |
|--------------------------------|------------------|------------------|
| BUILDINGS                      | \$479,800        | \$380,900        |
| BUSINESS PERSONAL PROPERTY     | \$144,800        | \$12,600         |
| EQUIPMENT BREAKDOWN            | \$0              |                  |
| AUTOMATIC BUILDING INCREASE    | 8%               | 8%               |
| PROPERTY DEDUCTIBLE            | \$500            | \$500            |
| GLASS DEDUCTIBLE               | \$100            |                  |
| OUTDOOR TREES, SHRUBS, PLANTS  | \$2,500          |                  |
| WINDSTORM OR HAIL % DEDUCTIBLE | N/A              | N/A              |

Business Income (All Listed Premises) 18 months-Actual Loss Sustained

**ADDITIONAL COVERAGES**

| COVERAGE | All Premises |
|----------|--------------|
|          |              |



**COVERAGE EXTENSIONS - Optional Higher Limits of Insurance Per Occurrence**

| COVERAGE                       | All Premises |  |
|--------------------------------|--------------|--|
| ACCOUNTS RECEIVABLE            | \$25,000     |  |
| VALUABLE PAPERS                | \$25,000     |  |
| OFF PREMISES PERSONAL PROPERTY | \$5,000      |  |

**OPTIONAL COVERAGES: We provide insurance for those Optional Coverages described below.**

| COVERAGE             | All Premises |                  |
|----------------------|--------------|------------------|
| OUTDOOR SIGNS        | \$7,500      |                  |
| EMPLOYEE DISHONESTY  | \$10,000     | \$500 DEDUCTIBLE |
| MONEY AND SECURITIES | \$10,000     | \$500 DEDUCTIBLE |

**LIABILITY AND MEDICAL PAYMENTS - Except for Fire Legal Liability, each paid claim for the following coverage reduces the amount of insurance we provide during the applicable annual period. Please refer to Paragraph D.4. of the Liability Coverage Form.**

| COVERAGE          | LIMITS OF INSURANCE     |                     |
|-------------------|-------------------------|---------------------|
| LIABILITY         | \$2,000,000 PER OCC/    | \$4,000,000 GEN AGG |
| MEDICAL EXPENSES  | \$5,000 PER PERSON      |                     |
| TENANTS LIABILITY | \$75,000 PER OCCURRENCE |                     |
| LIQUOR LIABILITY  | \$23,400                |                     |

**Mortgage Holders:**

| Premises No. | Mortgage Holder Name, Address  |
|--------------|--|
| 001 001      | HIGHLINE CAPITAL CORP<br>ISAOA<br>2390 CENTER GREEN CT SO<br>BOULDER CO 80301<br>1ST) LOAN NO. 14110 |

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
 (Date) (Authorized Representative)

Policy Number: 03506-91-81

Effective Date: 03/20/10

Policy Forms and Endorsements attached at inception:

|            |            |            |            |            |
|------------|------------|------------|------------|------------|
| E3452-ED1  | BP04170196 | BP04390196 | E6036-ED1  | E0207-ED1  |
| E3342-ED1  | 25-2110    | E4009-ED4  | BP12030689 | BP05140103 |
| E0051-ED2  | E2028-ED2  | BP00021299 | BP00060197 | BP00090197 |
| BP04340197 | BP04550197 | E2010-ED2  | BP04480197 | J6316-ED1  |
| J6345-ED1  | BP04160689 | J6300-ED2  | J6351-ED1  | E6289-ED1  |
| J6353-ED1  | S7337-ED2  | E6306-ED1  | S7363-ED2  | BP04150197 |
| E3307-ED1  | E3020-ED1  | S7339-ED1  | 562377-ED1 | J6577-ED1  |

Countersigned \_\_\_\_\_ (Date) By \_\_\_\_\_ (Authorized Representative)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**LOSS PAYABLE PROVISIONS**

This endorsement modifies insurance provided under the following:  
**BUSINESSOWNERS POLICY**

**SCHEDULE\***

| Prem No. | Bldg. No. | Description of Property   | Loss Payee (Name & Address)                   | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|---------------------------|---|--|
| 001      | 002       | ELIGIBLE COVERED PROPERTY | LLOYD COFFMAN<br>265 S 2ND ST<br>INDEPENDENCE | C<br><br>OR 97351                                    |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

