

<b>UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE</b>		<b>PROOF OF CLAIM</b>	
In re <b>Core-Mark International, Inc</b>		Case Number <b>03-10944</b>	

  
s187871  
Scheduled Claim Ref # 1-E3-10471  
**YOUR CLAIM IS SCHEDULED AS**  
  
UNKNOWN PRIORITY  
CONTINGENT UNLIQUIDATED

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

<b>Name of Creditor and Address</b>  CANADA CUSTOMS AND REVENUE AGENCY <del>9755 KING GEORGE HIGHWAY</del> <b>1166 W PENDER ST</b> <b>VANCOUVER, B.C.</b> <b>V6E 3H8</b> <b>CANADA</b>  Creditor Telephone Number <b>(604)-691-4312</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input checked="" type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.
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The amounts reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth herein and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.  
  
If the amounts shown above are listed as Contingent Unliquidated or Disputed, a proof of claim must be filed.  
If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

CREDITOR TAX ID #	ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR <b>101151835 RT</b>	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> or amends a previously filed claim dated _____
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**1 BASIS FOR CLAIM**

<input type="checkbox"/> Goods sold	<input type="checkbox"/> Personal injury/wrongful death	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)
<input type="checkbox"/> Services performed	<input checked="" type="checkbox"/> Taxes	<input type="checkbox"/> Wages, salaries, and compensation (Fill out below)
<input type="checkbox"/> Money loaned	<input type="checkbox"/> Other (describe briefly)	Your social security number _____

Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_ (date) (date)

<b>2 DATE DEBT WAS INCURRED</b> <b>MAY 2, 2003</b>	<b>3 IF COURT JUDGMENT DATE OBTAINED</b>
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<b>4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE</b> \$ _____ (unsecured) \$ <b>2,914,870.51</b> (secured)	<b>5 SECURED CLAIM</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>RIGHT OF SETOFF AGAINST 101151835 RT</b> Value of collateral \$ <b>3,773,106.51</b> Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____
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<b>Revenue Collect.</b> (unsecured priority) Revenue Amer.	<b>Revenu Collect.</b> (unsecured priority) des autres (collectes) du 11 mai 2003
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<b>5 SECURED CLAIM</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>RIGHT OF SETOFF AGAINST 101151835 RT</b> Value of collateral \$ <b>3,773,106.51</b> Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____	<b>6 UNSECURED PRIORITY CLAIM</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other. Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
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**7 CREDITS** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

**8 SUPPORTING DOCUMENTS** Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

**9 DATE-STAMPED COPY** To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m., September 15, 2003, Pacific Daylight Time.

<b>BY MAIL TO</b> Bankruptcy Management Corporation P.O. BOX 900 El Segundo, CA 90245-0900	<b>BY HAND OR OVERNIGHT DELIVERY TO</b> Bankruptcy Management Corporation 1330 East Franklin Avenue El Segundo, CA 90245
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Fleming Companies Claim  
  
12809  
**FILED**  
SEP 15 2003  
REVENUE COLLECTIONS

DATE SIGNED <b>SEP 09 2003</b>	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). <b>Amey Collections Officer (604)-691-4312</b>
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**BMC**

**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)
Debtors	)	(Jointly Administered)

**NOTICE OF DEADLINE FOR THE  
FILING OF PROOFS OF CLAIM AND PROOFS OF INTEREST**

**TO ALL CREDITORS OF THE DEBTORS**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors-in-possession (the "Debtors") filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (as amended from time to time the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 3002(c)(3), all Persons and Entities including, without limitation, individuals partnerships corporations estates trusts governmental units (which shall include all entities defined as such in Section 101(27) of the Bankruptcy Code, including any such entity that holds a claim arising from prepetition tax years or periods or from prepetition transactions to which a Debtor was a party) and entities asserting claims against an individual Debtor that arose out of the obligations of such entities or the Debtors under a contract for the provision of liability insurance (each a "Creditor" and collectively, "Creditors") holding or wishing to assert a claim as defined in Section 101(5) of the Bankruptcy Code against any of the Debtors (collectively, the "Claims") or interest in any of the Debtors (collectively, the "Interests") arising on or before April 1 2003 (the "Petition Date"), are required to file a separate completed and executed proof of claim form conforming substantially to Official Bankruptcy Form 10) (the "Proof of Claim") on account of any Claims such Creditors hold or wish to assert against the Debtors, so that the Proof of Claim is actually received on or before 4 00 p m Pacific Daylight Time on September 15, 2003 (the "General Bar Date") or in the case of governmental units, by October 1 2003 the "Governmental Unit Bar Date," by the Debtors' Official Notice and Claims Agent at the following address:

Bankruptcy Management Corporation ("BMC")  
1330 East Franklin Avenue El Segundo CA 90245 *(for overnight mail or hand delivery)*  
P O Box 900, El Segundo CA 90245-0900 *(for regular mail)*  
Telephone 1-888-909-0100

Notwithstanding the foregoing, AT THIS TIME, Proofs of Claim ARE NOT REQUIRED to be filed by Creditors holding or wishing to assert Claims against the Debtors of the types that are set forth in clauses (a) through (f) below (collectively, the "Excluded Claims"):

- (a) Claims listed in the Debtors' Schedules of Assets and Liabilities (the "Schedules") filed with the Court, pursuant to Bankruptcy Rule 1007 or any amendments thereto, which are not therein listed as "contingent," "unliquidated" or "disputed" and which are not disputed by the creditor holding such claim as to nature, amount or classification,
- (b) Claims on account of which a Proof of Claim has already been properly filed with the Court
- (c) Claims previously allowed by, or paid pursuant to an order of the Court, including, without limitation any claims of the Agents and/or the Lenders allowed pursuant to the Final DIP Order <sup>2</sup>
- (d) Claims allowable under Sections 503(b) and 507(a)(1) of the Bankruptcy Code as administrative expenses of the Debtors' chapter 11 cases
- (e) Claims made by any of the Debtors or any direct or indirect subsidiary of any of the Debtors against one or more of the other Debtors
- (f) Claims of an entity whose claim is limited exclusively to a claim for the repayment of principal and/or interest on or under any issuance by any of the Debtors of any debt security (collectively the "Notes") or any indenture in respect of each issue of the Notes (the "Indentures") and each such Indenture collectively with the Notes issued thereunder the "Debt Instruments") provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustees under any of the

<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

<sup>2</sup> The term "Final DIP Order" refers to the Final Order Authorizing (I) Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c) (II) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rules 4001(b) and (d) (III) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 and (IV) Approving Secured Inventory Trade Credit Program and Granting Subordinate Liens Pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c)

AC02 RETRIEVE GENERAL BREAKDOWN OF BALANCE MORE

GST ACCOUNT NUMBER 101151835 LEGAL NAME CORE-MARK INTERNATIONAL INC  
AS OF DATE 030908  
TAX CENTRE SURREY  
UNALLOC INSTL UNPOSTED DOC N  
NET BALANCE 2,914,870 51 D

