FORM B10 (Official Form 10)(4/98)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor Fleming Companies, Inc et al	Case Number 03-10945 (MFW)	THIS SPACE FOR COURT USE ONLY
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503		
Name of Creditor (The person or other entity to whom the debtor owes money or property) Oeser Food Stores, Inc	[ ] Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars [ ] Check box if you have never received any notices from the bankruptcy court in this case [ ] Check box if the address differs from the address on the envelope sent to you by the court	
Name and address where notices should be sent Robert J Mendes 120 30th Avenue North Suite 1000 Nashville, Tennessee 37203 Telephone Number (615) 846 8000		
Account or other number by which creditor identifies debtor 62-1467484	Check here if this claim [ ] replaces [ ] amends a previously filed claim dated _____	

1 Basis for Claim

[ ] Goods Sold
[ ] Services performed
[ ] Money loaned
[ ] Personal injury/wrongful death
[ ] Taxes
[x] Other_____

[ ] Retiree Benefits as defined in 11 U S C § 1114(a)
[ ] Wages, salaries and compensation (fill out below)
Your SS # _____ _____ _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2 Date debt was incurred VARIOUS

3 If court judgment, date obtained

4 Total Amount of Claim at Time Case Filed **$_UNKNOWN_____**

If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below

[ ] Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim

[ ] Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral

[ ] Real Estate [ ] Motor Vehicle
[ ] Other_____

Value of Collateral $_____

Amount of Arrearage and other charges at time case filed included in secured claim, if any $_____

6 Unsecured Priority Claim

[ ] Check this box if you have an unsecured priority claim

Amount entitled to priority $_____

Specify the priority of the claim

[ ] Wages salaries or commissions (up to $4300) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 U S C § 507(a)(3)
[ ] Contributions to an employee benefit plan 11 U S C § 507(a)(4)
[ ] Up to $1 950* of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)
[ ] Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)
[ ] Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
[ ] Other Specify applicable paragraph of 11 U S C § 507(a) (___)

** Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 Supporting Documents *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts contracts court judgments, mortgages, security agreements, and evidence of perfection of lien
DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous attach a summary

9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

FILED
SEP 12 2003
BMC

Date
9-11-03

Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

, as attorney

Fleming Companies Claim
11062

Penalty for presenting fraudulent claim Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 and 3571

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law In particular types of cases or circumstances such as bankruptcy cases that are not filed voluntarily by a debtor there may be exceptions to the general rules

-------- DEFINITIONS --------

Debtor

The person, corporation or other entity that has filed a bankruptcy case is called the debtor

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed

Proof of Claim

A form telling the bankruptcy court how much the debt owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim) This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property

Examples of liens are a mortgage on real estate and a security interest in a car truck, boat, television set or other item of property A lien may have been obtained through a court proceeding before the bankruptcy case began, in some states a court judgment is a lien In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim (See also *Unsecured Claim)*

Unsecured Claim

If a claim is not a secured claim, it is an unsecured claim A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims) The most common types of priority claims are listed on the proof of claim form Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number
Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California) the name of the debtor in the bankruptcy case and the bankruptcy case number If you received a notice of the case from the court all of this information is near the top of the notice

Information about Creditor
Complete the section giving the mane address and telephone number of the creditor to whom the debtor owes money or property and the debtor s account number if any If anyone else has already filed a proof of claim relating to this debt if you never received notices from the bankruptcy court about this case if your address differs from that to which the court sent notice or if this proof of claim replaces or changes a proof of claim that was already filed check the appropriate box on the form

1 Basis for Claim
Check the type of debtor for which the proof of claim is being filed If the type of debt is not listed check Other' and briefly describe the type of debt If you were an employee of the debtor fill in your social security number and the dates of work for which you were not paid

2 Date Debt Incurred
Fill in the date when the debt first was owed by the debtor

3 Court Judgments
If you have a court judgment for this debt state the date the court entered the judgment

4 Total Amount of Claim at Time Case Filed
Fill in the total amount of the entire claim If interest or other charges in addition to the principal amount of the claim are included check the appropriate place on the form and attach an itemization of the interest and charges