**A. LOSS PAYABLE**

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

**B. LENDER'S LOSS PAYABLE**

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading; or
- d. Financing statements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

**C. CONTRACT OF SALE**

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Businessowners Common Policy Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:  
**BUSINESSOWNERS POLICY**

### SCHEDULE\*

| Prem No. | Bldg. No. | Description of Property | Loss Payee (Name & Address)   | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|-------------------------|---|--|
| 001      | 001       | BUILDING                | HIGHLINE CAPITAL CORP<br>ISAOA<br>2390 CENTER GREEN CT SO<br>BOULDER CO 80301<br>LOAN NO. 14110 | B  |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

**A. LOSS PAYABLE**

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

**B. LENDER'S LOSS PAYABLE**

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading; or
- d. Financing statements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

**C. CONTRACT OF SALE**

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Businessowners Common Policy Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:  
**BUSINESSOWNERS POLICY**

### SCHEDULE\*

| Prem No. | Bldg. No. | Description of Property   | Loss Payee (Name & Address)                   | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|---------------------------|---|--|
| 001      | 001       | ELIGIBLE COVERED PROPERTY | LLOYD COFFMAN<br>265 S 2ND ST<br>INDEPENDENCE | C  |
|          |           |                           |   | OR 97351   |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

**A. LOSS PAYABLE**

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

**B. LENDER'S LOSS PAYABLE**

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:

- a. Warehouse receipts;
- b. A contract for deed;
- c. Bills of lading; or
- d. Financing statements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - LESSOR OF  
LEASED EQUIPMENT**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS POLICY**

**SCHEDULE\***

**Name of Person or Organization:  
RADIANCE CAPITAL LLC**

**Description of Leased Equipment:  
OFFICE EQUIPMENT**

**Location(s) of Leased Equipment:  
1082 MONMOUTH ST**

**INDEPENDENCE, OR 97351**

The following is added to Paragraph C. WHO IS AN INSURED in the Businessowners Liability Coverage Form:

4. The person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of the maintenance, operation or use by you of equipment leased to you by that person or organization and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

- A. Any "occurrence" which takes place after the equipment lease expires; or
- B. "Bodily injury" or "property damage" arising out of the sole negligence of the person or organization shown in the Schedule.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:**

**WSCO PETROLEUM**

**ATTN: JOHN PHIMISTER**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. **Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:**

**CHEVRON TEXACO**

**ATTN: JOHN PHIMISTER**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph **C. Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:**

**FERRELLGAS L P RISHMANAGEMENT  
ONE LIBERTY PLAZA**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. **Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.



**PREMIUM IS > \$5000**

## **INSURED**

|                                    |                |
|------------------------------------|----------------|
| <b>This section is for policy:</b> | 03506-91-81    |
| <b>Assembled-on Date:</b>          | 08/10/12       |
| <b>Assembled-on Time:</b>          | 02:21:59       |
| <b>Full Policy Number:</b>         | A0350691810009 |
| <b>Transaction Number:</b>         | 001            |
| <b>Operator id:</b>                | RH107          |

**TRANSACTION:**

RENEWAL

\*\* REPRINT REQUEST \*\*

23175 NW BENNETT ST  
HILLSBORO, OR 97124

PRODUCER#: 03 73 07 358  
JIM SHORT  
1655 BARNES RD SE  
SALEM OR 97306

JIM SHORT  
1655 BARNES RD SE  
SALEM OR 97306  
PRODUCER#: 03 73 07 358

JAGTAR SUBHASH LLC  
CIRCLE S MARKET  
1082 MONMOUTH ST  
INDEPENDENCE OR 97351-1323



**IMPORTANT NOTICE**  
(Please keep for your records)

**Subscription Agreement Notice**

By payment of the policy premium, you acknowledge that you have received and read the Farmers Insurance Exchange Subscription Agreement (the terms of which are provided below), and that you understand and agree to all the terms and conditions of the Subscription Agreement.

