

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

In re: ) Chapter11  
)  
)  
Fleming Companies, Inc., et. al., ) Case No.03-10945 (MFW)  
) (Jointly Administered)  
Debtors. )  
)  
)  
)

**DECLARATION OF JULIE NILES IN SUPPORT OF MOTION OF LPL PROPERTIES  
OF CALIFORNIA, LTD. FOR ORDER COMPELLING DEBTOR TO ASSUME OR  
REJECT UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY AND TO  
COMPLY WITH LEASE OBLIGATIONS PENDING ASSUMPTION OR REJECTION**

STATE OF ARIZONA )  
) ss.  
COUNTY OF PIMA )

I, Julie Niles, being duly sworn, declare as follows:

1. I submit this Declaration in support of the above-referenced Motion. I am a property manager with Chapman Lindsey Commercial Real Estate Services (the “Chapman”). LPL has contracted with Chapman to manage the LPL Premises.<sup>1</sup> I currently serve as the property manager for the LPL Premises. I am duly authorized to submit this Declaration. I have personal knowledge of and could testify to the matters set forth herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of the LPL Lease, together with the Third Amendment to the Lease.

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<sup>1</sup> All capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Motion.

3. The Parking Lot is in poor condition. The entire Parking Lot needs to be resurfaced immediately. I believe the present condition of the Parking Lot creates a potential hazard for customers visiting the LPL Premises and potential liability for the Debtor, LPL and the Sublessee.

4. LPL has obtained bids from several contractors to resurface the Parking Lot. The preferred bid was provided by Sunland, Inc. A copy of the Sunland bid is attached hereto as Exhibit 2. Based on the Sunland Bid (and the other bids LPL obtained), I believe it will cost approximately \$71,200 to repair the Parking Lot.


5. LPL has repeatedly asked the Debtor to consent to the repairs. Prior to the bankruptcy filing, I contacted Stan Kelley, Property Administrator of the Debtor, who represented to me that the Sublessee must first consent to the repairs prior to the Debtor consenting. Mr. Kelley told me that the Debtor would not consent to the repairs unless and until the Sublessee consented. I, then, met with Ray Garrett (the Sublessee) and presented him with three (3) paving quotes. Both the Debtor and the Sublessee refused to consent to the repairs.

6. After the bankruptcy filing, I sent notice of default to the Debtor dated October 16, 2003 ("Notice of Default"), advising the Debtor that it was in default under the LPL Lease due to its failure to timely and reasonably consent to the Parking Lot repairs. A true and correct copy of the Notice of Default is attached hereto as Exhibit 3. The Debtor is fully aware that it has breached its post-petition repair obligations under the LPL Lease. LPL has complied with all of its obligations under the LPL Lease, including seeking the consent of the Debtor prior to making much-needed repairs to the Parking Lot. The Debtor has not. The Debtor has

unreasonably withheld its consent to the repairs. As a consequence, the Debtor is in continuing default of its repair obligations under the LPL Lease.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of October, 2003.

  
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Julie Niles