SEL PERIOD	DEBIT /	DB UNA	INTEREST	DB	PENALTY	PERIOD	DB
END DATE	CREDIT	CR INS		CR		BALANCE	CR
03-03-31	2,821,942	24 D N	31,204	64 D	61,723 63	2,914,870	51 D

- 1 The Canada Customs and Revenue Agency (“the CCRA”), a Crown agent of the Government of Canada, has two claims for unpaid Goods and Services Tax one is a secured claim or alternatively a priority unsecured claim, the other is an provisional claim for which there may be partial security by way of a statutory set-off The CCRA also has a third provisional claim for income tax for the taxation year ending on June 17, 2003 for which there may be security by way of a statutory set-off

### **GST System Generally**

- 2 Under section 165 of the *Excise Tax Act* (the “ETA”), every recipient of a taxable supply made in Canada is required to pay Goods and Services Tax (“GST”) in respect of a taxable supply calculated on the value of the consideration for the supply In general, the ETA places an obligation on the supplier, as an agent for the Government of Canada (“the Crown”), to collect the tax payable by the recipient, account for the tax in its net tax calculation and remit any positive amount of net tax
- 3 Generally a purchaser can claim an input tax credit to recover the tax payable in respect of its purchases to the extent that they are for consumption, use or supply in the course of the purchaser’s commercial activities An input tax credit can be claimed for tax payable even if the amount of tax is not paid to the supplier at the time the input tax credit is claimed In turn, the supplier will account for the tax payable, even if it has not yet been paid by the purchaser, in the supplier’s net tax and remit any positive amount of net tax If the amount is not collected from the purchaser and the supplier writes the amount off as a bad debt, the supplier is generally entitled to claim a deduction in calculating its net tax
- 4 All taxes and other amounts payable under Part IX of the ETA, including assessments of tax payable, are debts due to the Crown

**Established Secured/Priority Claim**

- 5 Core-Mark International Inc (“Core-Mark”) filed a GST return for the month ending March 31, 2003 on May 2, 2003 reporting that it collected GST totalling \$ 5,744,163 81 After deducting input tax credits of \$2,922,176 40 it reported that it held \$ 2,821,987 41 in net GST, which it did not remit to the CCRA Attached hereto and marked as Exhibit “A” is copy of the March 31, 2003 return
- 6 During the years 1999 through 2002 Core-Mark made a series of pre-payments towards its income tax liability for various years There is now \$1,640,323 of credits that currently stand on the account for Core-Mark for prepaid income tax for tax years other than the 2003 tax year
- 7 Core-Mark has also made installment payments for income tax for the tax year ending June 17, 2003 totaling \$2,130,000
- 8 The CCRA has statutory rights of setoff under relevant federal legislation including ss 224 1 and 164(2) of the *Income Tax Act* and s 316 of the *Excise Tax Act*
- 9 A Notice of Assessment for the GST debt subject to the secured or priority claim has not yet been issued as Core-Mark has been provided with an opportunity to respond to certain proposed adjustments of the CCRA, though an assessment is expected to be issued in the amount of \$2,759,962 86 + accrued interest
- 10 In addition to being secured by the authority of a statutory set-off, the GST amounts for the month of March 2003 and referred to in paragraph 9 above has given rise to a “deemed trust” under section 222 of the *Excise Tax Act* which provides

*Despite any other provision of this Act , any other enactment of Canada (other than the Bankruptcy and Insolvency Act), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General ,*

property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held in trust for Her Majesty, and

(b) to form no part of the estate or property of the person

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests

- 11 The deemed trust provision establishes that any property belonging to the debtor and/or the secured creditor of the debtor (by virtue of the security interest) is imprinted with the deemed trust and becomes the property of the Crown to the extent of the debt. The CCRA therefore has a priority claim to the amounts referred to in paragraph 9 separate and apart from its statutory set-off, which takes priority to the claims of any creditor including any secured creditors

### **Provisional Claims**

#### *Income Tax Provisional Claim*

- 12 Core-Mark has not yet filed its income tax return for the tax year ending June 17, 2003. This tax year straddles April 9, 2003, the date on which Core-Mark filed for protection under the *Companies' Creditors Arrangement Act* in Canada. The CCRA is unable to quantify the income tax liability for that tax year until Core-Mark files its tax return, though it is aware that Core-Mark has already made over 2 million dollars of pre-payments for its income tax liability for that tax year. The tax return for that period is not due until December of 2003. Any income tax debt for that tax year which is attributable to the period prior to the initiation of CCAA proceedings is the subject of a provisional claim by the CCRA.
- 13 A portion of the income tax provisional claim may also be a secured claim. This is so because Core-Mark has made pre-payments for income tax for the tax year ending June 17, 2003 which could be the subject of a statutory set-off.

GST Provisional Claim

- 14 Core-Mark has claimed input tax credits in the amount of \$2,922,176 40, in the GST return filed for the month of March 2003. This has been the subject of an initial proposed audit adjustment increasing the input tax credits for the month of March 2003 to \$2,984,200 95.
- 15 If the unpaid suppliers/creditors to Core-Mark will not be paid 100 cents on the dollar of invoiced amounts in relation to which Core-Mark has already claimed input tax credits in the GST return filed for the month of March 2003, the suppliers/creditors of Core-Mark will have an amount for a bad debt and a corresponding claim for reduction adjustment in relation to their GST returns. Under s 231 of the ETA, a supplier would generally have 4 years from the time they have written off the debt in their books to claim relief.
- 16 In circumstances of potential revenue loss, the Minister of National Revenue may exercise the authority under paragraph 296(1)(b) of the ETA to assess the purchaser of goods and services (Core-Mark) rather than the supplier. An assessment of tax payable may be made where a purchaser has claimed an input tax credit in respect of a taxable purchase, for which payment to the supplier remains outstanding, and the supplier is generally entitled to a bad debt deduction in calculating its net tax. Under these circumstances, an assessment of tax payable addresses the net revenue loss position that would occur if the supplier deducts the bad debt adjustment in its net tax calculation.
- 17 For example, the Minister may assess a purchaser who is insolvent or bankrupt in respect of the GST not paid to a supplier. For the purposes of the ETA, forgiven debts pursuant to an arrangement under the *Companies' Creditors Arrangement Act* are considered to be bad debts as opposed to reductions of consideration. As such, the provisions of section 231 of the ETA apply to forgiven debts.

- 18 The amount of a further GST assessment of Core-Mark under s 296(1)(b) of the ETA will therefore be the portion of the GST component in invoices from March 2003 which are not paid by Core-Mark and which therefore form a bad debt for the suppliers. The amount of the assessment will be calculated as a portion of the \$2,984,200.95 of Core-Mark's total input tax credits for the period ending March 31, 2003. However the amount of the assessment cannot be determined until it is established what portion of the suppliers' debts from the invoices from March 2003 will be forgiven or extinguished within the *Companies' Creditors Arrangement Act* proceedings. This will be determined once a plan is filed and approved under the *Companies' Creditors Arrangement Act*.
- 19 A portion of the GST provisional claim may also be a secured claim. This is so because the amount pre-paid by Core-Mark for income tax is currently over \$3.7 million, while the deemed trust debt is currently less than 3 million. Whether or not there are any amounts held by the CCRA remaining for set-off against the provisional GST claim will therefore depend on whether or not Core-Mark will have an income tax debt for the tax year ending June 17, 2003.



