

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	
FLEMING COMPANIES, INC <i>et al</i> <sup>1</sup> ,	)	Case No 03-10945 (MFW)
	)	(Jointly Administered)
Debtors	)	
	)	Hearing Date Nov 25, 2003 at 9 30 a m
	)	Objection Deadline Nov 10, 2003 at 4 00 p m

**FILED**  
**OCT 22 2003**  
**BMC**

**MOTION OF THE ST PAUL PIONEER PRESS FOR  
ALLOWANCE OF ADMINISTRATIVE PRIORITY CLAIM**

The St Paul Pioneer Press ("Pioneer"), by its attorneys, Neal, Gerber & Eisenberg LLP and Connolly Bove Lodge & Hutz LLP, respectfully requests the entry of an order pursuant to Section 503(b) of Title 11 of the United States Code (the "Bankruptcy Code"), allowing Pioneer's administrative priority claim in the amount of \$459,473.95 against Rainbow Food Group, Inc ("Rainbow"). In support of this motion, Pioneer respectfully states as follows:

1 This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. § 1408. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory predicate for the relief requested herein is Section 503(b) of the Bankruptcy Code.

2 On April 1, 2003, (the "Petition Date"), the Debtors, including Rainbow, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to

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<sup>1</sup> The Debtors are the following entities: Core-Mark International, Inc., Fleming Companies, Inc., ABCO Food Group, Inc., ABCO Markets, Inc., ABCO Realty Corp., ASI Office Automation, Inc., C/M Products, Inc., Core-Mark Interrelated Companies, Inc., Core-Mark Mid-Continent, Inc., Dunigan Fuels, Inc., Favar Concepts, Ltd., Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P., Fleming International, Ltd., Fleming Supermarkets of Florida, Inc., Fleming Transportation Service, Inc., Food 4 Less Beverage Company, Inc., Fuelserv, Inc., General Acceptance Corporation, Head Distributing Company, Marquise Ventures Company, Inc., Minter-Weisman Co., Piggly Wiggly Company, Progressive Realty, Inc., Rainbow Food Group, Inc., Retail Investments, Inc., Retail Supermarkets, Inc., RFS Marketing Services, Inc., and Richmar Foods, Inc. (collectively, the "Debtors").

Fleming Companies Claim



Docket # 4137  
Date: 10/22/03

Sections 1107(a) and 1108 of the Bankruptcy Code No trustee has been appointed in these cases

3 By order entered on April 3, 2003, the Court consolidated the Debtors' cases for administrative purposes only

4 On June 4, 2003 (the "Sale Date"), the Court entered an order approving the sale of the majority of Rainbow's assets (the "Sale Order"), including, on information and belief, all grocery stores within the markets served by Pioneer's publications

### **BACKGROUND**

5 Pioneer is engaged in the business of publishing a daily newspaper Pioneer and Rainbow were parties to an annual revenue volume contract (the "Pioneer/Rainbow Agreement") See Pioneer/Rainbow Agreement attached hereto as Exhibit A

6 The Pioneer/Rainbow Agreement provided a discounted pricing structure for Rainbow on the condition that Rainbow purchase at least \$2.5 million of advertising annually from Pioneer and its affiliated entities The term of the Pioneer/Rainbow Agreement is from February 3, 2003 through February 2, 2004

7 Under the terms of the Pioneer/Rainbow Agreement, if Rainbow fails to purchase \$2.5 million in advertising during the one-year term, Rainbow will be retroactively billed at a higher rate (the "Short Rate") to be determined from Pioneer's 2002 Retail Advertising Rate Card The Pioneer/Rainbow Agreement provides that if Rainbow fails to meet its minimum revenue commitment during the term of its contract, a bill is calculated applying the Short Rate to all of the advertising placed during the term of the contract and Rainbow is to pay the amount necessary to make up the difference between the Short Rate total and the amount already paid for the advertising at the lower rate conditioned upon Rainbow's satisfaction of its \$2.5 million revenue commitment See Pioneer/Rainbow Agreement (Exhibit A) at Section V

8 The Sale Order authorized the Debtors to assume and assign certain contracts. The Sale Order did not authorize the Debtors to assume and assign the Pioneer/Rainbow Agreement.

9 Rainbow has failed to purchase any advertising from Pioneer since the Sale Date and, on information and belief, Rainbow no longer operates a business that could utilize advertising in Pioneer's publications. On information and belief, all Rainbow stores in the market served by Pioneer's publications have been sold.

10 Because the Pioneer/Rainbow Agreement was not assumed and assigned pursuant to the Sale Order, Rainbow cannot meet the \$2.5 million revenue commitment required to qualify for discounted advertising rates pursuant to the Pioneer/Rainbow Agreement. Consequently, Rainbow is obligated to pay Pioneer additional amounts that will bring the rate paid by Rainbow for advertising up to the Short Rate.

