

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF DELAWARE

In Re:)
) Case No. 03-10945 (MFW)
Fleming Companies, Inc., et al.)
) Chapter 11
Debtor(s).)

FILED
2003 APR 08 AM 10:54
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF DELAWARE

LIMITED OBJECTION TO CURE AMOUNT BY
MILLARD SHOPPING PLAZA, LLC (CA # 6874)

COMES NOW Millard Shopping Plaza, LLC ("Millard") and for its Limited
Objection to Cure Amount states as follows:

1. Millard is lessor to Debtor Fleming Companies, Inc, et al. ("Debtor") under an executory lease ("Lease") originally signed with Clayton & Martin, LTD on March 15, 1999 pertaining to certain improved real property located in Douglas County (Omaha), Nebraska, and identified by Debtor under Contract Assignment # 6874.

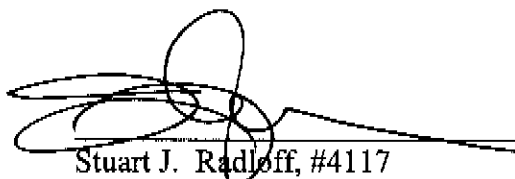
2. Debtor has advised in its Notice of Assignment, as supplemented, that it calculates the cure amount for purposes of 11 U.S.C. § 365 to be \$43,202.56. This amount represents the first-half installment of real property taxes due to Douglas County for calendar year 2002.

3. Millard agrees, in part, that such amount of real property taxes is due and payable by Debtor under its lease. Millard's objection arises from the fact that said taxes were due and payable without penalty not later than April 1, 2003. See copy of Douglas County Tax Statements, attached hereto as **Exhibit A**. However, because said taxes were not timely paid, Douglas County has assessed interest and penalties in the amount of \$1,843.21 through July 23, 2003, with a *per diem* accruing at the rate of 14%. Furthermore, said \$43,202.56 only represents

one-half of the 2002 real property taxes due with respect to the subject leasehold, with an additional \$43,202.56 being due and payable without penalty not later than August 1, 2003; per Exhibit A

4. The total of \$86,404.12 for the tax year 2002 is in fact an existing obligation that Debtor is responsible for under Section 6.8 of the Lease, together with all interest and penalties that may accrue as a result of Debtor's failure to timely pay said taxes. Pertinent portions of said Lease are attached hereto as **Exhibit B**.

WHEREFORE, Milliard Shopping Plaza LLC hereby objects to the cure amount proposed by Debtor Fleming Companies, Inc., et al. in the amount of \$43,202.56 as being inadequate, and hereby requests that said amount be revised to include the additional \$43,202.56 now due, but payable without penalty or interest on August 1, 2003; the \$1,843.21 in interest and penalties accrued through July 23, 2002, together with further *per diem* at the rate of 14% until paid; together with such additional interest and penalties as may accrue until the second half of the 2002 taxes are paid; and for such other and further orders and relief as the Court deems just and proper.



Stuart J. Radloff, #4117

Radloff & Riske

Attorneys for Millard Shopping Plaza, LLC

7733 Forsyth, Suite 2000

Clayton, MO 63105

Tel: (314) 725-9400

Fax: (314) 725-8306

Email: sjradloff@sbcglobal.net

CERTIFICATE OF SERVICE

A copy of the above and foregoing mailed this 25th day of July, 2003 to all parties shown on the attached Mailing List.



