

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

IN RE:)	CHAPTER 11 PROCEEDING
)	
FLEMING COMPANIES, INC. ET. AL.)	CASE NO.: 03-10945(MFW)
)	
)	(JOINTLY ADMINISTERED)
DEBTORS.)	

**RESPONSE TO NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH SALE MOTION AND OBJECTION TO CURE AMOUNT
AND/ OR PROPOSED ASSIGNMENT**

COMES NOW Hometown Market of Hartselle, Inc, doing business as Hometown Market of Hartselle, a Customer and/or Purchaser of groceries and other merchandise from Fleming Companies, Inc. and other named entities in the above styled Chapter 11 proceeding, (hereinafter referred to as the "Retailer") and files this Objection to the cure amount and/or the proposed assignment and assignment of an executory contract or an unexpired leases (Contract Assignment Numbers 4809 [Hometown Market of Hartselle, Inc. Contract Assignment Number Equipment Lease 1126]) and for grounds states as follows:

1. On November 16, 2002, the Retailer entered into a Facility Standby Agreement (a copy of which is attached hereto and marked for identification purposes as **EXHIBIT A**) with Fleming for the supply of food, grocery and related products through Fleming's supply centers.
2. Pursuant to paragraph 5 (b) of the Facility Standby Agreement the Retailer shall have the right to immediately terminate the Facility Standby Agreement if Fleming is the party in default of the Facility Standby Agreement. Fleming is in default under the Facility Standby Agreement and proper notice of the default has been sent to Fleming.
3. It is the Retailer's intent to continue to purchase from Fleming until such time as the Retailer has had an opportunity to analyze the "New Assignee's" sale plan.
4. Fleming owes the Retailer the sum of \$7,500.00 for credits on merchandise bough from Fleming for scan credits, bill back credits, shocker credits, damaged merchandise (truck delivery damage) credits, miss-shipment credits, coupon credits and reclamation credits.

5. Fleming owes the Retailer the sum of \$10,000.00 for rebates due the Retailer on total purchases for volume incentive rebates, cigarette rebates, spice rebates, magazine rebates, health and beauty aids rebates, produce rebates and survey rebates.

6. Fleming owes the Retailer the sum of \$4,000.00 for labor costs incurred by the Retailer as the result of Fleming's failure to provide goods and merchandise to the Retailer and requiring the Retailer to buy goods and merchandise from a secondary supplier in Anniston, Alabama. The Retailer's labor costs were increased due to excessive time require to process the orders due to different order codes, unloading orders, hand stacking dairy and frozen foods until pick-up and reloading dairy and frozen food by hand and an extra stock day.

7. Fleming owes the Retailer the sum of \$3,000.00 for extra expenses incurred as the result of being required to purchase goods and merchandise from a secondary supplier. The secondary supplier requires a minimum order of 1400 cubic feet or a full truckload. The secondary supplier only delivers to one location which requires the Retailer to pay additional freight and labor to process each order. The secondary supplier requires a four day advanced order. The secondary supplier requires the Retailer to wire transfer payment before an order can be shipped. The Retailer has incurred excess freight charges and fees, duplicate inventory due to uncertain and Fleming charges freight charges to pick up and deliver cold boxes to the Athens, Alabama store from other stores.

8. Fleming owes the Retailer the sum of \$1,500.00 for expenses incurred by the Retailer for purchasing groceries, goods and other merchandise from local competitors to supplement missing inventory items.

9. Fleming owes the Retailer the sum of \$15,200.00 for loss of one percent (1%) of gross profit from the grocery department as the result of higher costs from secondary suppliers and local competitors, lack of discounts and promotional benefits from Fleming resulting in deeper discounts in the Retailer's retail prices, lack of advertised items from Fleming resulting in deeper discounts for items, lack of a number of promotional items resulting in less displays with better gross profits and loss of gross profit as the result of unavailable merchandise.

10. Fleming owes the Retailer the sum of \$59,860.00 for documented loss of sales and loss of potential customers because when a customer leaves the Retailer's store to go to another store because the Retailer does not have a stock item the customer may not return to the Retailer's store.

11. Fleming owes the Retailer the sum of \$2,000.00 for extra labor costs brought on by duplicate work tasks and confusing caused by Fleming's inability to supply groceries, goods and merchandise causing a loss of productivity.

12. Fleming has caused and will cause the Retailer to incur attorney's fees and expense in dealing with Fleming's Chapter 11 Bankruptcy proceeding.

13. Fleming owes the Retailer the sum of \$121,602.25 which is one percent (1%) of purchasers for five (5) years which is the value of a new Facility Standby Agreement. Unless Fleming cures its default in the Facility Standby Agreement the Retailer should be allowed to negotiate with a new a wholesale grocery distributor of the Retailer's choice.

14. Fleming owes the Retailer the sum of \$50,000.00 for miscellaneous expenses resulting in a change of products lines resulting incompatible items causing deletions and costing thousands of dollars in deleted inventory, the change of private label name results in loss of inventory, loss of customers, loss of sales and loss of gross profits, resetting shelves causes additional labor cost and confusing among customers, and additional management cost by requiring managers to learn how to buy from a new supplier may take several months resulting in poor merchandising conditions and loss of gross profit.

15. Fleming owes the Retailer the sum of \$200,000.00 less any rent paid at the time of the agreement. The Retailer entered into an equipment lease with Fleming. Due to the representations of Fleming and the excessive repairs that the Retailer has made on the store equipment and the expenses that the Retailer will make to the store equipment in the future, Fleming should take the rent that the Retailer has previously paid and cancel the remaining obligations under the equipment lease,

This Notice and Objection is submitted because the Retailer has received a Notice and a Supplemental Notice stating that if the Retailer does not object to the Cure Amount or the proposed assignment, then, at the Sale Hearing, the Selling Debtors will request the Court to enter an order determining that amount set forth on the schedule attached to the Notice to be the actual cure amount payable for such contract or lease listed on such schedule and authorizing the

assignment of the above described executory contract or lease..

Dated this the 28 day of July, 2003.

Michael P. Morton P.A.

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