5 Secured Claim
Check the appropriate place if the claim is a secured claim You must state the type and value of property that is collateral for the claim attach copies of the documentation of your lien and state the amount past due on the claim as of the date the bankruptcy case was filed A claim may be partly secured and partly unsecured (See DEFINITIONS above)

6 Unsecured Priority Claim
Check the appropriate place if you have an unsecured priority claim and state the amount entitled to priority (See DEFINITIONS above) A claim may be partly priority and partly Nonpriority if for example, the claim is for more than the amount given priority by the law Check the appropriate place to specify the type of priority claim

7 Credits
By signing this proof of claim you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor

8 Supporting Documents
You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or if the documents are too lengthy a summary of those documents If documents are not available you must attach an explanation of why they are not available

Legal Advice The staff of the bankruptcy clerk's office cannot give legal advice You may want to consult an attorney to protect your rights

STATEMENT TO ACCOMPANY PROOF OF CLAIM

The entity filing this proof of claim has previously filed one or more objections in these bankruptcy cases The entity filing this proof of claim is actively involved in global settlement negotiations with the Debtors It is believed that the entity filing this proof of claim will soon finalize a global settlement with the Debtors which will include a waiver of any claims that this entity has against the Debtors

Accordingly, the entity filing this proof of claim is doing so to preserve its rights in connection with these bankruptcy cases The entity filing this proof of claim expressly reserves the right to amend or supplement this proof of claim at any time if a settlement does not resolve the issues between the parties Moreover, all of the documents that relate to or support this proof of claim are available for inspection and copying upon request to

Robert J Mendes
MENDES & GONZALES, PLLC
120 30th Avenue North, Suite 1000
Nashville, Tennessee 37203
(615) 846-8000
Fax (615) 846-9000
rjm@mglaw net

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Fleming Companies, Inc et al
Case No 03-10945-(MFW)-11

DOCUMENTS APPENDED TO CLAIM

On June 29, 2005, document(s) were appended to Claim Number **11062** for the following reason(s)

- ☒ Stipulation and Agreement Dated 1/26/04
- ☐ New Supporting Documents
- ☐ Letter and Notice Dated
- ☐ Notice of Withdrawal of Claim
- ☐ Other Docket Number ####

AGREEMENT OF SETTLEMENT-Oeser

This Agreement of Settlement (this "Agreement") is entered into as of the 26th day of January 2004 by and among Fleming Companies Inc (and certain of its subsidiaries in bankruptcy as referred to hereinafter collectively, "Debtor"), C&S Acquisition LLC ("Purchaser"), Associated Wholesale Grocers, Inc , (and certain of its affiliates, collectively "AWG") and Oeser Food Stores, Inc ("Settling Party", collectively with Debtor, Purchaser and AWG, the "Parties"), with reference to the following facts·

WHEREAS,Debtor and certain of its debtor subsidiaries have filed voluntary petitions on April 1, 2003 for relief pursuant to chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") as Case Nos 03-10944 through 03-10966 and 03-10970 through 03-10973 (the "Bankruptcy Case")

WHEREAS, Debtor, Purchaser and AWG have negotiated in good faith and at arm's-length for the purchase and sale of certain assets of Debtor, including certain assets of Debtor's wholesale grocery distribution business and the assumption of certain liabilities associated therewith (the "Business") pursuant to the terms of the Asset Purchase Agreement by and among the Debtor, Purchaser and other parties that are signatories thereto, dated July 7, 2003, as amended (the "Asset Purchase Agreement"), and for certain bid protections in connection therewith (the "Sale")

