

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

In Re:) **Case No. 03-10945 (MFW)**
) **Jointly Administered**
FLEMING COMPANIES, INC.) **Chapter 11**
et al.,)
)
 Debtors.) **Objection Date: July 28, 2003 at 4:00 p.m. (EDT)**
) **Hearing Date: August 4, 2003 at 11:30 a.m. (EDT)**

**HODA, LLC'S OBJECTION TO DEBTORS' SCHEDULED
CURE AMOUNTS IN REGARD TO UNEXPIRED LEASES**

HODA, LLC ("HODA") files this its Objection to Debtors' Scheduled Cure Amounts In Regard to Unexpired Leases and in support thereof states the following:

1. The Court has jurisdiction in regard to this matter pursuant to 28 U.S.C. §157 and 1334.
2. The Debtors filed their Voluntary Petition for Relief on April 1, 2003.
3. On or about July 11, 2003 the Debtor filed its Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion ("Notice").
4. Attached to the Notice was the Debtors' Cure Amount Schedule.
5. The Debtors' Cure Amount Schedule stated the following:
 - a. 6702 HODA, LLC \$0.00 Real Estate, Lessor
 - b. 6703 HODA, LLC \$0.00 Real Estate, Lessor
 - c. 6704 HODA, LLC \$0.00 Real Estate, Lessor
6. HODA timely objects to the scheduled Cure Amounts because the scheduled Cure Amounts do not include the 2003 real property taxes which are "additional rent" pursuant to paragraph 5 of the Lease Agreement.
7. The 2002 real property tax amounts are listed below:

- a. TX-340
8282 Spring Valley Road, Dallas, Texas
- | | |
|--|--------------------|
| (1) Richardson Independent School District | \$27,230.89 |
| (2) Dallas County and Dallas City, Texas | <u>\$18,303.03</u> |
| (3) Total | \$45,533.92 |
- The Lease Agreement is attached hereto and incorporated herein as Exhibit “1”. Copies of the 2002 tax statements are attached hereto and incorporated herein as Exhibits “2” and “3”.
- b. TX-341
5401 Park Springs Blvd., Arlington, Texas
- | | |
|---|-------------|
| (1) Tarrant County, Arlington City, and Arlington Independent School District, Ft. Worth, Texas | \$40,394.81 |
|---|-------------|
- The Lease Agreement is attached hereto and incorporated herein as Exhibit “4”. A copy of the 2002 tax statement is attached hereto and incorporated herein as Exhibit “5”.
- c. TX-342
9920 White Settlement Road, Ft. Worth, Texas
- | | |
|--|-------------|
| (1) Tarrant County, Ft. Worth City, and White Settlement Independent School District, Ft. Worth, Texas | \$49,190.54 |
|--|-------------|
- The Lease Agreement is attached hereto and incorporated herein as Exhibit “6”. A copy of the 2002 tax statement is attached hereto and incorporated herein as Exhibit “7”.

8. HODA also timely objects to the scheduled Cure Amounts because the scheduled Cure Amounts do not include the insurance premiums which Debtors failed to pay pursuant to the terms of the Lease Agreement and which are “additional rent” pursuant to paragraph 5 of the Lease Agreement.

9. HODA is currently determining the amount of these unpaid insurance premiums and “additional rent” and will supply that information to Debtors before the hearing on August 4, 2003.

WHEREFORE, HODA, LLC requests that the Court:

- (1) enter an Order determining that the amounts set forth on the Cure Amount Schedule are not the actual cure amounts payable for each of the following leases:

- a. TX-340
8282 Spring Valley Road, Dallas, Texas
- b. TX-341
5401 Park Springs Blvd., Arlington, Texas
- c. TX-342
9920 White Settlement Road, Ft. Worth, Texas

(2) enter an Order determining that the Cure Amounts must include the real property taxes and the insurance premiums described hereinabove.

(3) and for such other and further relief as the Court deems just.

Respectfully submitted,

STONE, LEYTON & GERSHMAN
A Professional Corporation

FERRY, JOSEPH & PEARCE, P.A.

By: /s/ Rebecca Case (w/ permission)

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EXHIBIT SUMMARY

The following exhibits are referenced in support of HODA, LLC's Objection to Debtor's Scheduled Cure Amounts In Regard to Unexpired Leases. Copies of these exhibits have been served on the parties designated in the Notice and will be delivered to the Court upon request.

1. Lease Agreement - TX-340 - 8282 Spring Valley Road, Dallas, Texas;
2. 2002 Tax Statement for Richardson Independent School District;
3. 2002 Tax Statement for Dallas County and Dallas City, Texas;
4. Lease Agreement - TX-341 - 5401 Park Springs Blvd., Arlington, Texas
5. 2002 Tax Statement for Tarrant County, Arlington City and Arlington Independent School District, Ft. Worth, Texas;
6. Lease Agreement - TX-342 - 9920 White Settlement Road, Ft. Worth, Texas; and
7. 2002 Tax Statement for Tarrant County, Ft. Worth City and White Settlement Independent School District, Ft. Worth, Texas.

STONE, LEYTON & GERSHMAN
A Professional Corporation

FERRY, JOSEPH & PEARCE, P.A.

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