

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
FLEMING COMPANIES, INC., et al., )  
 ) Case No. 03-10945 (MFW)  
Debtors. ) Jointly Administered  
 )  
 ) **Obj. Deadline: 5/12/03 at 4:00 p.m.**  
 ) **Hearing Date: 5/19/03 at 12:30 p.m.**

**OBJECTION OF INLAND RYAN, LLC, INLAND PARK SQUARE, LLC,  
AND INLAND REAL ESTATE LBI, LLC, TO DEBTORS' MOTION  
FOR ORDER: (A) SCHEDULING THE DATE, TIME AND PLACE  
FOR A HEARING ON THE PROPOSED RAINBOW FOOD  
STORES ASSET SALE MOTION; (B) APPROVING THE FORM  
AND MANNER OF NOTICE THEREOF; AND (C) APPROVING:  
(i) DEBTORS' AUCTION PROCEDURES; AND (ii) BREAK-UP  
FEE AND EXPENSE REIMBURSEMENT [DOCKET NO. 703]**

Inland Ryan, LLC, Inland Park Square, LLC, and Inland Real Estate LBI, LLC  
(collectively, "Inland"), by and through their undersigned counsel, hereby object to the above-  
captioned debtors' (the "Debtors") Motion for Order: (a) Scheduling the Date, Time and Place  
for a Hearing on the Proposed Rainbow Food Stores Asset Sale Motion; (b) Approving the Form  
and Manner of Notice Thereof; and (c) Approving: (i) Debtors' Auction Procedures; and (ii)  
Break-up Fee and Expense Reimbursement [Docket No. 703] (the "Motion"). In support of this  
objection, Inland respectfully states as follows:

Background

1. On or about April 1, 2003 (the "Petition Date"), each of the Debtors filed a  
voluntary petition for relief under chapter 11 of title 11 of the United States Code (the  
"Bankruptcy Code"). Upon information and belief, the Debtors are currently operating their

businesses and managing their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, the Debtors, as tenant, entered into non-residential real property leases (collectively, the “Leases”) with Inland, for the following locations: (i) Bergen Plaza Shopping Center, located in Oakdale, Minnesota, at which the Debtors operate their store no. 216; (ii) Rainbow Maple Grove Plaza, located in Maple Grove, Minnesota, at which the Debtors operate their store no. 265; (iii) Park Square Center, located in Brooklyn Park, Minnesota, at which the Debtors operate their store no. 286; (iv) The Quarry Shopping Center, located in Minneapolis, Minnesota, at which the Debtors operate their store no. 267; and (v) Riverdale Commons Shopping Center, located in Coon Rapids, Minnesota, at which the Debtors operate their store no. 268.

3. On or about May 2, 2003, the Debtors filed the Motion. Pursuant to the Motion, the Debtors are seeking authority to sell approximately 31 of their Rainbow Food grocery stores to Roundy’s, Inc. and RBF Corp., or to the highest and best bidder (the “Purchaser”), pursuant to an Asset Purchase Agreement (the “Agreement”). Neither the Motion nor the Agreement that is attached to the Motion identify which non-residential real property leases will be subject to the proposed sale. However, upon information and belief, all or at least some of the Leases will be subject to the proposed sale.

4. Pursuant to the Motion, among other things, the Debtors are seeking to implement certain bidding and auction procedures (the “Procedures”) for the proposed sale of the assets. The proposed Procedures provide that all parties must file their objections to the proposed sale, and their objections to cure amounts, no later than May 28, 2003. However, bids from interested

parties are not due from bidders until May 28, 2003. The Procedures also provide that an auction will occur on June 3, 2003, and a sale hearing will occur on June 4, 2003. Nowhere in the Procedures are there proposed deadlines by which the Debtors must (i) provide landlords with proposed cure amounts, (ii) provide landlords with financial information about Roundy's, Inc. and RBF Corp., or (iii) provide landlords with financial information about bidders that might have the highest and best bid at the auction on June 3, 2003.