WHEREAS, pursuant to Section 2 6(f) of the Asset Purchase Agreement, Purchaser has the right to join Third Party Purchasers to the Asset Purchase Agreement and to permit Third Party Purchasers to assume all rights, obligations and interests of Purchaser under the Asset Purchase Agreement. Purchaser previously designated AWG Acquisition, LLC as a "Purchaser" pursuant to the Amendment, Assignment and Consent dated as of August 23, 2003, by and among Purchaser, Surry Acquisition LLC, a New Hampshire limited liability company, Parent, Sellers, Associated Wholesale Grocers, Inc , a Missouri corporation, and AWG Acquisition, LLC, said Surry Acquisition LLC, a New Hampshire limited liability company, Parent, Sellers, Associated Wholesale Grocers, Inc , a Missouri corporation are all as identified in the Amendment, Assignment and Consent dated as of August 23, 2003

WHEREAS, Settling Party is obligated to AWG (originally obligated to Debtor) in respect of one or more forgiveness notes the aggregate outstanding principal balance of which is equal to approximately One Hundred Five Thousand Dollars ($105,000 00), plus any interest thereon, on the date hereof (the "Forgiveness Notes")

WHEREAS, Settling Party is obligated to the Debtor and/or its Debtor Subsidiaries in respect of accounts receivable for goods delivered and services statemented in the amount of $300,774 08 (the "A/R")

WHEREAS, Settling Party is obligated to AWG (originally obligated to Debtor) in respect of a sublease for a retail store (the "Sublease")

WHEREAS, Settling Party is party to a facility standby agreement or other grocery supply arrangement with the Debtor (the "FSA")

WHEREAS, Settling Party has filed one or more objections in connection with the Bankruptcy Case (collectively, the "Objection")

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows.

Forgiveness Notes

The outstanding principal balance (plus any amounts due including any interest thereon) of the Forgiveness Notes shall be forgiven, canceled and discharged in full concurrently with the execution of the New Supply Agreement as referred to below

Accounts Receivable

Regardless of the timing of the Bankruptcy Court's approval of this Agreement.

1 Settling Party and Debtor agree that Settling Party owes Debtor the A/R.

2 Upon execution of this Agreement, AWG and Debtor agree that $75,000 00 (Seventy-Five Thousand Dollars) (the "A/R Credit") shall be credited to Settling Party and shall be deducted from the A/R owed by Settling Party to Debtor AWG and Debtor further agree that such A/R Credit shall be counted against AWG's FSA Accounts Receivable Compromised Limit pursuant to the Asset Purchase Agreement. The amount equal to the A/R minus the A/R Credit shall be known as the "Adjusted A/R"

3 Settling Party shall pay Debtor the Adjusted A/R in immediately available funds contemporaneously with the execution of this Agreement.

4 The mutual releases contained herein shall not become effective until the Debtor has received the Adjusted A/R from the Settling Party

5 If the Adjusted A/R is not paid, Debtor, its successors and assigns shall be entitled to collect the full amount of the A/R from the Settling Party to the fullest extent permitted by law and in equity and the A/R Credit shall be rescinded.

Leases and Subleases:

(1) Debtor, Purchaser and AWG, as the case may be, agree to give all notices and file all pleadings with the Bankruptcy Court, and to take such other steps as may be commercially