11 Between the Petition Date and the Sale Date, Pioneer provided advertising to Rainbow for which Rainbow owes Pioneer \$459,473.95 based on Rainbow's obligation to pay the Short Rate pursuant to the Pioneer/Rainbow Agreement. The advertising provided for the benefit of Rainbow is set forth on the invoice for post-petition advertising attached hereto as Exhibit B and made a part hereof.

#### **PIONEER'S ADMINISTRATIVE PRIORITY CLAIM**

12 Section 503(b)(1)(A) of the Bankruptcy Code provides for the allowance of administrative expenses, including "the actual necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case."

13 Administrative expenses are entitled to a first priority distribution pursuant to Section 507(a)(1) of the Bankruptcy Code.

14 Generally, an obligation qualifies as an actual and necessary administrative expense when the obligation arose from a transaction with the estate, which benefited the estate in some demonstrable way *In re Megafood Stores, Inc* , 163 F 3d 1063 (9<sup>th</sup> Cir 1998), *In re White Motor Corp* , 831 F 2d 106 (6<sup>th</sup> Cir 1987)

15 With respect to post-petition obligations incurred by a debtor, the Supreme Court has held that

If the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for those services, which, depending on the circumstances of a particular contract, may be what is specified in the contract

*NLRB v Bildisco and Bildisco*, 465 U S 513, 531, 104 S Ct 1188, 1199 (1984), *see also US v Dewey Freight System, Inc* , 31 F 3d 620, 624-625 (8th Cir 1994) (same), *In re Chateaugay Corp*\_, 156 B R 391, 399 (Bankr S D N Y 1993) (“the Bankruptcy Code confers an administrative priority when a debtor, by electing post-petition not to disaffirm an executory contract or unexpired lease, induces a creditor to confer a post-petition benefit upon the estate”), *In re A H Robins Co , Inc* , 68 B R 705, 710 (Bankr E D Va 1986) (“[a] passive acceptance of benefits from a creditor during the post-petition period merely converts that creditor’s claim for post-petition services into one entitled to an administrative priority”), *In re Broadus Hospital Ass’n*, 159 B R 763, 770-772 (Bankr N D W Va 1993) (same)

16 Rainbow has received the full benefit of all of the advertising that it elected to place with Pioneer post-petition. The advertising provided by Pioneer enabled the Debtors to preserve the value of Rainbow as a going concern until it was sold pursuant to the Sale Order. All of the post-petition advertising provided by Pioneer to Rainbow has a recognized market value based upon the Pioneer/Rainbow Agreement, the Pioneer 2002 Retail Advertising Rate Card and the amounts paid by other parties for the same or substantially similar advertising

17 As of the date of this Motion, the accrued value of the post-petition advertising provided by Pioneer and for which Pioneer has not been paid is \$459,473 95, which amount is due and payable by Rainbow to Pioneer as an administrative expense. This amount is based on Pioneer's Short Rate calculation for post-petition advertising placed by Rainbow pursuant to the Pioneer/Rainbow Agreement, in light of Rainbow's failure to meet its \$2.5 revenue commitment under the Pioneer/Rainbow Agreement.

WHEREFORE, Pioneer respectfully requests that this Court enter an order in the form of the proposed order attached hereto as Exhibit C, granting Pioneer an administrative priority claim against Rainbow in the amount of \$459,473 95 pursuant to Sections 503(b) and 507(a) of the Bankruptcy Code, directing Rainbow to immediately pay such administrative expense and granting such other relief as is just.

Dated: October 22, 2003  
Wilmington, Delaware

/s/ Karen C. Bifferato  
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-and-

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Attorneys for The St. Paul Pioneer Press

#294533

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	
FLEMING COMPANIES, INC <i>et al</i> ,	)	Case No 03-10945 (MFW)
	)	(Jointly Administered)
Debtors	)	
	)	Hearing Date Nov 25, 2003 at 9 30 a m
	)	Objection Deadline Nov 10, 2003 at 4 00 p m

**NOTICE OF MOTION**

TO All parties on the attached list

PLEASE TAKE NOTICE that The St Paul Pioneer Press ("Pioneer") has today filed the attached **Motion of The St Paul Pioneer Press for Allowance of Administrative Priority Claim** (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5<sup>th</sup> Floor, Wilmington, Delaware 19801 (the "Court")

PLEASE TAKE FURTHER NOTICE that you are required to file a response to the Motion on or before **November 10, 2003 at 4 00 p.m** with the Court

