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U.S. BANKRUPTCY
DISTRICT OF ARIZONA

THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In Re: BCE WEST, L.P., *et al.*, Debtors EID # 38-3196719	In Proceedings Under Chapter 11 Case Nos. B 98-12547-ECF-CGC through 98-12570-ECF-CGC (Jointly Administered) **LIMITED OBJECTION BY GENERAL ELECTRIC CAPITAL CORPORATION AS ADMINISTRATIVE AGENT UNDER DIP LOAN TO DEBTORS' MOTION FOR AUTHORITY TO APPROVE COMPROMISE AND SETTLE WITH HARRY'S FARMERS MARKET, INC.** **Hearing Date:** **Hearing Time:**

GENERAL ELECTRIC CAPITAL CORPORATION ("GE Capital"), on its own behalf and as the administrative agent (the "Administrative Agent") for the lenders under that certain Debtor in Possession Credit Agreement dated as of October 5, 1998, by and among the Debtors, the Lenders thereto, GE Capital and Bank of America National Trust and Savings Association, as

amended (the "DIP Loan Agreement"), files this Limited Objection to the Debtor's Motion for Authority to Approve Compromise and Settle with Harry's Farmers Market, Inc. (the "Motion").

Although the Administrative Agent does not object to the terms of the Harry's transaction as described in the Motion (and has so informed the Debtors),[1] the Administrative Agent does object to the Motion insofar as, in violation of the DIP Loan Agreement and this Court's prior Orders approving and incorporating the provisions of the same, the Motion seeks to place the $4 million of transaction proceeds in an escrow account rather than applying these proceeds to pay down the DIP Loan. Neither the Administrative Agent nor any of the DIP Lenders have consented to the deposit of such transaction proceeds in an escrow account, and Administrative Agent has so informed the Debtors.

Pursuant to Section 6.8(b) of the DIP Loan Agreement, Borrowers would be permitted to dispose of assets as contemplated in the Motion so long as they (i) received Bankruptcy Court approval <u>and</u> (ii) paid the proceeds of such disposition to Administrative Agent for application to the DIP Loan. Pursuant to Section 1.3(b)(i) of the DIP Credit Agreement, all proceeds from the disposition of assets shall (with certain exceptions not relevant here) be applied as mandatory prepayments of the DIP Loan obligations. Contrary to the foregoing provisions, the Debtors have requested, in the last paragraph of the Motion, that the transaction proceeds be placed in escrow pending further order of the Court. The Debtors offer no explanation or basis for their request.

Given the requirements of the DIP Loan Agreement as outlined above and the Court Orders approving same, absent the consent of the DIP Lenders (which has not been obtained as of this time), the Debtors are obligated to turn the proceeds of the Harry's transaction over to

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[1] The Administrative Agent's approval of the Harry's transaction is, however, subject to review and approval of documentation, and the Administrative Agent reserves the right to raise subsequent objection following its review of the transaction documents.

Administrative Agent upon the closing of that transaction, and any failure to do so would constitute an Event of Default under the DIP Loan Agreement.

WHEREFORE, for the reasons set forth above, the Administrative Agent respectfully objects to the Debtors' request that the Harry's proceeds be placed in an escrow account rather than be paid to Administrative Agent for application to the DIP Loan in accordance with the DIP Credit Agreement. In addition, as also indicated above, Administrative Agent reserves the right to raise further objections pending review of the transaction documentation.

RESPECTFULLY SUBMITTED this 20th day of August, 1999.

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