

**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)

OBJECTION TO CURE AMOUNT TO CONTRACT ASSIGNMENT #4624

No Frills Supermarkets, Inc. (“No Frills”), pursuant to the Supplemental Notice re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With Sale Motion, filed by the Debtor, Fleming Companies, Inc., hereby objects to the amount stated by Debtor as the Cure Amount -- \$0 – in the Cure Amount Schedule filed regarding Debtor’s Facility Standby Agreement identified as “Contract Assignment #4624.” In support of its Objection, No Frills states as follows:

1. On or about October 19, 1998, No Frills entered into a supply agreement with Debtor, entitled “Facility Standby Agreement, “ which Debtor identifies as Contract #4624, a copy of which is attached hereto as Exhibit A.
2. Debtor proposes to assume and assign Contract #4624 to C & S Wholesale Grocers, Inc. as part of its sale of assets to C & S.
3. Debtor alleges that there are no cure costs; Debtor is wrong in two (2) respects.
4. First, pursuant to the terms of the Selling Plan (¶ 2 and Exhibit A of Contract #4624), No Frills purchased the pallets or “totes” on which grocery products were delivered by Debtor but was entitled to credit for that purchase price upon the return of empty “totes” by No Frills to Debtor. However, during the period January 1, 2001 through May 26, 2002, Debtor failed to provide credit for returned totes in the amount of \$21,225.00. Subsequently, Debtor did

give credit in the amount of \$1,395.50, leaving a balance due and owing of \$19,829.50. See Exhibit B attached hereto;

5. Next, as part of the services provided by Debtor under Contract #4624, Debtor, when it increased its prices of products to No Frills, supplied electronic data to each of No Frills' store computers contained in the check-out stations to increase the respective retail price of each such product in an amount so that No Frills maintained its same gross profit margin. During the period from early 2000 until late 2002, Debtor reported that it timely and consistently provided such electronic data, but, in fact, it failed to do so on a number of occasions, resulting in No Frills selling product at the price unadjusted for the price increase charged and collected by Debtor. In addition, Debtor failed to timely supply No Frills with hard copy "price books" as required by Contract #4624. Had such price books been supplied, it would have enabled No Frills to discover the failed data transmission sooner. As a result of Debtor's breach of this obligation, No Frills has incurred consequential damages in the estimated amount of \$200,000.00.

6. In addition to the breaches identified above, Debtor has also materially breached Contract #4624 in the following respect as a result of which No Frills has not incurred any consequential damages. Since the inception of this Contract, Debtor has not met its obligation set forth in Paragraph 1 to: "maintain capital, employees, inventory, equipment and facilities sufficient to supply Products to Retailer in quantities sufficient to allow Retailer to purchase the Estimated Purchase Level described in Section 3 of this Agreement." As a consequence, No Frills has been forced to purchase product from other sources but has been able to do so at a price equal to or less than the price listed by Debtor.

7. Therefore, No Frills requests the Court to grant Debtor's motion to assume and assign Contract #4624 only on the condition that Debtor pay the total cure amount of \$219,829.50 to No Frills on or before the assumption and assignment of such contract.

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ Charles J. Brown, III

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Attorneys for No Frills Supermarkets, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via overnight delivery this 25th day of July 2003, upon the following:

Fleming Companies, Inc.
Attn: Contracts Department
1945 Lakepointe Drive
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the Lenders
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the Committee
C/o Dennie Dunne
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Robert S. Hertzberg
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Detroit, MI 48243-1157

I certify the foregoing to be true and correct under the penalty of perjury.

Dated: July 25, 2003

/s/ Benjamin F. Mann
Benjamin F. Mann

SUPPLEMENTAL CERTIFICATE OF SERVICE

I, Charles J. Brown, III hereby certify that I caused a copy of the foregoing to be served upon the following parties via hand delivery or overnight delivery.

Richard Grossman
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I certify the foregoing to be true and correct under the penalty of perjury.

Dated: July 28, 2003

/s/ Charles J. Brown, III
Charles J. Brown, III