

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

In re: : Chapter 11
: :
FLEMING COMPANIES, INC., : Case No. 03-10945 (MFW)
: :
Debtor. : (Jointly Administered)
: **Objection Deadline: July 28, 2003**
: **Hearing Date: Aug. 4, 2003 @ 11:30 a.m. (EST)**

**OBJECTION TO CURE AMOUNT AS SET FORTH IN ORIGINAL CURE NOTICE
DATED JULY 11, 2003 IN ACCORDANCE WITH SUPPLEMENTAL NOTICE RE:
POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE MOTION**

CONTRACT ASSIGNMENT #:1483

EFS National Bank ("EFSNB"), a party-in-interest herein by and through its undersigned counsel files this Objection to Cure Amount as set forth on the schedule attached to the "Original Cure Notice" (CM/ECF #2002, filed on July 17, 2003) in accordance with the Supplemental Notice Re: Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion (CM/ECF #2034, filed on July 18, 2003) and states as follows:

1. In this case, Fleming Companies, Inc. ("Debtor") filed its "Original Cure Notice" on or about July 11, 2003. Attached to the Notice was a schedule of certain executory contracts and leases listing a proposed cure amount for each contract. The Debtor is a party to an executory contract with EFSNB listed on the schedule attached to the Original Cure Notice as **Contract Assignment #: 1483**.

2. The referenced executory contract is that certain Wholesaler Agreement dated September 17, 1997, as amended by the Amendment and Consent to Assignment of BUYPASS Corporation Wholesaler Agreement, dated September 12, 2001 (collectively the "Agreement") entered into between Debtor and EFSNB.

3. The cure amount listed on the schedule filed by the Debtor is **\$0.00**. EFSNB asserts that the correct Cure Amount under the terms of the Agreement is an amount of **\$447,356.46**. This amount is composed of **\$425,966.16** accruing pre-petition and **\$21,390.30** arising post-petition.

4. Attached as collective Exhibit A is a copy of Motion (*filed on 07/14/2003, CM/ECF#1923*) filed by EFSNB on July 14, 2003 in this case seeking relief from the automatic stay as provided under 11 U.S.C. § 362 in order to effect recoupment under the Agreement for the above-referenced sums. Included in collective Exhibit A are copies of the original Wholesaler Agreement and the Amendment to the Agreement.

5. EFSNB does not assert non-monetary defaults or other Consequential Damages.

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WHEREFORE, EFSNB prays the Court upon hearing (i) sustain a finding that the correct Cure Amount under the Agreement is an amount of \$447,356.46 and (ii) require payment of the same prior to any assumption and assignment of the Agreement pursuant to 11 U.S.C. § 365 and for such other and further relief to which it is entitled.

Dated: July 25, 2003

WEIR & PARTNERS LLP

By: /s/ Kenneth E. Aaron

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EXHIBIT A

Motion of EFS National Bank for Relief from the Automatic Stay in Order to Effect Recoupment (*Filed on 07/14/2003, CM/ECF#1923*), along with related exhibits