

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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 In re: : Chapter 11
 FLEMING COMPANIES, INC., et al., :
 : Case No. 03-10945 (MFW)
 :
 Debtors. : Jointly Administered
 :
 :
 -----X Re: 3251

**SECOND SUPPLEMENTAL ORDER APPROVING ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS
AND UNEXPIRED LEASES TO ASSOCIATED GROCERS, INC.**

Upon the motion¹ (the "Sale Motion") dated July 11, 2003 of Fleming Companies, Inc., Fleming Transportation Service, Inc., Piggly Wiggly Company, RFS Marketing Services, Inc., Fleming International, Ltd., Fleming Foods of Texas, L.P., and Fleming Foods Management Co., LLC (collectively, the "Selling Debtors"), seven of the above-captioned debtors and debtors in possession (collectively, the "Debtors")² in the above-captioned cases, for entry of an order, under sections 105(a), 363(b), (f), and (m), 364, 365, and 1146(c) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (A) approving the asset purchase agreement (as amended, the "APA") by and among the Selling Debtors, C&S Acquisition LLC, as Purchaser (including any affiliated assignee or designee of such company, the "Purchaser") and C&S Wholesale Grocers, Inc.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined herein) and the Sale Motion, and to the extent of any inconsistency, the APA shall govern.

² The Debtors are the following entities: Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

(“C&S”), and such other agreements to be entered into among the parties thereto as contemplated therein, (B) authorizing (i) the sale (the “Sale”) of substantially all of the Selling Debtors’ assets and business operations relating to their Wholesale Distribution Business and certain other assets designated in the APA (the “Acquired Assets”) free and clear of all Liens, claims, Encumbrances, Offset Rights, and Interests (except the Permitted Encumbrances and Assumed Liabilities under the APA), pursuant to and as described in the APA to Purchaser, any Purchaser Assignee or any Third Party Purchaser (as such terms are defined therein), as the case may be, and (ii) the assumption and assignment to Purchaser, any Purchaser Assignee or any Third Party Purchaser, as the case may be, of executory contracts and unexpired leases under sections 365(a) and (f) of the Bankruptcy Code both as of the Initial Closing Date and during the Option Period, and (C) granting related relief; and upon the Order of this Court dated July 18, 2003, approving the bidding procedures in connection with the Sale and notice of the hearing with respect to the Sale (the “Bidding Procedures Order”); and upon the Order of this Court dated August 15, 2003 approving the APA and the Sale (the “Sale Order”); and upon the Order of this Court dated September 4, 2003 approving the assumption and assignment of the AG Purchase Acquired Contracts as defined therein; and upon the record made at the hearing held before this Court with respect to relief sought in the Sale Motion in connection with assumption and assignment of the AG Acquired Lease (as defined below) on October 2, 2003 (the “Assumption and Assignment Hearing”), including the relevant pleadings, the evidence proffered or adduced and arguments of counsel; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the assumption and assignment of the unexpired lease to be assumed and assigned as of October 2, 2003 to Associated Grocers, Inc. (“AG”) and set forth on Exhibit A attached hereto (the “AG Acquired Lease”); and it appearing from the affidavits of service filed with the Court

that due and sufficient notice of the Sale Motion and the relief granted by this Order, have been provided to all parties affected thereby; and it further appearing that no other or further notice hereof is required; and upon the Court record of these cases; and it appearing that the relief requested in the Sale Motion regarding the assumption and assignment of the AG Acquired Lease is in the best interests of the Selling Debtors, their estates, creditors, and other parties-in-interest; and after due deliberation and good and sufficient cause appearing therefor, this Court hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6006(d), the parties may consummate the assumption and assignment of the AG Acquired Lease immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

C. The statutory predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code, as complemented by Rules 2002, 6006(a) and (c) and 9014 of the

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Assumption and Assignment Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the extent not inconsistent herewith.

Bankruptcy Rules.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the assumption and assignment of the AG Acquired Lease.

Notice of the Assumption and Assignment

E. As evidenced by the affidavits of service previously filed with this Court, (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the Assumption and Assignment Hearing and the assumption and assignment of the AG Acquired Lease has been provided in accordance with sections 102(1) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6006, and 9014.

F. Actual written notice of the Assumption and Assignment Hearing, the Sale Motion and the assumption and assignment of the AG Acquired Lease and a reasonable opportunity to object or be heard with respect to the Sale Motion and the assumption and assignment of the AG Acquired Lease has been afforded to all interested persons and entities, including, but not limited to: (i) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (ii) counsel to the Agents for the Debtors' pre-petition lenders and post-petition lenders; (iii); counsel to Purchaser; (iv) the non-debtor counterparty to the AG Acquired Lease; (v) counsel to the United States Trustee; (vi) any entity that has filed a notice of appearance and demand for service of papers in these bankruptcy cases pursuant to Bankruptcy Rule 2002; and (vii) all parties holding Liens against the Selling Debtors' estates.

G. The Debtors have served upon the non-debtor counterparty to the AG Acquired Lease, in accordance with applicable provisions of the Bankruptcy Code, appropriate and

adequate notice of the Debtors' intent to assume and assign the AG Acquired Lease at the Assumption and Assignment Hearing. The service of such notice, in connection with service of the Original Cure Notice (as defined in the Sale Order), the Supplemental Cure Notice (as defined in the Sale Order), notice of the Sale Motion and notice of the Assumption and Assignment Hearing, was good and sufficient and appropriate under the circumstances and no further notice need be given in respect of the assumption and assignment of the AG Acquired Lease. Such non-debtor counterparty has had an opportunity to object to the assumption and assignment of the AG Acquired Lease, including without limitation the cure amounts due and adequate assurance of future performance in respect thereof.

