

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

**PROOF OF CLAIM**



520712

Bar Date Ref # 2-NC-6000523

In re <b>Fleming Companies, Inc</b>	Case Number <b>03-10945 (MFW)</b>
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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.

**Name of Creditor and Address**

PRODUCE GARDEN  
2041 CORAL ST  
PHILADELPHIA PA 19125

0354653520712

☐ 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.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if this address differs from the address on the envelope sent to you by the court.

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 ( ) (215) 739-5454

CREDITOR TAX ID #

23-2596915

ACCOUNT OR OTHER NUMBER BY WHICH  
CREDITOR IDENTIFIES DEBTOR  
523

Check here  
if this claim

☐ replaces  
or  
☐ amends

a previously filed claim dated \_\_\_\_\_

**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 type="checkbox"/> Taxes                               | <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) |
| <input type="checkbox"/> Money loaned       | <input checked="" type="checkbox"/> Other (describe briefly) |   |

Your social security number \_\_\_\_\_

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

LOST PROFITS DUE TO FAILURE TO SUPPLY PRODUCT.

**2 DATE DEBT WAS INCURRED**

**3 IF COURT JUDGMENT, DATE OBTAINED**

**4 TOTAL AMOUNT OF CLAIM  
AS OF PETITION DATE**

\$ Unliquidated \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
(unsecured) (secured) (unsecured priority) (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ 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**

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral

- ☐ Real Estate  
☐ Motor Vehicle  
☐ Other \_\_\_\_\_

Value of collateral \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim above if any \$ \_\_\_\_\_

**6 UNSECURED PRIORITY CLAIM**

☐ Check this box if you have an unsecured priority claim.

Specify the priority of the claim

- ☐ 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)
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4)
- ☐ 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)
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7)
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8)
- ☐ Other. Specify applicable paragraph of 11 U.S.C. § 507(a) \_\_\_\_\_

\* 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.

**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 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

09-12-2003

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).

*[Signature]*

Fleming Companies Claim



12068

**FILED**

SEP 13 2003

**BMC**

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions

## FACILITY STANDBY AGREEMENT

THIS FACILITY STAND BY AGREEMENT (the "Agreement") is made as of this 8<sup>th</sup> day of December, 2000 (the "Effective Date"), by FLEMING COMPANIES, INC., an Oklahoma corporation ("Fleming"), and Cousin's Supermarket, Inc No 3, a Pennsylvania corporation ("Retailer"), with reference to the following circumstances

(i) Fleming is a full-line wholesale supplier of food, grocery, and related products through its product supply center at Northeast, Maryland and other locations, and

(ii) Retailer is a retailer of food, grocery, and related products and operates a retail grocery store at the location listed on Exhibit "A" hereto, and

(iii) Fleming has previously guaranteed a lease for the benefit of Retailer at the location listed on Exhibit "A", and

(iv) Concurrently herewith, Fleming and Retailer are entering into various agreements relating to the location listed on Exhibit "A", including but not limited to that certain letter agreement attached hereto as Exhibit "B", the terms and conditions of which are incorporated herein as if set forth in full, and

(v) Retailer has requested that Fleming be prepared to supply to Retailer a certain amount of food, grocery, non-food, and related products, and to be able to do so Fleming will have to commit certain resources including capital, employees, inventory, equipment, and facilities, and

(vi) Retailer acknowledges that but for Retailer's covenants and agreements in this Agreement, Fleming would not have agreed to commit its resources for the benefit of Retailer and entered into this Agreement

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants stated below, and intending to be legally bound, the parties agree as follows

1 Fleming's Commitment to Supply Throughout the term of this Agreement, Fleming will maintain capital, employees, inventory, equipment, and facilities sufficient to supply Products to Retailer in quantities sufficient to allow Retailer to meet the Estimated Purchase Level described in Section 3 of this Agreement

2 Price and Other Terms of Sale

(a) General Except as otherwise provided, the Products sold to Retailer pursuant to this Agreement shall be priced, and other terms of sale shall be established at levels which are generally consistent with the Flex Mate Marketing Plan, as modified by the Philadelphia Base Sales Service Plan dated 6/8/98 attached as Exhibit "A" to Flex Mate Marketing Plan, pursuant to which Retailer is purchasing Products (grocery, dairy, frozen food

and supply purchases), which is hereby incorporated by reference attached hereto and made a part hereof, marked Exhibit "B", and which has been reviewed with Retailer, as amended from time to time by Fleming (the "Selling Plan"), provided such amendments shall be applicable to all similarly situated customers of Fleming purchasing Products pursuant to such Selling Plan. As to any Products which are not covered by the Selling Plan, the price of such Products shall be Fleming's quoted selling price in effect for such Products from time to time.