---

**SUBSCRIPTION AGREEMENT**

For and in consideration of the benefits to be derived therefrom the subscriber covenants and agrees with Farmers Insurance Exchange and other subscribers thereto through their and each of their attorney-in-fact, the Farmers Underwriters Association, to exchange with all other subscribers' policies of insurance or reinsurance containing such terms and conditions therein as may be specified by said attorney-in-fact and approved by the Board of Governors or its Executive Committee for any loss insured against, and subscriber hereby designates, constitutes and appoints Farmers Underwriters Association to be attorney-in-fact for subscriber, granting to it power to substitute another in its place, and in subscriber's name, place and stead to do all things which the subscriber or subscribers might or could do severally or jointly with reference to all policies issued, including cancellation thereof, collection and receipt of all monies due the Exchange from whatever source and disbursement of all loss and expense payments, effect reinsurance and all other acts incidental to the management of the Exchange and the business of interinsurance; subscriber further agrees that there shall be paid to said Association, as compensation for its becoming and acting as attorney-in-fact, the membership fees and twenty per centum of the Premium Deposit for the insurance provided and twenty per centum of the premiums required for continuance thereof.

The remaining portion of the Premium Deposit and of additional term payments made by or on behalf of the subscriber shall be applied to the payment of losses and expenses and to the establishment of reserves and general surplus. Such reserves and surplus may be invested and reinvested by a Board of Governors duly elected by and from subscribers in accordance with provisions of policies issued, which Board or its Executive Committee or an agent or agency appointed by written authority of said Executive Committee shall have full powers to negotiate purchases, sales, trades, exchanges, and transfers of investments, properties, titles and securities, together with full powers to execute all necessary instruments. The expenses above referred to shall include all taxes, license fees, attorneys' fees and adjustment expenses and charges, expenses of members' and governors' meetings, agents' commissions, and such other specified fees, dues and expenses as may be authorized by the Board of Governors. All other expenses incurred in connection with the conduct of the Exchange and such of the above expenses as shall from time to time be agreed upon by and between the Association and the Board of Governors or its Executive Committee shall be borne by the Association.

The principal office of the Exchange and its attorney-in-fact shall be maintained in the City of Los Angeles, County of Los Angeles, State of California.

This agreement can be signed upon any number of counterparts with the same effect as if the signatures of all subscribers were upon one and the same instrument, and shall be binding upon the parties thereto, severally and ratably as provided in policies issued. Wherever the word "subscriber" is used the same shall mean members of the Exchange, the subscriber hereto, and all other subscribers to this or any other like agreement. Any policy issued hereon shall be non-assessable.

**FARMERS INSURANCE EXCHANGE  
(A RECIPROCAL COMPANY)**

MEMBERS OF THE FARMERS INSURANCE GROUP OF COMPANIES  
HOME OFFICE: 4680 WILSHIRE BLVD., LOS ANGELES, CALIFORNIA 90010

**COMMON POLICY DECLARATIONS  
RETAIL SERVICE - PREMIER**

|         |                                     |                   |                    |
|---------|-------------------------------------|-------------------|--------------------|
| 1.      | <b>JAGTAR SUBHASH LLC</b>           | <b>FQ33406</b>    |                    |
| Named   | · <b>CIRCLE S MARKET</b>            | EasyPay Acct. No. | Prod. Count        |
| Insured | · <b>1082 MONMOUTH ST</b>           | <b>73-07-358</b>  | <b>03506-91-81</b> |
| Mailing | ·                                   | Agent No.         | Policy Number      |
| Address | · <b>INDEPENDENCE OR 97351-1323</b> |                   |                    |

The named insured is an individual unless otherwise stated:

Partnership  Corporation  Joint Venture  Organization (Any other)

Type of Business **FOOD STORE**

2. Policy Period from **03/20/09** (not prior to time applied for) to **03/20/10** 12:01 a.m. Standard Time

If this policy replaces other coverage that ends at noon standard time of the same day this policy begins, this policy will not take effect until the other coverage ends. **This policy will continue for successive policy periods as follows:** If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums, rules and forms then in effect.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS LISTED BELOW AND FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO CHANGE.

|   | Premium After Applicable Discount and Modification |
|---|--|
| <b>BUSINESSOWNERS POLICY</b>                                    | <b>\$5,652.00</b>                                  |
| <b>BUSINESS AUTO POLICY</b>                                     | <b>\$258.00</b>                                    |
| <b>EMPLOYMENT PRACTICES INSURANCE COVERAGE</b>                  | <b>INCLUDED</b>                                    |
| <b>CERTIFIED ACTS OF TERRORISM - SEE DISCLOSURE ENDORSEMENT</b> | <b>INCLUDED</b>                                    |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
| <b>TOTAL</b>  | <b>SEE INVOICE ATTACHED</b>                        |