DOUGLAS COUNTY, NEBRASKA
REAL ESTATE TAX STATEMENT

JULIE M. HANEY, TREASURER

IF TAXES ARE PAID BY
FINANCIAL COMPANY
DO NOT PAY THIS NOTICE

FOR CALENDAR YEAR 2002 - DUE DECEMBER 31, 2002

LEGAL DESCRIPTION KEY SUB TXBK FEB TXDIST

STONY BROOK PLACE
LOT:000009 BLOCK:00000
ALL LOTS 8 & 9 TRREC

4705 2332 22 65 1730

GEOGRAPHIC ADDRESS OF PROPERTY

5710 S 144 ST 68137

169789**AUTO**MIXED AADC 680

4705 2332 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

VALUATIONS
LAND: 1314000
IMPROVEMENTS: 2625000
HOMESTEAD EXEMPT: 0
OTHER EXEMPTION: 0
NET TAXABLE VALUE: 3939000

TAXING UNIT	CURRENT LEVY	TAX AMOUNT	
		PRIOR	CURRENT
CC-BLDG BOND	0.01096	431.67	431.74
COUNTY BOND	0.03315	1103.91	1305.79
COUNTY	0.21486	7996.16	8463.35
SCHOOLS BOND	0.22841	9449.75	8997.05
SCHOOLS	1.04905	40057.78	41322.02
RSU 003	0.01735	686.54	683.40
METR CO	0.06400	2446.15	2520.97
OMAHA BOND	0.18475	7193.00	7277.31
OMAHA	0.24912	9897.15	9812.85
HYDRANT	0.00741	293.82	291.87
N.R.D.	0.03073	1210.42	1210.49
M.A.T.	0.05054	1936.41	1990.76

SPECIAL MESSAGE

NET TOTALS 2.14033 8,2696.16 8,4307.60

RETAIN THIS SECTION FOR YOUR RECORDS

DETACH HERE

JULIE M. HANEY, TREASURER

2ND HALF PAYMENT

DELINQUENT AUGUST 1, 2003
REMIT THIS PORTION WITH PAYMENT TO PAY 2ND HALF TAX
MAKE CHECKS PAYABLE TO THE DOUGLAS COUNTY TREASURER

Julie M. Haney, Treasurer

KEY SUB TXBK FEB TXDIST NET VALUE COMBINED LEVY

4705 2332 22 65 1730 3939000 2.14033

MAIL TO:
DOUGLAS COUNTY TREASURER
ATTN: PROPERTY DIVISION
1819 FARNAM STREET
OMAHA NE 68183-0003

4705 2332 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

Total Taxes: 8,4307.60
2nd Half: 4,2153.80

SPECIAL MESSAGES:

IF A SPECIAL MESSAGE APPEARS, CALL 402-444-7272

DETACH HERE

JULIE M. HANEY, TREASURER

1ST HALF PAYMENT

DELINQUENT APRIL 1, 2003
REMIT THIS PORTION WITH PAYMENT TO PAY 1ST HALF TAX
MAKE CHECKS PAYABLE TO THE DOUGLAS COUNTY TREASURER

Julie M. Haney, Treasurer

KEY SUB TXBK FEB TXDIST NET VALUE COMBINED LEVY

4705 2332 22 65 1730 3939000 2.14033

MAIL TO:
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4705 2332 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

Total Taxes: 8,4307.60
1ST Half: 4,2153.80

SPECIAL MESSAGES:

IF A SPECIAL MESSAGE APPEARS, CALL 402-444-7272

JULIE M. HANEY, TREASURER

EXHIBIT A

**DOUGLAS COUNTY, NEBRASKA
REAL ESTATE TAX STATEMENT**

JULIE M. HANEY, TREASURER

FOR CALENDAR YEAR 2002 - DUE DECEMBER 31, 2002

IF TAXES ARE PAID BY
FINANCIAL COMPANY
** DO NOT PAY THIS NOTICE **

LEGAL DESCRIPTION **KEY** **SUB** **TXBK** **FB** **TXDIST**

STONY BROOK PLACE
LOT:000003 BLOCK:00000
IRREG

4705 2306 22 65 1730

GEOGRAPHIC ADDRESS OF PROPERTY

5738 S 144 ST 6R137

169789**AUTO**MIXED AADC 680

4705 2306 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

VALUATIONS
LAND: 98000
IMPROVEMENTS: 0
HOMESTEAD EXEMPT: 0
OTHER EXEMPTION: 0
NET TAXABLE VALUE: 98000

TAXING UNIT	CURRENT LEVY	TAX AMOUNT	
		PRDR	CURRENT
CC-BLDG BOND	0.01096	10.74	10.74
COUNTY BOND	0.03315	27.45	32.49
COUNTY	0.21486	198.94	210.56
SCHOOLS' BOND	0.22841	234.96	223.84
SCHOOLS	1.04905	996.62	1028.07
ESU 003	0.01735	17.08	17.00
METR CO	0.06400	60.86	52.72
OMAHA BOND	0.18475	178.96	181.05
OMAHA	0.24912	246.23	244.14
HYDRANT	0.00741	7.31	7.26
N.R.D.	0.03073	30.11	30.12
M.A.T.	0.05054	48.18	49.53