(b) Exclusive Pricing Provisions and Other Terms and Conditions

Notwithstanding subsection (a) above, or any other provision of this Agreement, the following pricing provisions and other terms and conditions shall apply with respect to the purchase and sale of Products pursuant to this Agreement during Years 1 and 2 of this Agreement:

(i) Pricing

<u>Product</u>	<u>Price to Retailer Not to Exceed the following Percentage Over Fleming's Actual Cost for Such Products</u>
Grocery	3.0%
Frozen Food	4.0%
Dairy	3.0%
Health and Beauty Products	8.0%
General Merchandise (cases)	7.0%
General Merchandise (units)	16.0%

(ii) In the event that Retailer extends the term of this Agreement for an additional five (5) year term in accordance with Section 4 below, Fleming shall, during any extension of the term, charge fees and assure marketing funds with conditional retailer options in a manner which is competitive with similarly situated retailers as to volume of purchases and number of stores supplied by Fleming in the region ("Other Retailers") consistent with the terms of the then applicable Selling Plan. If, at any time during the aforesaid extended term, Fleming exercises a fee change which is not considered competitive as to Other Retailers, Retailer shall have the option of terminating this Agreement, without penalty, provided it pays the unamortized balance of any amounts outstanding to Fleming under any Note(s) of Retailer to Fleming.

In the event Retailer elects to terminate this Agreement due to an alleged non-competitive fee change, Retailer shall provide Fleming with written notice thereof which notice shall include a copy of any and all proposed supply contracts from the grocery wholesale supply company, or companies as the case may be (which may be redacted for confidentiality purposes) on which Retailer bases its non-competitive claim (a "Non-Competitive Termination Notice"). Fleming shall have thirty (30) days from the date of receipt of a Non-Competitive Termination Notice to investigate the

competitiveness of its pricing and the validity of Retailer's claim ("Investigation Period") and Retailer shall continue to purchase Products from Fleming during this Investigation Period

Upon the expiration of the Investigation Period, if Fleming elects to present a proposal to Retailer with pricing that is substantially similar to that upon which Retailer bases its non-competitive claim ("Fleming Counterproposal") or Fleming determines, in its reasonable opinion, based upon submission of a spreadsheet to Retailer as a statistical demonstration of the cost of goods sold, freight, promotional allowances and other pertinent terms versus the terms of the proposed final supply contract from the competing grocery wholesale supply company, that Retailer's claim is not valid, then unless Retailer invokes the arbitration provisions contained in Section 6 below to resolve any dispute regarding the competitiveness of Fleming's fee change, Retailer shall be obligated to purchase pursuant to this Agreement, as modified by any Fleming Counterproposal. In the event a Fleming Counterproposal is not forthcoming at the expiration of the Investigation Period, and/or Fleming determines that Retailer's non-competitive claim is valid, the Agreement shall be considered terminated in accordance with the provisions described herein

(iii) Other Terms and Conditions

- Minimum orders for Products shall not exceed amounts that are reasonably consistent with amounts historically ordered by Retailer. A violation of the minimum order provisions of this Agreement shall not constitute a default hereunder

- Retailer shall participate in annual volume rebate programs consistent with those in which it has historically participated (or which are customarily provided to other customers of Fleming)

- Retailer shall participate in sales growth rebate programs consistent with those in which it has historically participated (or which are customarily provided to other customers of Fleming)

- Retailer shall participate in all other growth and incentive programs offered by Fleming consistent with those in which it has historically participated (or which are customarily provided to other customers of Fleming)

- Retailer shall take reasonable steps to obtain price concessions and participation from vendors with respect to Retailer's anniversary sales programs

3 Facility Stand By Fee

(a) Amount By entering into this Agreement, Fleming has committed to devote such capital, employees, inventory, equipment, and facilities as are required to supply Retailer with the quantity of Products necessary for Retailer to maintain the Estimated Purchase Level (defined in Section 3(b) hereof) for the term of this Agreement. Fleming is willing to so

commit such resources because of the return it will realize from sale of Products in the quantities necessary for Retailer to meet the Estimated Purchase Level during the term of this Agreement. If Retailer does not purchase Products in such quantities, Retailer agrees to pay Fleming a Facility Standby Fee. The amount of the Facility Standby Fee shall be equal to three percent (3%) of the amount by which Retailer's purchases during each twelve (12) month period during the term of this Agreement (the first such period beginning with the Effective Date of this Agreement) are less than the amount of purchases which are required to maintain the Estimated Purchase Level. Retailer shall pay the Facility Stand By Fee within thirty (30) days after the close of the twelve (12) month period for which such fee is owed.