PLEASE TAKE FURTHER NOTICE that at the same time you file a response to the Motion, you must also serve a copy of the response upon Pioneer's attorneys so that it is received on or before **November 10, 2003 at 4 00 p m** by the following persons at the following addresses

Karen C Bifferato, Esq  
Connolly Bove Lodge & Hutz LLP  
The Nemours Building  
1007 North Orange Street  
Wilmington, DE 19801

Joseph D Frank, Esq  
Matthew M Martin, Esq  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street, Suite 2200  
Chicago, IL 60602

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held at the Court on **November 25, 2003 at 9 30 a m**

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this Notice, the Court may grant the relief demanded by the Motion without further notice or hearing

Dated October 22, 2003  
Wilmington, Delaware

/s/ Karen C Bifferato

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Attorneys for The St Paul Pioneer Press

#294547

# EXHIBIT A

  
**SAINT PAUL**  
**PIONEER PRESS**

7

345 Cedar Street  
Saint Paul, MN 55101-1057  
651-222 1111

RAINBOW FOODS  
AND THE  
ST PAUL PIONEER PRESS

February 3, 2003 – February 2, 2004

The term of this agreement begins February 3, 2003, and ends February 2, 2004

Rainbow Foods will agree to the following annual revenue volume contract in advertising expenditures in the Pioneer Press and its affiliated entities, i.e. Northwest Publications and KnightRider.com. All Rainbow Foods expenditures with the Pioneer Press will apply to Rainbow Foods total dollar revenue

\$2,500,000 Expenditure Level Daily Ad Program with Sunday Insert

I Daily Ad & Sunday Insert Rates

A ROP Full Page, 4-Color Rates Per Ad Per Day

Mon-Sat \$4,965

Sun \$6,750

\*Zone advertising available at 52x (lowest) zone rate. Refer to 2003 Retail Advertising Rate Card for details

\*Sunday rates apply on select Holidays, whereby circulation levels increase to Sunday levels per 2003 Retail Rate Card

B INSERT Rates

\*CPM earned rates based on insert quantities. Refer to 2003 Retail Rate Card for details

	<u>Sunday</u>	<u>Daily</u>
-Full Run Bill Quantity	272,500	210,000
-Full Run Send Quantity	278,000	214,200

\*8% frequency discount based on minimum of 52 Sunday inserts during the annual contract period

\*"Wednesday Only" daily cpm applies to any daily insert. Refer to 2003 Retail Advertising Rate Card for details

\*Insert Rate Examples

-Sunday 8 pg tab @ \$38.40 @ 272.5k = \$10,464.22

\*Daily Full Page, 4-Color Ad Program Short Rate: In the event Rainbow Foods cancels the Daily Full Page, 4-Color Ad Program prior to annual contract attainment, rates will revert to Rainbow Foods ROP rates (see V Short Rate)

II Premium ROP Positions

\*Daily Full Page, 4-Color Ad Program back of Main News, excluding Saturday

\*Daily Ad Program for back page positions results in no premium charge

\*Occasional events/circumstances, i.e. State Fair, Final Four, allow for movement from back of Main News to specifically requested, available positions

III Annual Partnership Performance Privileges

\*Daily Ad & Sunday Insert Agreement earns product enhancements

- A Sunday/Daily Polybags Up to 24 per year, as available (Value \$360k)
- B Friday Eat Full Pg Weekly, color as available (Value \$535.5k)
- C 2X2 Teasers Up to 10/week Mon-Sat, as available (Value \$131k)
- D Sunday TV Weekly Full Pg B&W Weekly (Value \$76k)
- E Annual twincities.com Package (Value \$145k) - ONLINE
- F Two Cause Marketing Partnerships at 126" minimum level per Partnership (Value \$13.5k +)
- G Publishers Circle 1x per year (Value \$15k)

IV Agreement Enhancements

- A 12x Sunday Post-It & Full Pg Ad \$13,400 (Value \$20,000)  
Annual investment \$160,800 (Annual value \$240,000)
- B Easy Save/Today's Deal Daily 1/4 Pg B&W \$1,240 per day  
Annual investment \$452,600 (75% off Full Pg Daily Rate)

V Short Rate

In the event Rainbow Foods fails to achieve the contracted expenditure commitment with the Pioneer Press upon expiration of yearly contract term, rates will revert to the earned ROP and Preprint Rates in the 2002 Retail Advertising Rate Card

VI Policy

All other rates charged at effective Pioneer Press rate card rates. All advertising subject to conditions and policies of Pioneer Press 2002 Retail Advertising Rate Card, which is incorporated herein by reference. Billing based on a net thirty-day payment schedule.