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

**In re· Fleming Companies, Inc et al  
Case No 03-10945-(MFW)-11**

**DOCUMENTS APPENDED TO CLAIM**

On August 18, 2005, document(s) were appended to Claim Number **12809** for the following reason(s)

- ☐ Stipulation and Settlement Agreement dated #####
- ☐ New Supporting Documents
- ☒ Letter and attachments dated 10/28/05
- ☐ Proof of Payment
- ☐ Other Docket Number ###



Department of Justice  
Canada

Ministère de la Justice  
Canada

900 - 840 Howe Street,  
Vancouver, British Columbia  
V6Z 2S9

Phone (604) 666 0649  
Fax (604) 665 1462

October 28, 2004

BY FAX

Kornfeld Mackoff Silber  
Barristers and Solicitors  
1100 One Bentall Centre  
505 Burrard Street  
Box 11  
Vancouver, British Columbia  
V7X 1M5

Attention Douglas B Hyndman

Dear Sir

Re **In the Matter of Core-Mark International Inc.**  
**S.C.B.C. Action No L031030, Vancouver Registry**  
**Our File No 3-215841**

Further to your request, please find enclosed a copy of the Affidavit of Bidyut Majumdar filed July 27, 2004, but not previously served. You will note the Affidavit explains Core-Mark's tax position with respect to the contingent liability claim for GST which was addressed in the Minister of National Revenue's Proof of Claim filed in the U.S.

Please note that although an amended Proof of Claim was filed, the narrative explaining the nature of the CCRA's provisional claim attached to the affidavit was also attached to the original Proof of Claim filed in 2003. This is set out in more detail in paragraph 8 of the affidavit. The actual numbers have of course fluctuated slightly, given certain adjustments to Core-Mark's overall GST debt of which you are aware.

I understand that you require this material in order to fully explain the reason for the draft Order which would approve CCRA's most recent set-off. Please advise once the Order has been fully circulated and executed by all parties.

Yours truly,

David Jacyk  
Senior Counsel  
Tax Law Services

Enclosure

c T Majumdar, CCRA



Affidavit #2 of B Majumdar  
Sworn July 27, 2004

No. L031030  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R S C  
1985, c C-36

AND

IN THE MATTER OF CORE-MARK INTERNATIONAL, INC

PETITIONER

AFFIDAVIT OF BIDYUT MAJUMDAR

I, Bidyut Majumdar, of 1166 West Pender Street, in the City of Vancouver,  
Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS

1 I am a Collections Officer for Canada Customs and Revenue Agency ("CCRA") assigned to the tax accounts of Core-Mark International Inc ("Core-Mark"), and as such I have personal knowledge of the facts and matters to which I hereinafter depose except those facts which I state on the basis of information and belief, which facts I verily believe to be true

2 Based on my review of the records of CCRA, Core-Mark filed a Goods and Services Tax ("GST") return for the month ending March 31, 2003 on April 29, 2003 reporting that it collected GST totalling \$ 5,744,163.81. After deducting input tax credits of \$2,922,176.40 it reported that it held \$ 2,821,987.41 in net GST, which it did not remit to the CCRA. The return was eventually reassessed and several adjustments were made such that a GST debt of approximately \$2.7 million dollars was established by the CCRA. The

majority of this amount was resolved by settlement agreement as between the CCRA and Core-Mark which I understand obtained approval within these proceedings

3 Based on my review of the records of CCRA, Core-Mark has over the course of several years made installment payments for corporate taxes under Part 1 or 13 of the Income Tax Act. It did the same for the tax year ending December 31, 2003 (the December 31, 2003 taxation year) by prepaying \$930,000 toward its anticipated tax debt for that year.

4 Core-Mark only recently filed its tax return for the 2003 taxation year on June 25, 2004. The return showed that Core-Mark owed only \$47,480 for corporate taxes for the year, thereby establishing that Core-Mark was in a substantial credit position as a result of the pre-payments made for the December 31, 2003 taxation year. The return for the December 31, 2003 taxation year was not assessed until July 13, 2004.

5 In filing its return for the December 31, 2003 taxation year, Core-Mark also requested a credit for tax withheld at source in the amount of \$523,829. Therefore after deducting \$47,480 for tax owing for the December 31, 2003 taxation year, Core-Mark currently has a total credit of \$1,420,326.88 including the \$930,000 of prepayments for the December 31, 2003 taxation year and \$13,977.88 of interest.

6 In addition to the amounts previously assessed for GST by the CCRA in respect of March 2003 (as referred to in paragraph 3 above), the CCRA has recently assessed a further GST debt arising from the month of March 2003. Based on my review of the records of CCRA, as a result of the Audit and subsequent assessment, \$2,775,306.88 was found to be owed by Core-Mark on account of an adjustment to GST collected. Attached hereto and marked as Exhibit "A" is a true copy of a Notice of Assessment issued to Core-Mark on July 21, 2004.

7 The recent GST reassessment resulted from the application of s 296(1)(b) of the *Excise Tax Act* which allows the Minister of National Revenue to reverse certain allowances for

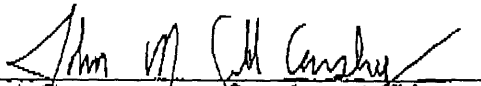
input tax credits. Based on my understanding, the reversal of the input tax credits in this case depended on the level of the "forgiveness" of debts by suppliers facilitated by the approval of a plan under the CCAA.

8 In its original proof of claim filed in these proceedings, the CCRA explained the nature of its provisional or contingent claim which could arise upon the approval of a plan and the reasons why such a claim could not be quantified prior to the deadline for filing the proof of claim. The CCRA has recently filed an amended Proof of Claim which adds the amount owed with respect to the recent GST reassessment and claims a portion of that debt as "secured" by virtue of the right of set-off. Attached hereto and marked as exhibit is a copy of the Amended Proof of claim package filed with the administrator. The amended proof of claim package filed by the CCRA included the following documents (marked as Schedules A, B, C and D respectively): a copy of the narrative attached to the original proof of claim filed last year explaining the nature of the CCRA's provisional claim, a copy of the reassessment on July 21, 2004, a copy of the previous minutes of settlement as between Core-Mark and the CCRA, and a Statement of Account calculated as of July 21, 2004.

9 The available credit of \$1,420,326.88 was originally put towards Core-Mark's account for the 2004 tax year when the tax return for the December 31, 2003 tax return was first processed, at the request of Core-Mark. However, after the assessment was reviewed by myself as the Collections Officer assigned to this file, the credit was reapplied towards the GST debt arising from the Notice of Assessment of July 21, 2004.