SPECIAL MESSAGE

NET TOTALS 2.14033 2057.44 2097.52

RETAIN THIS SECTION FOR YOUR RECORDS

DETACH HERE

JULIE M. HANEY, TREASURER

2ND HALF PAYMENT

DELINQUENT AUGUST 1, 2003
REMIT THIS PORTION WITH PAYMENT TO PAY 2ND HALF TAX
MAKE CHECKS PAYABLE TO THE DOUGLAS COUNTY TREASURER

Julie M. Haney, Treasurer

KEY: SUB: TXBK: FB: TXDIST: NET VALUE: COMBINED LEVY
4705 2306 22 65 1730 98000 2.14033

MAIL TO:
DOUGLAS COUNTY TREASURER
ATTN: PROPERTY DIVISION
1819 FARNAM STREET
OMAHA NE 68183-0003

4705 2306 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

Total Taxes: 2097.52
2nd Half: 1048.76

SPECIAL MESSAGES:

IF A SPECIAL MESSAGE APPEARS, CALL 402-444-7272

DETACH HERE

JULIE M. HANEY, TREASURER

1ST HALF PAYMENT

DELINQUENT APRIL 1, 2003
REMIT THIS PORTION WITH PAYMENT TO PAY 1ST HALF TAX
MAKE CHECKS PAYABLE TO THE DOUGLAS COUNTY TREASURER

Julie M. Haney, Treasurer

KEY: SUB: TXBK: FB: TXDIST: NET VALUE: COMBINED LEVY
4705 2306 22 65 1730 98000 2.14033

MAIL TO:
DOUGLAS COUNTY TREASURER
ATTN: PROPERTY DIVISION
1819 FARNAM STREET
OMAHA NE 68183-0003

4705 2306 22 65
MILLARD SHOPPING PLAZA LLC
1830 CRAIG PARK COURT #101
ST LOUIS MO 63146

Total Taxes: 2097.52
1ST Half: 1048.76

SPECIAL MESSAGES:

IF A SPECIAL MESSAGE APPEARS, CALL 402-444-7272

JULIE M. HANEY, TREASURER

Execution

RETAIL BUILDING LEASE

THIS LEASE, entered into this 15th day of March, 1999, which is the date of this Lease, by and between CLAYTON & MARTINDALE, LTD., a Texas limited partnership (hereinafter referred to as "Landlord"), and FLEMING COMPANIES, INC., an Oklahoma corporation (hereinafter referred to as "Tenant").

WITNESSETH

1. DEFINITIONS.

1.1 Leased Building. That certain retail store building which includes approximately 81,450 ground floor square feet located on the Real Property and designated as "Supermarket" on the drawing attached hereto as Exhibit "A" (the "Site Plan"), which is now or is hereafter to be located on the Real Property.

1.2 Real Property. That certain real property located in Omaha, Nebraska, more particularly described on Exhibit "B" attached hereto.

1.3 Leased Premises. The Leased Building, Real Property and all appurtenances thereto.

2. PREMISES. In consideration of the covenants and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Leased Premises, together with non-exclusive rights to the easements, entrances, parking areas, approaches and exits appurtenant to the Leased Premises.

3. TERM. The Initial Term of this Lease shall run and extend for twenty (20) years from and after the Commencement Date as set forth below, unless sooner terminated as herein provided (the "Initial Term").