Change in Control: Should any entity purchase substantially all of Rainbow Foods' assets by stock or otherwise, such entity shall assume all rights and obligations under this agreement.

All 2002 retail advertising agreement addendums between Rainbow Foods and the Pioneer Press are incorporated herein by reference.

Accepted for Pioneer Press



Gary Wortel  
VP Advertising, Pioneer Press

Date

2/4/03

1/2/03

Accepted for Rainbow Foods



Pat Liska  
President, Rainbow Foods

Date

2-3-2003



# EXHIBIT B

# PIONEER PRESS

P O Box 64890  
St Paul MN 55164  
Fed ID # 41 0449710

1 BILLING PERIOD		2 ADVERTISER/CLIENT NAME	
August 2003		Rainbow Foods	
43 TOTAL AMOUNT DUE	CREDIT BAL	31 TERMS OF PAYMENT	
\$459,473.95			
21 CURRENT NET AMOUNT DUE	22 30 DAYS	60 DAYS	OVER 90 DAYS
\$459,473.95			

1 PAGE #	5 BILLING DATE	8 BILLED ACCOUNT NAME AND ADDRESS	9 REMITTANCE ADDRESS
1	August 28	Rainbow Foods c/o Fleming Foods	St. Paul Pioneer Press 345 Cedar Street St. Paul, Mn. 55101
21 BILLED ACCOUNT NUMBER			
30317			
71 ADVERTISER CLIENT NUMBER			
30317			

PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

10 DATE	11 NEWSPAPER REFERENCE	12	13	14 DESCRIPTION OTHER COMMENTS/CHARGES	15	16 SAU SIZE BILLED UNITS	17	18 TIMES RUN RATE	19 GROSS AMOUNT	20 NET AMOUNT
				Balance Forward					19,198 06-	
				Shortrate for Advertising used from 4/1/2003 thru 6/4/2003						
				Preprints rerated to earned rate					4,877.97	
				Friday Eat Ads					67,304.16	
				Friday Eat Color Charges					16,400.00	
				Plastic Bags					35,208.40	
				TV Book Ads					17,676 00	
				2x2 Teaser Ads					7,913.32	
				Rop ads rerated to earned rate					197,462.16	
				Rop Color Charges					131,830.00	
				Total					459,473.95	

SBI

21 CURRENT NET AMOUNT DUE	22 30 DAYS	60 DAYS	OVER 90 DAYS	CREDIT BAL	23 TOTAL AMOUNT DUE
\$459,473.95					\$459,473 95

# PIONEER PRESS

345 Cedar Street St Paul MN 55101 1057  
FED ID # 41 0449710

24 INVOICE NUMBER	25	ADVERTISER INFORMATION			
		1 BILLING PERIOD	6 BILLED ACCOUNT NUMBER	7 ADVERTISER/CLIENT NUMBER	2 ADVERTISER/CLIENT NAME

# jbush

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FLEMING COMPANIES, INC , , <u>et al</u> ,	)	Jointly Administered
	)	Case No 03-10945 (MFW)
	)	
Debtors	)	

**NOTICE OF WITHDRAWAL OF PROOF OF CLAIM**

**PLEASE TAKE NOTICE THAT** Lancdon Limited Partnership (“Lancdon”), hereby  
withdraws, its Proof of Claims No 13488

Dated October 15, 2003

SMITH, KATZENSTEIN & FURLOW LLP

/s/ Kathleen M Miller  
Kathleen M Miller, Esquire (ID No 2898)  
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Wilmington, DE 19899  
Phone (302) 652-8400  
Fax (302) 652-8405  
Email Kmiller@skfdelaware.com

Attorneys for Lancdon Limited Partnership

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this **15<sup>th</sup>** day of **October, 2003**, the foregoing **Withdrawal of Proof of Claim** was served on the following party by first class mail

Laura Davis Jones, Esquire  
Pachulski Stang Ziehl Young Jones & Weintraub  
919 N Market Street  
16th Floor  
Wilmington, DE 19899-8705

/s/ Kathleen M. Miller

Kathleen M. Miller

# EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	
FLEMING COMPANIES, INC <i>et al</i>	)	Case No 03-10945 (MFW)
	)	(Jointly Administered)
Debtors	)	
	)	Related to Docket No _____

**ORDER ALLOWING ADMINISTRATIVE PRIORITY CLAIM**

This Court having considered the Motion of The St Paul Pioneer Press for Allowance of Administrative Priority Claim (the "Motion"), which Motion requests the allowance and payment of an administrative claim pursuant to Section 503 of the Bankruptcy Code, and the Court having considered the merits of the Motion and any responses thereto, and it appearing that notice of the Motion was duly given in accordance with the provisions of the Federal Rules of Bankruptcy Procedure, and no further notice being necessary and this Court having jurisdiction over this core proceeding,