Forms applicable to all Coverage Parts:

**E0002-ED1 IL00030498 IL00171198 E0022-ED1 56-5166ED3**

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
(Date) (Authorized Representative)

Agent: **JIM SHORT**  
Agent Phone: **503-363-4521**



**FARMERS**

**ENDORSEMENT**

Effective

Date 03/20/09

03506-91-81

Policy Number  
Of the Company designated  
in the Declarations

**NAMED INSURED(S)  
JAGTAR SINGH  
SUBHASH SHARMA  
JAGTAR SUBHASH LLC  
DBA CIRCLE S MARKET**

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

COUNTERSIGNED \_\_\_\_\_  
(Date)



**FARMERS INSURANCE EXCHANGE**

**MEMBERS OF THE FARMERS INSURANCE GROUP OF COMPANIES**  
**HOME OFFICE: 4680 WILSHIRE BLVD., LOS ANGELES, CALIFORNIA 90010**

**POLICY DECLARATIONS**  
**RETAIL SERVICE - PREMIER**

|    |   |                   |                    |
|----|---|-------------------|--------------------|
| 1. | Named : <b>JAGTAR SUBHASH LLC</b>           | <b>FQ33406</b>    |                    |
|    | Insured : <b>CIRCLE S MARKET</b>            | EasyPay Acct. No. | Prod. Count        |
|    | Mailing : <b>1082 MONMOUTH ST</b>           | <b>73-07-358</b>  | <b>03506-91-81</b> |
|    | Address : <b>INDEPENDENCE OR 97351-1323</b> | Agent No.         | Policy Number      |

The named insured is an individual unless otherwise stated:

Partnership  Corporation  Joint Venture  Organization (Any other)

Type of Business **FOOD STORE**

2. Policy Period from **03/20/09** (not prior to time applied for) to **03/20/10** 12:01 a.m. Standard Time

If this policy replaces other coverage that ends at noon standard time of the same day this policy begins, this policy will not take effect until the other coverage ends. **This policy will continue for successive policy periods as follows:** If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums, rules and forms then in effect.

3. Insured location same as mailing address unless otherwise stated:

4. We provide insurance only for those coverages described below and for which a specific limit of insurance is shown.

**PROPERTY**

**COVERAGES AND LIMITS OF INSURANCE**

| COVERAGES                      | PREM NO. 001 001 | PREM NO. 001 002 |
|--------------------------------|------------------|------------------|
| BUILDINGS                      | \$452,600        | \$359,300        |
| BUSINESS PERSONAL PROPERTY     | \$136,600        | \$11,900         |
| EQUIPMENT BREAKDOWN            | \$0              |                  |
| AUTOMATIC BUILDING INCREASE    | 8%               | 8%               |
| PROPERTY DEDUCTIBLE            | \$500            | \$500            |
| GLASS DEDUCTIBLE               | \$100            |                  |
| OUTDOOR TREES, SHRUBS, PLANTS  | \$2,500          |                  |
| WINDSTORM OR HAIL % DEDUCTIBLE | N/A              | N/A              |

Business Income (All Listed Premises) 18 months-Actual Loss Sustained

**ADDITIONAL COVERAGES**

| COVERAGE | All Premises |
|----------|--------------|
|          |              |



**COVERAGE EXTENSIONS - Optional Higher Limits of Insurance Per Occurrence**

| COVERAGE                       | All Premises |  |
|--------------------------------|--------------|--|
| ACCOUNTS RECEIVABLE            | \$25,000     |  |
| VALUABLE PAPERS                | \$25,000     |  |
| OFF PREMISES PERSONAL PROPERTY | \$5,000      |  |

**OPTIONAL COVERAGES: We provide insurance for those Optional Coverages described below.**

| COVERAGE             | All Premises |                  |
|----------------------|--------------|------------------|
| OUTDOOR SIGNS        | \$7,500      |                  |
| EMPLOYEE DISHONESTY  | \$10,000     | \$500 DEDUCTIBLE |
| MONEY AND SECURITIES | \$10,000     | \$500 DEDUCTIBLE |

