

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
Fleming Companies, Inc., *et al.*,<sup>1</sup> ) Case No. 03-10945 (MFW)  
) (Jointly Administered)  
Debtors. )  
)

Objection Deadline: October 28, 2003 at 4:00 p.m. prevailing Eastern time  
Hearing Date: November 4, 2003 at 2:00 p.m. prevailing Eastern time

**MOTION FOR AN ORDER APPROVING SETTLEMENT  
IN CONNECTION WITH TERMINATION OF FACILITY STANDBY AGREEMENT**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (the “Motion”) seeking entry of an order substantially in the form attached hereto (the “Order”) under Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Section 363 of Title 11 of the United States Code (the “Bankruptcy Code”) approving a settlement in connection with the Termination of Facility Standby Agreement (the “Agreement”). In support of this Motion, the Debtors respectfully represent as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B) and (O).

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<sup>1</sup> 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 International, 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.

2. The statutory bases for the relief requested herein is Rules 2002 and 9019 of the Bankruptcy Rules and Section 363 of the Bankruptcy Code.

### **Background**

3. On April 1, 2003 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has been appointed in these cases.

4. Fleming Companies, Inc., one of the Debtors, ("Fleming") and Stop N Go of Madison Inc. and Rockford Stop N Go, Inc. (collectively, the "Retailer") are parties to a Facility Standby Agreement (the "FSA") dated August 4, 1999, pursuant to which the Retailer engaged Fleming as its primary supplier of convenience food, groceries and related products to convenience stores in Wisconsin and Illinois.

5. On June 27, 2003, Fleming discontinued operations from its distribution facility in Marshfield, Wisconsin, which was the primary center serving the Retailer pursuant to the FSA.

6. The Retailer is indebted to Fleming for merchandise purchased pursuant to the FSA and Fleming is indebted to the Retailer for certain credits and rebates claimed by the Retailer.

7. Fleming and the Retailer have reached a settlement as to these claims which includes a payment by the Retailer to Fleming of \$968,845.26 and a mutual release of further liability by the parties. This settlement is embodied in the Termination of Facility Standby Agreement (the "Settlement Agreement") attached to the proposed Order as Exhibit A.

### **Basis for Relief**

8. Bankruptcy Rule 9019(a) provides, in pertinent part, that “after notice and a hearing, the court may approve a compromise or settlement.”

9. In reviewing a motion for approval of a settlement, bankruptcy courts must “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). This requires court consideration of the following criteria: “(1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” Id.

10. The relief requested herein will aid Debtors' efforts to reduce expenses and maximize value for the benefit of their estates, creditors and other parties in interest because it settles a controversy and allows the Debtors to collect \$968,845.26.

### **Notice**

11. Notice of this Motion has been given to (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) counsel to the Indenture Trustees; (d) counsel to the Official Committee of Unsecured Creditors (d) counsel to the Retailer; and (e) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

### **No Prior Request**

12. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, approving a settlement in connection with the Termination of the Facility Standby Agreement and granting such other and further relief as the Court deems appropriate.

Dated: October 10, 2003

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