

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

In re:	:	
	:	
FLEMING COMPANIES, INC., et al.,	:	Case No. 03-10945 (MFW)
	:	(Jointly Administered)
	:	Chapter 11
Debtors.	:	
	:	Hearing Date: November 4, 2003 at 2:00 p.m.
	:	Objection Deadline: October 28, 2003 at 4:00 p.m.

**ROCK COD VILLAGE SOUTH LLC'S MOTION FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO § 503(b)(1)(A)**

Rock Cod Village South LLC ("Rock Cod"), by and through its undersigned attorneys, Buchanan Ingersoll P.C., herby moves this Court for an Order allowing Classification and Payment of an Administrative Expense Pursuant to 11 U.S.C. § 503(b) (the "Motion"). In support of its Motion, Rock Cod respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicate for the relief sought herein is 11 U.S.C. §§ 503(b) and 507(a) and Bankruptcy Rules 2002 and 9014 of the Federal Rules of Bankruptcy Procedure. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On April 1, 2003 (the "Petition Date"), Fleming Companies, Inc. ("Fleming" or the "Debtor") and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Code"). Since the Filing Date, the Debtors have operated their

businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. By that certain lease dated February 2, 1983 between Rock Cod predecessor Village South, as lessor, and Fleming, as lessee, Village South leased to Fleming real property 10121 South Sheridan, Tulsa, Oklahoma (the "Property") for the term of twenty (20) years with one five year renewal option. The Debtor Subsequently sub-leased the subject property to Elyeck, Inc., Richard and Debra Eck. The Property is referenced by the Debtors as OK-058 in its May 28, 2003 Schedule of Unexpired Leases [D.I. 1116]. A true and correct copy of the Lease is attached hereto as Exhibit A. A true and correct copy of the First and Second Lease Amendments are attached hereto as Exhibit B and C, respectively.

4. Pursuant to the terms and conditions of the Lease and any amendments thereto, Debtor agreed, *inter alia*, to make quarterly CAM (or Common Area Maintenance) payments to Rock Cod, as well as fees associated with repair and clean up of the premises.

5. The Debtor presently owes Rock Cod: (i) a post-petition payment obligation arising under Debtor's lease covering the subject property for 2003 2nd quarter CAM charges in the amount of \$7,279.11; (ii) a post-petition payment obligation arising under Debtor's lease covering the subject property for 2003 3rd quarter CAM charges (July and August only) in the amount of \$3,896.35; and costs associated with the repair and clean-up of the Suite in the amount of \$21,656.00. An itemization of the charges is attached hereto as Exhibit D.

6. Through this Motion, Rock Cod seeks the allowance of an administrative expense claim for the past due CAM charges and costs associated with the repair and clean up of the Suite.

7. The Debtor remained in possession of the Property, but Rock Cod received no adequate protection payment(s) from the Debtor in return for its occupation, use and benefit of the Property.

8. The payments due on the Property constitute actual and necessary costs and expenses of preserving the estate pursuant to 11 U.S.C. 503(b)(1)(A). The Property was necessary to Debtor to maintain its business and generate post petition revenue, while at the same time causing wear and tear and depreciation of the value of the Property. Therefore, the CAM charges and maintenance costs that came due after the Petition Date were "actual and necessary costs and expenses of preserving the estate" as provided for in § 503(b)(1)(A).¹

WHEREFORE, Rock Cod respectfully requests that this Court enter its Order Allowing and Administrative Expense Claim for the Payments due and Owing Under the Lease Pursuant to 11 U.S.C. 503(b)(1)(A) and Compelling Payment Thereof.

Respectfully submitted by:

BUCHANAN INGERSOLL P.C.

Dated: October 6, 2003

BY: /s/ Margaret Manning
Margaret M. Manning (#4183)
1201 N. Market Street, Suite 1501
Wilmington, DE 19801
Telephone (302) 428-5500
Facsimile (302) 428-3996

¹ 11 U.S.C. 503(b)(1)(A).