**LIABILITY AND MEDICAL PAYMENTS - Except for Fire Legal Liability, each paid claim for the following coverage reduces the amount of insurance we provide during the applicable annual period. Please refer to Paragraph D.4. of the Liability Coverage Form.**

| COVERAGE          | LIMITS OF INSURANCE |                |                     |
|-------------------|---------------------|----------------|---------------------|
| LIABILITY         | \$2,000,000         | PER OCC/       | \$4,000,000 GEN AGG |
| MEDICAL EXPENSES  | \$5,000             | PER PERSON     |                     |
| TENANTS LIABILITY | \$75,000            | PER OCCURRENCE |                     |
| LIQUOR LIABILITY  | \$22,500            |                |                     |

**Mortgage Holders:**

| Premises No. | Mortgage Holder Name, Address  |
|--------------|--|
| 001 001      | HIGHLINE CAPITAL CORP<br>ISAOA<br>2390 CENTER GREEN CT SO<br>BOULDER CO 80301<br>1ST) LOAN NO. 14110 |

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
 (Date) (Authorized Representative)

Policy Number: 03506-91-81

Effective Date: 03/20/09

Policy Forms and Endorsements attached at inception:

|            |            |            |            |            |
|------------|------------|------------|------------|------------|
| E3452-ED1  | BP04170196 | BP04390196 | E6036-ED1  | E0207-ED1  |
| E3342-ED1  | 25-2110    | S7337-ED1  | E4009-ED4  | BP05140103 |
| E0051-ED2  | E2028-ED2  | BP12030689 | BP00021299 | BP00060197 |
| BP00090197 | BP04340197 | BP04550197 | E2010-ED2  | BP04480197 |
| J6316-ED1  | J6345-ED1  | BP04160689 | J6300-ED2  | J6351-ED1  |
| E6289-ED1  | J6353-ED1  | E6306-ED1  | S7363-ED2  | BP04150197 |
| E3307-ED1  | E3020-ED1  | S7339-ED1  | 562377-ED1 | J6577-ED1  |

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
(Date) (Authorized Representative)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:  
BUSINESSOWNERS POLICY

### SCHEDULE\*

| Prem No. | Bldg. No. | Description of Property   | Loss Payee (Name & Address)                   | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|---------------------------|---|--|
| 001      | 001       | ELIGIBLE COVERED PROPERTY | LLOYD COFFMAN<br>265 S 2ND ST<br>INDEPENDENCE | C  |
|          |           |                           |   | OR 97351   |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

#### A. LOSS PAYABLE

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

#### B. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:
  - a. Warehouse receipts;
  - b. A contract for deed;
  - c. Bills of lading; or
  - d. Financing statements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
  - a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
  - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

- c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
  - (1) Pays any premium due under this policy at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

- d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
  - (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
  - (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

**C. CONTRACT OF SALE**

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Businessowners Common Policy Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:  
BUSINESSOWNERS POLICY

### SCHEDULE\*

| Prem No. | Bldg. No. | Description of Property | Loss Payee (Name & Address)  | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|-------------------------|--|--|
| 001      | 001       | BUILDING                | HIGHLINE CAPITAL CORP<br>ISAQA<br>2390 CENTER GREEN CT SO<br>BOULDER<br>LOAN NO. 14110 | B  |
|          |           |                         | CO 80301   |  |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

#### A. LOSS PAYABLE

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

#### B. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:
  - a. Warehouse receipts;
  - b. A contract for deed;
  - c. Bills of lading; or
  - d. Financing statements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
  - a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
  - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

**C. CONTRACT OF SALE**

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Businessowners Common Policy Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:  
BUSINESSOWNERS POLICY

### SCHEDULE\*

| Prem No. | Bldg. No. | Description of Property   | Loss Payee (Name & Address)                   | Provision Applicable (Indicate Paragraph A, B, or C) |
|----------|-----------|---------------------------|---|--|
| 001      | 002       | ELIGIBLE COVERED PROPERTY | LLOYD COFFMAN<br>265 S 2ND ST<br>INDEPENDENCE | C  |
|          |           |                           |   | OR 97351   |

The following is added to the Businessowners Property Coverage Form LOSS PAYMENT Loss Condition, as shown in the Declarations or by an "A," "B" or "C" in the Schedule:

#### A. LOSS PAYABLE

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

#### B. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor (including a mortgageholder or trustee) with whom you have entered a contract for the sale of Covered Property, whose interest in that Covered Property is established by such written contracts as:
  - a. Warehouse receipts;
  - b. A contract for deed;
  - c. Bills of lading; or
  - d. Financing statements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
  - a. We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
  - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure for similar action on the Covered Property.