**IT IS HEREBY ORDERED THAT**

- 1       The Motion is granted,
- 2       The St Paul Pioneer Press is hereby granted an administrative priority status claim pursuant to Section 503(b) of the Bankruptcy Code in the amount of \$459,473 95, and
- 3       Rainbow Food Group, Inc is directed to pay to The St Paul Pioneer Press \$459,473 95 within five business days of the entry of this order

Date \_\_\_\_\_, 2003

\_\_\_\_\_  
Hon Mary F Walrath  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Karen C Bifferato, hereby certify that on the 22<sup>nd</sup> day of October, 2003, I caused a true and correct copy of the foregoing to be served upon the persons or entities indicated on the attached list in the manner indicated on the attached list

/s/ Karen C Bifferato  
Karen C Bifferato (No 3279)

#295193

**BY HAND DELIVERY**

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c/o Becket And Lee, LLP  
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Card  
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Pachulski, Stang, Ziehl, Young,  
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10100 Santa Monica Blvd , #1100  
Los Angeles, CA 90067

**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 May 25, 2005, document(s) were appended to Claim Number **14745** for the following reason(s):

- ☐ Stipulation/Order
- ☐ New Supporting Documents
- ☐ Change of Address
- ☐ Withdrawn by Creditor per Letter dated
- ☒ Other: Settlement Agreement Dated 2/10/05

COPY

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This settlement agreement and mutual release ("Agreement"), dated as of February 10, 2005 is entered into by and between St. Paul Pioneer Press and the Post-Confirmation Trust of the Fleming Companies, Inc. Estates as Successor-in-Interest to Rainbow Food Group, Inc.,<sup>1</sup> and its affiliated former Debtors (collectively, the "Debtors").<sup>2</sup> St. Paul Pioneer Press and the Debtors are collectively referred to herein as the "Parties."

### Recitals

This Agreement is made with respect to the following facts, which are true and correct, and are incorporated into and made a substantive part of this Agreement.

WHEREAS, St. Paul Pioneer Press is a vendor that supplied goods and services to Rainbow Food Group, Inc. in exchange for payments pursuant to a contract entered into on or about February 4, 2003 (the "Contract");

WHEREAS, on April 1, 2003, the Debtors filed voluntary petitions under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS the Debtors' bankruptcy cases (the "Bankruptcy Cases") are being jointly administered;

WHEREAS, on October 22, 2003, St. Paul Pioneer Press filed Proof of Claim No. 14745 against Rainbow Food Group, Inc., seeking allowance of an administrative priority claim for post-petition amounts due pursuant to the Parties' Contract (the "Motion");

WHEREAS, on May 21, 2003, St. Paul Pioneer Press filed Proof of Claim No. 00200, which was subsequently amended and replaced on September 10, 2003, by Proof of Claim No.

<sup>1</sup> The PCT is a trust created pursuant to the Debtors' Amended and Official Committee of Unsecured Creditors' Third and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and its Filing Subsidiaries under Chapter 11 of the United States Bankruptcy Code and the Post-Confirmation Trust Agreement dated August 19, 2004. The PCT is responsible for and has the power to administer certain post-confirmation responsibilities under the Plan.

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

09478 against Rainbow Food Group, Inc., seeking payment of unsecured pre-petition amounts due pursuant to the Parties' Contract (the administrative priority claim and unsecured claim are collectively referred to herein as the "Claims");

WHEREAS, the Parties now desire to effect between themselves a full, complete and final settlement and global release of any and all claims, counterclaims and other differences that do, could or may hereafter exist between them, or could be brought on their behalf, arising out of and/or related to the Bankruptcy Cases and/or the Claims, *except for any claim the Debtors may have against St. Paul Pioneer Press under Chapter 5 of Title 11 of the United States Code ("Preference Claim"), whether known or unknown, which Preference Claim the Debtors do not expressly or implicitly waive or intend to waive by entering into this Agreement;*

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is acknowledged and intended to be binding, the Parties agree as follows:

#### ARTICLE I Key Definitions

The following definitions shall have the following meanings. Other definitions are as set forth in this Agreement. Capitalized terms not defined herein shall have the meaning ascribed to them under the Bankruptcy Code, 11 U.S.C. §§ 101-1330, et seq.

Section 1.1 "Debtor Released Parties" shall mean Debtors, as delineated in footnote 2 above, and all of its current, former and future directors, partners, members, officers, agents, employees, assigns, attorneys, predecessors, and successors.

Section 1.2 "St. Paul Pioneer Press Released Parties" shall mean St. Paul Pioneer Press and all of its current, former and future directors, partners, members, officers, agents, employees, assigns, attorneys, predecessors, and successors.