reasonable (as and when such actions may be required under the Asset Purchase Agreement and the transaction documents between the respective parties) to obtain Bankruptcy Court approval for the Debtor to assign each non-residential real property lease for H G Hills #38 located at 212 Goodlettesville Plaza, Goodlettesville, TN 37072 (collectively, the "Master Leases") directly to Settling Party Settling Party agrees that it shall have the sole responsibility for presenting evidence of and establishing its ability to provide to the landlords of the Master Leases adequate assurances of future performance as required by Section 365(b)(1)(C) of the Bankruptcy Code at any hearing before the Bankruptcy Court to consider the assumption and assignment of such Master Leases to the Settling Party It is expressly understood that any cure obligations due and owing to the landlords on such Master Leases in connection with such assumption and assignment shall be the sole responsibility of AWG as set forth in the Asset Purchase Agreement. Settling Party agrees that none of Debtor, Purchaser or AWG shall have any liability with respect to any obligations under the Master Leases arising from and after the effective date of the assumption and assignment to Settling Party of such Master Leases In the event the Bankruptcy Court denies the request to assume and assign one or all of the Master Leases to Settling Party, such denial shall not relieve Settling Party of any of its obligations pursuant to this Agreement or otherwise, and AWG may request that such Master Lease be assumed and assigned to AWG or rejected per the Asset Purchase Agreement. Moreover, nothing herein shall be deemed to prohibit or otherwise preclude the parties from negotiating, resolving and effectuating an assignment or rejection of the various Master Leases contemplated herein (for the parties to effect the desired result of granting control of the leaseholds to Settling Party) by some other means, provided, however, that any such undertaking shall be subject to (i) prior written consent, (ii) the parties agreement to negotiate in good faith and (iii) Bankruptcy Court approval To the extent any Master Leases are rejected, or assigned and assumed by another party, Settling Party hereby waives any claim for damages against each of Debtor, C&S and AWG flowing from the rejection or the assignment and assumption of such Master Leases

(2) Debtor, Purchaser and AWG, as the case may be, agree to give all notices and file all pleadings with the Bankruptcy Court, and to take such other steps as may be commercially reasonable (as and when such actions may be required under the Asset Purchase Agreement and the transaction documents between the respective parties) to obtain Bankruptcy Court approval for the Debtor to reject each Sublease by and between the Debtor, or its affiliates, and Settling Party related to each of the respective Master Leases Settling Party may request that such actions be taken concurrently and simultaneously with the assumption and assignment of such Master Lease subsequent to a determination by the Bankruptcy Court of the assumption and assignment of the Master Leases to Settling Party. Nothing herein shall be deemed to prohibit or otherwise preclude the parties from negotiating, resolving and effectuating an assignment or rejection of the various Subleases contemplated herein by some other means, provided, however, that any such undertaking shall be subject to (i) prior written consent, (ii) the parties agreement to negotiate in good faith and (iii) Bankruptcy Court approval To the extent any Master Leases are rejected, or assigned to and assumed by another party, Settling Party hereby waives any claim for damages against each of Debtor, C&S and AWG flowing from the rejection or the assignment and assumption of any related Sublease

Agreement of Settlement Oeser P4 Typo Corrected

(3) However, in the event AWG must remain on the lease, sublease and/or any lease guarantee to landlord, then the Settling Party will pay AWG its standard 5% fee on the monthly rental amount pursuant to the lease In the event of any such Lease, Sublease or guarantee from AWG with the 5% fee, then AWG shall pass all leasehold rights and option periods it has to Settling Party exactly as the same appear in the lease documents Notwithstanding anything to the contrary in this Agreement, at all times where AWG remains on a lease and/or guarantee of a lease or has any obligations related thereto with respect to a given store, AWG will have a mutually agreeable supply agreement with the Settling Party in connection with such store

Will insert this page in Originals

Therefore, the Leases, Subleases and/or guarantees will be disposed of as agreed between the Parties To the extent any Leases, Subleases and/or guarantees are rejected, or assigned and assumed to another party, Settling Party hereby waives any claim for damages flowing from the rejection or the assignment and assumption of the Leases and Subleases

The FSA

Settling Party hereby consents to the rejection and termination of the FSA (except that the FSA associated with Hills #9 and Hills #14, identified as contracts #5050 and/or #5051, possibly duplicates, shall not be rejected and terminated but will be assigned by Debtor to AWG after receipt of an option notice) and all cure amounts asserted by Settling Party are hereby waived, whether the FSA is rejected and terminated or assigned by Debtor to AWG Purchaser and AWG shall cause Debtor to seek Bankruptcy Court approval of the rejection of the specific FSA or FSA's to be rejected In connection with the rejection of the FSA, Settling Party hereby waives any claim for damages flowing from the rejection of the FSA