- c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
  - (1) Pays any premium due under this policy at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of the Businessowners Property Coverage Form will then apply directly to the Loss Payee.

- d. If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
  - (1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
  - (2) The Loss Payee's right to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we do not renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

**C. CONTRACT OF SALE**

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Businessowners Common Policy Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - LESSOR OF  
LEASED EQUIPMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name of Person or Organization:  
RADIANCE CAPITAL LLC**

**Description of Leased Equipment:  
OFFICE EQUIPMENT**

**Location(s) of Leased Equipment:  
1082 MONMOUTH ST**

**INDEPENDENCE, OR 97351**

The following is added to Paragraph C. WHO IS AN INSURED in the Businessowners Liability Coverage Form:

4. The person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of the maintenance, operation or use by you of equipment leased to you by that person or organization and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

- A. Any "occurrence" which takes place after the equipment lease expires; or
- B. "Bodily injury" or "property damage" arising out of the sole negligence of the person or organization shown in the Schedule.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:**

**WSCO PETROLEUM**

**ATTN: JOHN PHIMISTER**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph **C. Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:**

**CHEVRON TEXACO**

**ATTN: JOHN PHIMISTER**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph **C. Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON  
OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

**SCHEDULE\***

**Name Of Person Or Organization:  
FERRELLGAS L P RISHMANAGEMENT  
ONE LIBERTY PLAZA**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. **Who Is An Insured** in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations or premises owned by or rented to you.

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

Radiance Capital, LLC, a Washington limited liability company,

Appellant,

v.

CIRCLE S FOODS, Inc., a foreign corporation, dba CIRCLE S. MARKET AND DAILY; SUBHASH CHANDER SHARMA and "JANE DOE" SHARMA, husband and wife; JAGTAR SINGH and "JANE DOE" SINGH, husband and wife; and NAVJIT SINGH and "JANE DOE" SINGH, husband and wife,

Respondent.

No. 695479

**DECLARATION OF SERVICE**

THE UNDERSIGNED, hereby declares as follows:

That I am now and at all times herein mentioned, a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action and competent to be a witness therein. That on the 2nd day of May, 2013, she caused a copy of the following documents:

(1) Appellant's Motion to Extend Time to File Amended Brief, One

Original and one copy and Declaration of Service to be served on  
the parties listed below by the method(s) indicated:

Richard D. Johnson, Clerk  
Court of Appeals, Division 1  
600 University St  
One Union Square  
Seattle, WA 98101-1176

regular first class U.S. mail  
 facsimile at 206-389-2613  
 Fed-Express/overnight delivery  
 personal delivery via ABC Legal Messengers  
 via electronically to: <http://www.wawd.uscourts.gov/>

Copies to:

Lauren D. Parris  
Attorney at Law  
1001 Fourth Avenue, Suite 4200  
Seattle, WA 98154  
(206) 689-2183  
[lparris@helsell.com](mailto:lparris@helsell.com)  
Attorney for Defendants

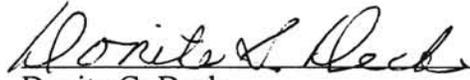
regular first class U.S. mail  
 facsimile  
 Fed-Express/overnight delivery  
 personal delivery via ABC Legal Messengers  
 via electronically to [lparris@helsell.com](mailto:lparris@helsell.com)

Andrew James Kinstler  
Attorney at Law  
1001 Fourth Avenue, Suite 4200  
Seattle, WA 98154  
(206) 689-2183  
 regular first class U.S. mail

- facsimile
- Fed-Express/overnight delivery
- personal delivery via ABC Legal Messengers
- via electronically to: [akinstler@helsell.com](mailto:akinstler@helsell.com)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed at Puyallup, Pierce County, Washington, this 2nd day of May, 2013.

  
\_\_\_\_\_  
Donita G. Deck