Section 1.3 "Settlement Effective Date" shall have the meaning ascribed to such term under Section 2.2 of this Agreement.

#### ARTICLE II Payment and Performance

##### Section 2.1 Consideration and Administrative Claim Amount

(a) As consideration for the release and settlement of all St. Paul Pioneer Press Released Claims (as set forth in Section 3.1(a), as modified by Section 3.1(d)), the Debtors hereby release and waive all Debtor Released Claims (with the exception of any Preference Claim, as set forth in Sections 3.1(b) and (c)) and shall pay to St. Paul Pioneer Press the administrative priority sum of \$412,500.00 (the "Administrative Claim Amount") and shall allow a Class 6 General Unsecured Claim in favor of St. Paul Pioneer Press in the amount of \$1,097,480.32 (the "General Unsecured Claim").

POL # 9178 (b) As consideration for the release and settlement of all Debtor Released Claims (with the exception of any Preference Claim, as set forth in Sections 3.1(b) and (c)), and

the payment of the Administrative Claim Amount by Debtors, St. Paul Pioneer Press hereby releases and waives all St. Paul Pioneer Press Released Claims (as set forth in Section 3.1(a), as modified by Section 3.1(d)).

Section 2.2 Settlement Effective Date.

This Agreement will become effective and binding on the Parties and the Settlement Effective Date shall occur upon the execution of this Agreement by both Parties.

Section 2.3 Dismissal of Claims and Payment of Administrative Claim Amount.

(a) Within five (5) business days after the Settlement Effective Date (as set forth in Section 2.2), Debtors shall make payment of the Administrative Claim Amount by a check payable to St. Paul Pioneer Press, by overnight mail delivery to the following address:

Dawn Lindgren  
Credit Manager  
St. Paul Pioneer Press  
345 Cedar Street  
St. Paul, MN 55101

With a copy of proof of payment to:

Joseph D. Frank  
Frank/Gecker LLP  
325 North LaSalle Street, Suite 625  
Chicago, IL 60610

(b) On the Settlement Effective Date (as set forth in Section 2.2), the General Unsecured Claim shall be deemed allowed in the amount of \$1,097,480.32, to be distributed as provided under the Debtors' Amended and Official Committee of Unsecured Creditors' Third and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and its Filing Subsidiaries under Chapter 11 of the United States Bankruptcy Code (the "Plan").

(c) Upon confirmation of receipt of a valid check for the Administrative Claim Amount, the Debtors will transmit to BMC Group a copy of the executed settlement agreement and will prepare a stipulation to be filed with the Court withdrawing the Motion with prejudice.

**ARTICLE III**  
**Mutual Waiver and Release**

Section 3.1 Mutual Waiver and Release.

(a) As of the Settlement Effective Date and subject to Section 3.1(d), St. Paul Pioneer Press, for itself and on behalf of its successors and assigns, hereby waives, releases and forever discharges the Debtor Released Parties from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description,

whether in law or equity, whether sounding in tort, contract or other applicable law, whether known or unknown, fixed or contingent, concealed or hidden, latent or patent, anticipated or unanticipated, which St. Paul Pioneer Press and/or its respective successors and/or assigns ever had, now have, or may have against the Debtor Released Parties arising out of, related to, or in connection with, based in whole or in part, on the Bankruptcy Cases and/or the Claims ("St. Paul Pioneer Press Released Claims"). Notwithstanding the foregoing, St. Paul Pioneer Press does not waive, release, or discharge the Debtor Released Parties from any of their obligations under this Agreement.

(b) As of the Settlement Effective Date and subject to Section 3.1(c), the Debtors, for themselves and on behalf of their successors and assigns, hereby waive, release, and forever discharge the St. Paul Pioneer Press Released Parties from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or other applicable law, whether known or unknown, fixed or contingent, concealed or hidden, latent or patent, anticipated or unanticipated, which the Debtors and/or their respective successors and/or assigns ever had, now have, or may have against the St. Paul Pioneer Press Released Parties arising out of, related to, or in connection with, based in whole or in part, on the Bankruptcy Cases and/or the Claims ("Debtor Released Claims"). Notwithstanding the foregoing, the Debtors do not waive, release, or discharge St. Paul Pioneer Press Released Parties from any of its obligations under this Agreement.

(c) Notwithstanding the foregoing, the Debtors do not waive, release or discharge St. Paul Pioneer Press Released Parties from any obligations St. Paul Pioneer Press Released Parties may be found by the Court to owe to the Debtors as a result of the litigation of any Preference Claim that may be brought by or on behalf of the Debtors. The Parties hereby expressly agree that Debtors reserve and intend to litigate in the future any Preference Claim that is now known or may become known to the Parties, and the Parties further agree that neither this Agreement nor anything contained within this Agreement shall preclude Debtors from asserting a Preference Claim against St. Paul Pioneer Press Released Parties at some time in the future in the Bankruptcy Cases.