In connection with the termination of the FSA, AWG and Settling Party has agreed to enter into a supply agreement (the "New Supply Agreement") for the purchase and delivery of grocery products The term of this New Supply Agreement shall have a term of at least five (5) years and shall apply to Settling Party's store location for H G Hills # 38 The terms and conditions of the New Supply Agreement shall be negotiated and mutually agreed upon by AWG and Settling Party in good faith Retagging expenses will be paid by AWG and Settling Party shall receive any product promotions made available to other Settling Parties for private label products from AWG

edited page

AWG and Settling Party agree to negotiate in good faith to finalize and execute a license agreement whereby AWG shall license the right to use the H G Hills name to Settling Party, but in no event shall the renegotiated agreement contain a reference to any option on the part of the Licensor to purchase the stores of Settling Party for any reason

AWG, Purchaser and Settling Party shall take, and shall cause Debtor to take, as applicable, such commercially reasonable actions as are necessary to give effect to the terms and conditions of this agreement, including, among other things, the rejection, assumption, assignment, modification or termination of such contracts, subleases or agreements

Release and Withdrawal of Objection by Settling Party.

Settling Party agrees for itself, its/their successor and assigns, and its/their agents, directors, officers, guarantors, if any, and affiliates

(1) to hereby release and forever discharge each of Debtor, Purchaser and AWG and any of their respective successors and assigns, affiliates, directors, officers, and agents, from any and all causes of action, suits, contracts, damages, costs, claims and demands whatsoever, in law or in equity, which Settling Party or which it or its agents, representatives and officers ever had, now has, thereafter can, shall or may have against any of Debtor, Purchaser, AWG or any of their respective successors and assigns, affiliates, directors, officers, and agents for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Bankruptcy Case or any of Settling Party's business dealings with Debtor or any of its debtor subsidiaries, occurring on or prior to the date of this Agreement, and will not thereafter institute any such charges, claims or actions against any of Debtor, Purchaser or AWG or any of their respective successors and assigns, affiliates, directors, officers, and agents, and

(2) to withdraw the Objection.

Release

Except as otherwise provided for in this agreement, each of Debtor, Purchaser and AWG agree for themselves and their agents, directors and officers

(1) to hereby release and forever discharge Settling Party and any of its/their respective successors and assigns, directors, officers, guarantors and agents, from any and all causes of action, suits, contracts, damages, costs, claims and demands whatsoever, in law or in equity, which Debtor, Purchaser and AWG or any of their agents, representatives and officers ever had, now has, or which Debtor, Purchaser, AWG themselves or their agents, representatives and officers, thereafter can, shall or may have against Settling Party, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Bankruptcy Case or any of Debtor's business dealings with Settling Party or any of its/their subsidiaries, occurring on or prior to the date of this Agreement, and will not thereafter institute any such charges, claims or actions against Settling Party or any of its/their respective successors and assigns, directors, officers, guarantors and agents

Notwithstanding the foregoing, the Settling Party shall remain liable to AWG for any rents or other leasehold obligations since August 23, 2003, for properties occupied by Settling Party that AWG has paid or is otherwise obligated to pay per the Asset Purchase Agreement or other transaction documents Settling Party shall also remain liable on any leasehold obligations to Debtor that arose prior to August 23, 2003, such as CAM, tax, or unpaid rent.

BASED ON THE FOREGOING, the Objection, is hereby withdrawn and the Parties agree to execute such documents as may be required to effectuate such withdrawal in the Bankruptcy Case

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Settlement to be executed and delivered as of the date first written above

FLEMING COMPANIES INC

Name _____
Title VP

C&S ACQUISITION LLC

Name _____
Title SVP

ASSOCIATED WHOLESALE GROCERS, INC

Name _____
Title President + CEO

OESER FOODS, INC

Name _____
Title _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Settlement to be executed and delivered as of the date first written above

FLEMING COMPANIES INC.

Name _____
Title _____

C&S ACQUISITION LLC

Name _____
Title _____

ASSOCIATED WHOLESALE GROCERS, INC

Name _____
Title _____

OESER FOODS, INC

Name Walt Oeser
Title PRESIDENT