10 I swear this affidavit in response to the motion of Core-Mark to extend the stay to August 31, 2004, and in support of the CCRA's position to clarify that paragraph 3(j) of the original stay Order of April 8, 2003 does not preclude the application of a set-off permitted under 18.1 of the *Companies' Creditors Arrangement Act*.

SWORN BEFORE ME at the City of  
Vancouver, Province of British  
Columbia this 27 day of July,  
2004

  
A Commissioner for taking Affidavits  
within British Columbia

**John Gibb-Carsley**  
Barrister and Solicitor  
Department of Justice Canada  
#900 - 810 Howe Street  
Vancouver, BC V6Z 2S9  
(604) 666-7061

  
BIDYUT MAJUMDAR

10/28/04 13 34 FAX 604 683 0570

K M S

007  
007

10/2 2004 12 14 FAX 6046602214

JUSTICE CANADA TAX  
Schedule B

Can. Customs Agency of Revenue Canada

GOODS AND SERVICES TAX/HARMONIZED SALES TAX  
TAXE SUR LES PRODUITS ET SERVICES/TAXE DE VENTE HARMONISEE

NOTICE OF (RE) ASSESSMENT

11BU05 00 897	2004 07 21	10115 183J RT0001
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CORE MARK INTERNATIONAL INC  
601 13211 DELF PLACE  
RICHMOND BC  
V6V 2A2

RC) ASSESSMENT PERTAINING TO 2003-03-01 TO 2003-03-31

5,535,269 33	\$0 00	\$0 00	\$0 00
\$0 00	\$0 00	\$0 00	\$2,775,306 88

EXPLANATION OF CHANGES

The Amount Owning reflects only the results of the audit for the above noted period and does not reflect balances from any other period.

Please note that Amount Owning does not reflect any payments that may have been made with respect to this assessment. The payments have however been taken into account in the calculation of penalty and interest.

THE DETAILS THE AMOUNT OWING ARE SUMMARIZED BELOW

Summary of assessment for the period 2003-03-01 TO 2003-03-31

Adjustments to GST/NET COLLECTIBLE (GST)	\$2 775 306 88
Adjustments to INPUT TAX CREDIT (ITC)	\$ 0 00
Total Adjustments for Assessment period	\$2 775 306 88
Penalty	\$ 0 00
Interest	\$ 0 00
Other Penalty	\$ 0 00
Amount Owning	\$2 775 306 88
PAYMENTS RECEIVED	\$ 0 00

This is Exhibit "A" referred to in the affidavit of BIDYOT MASUMDA sworn before me at VANCOUVER in the Province of British Columbia on the 27 day of JULY A.D. 2004  
John M. Smith

Penalty and Interest Calculated up to 2004 07-21

Please note that Penalty and interest accrue daily on any unpaid balance

Make your cheque or money order payable to the RECEIVER GENERAL and forward it with the attached remittance form in the envelope provided to

CANADA REVENUE AGENCY  
9755 King George HWY  
Surrey BC  
V3T 5E1

☐ Payments can also be made at the local Tax Services Office or at your financial institution

If you need more information please see reverse. Si vous désirez de plus amples renseignements veuillez vous reporter au verso.  
COMMISSIONER CANADA CUSTOMS AND REVENUE AGENCY COMMISSAIRE AGENCE DES DOUANES ET DU REVENUE DU CANADA

Canada

<b>UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE</b>		<b>PROOF OF CLAIM</b>	
In <b>Coré-Mark International Inc</b>		Case Number <b>03-10944</b>	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.	
Name of Creditor and Address  <div style="text-align: right; font-size: small;">035429345299</div> <b>CANADA CUSTOMS &amp; REVENUE AGENCY</b> <del>1155 RING ROAD</del> <b>1166 W PENDER ST</b> <del>SUITE 100</del> <b>VANCOUVER, BC</b> <del>CANADA</del> <b>CANADA, V6E 3H8</b>		The amounts reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth hereon and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.  If the amounts shown above are listed as Contingent, Unliquidated or Disputed, a proof of claim must be filed. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.	
Creditor Telephone Number <b>(604) - 691-4312</b>		Check here <input type="checkbox"/> replaces or <input checked="" type="checkbox"/> amends a previously filed claim dated <b>SEP 9/03</b>	
CREDITOR TAX ID # <b>CLAIM # 12809</b>		ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR <b>101151835 RT</b>	
BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other (describe briefly)		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 541(c)(2) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) Your social security number _____ Unpaid compensation for services performed on or before _____	
DATE DEBT WAS INCURRED _____		IF COURT JUDGMENT DATE OBTAINED _____	
TOTAL AMOUNT OF CLAIM \$ <b>1,385,664.53</b> (unsecured)		\$ <b>1,420,326.88</b> (secured)	
PETITION DATE (CDA) _____		\$ <b>2,805,991.41</b> (total)	
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5 SECURED CLAIM <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>RIGHT OF SETOFF AGAINST 101151835 RC</b> Value of collateral \$ <b>1,420,326.88 (CDA)</b> Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____		6 UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or compensation (up to \$4,650) earned within 90 days before filing of the bankruptcy petition or exceptional of the Debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(5) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental unit's - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other: Specify applicable paragraph of 11 U.S.C. § 507(a) _____ Amounts are subject to adjustment on 4/1/01 and every 7 years thereafter with respect to each commensurate on or prior to date of adjustment.	
7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.			
8 SUPPORTING DOCUMENTS Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
9 DATE STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.			
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m. September 15, 2003, Pacific Daylight Time.			
BY MAIL TO Bankruptcy Management Corporation P.O. BOX 900 El Segundo CA 90245-0900		BY HAND OR OVERNIGHT DELIVERY TO Bankruptcy Management Corporation 1330 East Franklin Avenue El Segundo CA 90245	
DATE SIGNED _____		SIGN and print the name and title of any of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) <b>B K MAJUMDAR, Collections Officer</b>	

THIS SPACE FOR COURT  
USE ONLY  
**RECEIVED**  
**ALD 09 2003**  
by Fraser & Son  
REVENUE COLLECTIONS



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## INSTRUCTIONS FOR FILING PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances such as bankruptcy cases that are not filed voluntarily by a debtor there may be exceptions to the general rules.*

### DEFINITIONS

#### DEBTOR

The person, corporation or other entity that has filed a bankruptcy case is called the debtor.

#### CREDITOR

A creditor is any person, corporation or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court appointed Claims Agent, Bankruptcy Management Corporation at the address listed on the reverse side of this page.

#### SECURED CLAIM

A claim is a secured claim to the extent that the creditor has a lien on the property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before a bankruptcy case began, in some states a court judgment is a lien. In addition to the extent a creditor also owes money to the debtor (has a right of setoff) the creditor's claim may be a secured claim. (See also Unsecured Claim.)