(d) Notwithstanding the foregoing, the St. Paul Pioneer Press Released Parties do not waive, release or discharge the Debtor Released Parties from any obligations the Debtor Released Parties may be found by the Court to owe to the St. Paul Pioneer Press Released Parties as the result of the litigation of any Preference Claim that may be brought by or on behalf of the Debtors. The parties hereby expressly agree that the St. Paul Pioneer Press Released Parties reserve and intend to litigate in the future any defense or grounds for dismissal or judgment in favor of the St. Paul Pioneer Press Released Parties to any Preference Claim that is now known or may become known to the Parties and the Parties further agree that neither this Agreement nor anything contained within this Agreement shall preclude the St. Paul Pioneer Press Released Parties from asserting any defense or grounds for dismissal or judgment in favor of the St. Paul Pioneer Press Released Parties to any Preference Claim asserted against the St. Paul Pioneer Press Released Parties at some time in the future in the Bankruptcy Cases.

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**ARTICLE IV**  
**Representations and Warranties**

Section 4.1 Each Party represents and warrants that it is the sole and current owner of the claims released by this Agreement. Each Party further represents and warrants that none of the released claims have been assigned, granted, or transferred in any way to any Person or Entity before the execution hereof.

Section 4.2 Each Party represents and warrants that it has the legal right and authority to enter into this Agreement and release the claims now being released. Each Party agrees to indemnify the other from any loss or expense (including, but not limited to, attorneys' fees, costs, and sanctions) that may be incurred as a result of any breach of this warranty.

Section 4.3 Each Party covenants and agrees not to bring any action, claim, suit, or proceeding against any other Party, directly or indirectly, regarding or relating to the matters released hereby, and further covenants and agrees that this Agreement is a bar to any such claim, action, suit, or proceeding, subject to Section 3.1(c).

**ARTICLE V**  
**Miscellaneous**

Section 5.1 Notices. All notices, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given: (a) when personally delivered; (b) upon receipt during normal business hours, otherwise on the first business day thereafter, if transmitted by facsimile with confirmation of receipt; (c) when mailed by certified mail, return receipt request, postage prepaid; or (d) when sent by overnight courier; in each case, to the following addressees, or to such other addressees as a Party may from time to time specify by notice to the other Party given pursuant hereto.

If to Debtors, to:

Kirkland & Ellis L.L.P.  
777 South Figueroa St.  
Los Angeles, CA 90017  
Attn: Eric C. Liebeler, Esq.  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

With a copy to:

Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C.  
919 North Market Street, 16<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier No. 19801)  
Attn: Scotta E. McFarland, Esq.  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

If to St. Paul Pioneer Press, to:

Dawn Lindgren  
Credit Manager  
St. Paul Pioneer Press  
345 Cedar Street  
St. Paul, MN 55101

With a copy to:

Joseph D. Frank  
Frank/Gecker LLP  
325 North LaSalle Street, Suite 625  
Chicago, IL 60610

Section 5.2 Cooperation. The Parties will cooperate fully and will execute and deliver any and all supplementary papers, documents, instruments, and other assurances, and shall do any and all acts that may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

Section 5.3 Governing Law/Jurisdiction. This Agreement shall be governed by the laws of the state of Delaware and the United States Bankruptcy Code.

Section 5.4 Continuing Jurisdiction of Bankruptcy Court. This Agreement is subject to and contingent upon the approval by the Bankruptcy Court. The Bankruptcy Court shall have exclusive jurisdiction to determine as a core proceeding any dispute or controversy with respect to the interpretation or enforcement of this Agreement.

Section 5.5 Integration. This Agreement contains the entire agreement between the Parties with respect to the matters covered by this Agreement, and no promise or understanding or representation made by any Party or agent, director, officer, employee, or attorney of any Party that is not expressly contained in this Agreement shall be binding or valid.

Section 5.6 Waiver, Modification and Amendment. This Agreement may not be modified, amended, or supplemented by the Parties except in accordance with further order of the Bankruptcy Court or by a written agreement that all of the Parties have signed. A waiver of any provision of this Agreement will not constitute a waiver of any other provision of this Agreement.

Section 5.7 Severability. In case any provision of this Agreement shall be determined to be invalid, illegal or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

Section 5.8 Survival of Representations. All representations, warranties, agreements, covenants and obligations made by the Parties herein are material, shall be deemed to have been relied upon by the other Party, and shall survive the Settlement Effective Date.

