

**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.	)	
	)	<b>Related Docket No. 4140</b>

**STIPULATION**

Robert S. and Kathleen E. Moss (the "Mosses") and the above-captioned debtors and debtors in possession (the "Debtors"), by and through their undersigned counsel, hereby agree to resolve the Motion of Robert S. and Kathleen E. Moss for an Order Enlarging the Bar Date [Docket No. 4140] (the "Motion") as set forth herein.

WHEREAS, on April 1, 2003, each of the Debtors filed its respective voluntary petition for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code"); and

WHEREAS, on July 28, 2003, the Mosses filed the Motion of Robert S. and Kathleen E. Moss to Compel Immediate Payment of Post-Petition Obligations Pursuant to Section 365(d)(3) of the Bankruptcy Code (the "Motion to Compel Payment"), requesting that the Debtors, as assignor of lease No. PA-247-CL (the "Lease") covering the property located in Corry County, PA, immediately pay to the Mosses, as landlord, the sum of \$22,990.41, which sum was said to constitute rent and other obligations due under the Lease for June, July and August, 2003; and

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<sup>1</sup> The Debtors are the following entities: Core-Mark International, Inc.; 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.

WHEREAS, an Order was entered on August 19, 2003 (Docket No. ), which approved a stipulation (the "Stipulation") between the Mosses and the Debtors which resolved the Motion to Compel Payment and provided as follows:

- (A) The Lease will be deemed to be rejected by the Debtors effective August 19, 2003 and any rejection damages under section 365 of the Bankruptcy Code will be deemed pre-petition claims which must be filed by the Mosses no later than September 15, 2003; and
- (B) The Debtors shall pay (the "Payment") \$22,990.41 to the Mosses immediately upon the entry of the order approving the Stipulation; and

WHEREAS, on September 17, 2003, the Debtors' claims agent received proof of claim number 14086 submitted by the Mosses (the "Claim No. 14086"); and

WHEREAS, Claim No. 14086 is comprised of (a) a request for payment of \$72,085.32 for damages alleged to be the result of the Debtors' rejection of the Lease (which the Stipulation provides constitute a general unsecured claim, if allowed), and (b) a request for \$22,990.41 which represents the Payment provided for in the Stipulation; and

WHEREAS, the Mosses have received the Payment provided for in the Stipulation; and

WHEREAS, the Mosses' only remaining claim against the Debtors is the request for \$72,085.32 for alleged lease rejection damages; and

WHEREAS, on October 22, 2003, the Mosses filed the Motion requesting that Claim No. 14086 be deemed timely filed;

NOW, THEREFORE, in consideration for the stipulations set forth below, the Debtors and the Mosses agree to resolve the Motion by stipulating and agreeing as follows:

1. The Mosses have received the Payment as required by the Stipulation.
2. Claim No. 14086 is hereby amended to a general unsecured claim against the Debtors in the amount of \$72,085.32.

3. Claim No. 14086 will be deemed timely filed and the Debtors, and any and all successors in interest thereto, hereby waive the right to object to Claim No. 14086 on the basis that it was not timely filed.

4. Subject to the limitation set forth in paragraph 3 above, all parties retain the right to object to Claim No. 14086 on any other valid bases and the Mosses reserve their rights to respond to any such objection.

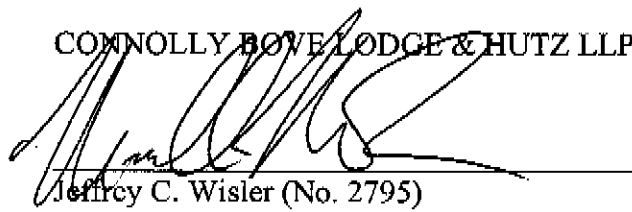
5. The Mosses waive the right to later amend Claim No. 14086 in any manner including to assert Claim No. 14086 in a higher dollar amount or to seek a priority payment for Claim No. 14086 higher than that of a general unsecured claim in these cases.

6. The parties agree that this Stipulation shall be deemed to have been jointly drafted, and no provision of it shall be interpreted or construed for or against any party because such party purportedly prepared or requested such provision, or the Stipulation as a whole.

7. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Dated: Wilmington, Delaware  
December 17, 2003

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