#### UNSECURED CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### UNSECURED PRIORITY CLAIM

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

### ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

#### Court, Name of Debtor, and Case Number

Fill in the name of the federal judicial district where the bankruptcy case was filed, the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, Bankruptcy Management Corporation, all of this information is near the top of the notice.

#### Information about Creditor

If not already accurately pre-printed, complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If (a) anyone else has already filed a proof of claim relating to this debt, (b) if you never received notices from the Claims Agent, Bankruptcy Management Corporation about this case, (c) if your address differs from that to which the Claims Agent sent this notice, or (d) if this proof of claim replaces or amends a proof of claim that was already filed, check the appropriate boxes on the form.

#### 1. Basis for Claim

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

#### 2. Date Debt Incurred

Fill in the date when the debt first was owed by the debtor.

#### 3. Court Judgments

If you have a court judgment for this debt, state the date the court entered the judgment.

#### 4. Amount of Claim at Time Case Filed

Fill in the **TOTAL AMOUNT OF THE ENTIRE CLAIM**. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach information of the interest and charges.

#### 5. Secured Claim

If your claim is a secured claim, check the appropriate boxes in this section. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured (See DEFINITIONS above).

#### 6. Unsecured Priority Claim

If your claim is an unsecured priority claim (See DEFINITIONS, above), check the appropriate boxes in this section, and state the amount entitled to priority. A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

#### 7. Credits

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

#### 8. Supporting Documents

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

*Please read - Important information upon completion of this claim form, you are certifying that the statements herein are true.*

Be sure to date the claim and place original signature of claimant or person making the claim for creditor where indicated at the bottom of the claim form. Please type or print name of individual under the signature. Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

Return claim form and attachments, if any, and a second copy with any attachments to the Claims Agent, Bankruptcy Management Corporation, at the address on the front of this form.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Chapter 11  
Case No. 03-10945 (MFW)  
(Jointly Administered)  
Fleming Companies, Inc., et al.  
Debtors

NOTICE OF DEADLINE FOR THE  
FILING OF PROOFS OF CLAIM AND PROOFS OF INTEREST

TO ALL CREDITORS OF THE DEBTORS

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (the "Debtors") filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (as amended from time to time the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

Pursuant to Section 105(e) of the Bankruptcy Code and Bankruptcy Rule 3002(c)(3), all Persons and Entities, including, without limitation, individuals, partnerships, corporations, estates, trusts, governmental units (which shall include all entities defined as such in Section 101(27) of the Bankruptcy Code, including any such entity that holds a claim arising from prepetition tax years or periods or from prepetition transactions to which a Debtor was a party), and entities asserting claims against an individual Debtor that arose out of the obligations of such entities or the Debtors under a contract for the provision of liability insurance (each a "Creditor" and collectively, "Creditors") holding or wishing to assert a claim as defined in Section 101(5) of the Bankruptcy Code against any of the Debtors (collectively, the "Claims") or interest in any of the Debtors (collectively, the "Interests") arising on or before April 1, 2003 (the "Petition Date"), are required to file a separate completed and executed proof of claim form conforming substantially to Official Bankruptcy Form 101 (the "Proof of Claim") on account of any Claims such Creditors hold or wish to assert against the Debtors so that the Proof of Claim is actually received on or before 4:00 p.m. Pacific Daylight Time on September 15, 2003 (the "General Bar Date") or in the case of governmental units, by October 1, 2003, the "Governmental Unit Bar Date," by the Debtors' Official Notice and Claims Agent at the following address:

Bankruptcy Management Corporation ("BMC")  
1330 East Franklin Avenue, El Segundo, CA 90245 (for overnight mail or hand delivery)  
P.O. Box 900, El Segundo, CA 90245 0900 (for regular mail)  
Telephone: 1-888-909-0100

Notwithstanding the foregoing, AT THIS TIME, Proofs of Claim ARE NOT REQUIRED to be filed by Creditors holding or wishing to assert Claims against the Debtors of the types that are set forth in clauses (a) through (f) below (collectively, the "Excluded Claims"):

- (a) Claims listed in the Debtors' Schedules of Assets and Liabilities (the "Schedules") filed with the Court pursuant to Bankruptcy Rule 1007, or any amendments thereto, which are not herein listed as contingent, unliquidated or "disputed" and which are not disputed by the creditor holding such claim as to nature, amount, or classification;
- (b) Claims on account of which a Proof of Claim has already been properly filed with the Court;
- (c) Claims previously allowed by, or paid pursuant to, an order of the Court, including, without limitation, any claims of the Agents and/or the Lenders allowed pursuant to the Final DIP Order<sup>2</sup>;
- (d) Claims allowable under Sections 503(b) and 507(a)(1) of the Bankruptcy Code as administrative expenses of the Debtors' Chapter 11 cases;
- (e) Claims made by any of the Debtors or any direct or indirect subsidiary of any of the Debtors against one or more of the other Debtors;
- (f) Claims of an entity whose claim is limited exclusively to a claim for the repayment of principal and/or interest on or under any issuance by any of the Debtors of any debt security (collectively, the "Notes") or any indenture in respect of each issue of the Notes (the "Indentures" and each such Indenture collectively with the Notes issued thereunder, the "Debt Instruments"), provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustees under any of the

<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., Fivar Concepts Ltd., Fleming Foods Management Co. LLC, 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.

<sup>2</sup> The term "Final DIP Order" refers to the Final Order Authorizing (I) Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c) (II) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rules 4001(b) and (d), (III) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 and (IV) Approving Secured Inventory Trade Credit Program and Granting Subordinate Liens Pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c).

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Indentures (the "Indenture Trustees"), (ii) each Indenture Trustee shall be required to file a Proof of Claim on account of the applicable Debt Instruments for which it is the Indenture Trustee on or before the General Bar Date, provided further, that each Indenture Trustee may file a single Proof of Claim against all Debtors liable under such Debt Instruments, provided further that any such Proof of Claim shall expressly designate those Debtor entities that are so liable and the basis for such liability, and provided further that each holder of Notes shall retain the exclusive right (if any) to vote individually on any chapter 11 plan of the Debtors with respect to their respective claims, and (iii) each Indenture Trustee and any holder of Notes that wishes to assert a claim against the Debtors arising out of or relating to a Debt Instrument, other than a claim for the repayment of principal and/or interest on or under a Note, shall be required to file a Proof of Claim on or before the General Bar Date, unless another exception in this paragraph applies

Should the Court fix a date in the future after the General Bar Date by which time the Excluded Claims must be filed, you will be so notified

Each Proof of Claim form must specifically set forth the full name of the Debtor and the proper case number, as set forth in the above caption of the Debtors' Chapter 11 cases, and must be filed by delivering the Proof of Claim form with the original signature so that it is actually received by Bankruptcy Management Corporation at the following address: 1330 East Franklin Avenue, El Segundo, California 90245 (for overnight mail or hand delivery), or P O Box 900, El Segundo, CA 90245 0900 (for regular mail); telephone 888-909-0100 at or before 4 00 p.m. Pacific Daylight Time on the General Bar Date, or at or before 4 00 p.m. Pacific Daylight Time on the Governmental Bar Date, October 1, 2003, if such claimant is a Governmental Unit