Section 5.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, predecessors, heirs, assigns, officers, directors, shareholders, employees, agents, and attorneys to the extent provided by law, including without limitation, any appointed Chapter 11 trustee or any trustee appointed in a subsequent Chapter 7 case.

Section 5.10 No Third-Party Beneficiaries. This Agreement does not constitute a contract for the benefit of any third parties, any prior creditors or claimants of the Parties, or any nonparty, except the entities and individuals released in the releases contained in Sections 1.2, 1.3, and 3.1 of this Agreement.

Section 5.11 No Admission of Liability. This Agreement is intended to settle and dispose of claims, which are contested and denied. Nothing herein shall be construed as an admission by any Party of any liability of any kind.

Section 5.12 Advice of Counsel. Each Party acknowledges and agrees that it has given careful thought to this Agreement, has reviewed or has had the opportunity to review this Agreement independently with legal counsel of its choice, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions in this Agreement.

Section 5.13 Attorneys' Fees. The Parties hereto shall be responsible for their respective attorneys' fees, expenses and costs incurred by them through the date of this Agreement. In the event of any litigation arising out of a breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, expenses, and costs.

Section 5.14 Captions. The captions of this Agreement are for convenience only and are not a part of the Agreement and do not in any way define, limit or extend, describe, or amplify the terms and/or provisions and/or scope of this Agreement and shall have no effect on its interpretation.

Section 5.15 Counterparts. The Parties may execute this Agreement in one or more counterparts, each of which constitutes an original, and all of which constitute one and the same Agreement. A facsimile or copy of this Agreement executed by the Parties, whether complete or in counterparts, will constitute sufficient evidence of the executed original of this Agreement for all purposes.

Section 5.16 Construction and Interpretation. Unless the context requires otherwise, singular nouns and pronouns used in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender. In the event of an ambiguity in, or controversy or claim arising out of, or relating to the interpretation, application, or enforcement of this Agreement, the Parties agree that no one will resolve any ambiguity in, or controversy or claim arising out of, or relating to, interpretation,

application, or enforcement of this Agreement by any rule providing for interpretation against the Party who causes the ambiguity to exist or against the draftsman.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first listed above.

**AUTHORIZED REPRESENTATIVE OF  
POST-CONFIRMATION TRUST AS  
SUCCESSOR-IN-INTEREST TO RAINBOW  
FOOD GROUP, INC.**

By: \_\_\_\_\_

Name: Robert Kors

Title: Authorized Representative of Post-  
Confirmation Trust

**ST. PAUL PIONEER PRESS**

By: \_\_\_\_\_

Name: Joseph D. Frank

Title: Attorney for St. Paul Pioneer Press

application, or enforcement of this Agreement by any rule providing for interpretation against the Party who causes the ambiguity to exist or against the draftsman.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first listed above.

**AUTHORIZED REPRESENTATIVE OF  
POST-CONFIRMATION TRUST AS  
SUCCESSOR-IN-INTEREST TO RAINBOW  
FOOD GROUP, INC.**  
CASTELLAMMARE ADVISORS, LLC

By:

Robert Kors  
Name: Robert Kors, Principal of Castellammare Advisors  
Title: Authorized Representative of Post-Confirmation Trust LLC

**ST. PAUL PIONEER PRESS**

By:

Joseph D. Frank  
Name: Joseph D. Frank  
Title: Attorney for St. Paul Pioneer Press

Julie

972 720 2004

**Fleming Companies, Inc - Estate****33641**

REFERENCE NO / DESCRIPTION		INVOICE DATE	INVOICE AMOUNT	DISCOUNT TAKEN	AMOUNT PAID
Account Payables - CAP					412,500.00
CHECK DATE	CHECK NUMBER	PAYEE		DISCOUNTS TAKEN	CHECK AMOUNT
2/11/05	33641	ST PAUL PIONEER PRESS			\$412,500.00

**Fleming Companies, Inc - Estate**

Phone: 405.841.5789

5701 North Shartel

Oklahoma City OK 73118

JPMorgan Chase Bank  
New York Controlled Disbursements**33641**1-2  
210

CHECK #	DATE	AMOUNT
33641	Feb 11, 2005	*****\$412,500.00

Four Hundred Twelve Thousand Five Hundred and 00/100 Dollars

Memo:

PAY  
TO THE  
ORDER  
OFST PAUL PIONEER PRESS  
ATTN: DAWN LIDGREN  
345 CEDAR STREET  
ST PAUL, MN 55101

Copies of Checks

\*\* VOID \* VOID \* VOID \*\*

\*\*\*\* NOT NEGOTIABLE \*\*\*\*

Authorized Signature