3.1 Commencement Date. The Initial Term of this Lease shall commence on the earlier of (i) forty-five (45) days after Landlord has completed all Landlord's construction obligations including, without limitation, the construction requirements referenced in Exhibits "C" and "D" attached hereto, the Construction Documents and in Paragraph 5 hereof and has delivered the Leased Premises to Tenant for preparation for opening for the transaction of business therein, and Tenant has been so notified in writing, or (ii) the first day Tenant makes its first retail sale in the Leased Premises; provided, however, that notwithstanding any other term or condition hereof to the contrary, Tenant shall not be obligated to commence its transaction of business on the Leased Premises or commence the Initial Term of this Lease (a) during the months of November, December, January or February, or (b) until all streets and roadways providing access to the Real Property as shown on the Site Plan have been completed and are open for public use. Tenant will do all of its work under Subparagraph 3.2 in a manner required by applicable codes so that, insofar as

EXHIBIT B

6.6 Utilities. Landlord, at its cost, shall furnish, install and maintain adequate utility lines and services to serve the Leased Building, which utilities shall be separately metered to the Leased Building, all in accordance with the approved Construction Documents. Tenant shall pay for the utility services which it uses at the Leased Building.

6.7 Compliance With Laws. Landlord represents and warrants to Tenant that the Leased Premises shall, upon completion, comply with all applicable federal, state and local laws, ordinances and regulations, including without limitation, all building codes and The Americans with Disabilities Act. In addition, Landlord agrees to make, at Landlord's cost and expense, all necessary changes, additions, alterations and improvements to the Leased Premises, that may be required at any time during the term hereof to make the Leased Premises comply with all laws, ordinances, rules and regulations of all duly constituted city, county, state or federal authorities. Tenant agrees to make any changes to the Leased Premises required due to Tenant's use of the Leased Premises.

6.8 Taxes. Subject to Subparagraph 6.8.1, at all times during the term hereof, all ad valorem taxes, real estate taxes and similar taxes, special assessments and any other taxes levied or assessed against the Real Property or any part thereof that are due and payable during any calendar year containing any portion of a Lease Year ("Taxes") shall be paid and discharged by Tenant before becoming delinquent. If such Taxes are not paid before delinquency, Tenant shall be responsible for any penalties and interest imposed because of such late payment. Tenant shall furnish Landlord proof of payment of all Taxes within thirty (30) days after payment of each installment of Taxes. Tenant shall pay such Taxes directly to the taxing authority. All such Taxes for which Tenant is liable hereunder for the calendar years of commencement and termination of this Lease shall be prorated from the Commencement Date and to the termination date of the term of the Lease. This Subparagraph 6.8 shall not be deemed or construed to require Tenant to pay or discharge any tax which may be levied upon the income, profits or business of Landlord or any franchise, inheritance or estate taxes which may be levied against Landlord or any tax of the same nature as any tax heretofore mentioned in this sentence, even though such taxes may become a lien against the Real Property unless any such taxes are in lieu of or a substitute for any other tax or assessment upon or with respect to the Leased Premises which, if such other tax or assessment were in effect on the Commencement Date, would be payable by Tenant. In regard to any special assessments or other taxes payable in installments, Tenant may elect to pay such special assessments or taxes over the maximum allowable term.

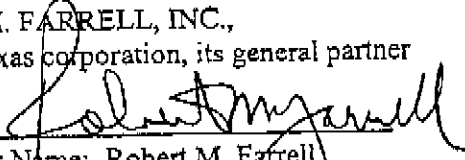
6.8.1 Special Assessments. Notwithstanding the above Paragraph 6.8, Tenant shall not be required to pay any portion of any installments of special assessments due and payable after the expiration of the term of this Lease. In addition, in the case of any special assessments payable only in a lump sum, Tenant shall only be responsible for the amount of such assessment multiplied by a fraction, the numerator of which is the number of years remaining in the then current term of the Lease and the denominator of which is the useful life of the improvement against

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease on the date first above written.

LANDLORD:


CLAYTON & MARTINDALE, LTD.,
a Texas limited partnership

By: R. M. FARRELL, INC.,
a Texas corporation, its general partner

By: 
Print Name: Robert M. Farrell
Title: President

TENANT:

FLEMING COMPANIES, INC.,
an Oklahoma corporation

By: 
Title: Vice President