H. Based on the findings set forth in paragraphs E through G above, such notice was good and sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Assumption and Assignment Hearing or the assumption and assignment of the AG Acquired Lease shall be required.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Sale Motion with respect to the assumption and assignment of the AG Acquired Lease is granted and approved to the extent provided herein, and the assumption and assignment contemplated thereby is hereby approved to the extent provided herein.

2. Attached hereto as Exhibit A is a schedule setting forth the AG Acquired Lease that the Selling Debtors are authorized to assume and assign to AG as of October 2, 2003.

3. The Selling Debtors and AG have cured or have provided adequate assurance of a prompt cure of, all defaults, if any, arising under the AG Acquired Lease that are required to be

cured by section 365(b)(1)(A) of the Bankruptcy Code (after giving effect to section 365(b)(2) of the Bankruptcy Code).

4. No amount is payable under section 365(b)(1)(B) of the Bankruptcy Code (the “Cure Amount”) for the AG Acquired Lease, and AG shall not be required to pay any Cure Amount in connection with the assumption and assignment of the Acquired Lease. Paragraphs 15, 16 and 17 of the Sale Order regarding Cure Amounts are hereby incorporated by reference as if fully set forth herein. The provisions of this paragraph 4 satisfy the requirements under section 365(b)(1)(B) of the Bankruptcy Code that the Selling Debtors compensate or provide adequate assurance of prompt compensation for any defaults as to the AG Acquired Lease. The non-debtor party to the AG Acquired Lease shall not be entitled to any further or additional compensation other than as provided in this paragraph 4 on account of defaults under the AG Acquired Lease accruing, arising or otherwise relating to the period prior to October 2, 2003.

5. AG has provided adequate assurance of future performance under the AG Acquired Lease pursuant to Section 365(b)(1)(C) of the Bankruptcy Code.

6. Any objection, if any, to the assumption and assignment of the AG Acquired Lease that has not been withdrawn, waived, or settled, and all reservations of rights included in any such objection are overruled on the merits.

7. Any provision restricting the assignment of or the effectiveness of the AG Acquired Lease shall be null, void and of no force and effect in connection with the assignment to AG, including without limitation, the following provisions:

(i) any provision of the AG Acquired Lease or any agreement ancillary thereto that purports to prohibit, condition, or otherwise restrict the assignment by the Selling Debtors to AG;

(ii) any provision of the AG Acquired Lease or agreement ancillary thereto that permits the landlord at any time after closing to declare a default, terminate, modify, or cancel the lease, increase the payments or obligations thereunder (including without limitation, increasing the rent), exercise a right (whether based in law, equity, or otherwise) of recapture or termination, require the payment of any fee, impose any penalty, prevent the assignee from exercising any renewal options, seek damages, or seek other relief by reason of (a) the assignment of the lease to AG or (b) a change of control of the Selling Debtors;

(iii) any provision of the AG Acquired Lease or agreement ancillary thereto that purports to terminate or modify the applicable agreement (including without limitation, by increasing the rental obligations) if any of the Selling Debtors cease to be a party to such agreement; or

(iv) any provision that requires a payment to any entity, including without limitation, the non-debtor party, as a result of, as a condition to, or relating to the transfer or assignment of such agreement.

8. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall have no liability under the AG Acquired Lease following October 2, 2003 and the non-debtor party to the AG Acquired Lease is hereby barred and permanently enjoined from asserting against Debtors or their successors any default, claim or liability existing, accrued, arising or relating to a period after October 2, 2003.

9. The non-debtor party to the AG Acquired Lease is hereby barred and permanently enjoined from asserting against C&S, Purchaser or any of their affiliates, successors or assigns any default, claim or liability relating to the AG Acquired Lease.

10. The failure (if any) of the Selling Debtors or AG to enforce at any time one or more terms or conditions of the AG Acquired Lease shall not be a waiver of such terms or conditions, or of any of the rights of any such party to enforce each and every term and condition of the AG Acquired Lease.

11. Unless and until, and except to the extent, actually assumed and assigned to AG, AG shall have no liability under any Acquired Contract, including the AG Acquired Lease.

12. This Court retains jurisdiction, even after the closing of these chapter 11 cases, to:

- (a) interpret, implement and enforce the terms and provisions of this Order;
- (b) enter orders in aid or furtherance of the assumption and assignment of the AG Acquired Lease;
- (c) compel delivery of the AG Acquired Lease to AG;
- (d) adjudicate any and all remaining issues concerning the Selling Debtors' right and authority to assume and assign the AG Acquired Lease and the rights and obligations of AG with respect to such assignment and the existence of any default under the AG Acquired Lease;
- (e) adjudicate any and all issues and/or disputes relating to the Debtors' right, title or interest in the AG Acquired Lease and the proceeds thereof; and
- (f) re-open the Debtors' chapter 11 case to enforce the provisions of this Order.

13. This Order shall be effective immediately upon entry and Bankruptcy Rule 6006(d) shall not apply.

14. The provisions of this Order are non-severable and mutually dependent.

Dated: Wilmington, Delaware
October 2, 2003


UNITED STATES BANKRUPTCY JUDGE