

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

In re: )  
 ) Case No.: 03-10945 (MFW)  
Fleming Companies, Inc., et al., )  
 )  
 )  
Debtors. ) **Hearing Date: October 20, 2003 @ 2:00 P.M.**  
 ) **Objections Due: October 13, 2003**

**LIMITED OBJECTION TO DEBTORS' SECOND MOTION PURSUANT TO SECTION  
365(d)(4) OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER EXTENDING  
TIME TO ASSUME, ASSUME AND ASSIGN OR REJECT UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL PROPERTY (Docket No. 3836)**

Warrensburg Venture, Inc. (“Warrensburg”) and Jeff-City Venture, Inc. (“Jeff City”) (collectively, the “Lessors”) for their Limited Objection to Debtors’ Second Motion Pursuant to Section 365(d)(4) of the Bankruptcy Code for Entry of an Order Extending Time to Assume, Assume and Assign or Reject Unexpired Leases of Nonresidential Real Property (the “Motion”) state:

1. On September 26, 2003, the Debtors filed the Motion seeking, among other things, an order extending the deadline under section 365(d)(4) of the Bankruptcy Code to assume, assume and assign or reject certain unexpired leases to March 31, 2004.

2. On or about December 1, 1985, the Fleming Companies, Inc. (the “Debtors”) entered into a Build and Lease Agreement with Warrensburg (the “Warrensburg Lease”) under which the Debtors leased certain property located in the City of Warrensburg, Missouri. The Warrensburg Lease is identified by the Debtors as Lease No. MO-083. The Warrensburg Lease expires in November 2005, unless certain options to extend the Warrensburg Lease are exercised. A copy of the Warrensburg Lease is attached hereto as **Exhibit A**.

3. On or about June 23, 1982, the Debtors entered into a Build and Lease Agreement with Jeff-City (the “Jeff-City Lease”) under which the Debtors leased certain property located in

the City of Jefferson City, Missouri. The Jeff-City Lease is identified by the Debtors as Lease No. MO-079. The Jeff-City Lease is attached hereto as **Exhibit B**.

4. On or about May 13, 2002, the Debtors executed a Lease Renewal Option extending the Jeff-City Lease from November 17, 2002 through November 16, 2007. A copy of the Lease Renewal is attached hereto as **Exhibit C**.

5. The Debtors subsequently subleased the property that was subject to the Warrensburg Lease and the Jeff-City Lease (collectively, the "Leases").

6. The Leases are Unexpired Leases as defined in the Debtors' Motion. The Warrensburg Lease expires in 2005, and the Jeff-City Lease expires in 2007.

7. Rent under the Leases, which is paid in arrears, is due on the 20<sup>th</sup> of every month. The monthly rent amount is approximately \$18,153.04 on the Warrensburg Lease and \$12,884.92 on the Jeff-City Lease.

8. The Debtors failed to pay rent due under the Leases for the month of August on or before September 20, 2003 as required under the Leases. Despite inquiries, the Lessors have been unable to collect the August rent from the Debtors, and it remains unpaid as of the filing of this objection. As of the hearing date on the Debtors' motion, the September rent payments under the Leases will be due and owing as well.

9. The Lessors object to the Motion to the extent that it would permit the Debtors additional time to either assume or reject the Leases and at the same time allow the Debtors to remain delinquent in rent amounts due under the Leases.

10. The Lessors therefore request that Court deny the Motion, or in the alternative, in the event the Court grants the Motion, it also order the Debtors to get current and stay current in its payments due under the Leases.

WHEREFORE, Warrensburg Ventures, Inc. and Jeff-City Venture, Inc. hereby object to the Debtors' Motion and request that the Court deny the Motion, or in the alternative, should the Court approve the Motion, it also order the Debtors to get current and remain current on all amounts due under the Leases.

Dated: October 13, 2003  
Wilmington, DE

ELZUFON AUSTIN REARDON  
TARLOV & MONDELL, P.A.

/s/ William D. Sullivan  
WILLIAM D. SULLIVAN (No. 2820)  
300 Delaware Avenue  
Suite 1700, PO Box 1630  
Wilmington, Delaware 19899-1630  
(302) 428-3181  
Fax No. (302) 428-3180

-and-

POLSINELLI SHALTON & WELTE  
A PROFESSIONAL CORPORATION  
JAMES E. BIRD (MO #28833)  
AMY E. HATCH (MO #53116)  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, Missouri 64112  
(816) 753-1000  
Fax No. (816) 753-1536

ATTORNEYS FOR WARRENSBURG  
VENTURE, INC. AND JEFF-CITY VENTURE,  
INC.

**CERTIFICATE OF SERVICE**

I, William D. Sullivan, hereby certify that I caused a copy of foregoing *Limited Objection to Debtors' Second Motion Pursuant to Section 365(D)(4) of the Bankruptcy Code for Entry of an Order Extending Time to Assume, Assume and Assign or Reject Unexpired Leases of Nonresidential Real Property (Docket No. 3836)* to be served upon the following parties via hand delivery or United States Mail, postage prepaid.

Geoffrey Richards  
Kirkland & Ellis  
Aon Center  
200 East Randolph Drive  
Chicago, IL 60601

Ira D. Kharasch  
Pachulski Stang Ziehl Young & Jones PC  
10100 Santa Monica Blvd  
11th Floor  
Los Angeles, CA 90067

Laura Davis Jones  
Scotta Edelen McFarland  
Pachulski Stang Ziehl Young & Jones  
919 N. Market Street  
16th Floor  
Wilmington, DE 19899-8705

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

Julie L. Compton  
Office of the U.S. Trustee  
J. Caleb Boggs Federal Building  
844 King Street  
Suite 2313  
Wilmington, DE 19801

Scott Cousins  
Greenberg Traurig LLP  
The Brandywine Building  
1000 West Street, Suite 1540  
Wilmington, DE 19801

Aaron A. Garber  
Pepper Hamilton LLP  
1201 Market Street  
Suite 1600  
Wilmington, DE 19899

Paul Aronzon  
Milbank, Tweed, Hadley & McCloy, LLP  
601 South Figueroa, 30<sup>th</sup> Floor  
Los Angeles, CA 90017

David M. Fournier  
Pepper Hamilton  
1201 Market Street, Suite 1600  
PO Box 1709  
Wilmington, DE 19899

I certify the foregoing to be true and correct under the penalty of perjury.

Dated: October 13, 2003

/s/ William D. Sullivan  
William D. Sullivan