A Proof of Claim form is enclosed with this notice and may be used to file with respect to your Claims and/or Interests

**PLEASE TAKE FURTHER NOTICE THAT, EXCEPT WITH RESPECT TO CLAIMS OF THE TYPE SET FORTH IN PARAGRAPHS (a) THROUGH (g) ABOVE AND GOVERNMENTAL UNITS (WHICH MUST FILE PROOFS OF CLAIM ON OR BEFORE 4 00 P.M. (PACIFIC DAYLIGHT TIME) ON OCTOBER 1, 2003) ANY CREDITOR WHO IS REQUIRED TO FILE A PROOF OF CLAIM BUT FAILS TO DO SO ON OR BEFORE 4 00 P.M. (PACIFIC DAYLIGHT TIME) ON SEPTEMBER 15, 2003, SHALL BE FOREVER BARRED, STOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO), AND THE DEBTORS AND THE DEBTORS' PROPERTY SHALL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH CLAIM AND SUCH HOLDER SHALL NOT BE PERMITTED TO VOTE ON ANY PLAN OF REORGANIZATION OR PARTICIPATE IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM(S)**

In the event that the Debtors should amend their Schedules subsequent to the date hereof, the Debtors shall give notice of such amendment to the holders of the claims affected thereby, and such holders shall be afforded the later of the General Bar Date or thirty (30) days from the date on which such notice has been given to such holders (or such other time period as may be fixed by the Court) to file a Proof of Claim or forever be barred from doing so

In the event that a Claim arises with respect to the Debtors' rejection of an executory contract or unexpired lease, the holder of such Claim will be afforded the later of the General Bar Date or thirty (30) days after the effective date of any order authorizing the rejection of the executory contract or unexpired lease to file a Proof of Claim or forever be barred from doing so

The Debtors' Schedules may be examined and inspected by interested parties during regular business hours at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, District of Delaware, 824 Market Street 5<sup>th</sup> Floor, Wilmington Delaware 19801. The staff of the Bankruptcy Clerk's Office is prohibited by law from giving legal advice. A copy of the Debtors' Schedules may be obtained by contacting Bankruptcy Management Corporation at the following address: 1330 East Franklin Avenue, El Segundo, California, 90245 (overnight mail or hand delivery), or P O Box 900, El Segundo, CA 90245 0900 (regular mail), telephone 1-888-909-0100. Creditors wishing to rely on the Schedules are responsible for determining whether their claims are accurately listed therein

**THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM AGAINST THE DEBTORS. YOU SHOULD CONSULT WITH YOUR OWN PROFESSIONALS TO DETERMINE WHETHER YOU HOLD A CLAIM AGAINST THE DEBTORS. YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST THE DEBTORS. QUESTIONS CONCERNING THIS NOTICE SHOULD BE DIRECTED TO BANKRUPTCY MANAGEMENT CORPORATION, P O BOX 900, EL SEGUNDO, CA 90245-0900 (FOR REGULAR MAIL) OR 1330 E FRANKLIN AVE., EL SEGUNDO, CA 90245 (FOR OVERNIGHT OR HAND DELIVERY), TELEPHONE 888-909-0100**

Dated July 26 2003

Fleming Companies, Inc., 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., Dunagan 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., Fuelsco, 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.

Debtors and Debtors in Possession

- 1 In its original proof of claim, the Canada Customs and Revenue Agency (CCRA) explained the tax situation of Core-Mark and outlined the existence of provisional claims for Income Tax and Goods and Services Tax ("GST"). A copy of that explanation is attached as Schedule 'A'
- 2 The provisional claims have now been quantified. Core-Mark has filed its income tax return for the 2003 tax year indicating \$47,480.00 (Cdn) owing in tax.
- 3 CCRA holds \$1,467,806.88 (Cdn) in amounts Core-Mark pre-paid (including interest which has accrued on the amount) for its income tax liability for the 2003 tax year, pursuant to the provisions of the *Income Tax Act*, including s 157 (the 'Fund').
- 4 As anticipated, a GST assessment has also now been raised against Core-Mark pursuant to s 296(1)(b) of the *Excise Tax Act* in the amount of \$2,775,306.88 (Cdn), relating to the March 2003 period. A copy of the assessment is attached as Schedule 'B'.
- 5 CCRA entered into settlement minutes with Core-Mark in relation to CCRA's tax claims. The result of that settlement was that CCRA was paid, or collected by way of set-off, all of its then quantified debt with the exception of \$80,000 (See the order granting the relief sought in the Debtors' Fourth Omnibus Objection to the Claims (Substantive)).
- 6 An additional GST credit adjustment was set off against the debt leaving a balance of \$30,684.53 (Cdn) from the previously quantified claims.
- 7 The minutes of settlement preserved CCRA's right to claim as an unsecured creditor for the provisional or contingent claims and the right to set-off that may arise with respect to any unsecured claim. A copy of the minutes of settlement is attached as Schedule 'C'.
- 8 The tax owing for the 2003 tax year has been prepaid from the Fund. This has left an excess of \$1,420,326.88 (Cdn) in the Fund. CCRA now has a claim for a total of \$2,805,991.41 related to GST, of which \$1,420,326.88 (Cdn) is secured through CCRA's statutory right of set-off against the Fund under relevant federal legislation, including ss 224.1 and 164(2) of the *Income Tax Act* and s 316 of the *Excise Tax Act*.
- 9 Attached as Schedule 'D' is a statement of account.

## Schedule 'A'

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- 1 The Canada Customs and Revenue Agency ("the CCRA"), a Crown agent of the Government of Canada, has two claims for unpaid Goods and Services Tax: one is a secured claim or alternatively a priority unsecured claim, the other is an provisional claim for which there may be partial security by way of a statutory set-off. The CCRA also has a third provisional claim for income tax for the taxation year ending on June 17, 2003 for which there may be security by way of a statutory set-off.

### GST System Generally

- 2 Under section 165 of the *Excise Tax Act* (the "ETA"), every recipient of a taxable supply made in Canada is required to pay Goods and Services Tax ("GST") in respect of a taxable supply calculated on the value of the consideration for the supply. In general, the ETA places an obligation on the supplier, as an agent for the Government of Canada ("the Crown"), to collect the tax payable by the recipient, account for the tax in its net tax calculation and remit any positive amount of net tax.
- 3 Generally, a purchaser can claim an input tax credit to recover the tax payable in respect of its purchases to the extent that they are for consumption, use or supply in the course of the purchaser's commercial activities. An input tax credit can be claimed for tax payable even if the amount of tax is not paid to the supplier at the time the input tax credit is claimed. In turn, the supplier will account for the tax payable, even if it has not yet been paid by the purchaser, in the supplier's net tax and remit any positive amount of net tax. If the amount is not collected from the purchaser and the supplier writes the amount off as a bad debt, the supplier is generally entitled to claim a deduction in calculating its net tax.
- 4 All taxes and other amounts payable under Part IX of the ETA, including assessments of tax payable, are debts due to the Crown.

