

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

In re:	:	Chapter 11
	:	
Fleming Companies, Inc., <i>et al.</i>	:	
	:	
Debtors	:	Bankruptcy No. 03-10945(MFW) (Jointly Administered)

**NUNC PRO TUNC OBJECTION OF USRP I LLC TO CURE AMOUNT  
REGARDING POTENTIAL ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

USRP I LLC (“USRP”), by and through its counsel, Spector Gadon & Rosen, P.C., hereby objects to the scheduled Cure Amount for the proposed assumption and assignment of lease/contract nos. 6576, *nunc pro tunc*, and states as follows:

1. On or about March 24, 1992, Sackett Development Company as Lessor and Fleming Foods East, Inc. as Lessee entered into a Build and Lease Agreement (“Lease”) for the building and lease of premises known as Mayfair Center located at Frankford Avenue and Hellerman Street, Philadelphia, Pennsylvania (“Premises”). Sackett Development Company’s interests as Lessor in the Lease was subsequently sold several times. USRP is the current Lessor. See Exhibit “A”, a true and correct copy of the Lease and amendments thereto, all of which may also be referred to collectively herein as the “Lease.”

2. On or about July 11, 2003, Fleming Companies, Inc. (“Fleming” or “Debtor”), filed a Notice concerning potential assumption and assignment of certain executory contracts and unexpired leases with a Cure Amount Schedule (“Schedule”) attached thereto.

3. USRP believes that Contract 6576 (First Washington Realty Trust, Inc.), with a scheduled cure amount of \$864, which is set forth on the Schedule, is the Lease.

4. Despite the fact that since approximately February, 2001, the Debtor's rent checks have been made payable to USRP, the Debtor failed to serve USRP with the Notice and, therefore, USRP was unaware of the deadline for filing objections to the cure amounts.

5. More specifically, although First Washington Realty, Inc. was served with the Notice, First Washington Realty was unable to discern from the Schedule to which properties the Debtor was referring. Counsel made numerous telephone calls and sent numerous e-mails to Debtor's counsel to determine which properties were set forth on the Schedule, but as of the deadline for filing objections, had not received a definitive response to which it was able to timely process.

6. Therefore, in the objection filed by FWR Partners, L.P. on July 24, 2003, FWR Partners specifically reserved the right to amend the objection with respect to the cure amounts listed for, *inter alia*, contract 6576.

7. USRP did not learn of the Notice or that the Notice referred to the Lease until Tuesday, August 5, 2003.

8. Therefore, based on the lack of notice, the Debtor's failure to timely identify with any particularity the properties at issue and in reliance on the reservation of the right to amend the objection with respect to contract 6576, USRP respectfully requests that the Court accept this Objection *nunc pro tunc*.

9. USRP believes, and therefore avers, that the cure amount as scheduled by the Debtor is incorrect. USRP believes that the Cure Amount for the Lease instead should be \$29,984.90, itemized as follows:

**Pre-Petition**

a.	2002 year-end CAM reconciliation	\$ 14,714.73
b.	January 2003 base rent and CAM Underpayment <sup>1</sup>	\$ 216.00
c.	February 2003 base rent and CAM Underpayment	\$ 216.00
d.	March 2003 base rent and CAM Underpayment	\$ 216.00
	<b>Sub-Total</b>	<b>\$15,362.73</b>

**Post-Petition**

a.	April 2003 base rent and CAM Underpayment	\$ 216.00
b.	May 2003 base rent and CAM Underpayment <sup>2</sup>	\$ 14,406.17
	<b>Sub-Total</b>	<b><u>\$14,622.17</u></b>
	<b>Total Pre and Post-Petition</b>	<b><u>\$29,984.90</u></b>

10. Further, it should be noted that the contracting party (Lessor) listed by Debtor for contract no. 6576 is First Washington Realty Trust, Inc. The legal entity which is the Lessor under the Lease which USRP believes should be listed as the Lessor is the current lessor, USRP. For information purposes only, it should be noted that First Washington Realty, Inc. has acted as USRP's agent.

---

<sup>1</sup> Total base rent and CAM payments due each month was \$26,493.69 but each check received from the Debtor during the period of January, 2003 through April, 2003 was in the amount of \$26,277.69.

<sup>2</sup> Total base rent and CAM payments due each month was \$26,493.69 but each check received from the Debtor for May, 2003 was in the amount of \$12,087.52.

WHEREFORE, USRP I LLC objects to the Cure Amount as listed in the Schedule filed by Debtor for potential assumption and assignment of certain executory contracts and unexpired leases for the reasons set forth herein.

SPECTOR GADON & ROSEN, P.C.

By: /s/ Leslie Beth Baskin  
Leslie Beth Baskin, Esquire  
Tina L. Colman, Esquire  
1635 Market Street  
Seven Penn Center – 7<sup>th</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-241-8888  
Telecopier: 215-241-8844

Counsel to USRP I LLC

Dated: August 8, 2003

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

In re:	:	Chapter 11
	:	
Fleming Companies, Inc., <i>et al.</i>	:	
	:	Bankruptcy No. 03-10945(MFW)
Debtors	:	(Jointly Administered)

**CERTIFICATION OF SERVICE**

I, Leslie Beth Baskin, do hereby certify that I caused to have served a copy of the foregoing Objection of USRP I LLC, to Cure Amount Regarding Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, on this 8<sup>th</sup> day of August on all parties as set forth on the attached Service List, via Federal Express.

SPECTOR GADON & ROSEN, P.C.

By: /s/ Leslie Beth Baskin  
Leslie Beth Baskin, Esquire  
Tina L. Colman, Esquire  
1635 Market Street  
Seven Penn Center – 7<sup>th</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-241-8888  
Telecopier: 215-241-8844

Counsel to USRP I LLC

Dated: August 8, 2003

F:\70019\023\Pleadings\Objection of USRP to Cure Amount.doc

## SERVICE LIST

Fleming Companies, Inc.  
Attn: Contracts Department  
1945 Lakepointe Drive  
Lewisville, TX 75057

James H.M. Sprayregen, Esquire  
Shirley S. Cho, Esquire  
Kirkland & Ellis, LLP  
777 South Figueroa Street  
Los Angeles, CA 90017

Geoffrey Richards, Esquire  
Kirkland & Ellis, LLP  
200 East Randolph Drive  
Chicago, IL 60601

Laura Davis Jones, Esquire  
Christopher J. Lhulier, Esquire  
Pachulski, Stang, Ziehl, Young,  
Jones & Weintraub, P.C.  
919 North Market Street  
16<sup>th</sup> Floor  
Wilmington, DE 19801

Andrew DeNatale, Esquire  
White & Case  
1155 Avenue of the Americas  
New York, NY 10036

Dennis Dunne, Esquire  
Millbank, Tweed, Hadley & McCloy, LLP  
One Chase Manhattan Plaza  
New York, NY 10005

Robert S. Hertzberg, Esquire  
Pepper Hamilton, LLP  
36<sup>th</sup> Floor  
100 Renaissance Center  
Detroit, MI 48243-1157

Jeffrey S. Distenfeld, Esquire  
Executive Vice President and  
General Counsel  
First Washington Realty, Inc.  
4350 East-West Highway  
Suite 400  
Bethesda, MD 20814