

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

In re:

FLEMING COMPANIES, INC., et al.,

Debtors.

Chapter 11

Case No. 03-10945 (MFW)

Jointly Administered

Hearing Date: 01/05/04 at 2:00 p.m.

**STATEMENT OF POSITION AND RESERVATION OF RIGHTS OF CIRCLE K  
STORES INC. WITH RESPECT TO THE DEBTORS' MOTION FOR AN ORDER (I) (A)  
AUTHORIZING DEBTOR TO OBTAIN REPLACEMENT POST-PETITION  
FINANCING UNDER 11 U.S.C. § 364 AND BANKRUPTCY RULE 4001(c) AND DEL.  
BANKR. LR 4001-2 AND, ASSIGN THE EXISTING SECURED LENDERS' LIENS TO  
THE REPLACEMENT LENDERS, AND (B) AUTHORIZING DEBTOR TO PAY  
CERTAIN COMMITMENT AND RELATED FEES AND EXPENSES RELATING TO  
THE REPLACEMENT POST-PETITION FINANCING, (II) GRANTING ADEQUATE  
PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363; AND (III) AUTHORIZING  
DEBTOR TO REPAY CERTAIN OUTSTANDING OBLIGATIONS UNDER THE PRE-  
PETITION CREDIT AGREEMENT AND THE POST-PETITION LOAN AGREEMENT  
(Re Docket #5034)**

This Statement of Position and Reservation of Rights is filed by CIRCLE K STORES INC. ("Circle K"), a creditor and party in interest in the above-captioned, jointly administered Chapter 11 cases of FLEMING COMPANIES, INC. ("Fleming"), Fleming's affiliate CORE-MARK INTERNATIONAL, INC. ("CMI"), and certain of Fleming's other subsidiaries and affiliates (collectively with Fleming and CMI, the "Debtors"), by and through its undersigned counsel. Circle K files this Statement of Position and Reservation of Rights in connection with the "Debtors' Motion For An Order (I) (A) Authorizing Debtor To Obtain Replacement Post-Petition Financing Under 11 U.S.C. § 364 And Bankruptcy Rule 4001(C) And Del. Bankr. Lr 4001-2 And, Assign The Existing Secured Lenders' Liens To The Replacement Lenders, And (B) Authorizing Debtor To Pay Certain Commitment And Related Fees And Expenses Relating To The Replacement Post-Petition Financing, (II) Granting Adequate

Protection Pursuant To 11 U.S.C. §§ 361 And 363; And (III) Authorizing Debtor To Repay Certain Outstanding Obligations Under The Pre-Petition Credit Agreement And The Post-Petition Loan Agreement" (the "Replacement Financing Motion") filed on December 16, 2003 (Docket #5034 ), and hereby respectfully represents and asserts as follows:

1. On April 1, 2003 (the "Petition Date"), the Debtors each filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code, thereby commencing the above-captioned Chapter 11 cases. Since the Petition Date, the Debtors have been administering their assets and affairs as debtors-in-possession pursuant to Bankruptcy Code §§1107(a) and 1108.

2. The Debtors assert that they are currently attempting to reorganize around their convenience store business which would presumably mean a reorganization primarily related to the business of CMI which directly involves and affects Circle K.

3. Circle K and CMI are parties to several agreements, including, but not limited to: (i) that certain "Agreement To Design, Equip, Manage And Operate A Distribution Center" made as of November 3, 2000 (the "Management Agreement"); and (ii) that certain "CMI Merchandise Distribution Agreement" made as of January 26, 2001 (the "Distribution Agreement", and together with the Management Agreement, the "Agreements").

4. Pursuant to the Management Agreement, Circle K has engaged CMI as an independent contractor to provide project planning, project development, management, and operation services for the benefit of Circle K in connection with a consumer packaged goods distribution center (the "Arizona Distribution Center") to service the over 500 Circle K-supplied retail outlets in the State of Arizona.

5. Circle K and CMI are also parties to that certain "CMI Merchandise Distribution Agreement" made as of January 26, 2001 (the "Distribution Agreement"). Pursuant to the Distribution Agreement, Circle K has engaged CMI for the purposes of selling and delivering merchandise to Circle K retail outlets in various states west of the Mississippi River.

6. Under the Management Agreement, CMI, as an independent contractor engaged by Circle K, and subject to the terms and restrictions set forth in the Management Agreement, acquires, possesses, manages, and administers a significant amount of property of Circle K as provided under the Management Agreement. This Circle K property includes, without limitation, the Arizona Distribution Center, the Property, the Lease, the Inventory, the FF&E, any goods located in the Arizona Distribution Center, and Merchandise Income (as these terms are defined in the Management Agreement), in which the Debtors do not (and have acknowledged that they do not) have any legal or equitable interest. In addition, under the Distribution Agreement, CMI also acquires, possesses, manages, and administers Merchandise Income (as this term is defined in the Distribution Agreement) and other property belonging to Circle K in which the Debtors do not (and have acknowledged that they do not) have any legal or equitable interest. The property of Circle K described in the Agreements that has been, is, or will be, acquired or possessed by the Debtors, or that otherwise has been, is, or will be managed or administered by CMI or any of the other Debtors, pursuant to the terms of the Agreements shall be referred to herein collectively as the "Circle K Property".

7. On December 16, 2003, the Debtors filed the Replacement Financing Motion, pursuant to which the Debtors seek, among other things, to obtain replacement financing, transfer existing liens to the new lender(s) and grant liens and security interests in all property of the Debtors.

8. The definitions contained in the proposed "Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement" (the "Credit Agreement") are very broad. For example, definition of Inventory includes inventory "held by . . . any Borrower . . . or are furnished or are to be furnished under a contract of service . . ." Annex A to Credit Agreement, pg. A-14. Other types of collateral to which the replacement liens and security interest and liens will attach are also broad and may impact upon the Circle K Property. Therefore, it is unclear that the liens and security interests to be granted are limited to interests that are owned by the Debtors. In addition, there may be other provisions in the Credit Agreement that are contrary to terms of the

Management Agreement and/or the Distribution Agreement and give or purport to give rights to the proposed lenders in property that is not owned by the Debtors and in which the Debtors have acknowledged that they have no legal or equitable interest or that may violate the terms of the Management Agreement and/or the Distribution Agreement.

9. Circle K has no objection to the Replacement Financing Motion so long as the any orders entered and the Credit Agreement make clear that the replacement liens and other liens and security interests granted therein (the "Liens"), do not encumber, impair, or otherwise affect in any way any of the Circle K Property or any of Circle K's rights and remedies under or in connection with the Agreements and the Circle K Property.

WHEREFORE, Circle K has no objection to the Replacement Financing Motion to the extent that the proposed order, the Credit Agreement and the Liens do not encumber, impair, or affect in any way the Circle K Property or any of Circle K's rights and remedies under and with respect to the Agreements and the Circle K Property. Circle K hereby expressly reserves all of its rights and remedies under and in connection with the Agreements and the Circle K Property.

Dated: December 30, 2003

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

By /s/ Tobey M. Daluz  
Tobey M. Daluz (No. 3939)  
William M. Kelleher (No. 3961)  
919 North Market Street  
17th Floor  
Wilmington, DE 19801-3034  
Phone: (302) 252-4465  
Fax: (302) 252-4466  
[daluzt@ballardspahr.com](mailto:daluzt@ballardspahr.com)  
[kelleherw@ballardspahr.com](mailto:kelleherw@ballardspahr.com)

Attorneys for CIRCLE K STORES INC.