Established Secured/Priority Claim

- 5 Core-Mark International Inc ("Core-Mark") filed a GST return for the month ending March 31, 2003 on May 2, 2003 reporting that it collected GST totalling \$ 5,744,163.81. After deducting input tax credits of \$2,922,176.40 it reported that it held \$ 2,821,987.41 in net GST, which it did not remit to the CCRA. Attached hereto and marked as Exhibit "A" is copy of the March 31, 2003 return.
- 6 During the years 1999 through 2002 Core-Mark made a series of pre-payments towards its income tax liability for various years. There is now \$1,640,323 of credits that currently stand on the account for Core-Mark for prepaid income tax for tax years other than the 2003 tax year.
- 7 Core-Mark has also made installment payments for income tax for the tax year ending June 17, 2003 totaling \$2,130,000.
- 8 The CCRA has statutory rights of set-off under relevant federal legislation including ss 224.1 and 164(2) of the *Income Tax Act* and s 316 of the *Excise Tax Act*.
- 9 A Notice of Assessment for the GST debt subject to the secured or priority claim has not yet been issued as Core-Mark has been provided with an opportunity to respond to certain proposed adjustments of the CCRA, though an assessment is expected to be issued in the amount of \$2,759,962.86 + accrued interest.
- 10 In addition to being secured by the authority of a statutory set-off, the GST amounts for the month of March 2003 and referred to in paragraph 9 above has given rise to a 'deemed trust' under section 222 of the *Excise Tax Act* which provides

*Despite any other provision of this Act, any other enactment of Canada (other than the Bankruptcy and Insolvency Act), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General,*

property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held in trust for Her Majesty, and

(b) to form no part of the estate or property of the person

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests

- 11 The deemed trust provision establishes that any property belonging to the debtor and/or the secured creditor of the debtor (by virtue of the security interest) is imprinted with the deemed trust and becomes the property of the Crown to the extent of the debt. The CCRA therefore has a priority claim to the amounts referred to in paragraph 9 separate and apart from its statutory set-off, which takes priority to the claims of any creditor including any secured creditors

#### Provisional Claims

##### Income Tax Provisional Claim

- 12 Core-Mark has not yet filed its income tax return for the tax year ending June 17 2003. This tax year straddles April 9, 2003, the date on which Core-Mark filed for protection under the *Companies' Creditors Arrangement Act* in Canada. The CCRA is unable to quantify the income tax liability for that tax year until Core-Mark files its tax return, though it is aware that Core-Mark has already made over 2 million dollars of pre-payments for its income tax liability for that tax year. The tax return for that period is not due until December of 2003. Any income tax debt for that tax year which is attributable to the period prior to the initiation of CCAA proceedings is the subject of a provisional claim by the CCRA.

- 13 A portion of the income tax provisional claim may also be a secured claim. This is so because Core-Mark has made pre-payments for income tax for the tax year ending June 17, 2003 which could be the subject of a statutory set-off.

GST Provisional Claim

- 14 Core-Mark has claimed input tax credits in the amount of \$2,922,176.40, in the GST return filed for the month of March 2003. This has been the subject of an initial proposed audit adjustment increasing the input tax credits for the month of March 2003 to \$2,984,200.95.
- 15 If the unpaid suppliers/creditors to Core-Mark will not be paid 100 cents on the dollar of invoiced amounts in relation to which Core-Mark has already claimed input tax credits in the GST return filed for the month of March 2003, the suppliers/creditors of Core-Mark will have an amount for a bad debt and a corresponding claim for reduction adjustment in relation to their GST returns. Under s. 231 of the ETA, a supplier would generally have 4 years from the time they have written off the debt in their books to claim relief.
- 16 In circumstances of potential revenue loss, the Minister of National Revenue may exercise the authority under paragraph 296(1)(b) of the ETA to assess the purchaser of goods and services (Core-Mark) rather than the supplier. An assessment of tax payable may be made where a purchaser has claimed an input tax credit in respect of a taxable purchase, for which payment to the supplier remains outstanding, and the supplier is generally entitled to a bad debt deduction in calculating its net tax. Under these circumstances, an assessment of tax payable addresses the net revenue loss position that would occur if the supplier deducts the bad debt adjustment in its net tax calculation.
- 17 For example, the Minister may assess a purchaser who is insolvent or bankrupt in respect of the GST not paid to a supplier. For the purposes of the ETA, forgiven debts pursuant to an arrangement under the *Companies' Creditors Arrangement Act* are considered to be bad debts as opposed to reductions of consideration. As such, the provisions of section 231 of the ETA apply to forgiven debts.



- 18 The amount of a further GST assessment of Core-Mark under s. 296(1)(b) of the ETA will therefore be the portion of the GST component in invoices from March 2003 which are not paid by Core-Mark and which therefore form a bad debt for the suppliers. The amount of the assessment will be calculated as a portion of the \$2,984,200.95 of Core-Mark's total input tax credits for the period ending March 31, 2003. However the amount of the assessment cannot be determined until it is established what portion of the suppliers' debts from the invoices from March 2003 will be forgiven or extinguished within the Companies' Creditors Arrangement Act proceedings. This will be determined once a plan is filed and approved under the *Companies Creditors Arrangement Act*.
- 19 A portion of the GST provisional claim may also be a secured claim. This is so because the amount pre-paid by Core-Mark for income tax is currently over \$3.7 million, while the deemed trust debt is currently less than 3 million. Whether or not there are any amounts held by the CCRA remaining for set-off against the provisional GST claim will therefore depend on whether or not Core-Mark will have an income tax debt for the tax year ending June 17, 2003.

10/28/04 13 38 FAX 604 683 0570  
10/25 2004 12 46 FAX 6046062214

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JUSTICE CANADA TAX

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643 Cc: La Douane  
and Revenue Agency  
Agence des douanes  
et du revenu du Canada

Schedule B

GOODS AND SERVICES TAX/HARMONIZED SALES TAX  
TAXE SUR LES PRODUITS ET SERVICES/TAXE DE VENTE HARMONISEE

NOTICE OF (RE) ASSESSMENT

118U05 00 887	2004 07 21	10115	1835	RT0001
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CORE MARK INTERNATIONAL INC  
601-13211 DELF PLACE  
RICHMOND BC  
V6V 2A2

RE) ASSESSMENT PERTAINING TO 2003-03-01 TO 2003-03-31

\$5 535 269 33	\$0 00	\$0 00	\$0 00
\$0 00	\$0 00	\$0 00	\$2,775,306 88

EXPLANATION OF CHANGES

The Amount Owng reflects only the results of the audit for the above noted period and does not reflect balances from any other period.