#### Objections to the Motion and the Proposed Procedures

5. First and foremost, the Motion and the Procedures are defective because they do not list which leases are subject to the proposed sale, and, therefore, it is impossible for potentially affected landlords to determine whether their leases are subject to the Motion and the Procedures. The Agreement contemplates that the Debtors will assume and assign to the Purchaser certain executory contracts and unexpired leases. However, the Debtors have failed to file schedules 1.1(a) and 5.19 that are supposed to be attached to the Agreement, and which are supposed to list the specific contracts and leases to be assumed and assigned, along with the respective proposed cure amounts.

6. The Motion and the Procedures are also defective because they provide no time frame within which the Debtors will inform landlords whether their leases are subject to the proposed sale. The Procedures do provide that the Debtors will send a cure notice to parties to executory contracts and unexpired leases that are being assumed and assigned pursuant to the Agreement. However, there is no deadline by which the notice must be sent to the third parties, such as landlords. Because the Procedures provide that landlords must file objections to the sale and objections to the cure amounts by May 28, 2003, the Debtors must either be required to send

a cure notice no later than May 20, 2003, or the objection deadline should be later than May 28, 2003. Landlords such as Inland must be provided with adequate time to evaluate and respond accordingly to any cure notices.

7. In addition, the Procedures are noticeably void of any requirement that the Debtors provide landlords with adequate assurance of the Purchaser's future performance under those leases being assumed and assigned as part of the sale, as required by section 365 of the Bankruptcy Code. Currently, Roundy's, Inc. or RBF Corp. is expected to be the Purchaser. However, the Motion does not specify which of the foregoing two entities will be the assignee under the Leases, nor do the Debtors apparently contemplate providing any financial information about Roundy's, Inc. or RBF Corp. to parties to the leases and contracts that will be assumed and assigned, much less financial information about any bidder that submits a higher and better bid at the auction scheduled to occur on June 3, 2003.

8. Given that pursuant to the Procedures, the sale hearing is proposed to be held the day after the auction, there is no possible way that Inland could have enough time to evaluate, *inter alia*, the financial viability of any bidder that may ultimately submit a higher and better bid than Roundy's, Inc. and/or RBF Corp. More time should be built in to the Procedures, so that parties to the contracts and leases proposed to be assumed and assigned, can determine whether the Debtors have met their burden of providing adequate assurance of the assignee's future performance, as required by sections 365(b)(1)(C), 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code.

9. To summarize, if the Procedures are going to be approved by the Court, they should be modified so that the Debtors are required by a certain date to (a) notify parties to

contracts and leases that their contracts and leases are going to be assumed and assigned, (b) notify such parties of the proposed cure amount, (c) notify such parties whether Roundy's, Inc. or RBF Corp. is going to be the proposed assignee, (d) provide to such parties relevant financial information for Roundy's, Inc. and RBF Corp., and (e) provide to such parties relevant financial information<sup>1</sup> for any higher and better bidder from the auction. In addition, the parties to the contracts and leases need to be afforded reasonable time within which to digest and respond to all of the foregoing information, all of which the current Procedures fail to address.

WHEREFORE, for all of the foregoing reasons, Inland respectfully requests that the Court enter an order that denies the Motion and the Procedures in their current form, and that grants such other and further relief as is just and proper.

Dated: May 12, 2003  
Wilmington, Delaware

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<sup>1</sup> Such relevant information should include the following, at a minimum: full legal name of the proposed assignee, financial statements and supplemental schedules of the assignee for the past two years, any and all documents regarding the potential assignee's experience and the potential assignee's principals' experience in operating the proposed business, the number of facilities the potential assignee operates, a statement setting forth the potential assignee's intended use of the demised premises under the Leases, the potential assignee's business plan for the next few years, including sales and cash flow projections, any pro-forma financial projections prepared in contemplation of the purchase of the Leases and operation of the facilities at the premises, any information relating to the proposed assignee's ability to fund the purchase of the Leases and operation of the facilities, and any additional information that the proposed assignee intends to use to demonstrate adequate assurance of future performance.