

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

In re	:	Chapter 11
	:	
FLEMING COMPANIES, INC., et al.,	:	
	:	Case No. 03-10945 (MFW)
	:	(Jointly Administered)
Debtors.	:	
	:	Hearing Date: May 19, 2003 at 12:30 p.m.
	:	[Relates to Docket # 743 and #861]

**JOINDER TO OBJECTION OF NEW PLAN EXCEL REALTY TRUST INC.,
GIBBSTOWN ASSOCIATES L.P., NEW HOPE CENTERS, A PENNSYLVANIA
LIMITED PARTNERSHIP, QUAKERTOWN ASSOCIATES L.P., MAJESTIC REALTY
COMPANY, AND HAWKINS COMPANIES LLC TO PROVISIONS PERTAINING TO
LIQUIDATION OR GOING OUT OF BUSINESS SALES SET FORTH IN
PARAGRAPHS 36, 37, AND 38 OF THE PROPOSED FINAL DIP ORDER**

TO THE HONORABLE MARY F. WALRATH,
UNITED STATES BANKRUPTCY JUDGE:

The Prudential Insurance Company of America, National Retail Partners and Pan Pacific Retail Properties (collectively “Landlords”) hereby submit their Joinder (the “Joinder”) to the Objection of New Plan Excel Realty Trust Inc., Gibbstown Associates L.P., New Hope Centers, a Pennsylvania limited partnership, Quakertown Associates L.P., Majestic Realty Company, and Hawkins Companies LLC (collectively, the “Objecting Landlords”) to Provisions Pertaining to Liquidation or Going Out of Business Sales Set Forth in Paragraphs 36, 37, and 38 of the Proposed Final DIP Order, and in support thereof aver as follows:

I. FACTUAL BACKGROUND

1. Fleming Companies, Inc. and its affiliates (collectively “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on April 1, 2003. The Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. On or about May 6, 2003, the Court signed an Order authorizing (i) post-petition financing pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c); (ii) use of cash collateral pursuant to 11 U.S.C. § 363 and Bankruptcy Rules 4001(b) and (d); (iii) grant of adequate protection pursuant to 11 U.S.C. §§ 361 and 363; and (iv) approving secured inventory trade credit program and granting of subordinate liens, pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c) (the “Final DIP Order”).

3. Certain provisions pertaining to liquidation or going out of business (“GOB”) sales set forth in paragraphs 36, 37 and 38 of the Final DIP Order as well as the GOB guidelines, annexed thereto, were approved on an interim basis. The final hearing with respect to paragraphs 36, 37 and 38 and the GOB guidelines is to be held on May 19, 2003.

4. Landlords are the owners or managing agents of the following three (3) shopping centers wherein Debtors remain retail tenants pursuant to unexpired leases of nonresidential real property (“Leases”).

The Prudential Insurance Company of America	
Oak Park Ponds	Oak Park Heights, MN
National Retail Partners	
Rockford Road Plaza	Plymouth, MN
Pan Pacific Retail Properties	
Southern Palms	Tempe, AZ

5. The Leases are “leases of real property in a shopping center” as that term is used in 11 U.S.C. § 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3rd Cir. 1990).

6. At this time, it appears that the above locations are all subject to either (i) the sale to Roundy’s, Inc., or (ii) store closure and rejection. As a result, the above leases would be removed from the bankruptcy estate. Additionally, the Landlords believe that they have reached an agreement with the DIP Lenders with respect to Leases, and on that basis have not filed

further objections to the DIP Financing request. At this time, however, Landlords have not received written confirmation of their agreement. Therefore, out of an abundance of caution and to fully preserve their rights with respect to the Leases, and to the extent that any such Leases are or remain the subject of any upcoming rejection or store closing, and are thus potentially impacted by the proposed paragraphs, Landlords hereby file this Joinder to the objections raised and more fully set forth by the Objecting Landlords (Docket No. 861).

WHEREFORE, Landlords pray that paragraphs 36, 37, and 38 be determined to be inapplicable to their Leases, and pray for such further relief as is just and necessary under the circumstances.

Dated: May 16, 2003
Wilmington, Delaware

By: /s/ Jennifer A. L. Kelleher
Tobey M. Daluz, Esquire (No. 3939)
Jennifer A. L. Kelleher, Esquire (No. 3960)
919 Market Street, 17th Floor
Wilmington, DE 19801
Phone: (302) 252-4465
Facsimile: (302) 252-4466
E-mail: daluzt@ballardspahr.com
kelleherj@ballardspahr.com

and

David L. Pollack, Esquire
Jeffrey Meyers, Esquire
51st Floor – Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
Phone: (215) 864-8325
Facsimile: (215) 864-9473
E-mail: pollack@ballardspahr.com
meyers@ballardspahr.com

and

KATTEN MUCHIN ZAVIS ROSENMAN

Thomas J. Leanse, Esquire
Dustin P. Branch, Esquire
2029 Century Park, East, Suite 2600
Los Angeles, CA 90067-3012
Phone: (310) 788-4400
Facsimile: (310) 4471
E-mail: thomas.leanse@kmzr.com
dustin.branch@kmzr.com

Attorneys for Creditors The Prudential Insurance Company of
America, National Retail Partners, and Pan Pacific Retail
Properties