Please note that Amount Owng does not reflect any payments that may have been made with respect to this assessment. The payments have, however, been taken into account in the calculation of penalty and interest.

THE DETAILS THE AMOUNT OWING ARE SUMMARIZED BELOW.

Summary of assessment for the period 2003-03-01 TO 2003-03-31

Adjustments to GST MISST COLLECTIBLE (GST)	\$2,775,306 88
Adjustments to INPUT TAX CREDIT (ITC)	\$ 0 00
Total Adjustments for Assessment period	\$2,775,306 88
Penalty	\$ 0 00
Interest	\$ 0 00
Other Penalty	\$ 0 00
Amount Owng	\$2,775,306 88
PAYMENTS RECEIVED	-\$ 0 00

Penalty and Interest Calculated up to 2004 07 21

Please note that Penalty and interest accrue daily on any unpaid balance.

Make your cheque or money order payable to the RECEIVER GENERAL and forward it with the attached remittance form in the envelope provided to

CANADA REVENUE AGENCY  
9755 King George HWY  
Surrey BC  
V3T 5E1

Payments can also be made at the local Tax Services office or at your financial institution.

If you need more information please see reverse. Si vous avez besoin de plus amples renseignements, veuillez vous reporter au verso.  
COMMISSIONER CANADA CUSTOMS AND REVENUE AGENCY COMMISSAIRE AGENCE DES DOUANES ET DU REVENU DU CANADA

Canada

## Schedule 'C'

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MINUTES OF SETTLEMENT

WHEREAS in March 2003 Core-Mark International Inc ('Core-Mark') collected Goods and Services Tax ('GST') pursuant to the *Excise Tax Act*, R S C 1985 c E-15, as amended ('the *Excise Tax Act*') for the GST period ending March 31, 2003 which it did not remit to Canada Customs and Revenue Agency (the 'CCRA'),

AND WHEREAS on April 8 2003, Core-Mark filed a petition for protection under the *Companies Creditors Arrangement Act*, R S C 1985, c C-36 in support of proceedings initiated by Core-Mark and its affiliates in the United States Bankruptcy Court for the District of Delaware pursuant to Chapter 11 of the United States Bankruptcy Code on April 1, 2003,

AND WHEREAS CCRA has assessed the amount of collected but unremitted GST for the GST period ending March 31, 2003 at \$2 759,517 69 after adjustments ("the Deemed Trust Amount"),

AND WHEREAS CCRA has assessed a further amount of \$99,930 05 for the GST return period ending April 30, 2003 by way of a Notice of Reassessment dated September 25, 2003, which amount has now been paid by Core-Mark under protest and with a Notice of Objection objecting to the Notice of Reassessment dated September 25, 2003,

AND WHEREAS the CCRA holds approximately \$2 4 million dollars of refunds owing to Core-Mark arising from overpayments for corporate income tax under Part I or Part I.3 of the

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*Income Tax Act* R S C 1985, c 1 (5th Supp), as amended, ("the *Income Tax Act*") for Core-Mark's tax years 1998 through 2002,

AND WHEREAS the CCRA has filed a proof of claim for the recovery of the Deemed Trust Amount and a further provisional or contingent claim for GST pursuant to the claims process approved by the Order of Mr Justice Tysoe of July 7, 2003 for the GST reporting periods of Core-Mark prior to April 1, 2003,

AND WHEREAS Core-Mark has entered into an agreement with the CCRA regarding payment of GST which is the subject matter of the proofs of claim filed by the CCRA pursuant to the claims process approved by the Order of Mr Justice Tysoe of July 7, 2003 for the GST reporting periods of Core-Mark prior to April 1, 2003 (the "Pre-Petition Tax Liabilities")

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the sufficiency of which is acknowledged by each of the parties to the other

1. CCRA and Core-Mark have agreed that upon obtaining approval of the Supreme Court of British Columbia, all amounts held by CCRA to the credit of Core-Mark representing refunds, overpayments and other monies held by CCRA in respect of Core-Mark's taxation years prior to April 1, 2003 will be set off against the Pre-Petition Tax Liabilities and Core-Mark will pay eighty percent (80%) of any balance of the Pre-Petition Tax Liabilities then remaining unpaid

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2 CCRA has further agreed that forthwith upon receipt of the payment of eighty percent (80%) of the then remaining Pre-Petition Tax Liabilities (the "Settlement Amount"), CCRA releases all Directors, past or present, of Core-Mark from the Pre-Petition Tax Liabilities whether direct, indirect, absolute or contingent, provided that CCRA has the right to claim as an unsecured creditor of Core-Mark for the unpaid Pre Petition Tax Liabilities, including with respect to the provisional or contingent claim for GST filed by the CCRA within these proceedings, and has the right of set-off which may arise in the future with respect to any unsecured claims and which is authorized by any applicable legislation or otherwise permitted by any law

3 Core-Mark has agreed that it will withdraw or discontinue any objection to the Notice of Reassessment issued by the CCRA and dated September 25, 2003 adding \$99,930.05 to the amount reported in the GST return for the period ending April 30, 2003,

4 CCRA undertakes and agrees that it will not vote against any Plan of Reorganization proposed by the Debtors in the Ch 11 proceedings, except on the basis of the treatment in the Plan of Reorganization of a claim other than the claim which is the subject of this agreement, and providing that such Plan of Reorganization does not adversely impact the settlement or payment of any post-filing claims

IN CONSIDERATION of the payment of the Settlement Amount to CCRA and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), CCRA does hereby release and forever discharge all Directors of Core-Mark, past or present (the "Releasees") from any and all actions, judicial proceedings, suits, claims, demands, debts, costs

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interest, penalties, relating to the recovery of the Pre-Petition Tax Liabilities claimed by CCRA provided that this release does not affect the right of CCRA to claim as an unsecured creditor of Core-Mark for the unpaid Pre-Petition Tax Liabilities, or the right of the CCRA or the Minister of National Revenue to exercise any right of set-off with respect to any unsecured claims which may arise in the future and which is authorized by any applicable legislation or otherwise permitted by any law, or any ability of the CCRA or the Minister of National Revenue to assess or reassess Core-Mark pursuant to the powers provided under the *Income Tax Act*, the *Excise Tax Act* or any other taxing statute, or any other powers conferred under any taxing statute

IT IS UNDERSTOOD and agreed that the aforesaid consideration is deemed to be no admission of any liability on the part of the Releasees

DATED at the City of *VANCOUVER*, in the *PROVINCE OF BC*, this *25* day of February 2004

Core-Mark International, Inc



per its Chief Restructuring Officer

Canada Customs and Revenue Agency



per **Robert Allen**

Manager, Revenue Collections

## Schedule 'D'

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## Statement of Account for GST 101151835 RT0001

Revised Debt	\$ 30,684.53
New Assessment	\$2,775,306.88
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Sub-Total	\$2,805,991.41
LESS Set-Off	\$1,420,326.88
	-----
Unsecured Debt	<u>\$1,385,664.53</u>