(b) Estimated Purchase Level Retailer has estimated that its purchases of Products for delivery to the Stores during each 12-month period during the term of this Agreement will be not less than \$5,500,000.00 (the "Estimated Purchase Level"). Fleming will commit its resources, including capital, employees, inventory, equipment and facilities, in order to be prepared to supply the Estimated Purchase Level of Products to Retailer.

(c) No Other Retailer Obligations Except as otherwise provided in Section 3 of this Agreement, Retailer shall have no obligations to purchase any specific quantity or type of Products from Fleming.

4 Term Unless terminated sooner in accordance with this Agreement, the term of this Agreement will commence on the date hereof and will extend until the date which is two (2) years following the date hereof, at the end of the aforesaid Term, and if Retailer shall not have terminated this Agreement in accordance with the terms hereof, this Agreement will automatically be extended for an additional term of five (5) years. Provided, however, notwithstanding the foregoing, the Retailer shall be entitled to terminate this Agreement on the date which is two (2) years following the date hereof on sixty (60) days' prior written notice.

## 5 Default

(a) Default by Retailer If Retailer fails to perform in any material respect any of its obligations under this Agreement, other than a monetary default as noted below, which failure continues uncured for a period of fifteen (15) days after the date written notice of such failure has been given by Fleming to Retailer (and in the event such breach is not capable of being cured within such fifteen (15) day period, but Retailer commences cure efforts within the fifteen (15) day period and promptly and diligently prosecutes such efforts, Retailer shall have an additional fifteen (15) days within which to effect such cure), then Retailer shall be in default and Fleming shall have all rights and remedies available under law, including, without limitation, the right to immediately stop shipment of Products, the right to immediately terminate this Agreement by written notice (a "Termination Notice"), and the right of specific enforcement of the obligations of Retailer. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Retailer shall have five (5) days from receipt of a Notice of Termination within which to cure the monetary default. Fleming shall not be obligated to ship any Products to Retailer during such five (5) days. Fleming's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Fleming. In no event whatsoever shall Retailer be liable to

Fleming for, and Fleming waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), or statutorily prescribed damages. In the event Fleming is not supplying Products to Retailer through no fault of or default by Retailer, then the Estimated Purchase Level required to be maintained by Retailer shall be reduced by the total cost of the Products that Fleming failed to supply Retailer so as to prevent Retailer from maintaining the Estimated Purchase Level.

(b) Default by Fleming If Fleming fails to perform in any material respect any of its obligations under this Agreement, which failure continues uncured for a period of fifteen (15) days after the date written notice of such failure has been given by Retailer to Fleming (and in the event such breach is not capable of being cured within such fifteen (15) day period but Fleming commences cure efforts within the fifteen (15) day period and promptly and diligently prosecutes such efforts, Fleming shall have an additional fifteen (15) days within which to effect such cure), then Fleming shall be in default and Retailer shall have the right to immediately terminate this Agreement by written notice and pursue all remedies available under this Agreement or law by reason of such default, including, without limitation, specific enforcement of the obligations of Fleming. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Fleming shall have five (5) days from receipt of the notice of termination from Retailer within which to cure the monetary default. Retailer's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Retailer. In no event whatsoever shall Fleming be liable to Retailer for, and Retailer waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), or statutorily prescribed damages.

6 Disputes, Arbitration The parties shall attempt to resolve all disputes between the parties hereunder through direct negotiation. If the dispute is not resolved within ten (10) business days after a demand for direct negotiation, the parties shall attempt to resolve the dispute through arbitration as provided in this Agreement. This agreement to arbitrate shall survive the rescission or termination of this Agreement. All arbitration shall be conducted in Philadelphia, Pennsylvania, pursuant to the Commercial Arbitration Rules of the American Arbitration Association except as may be otherwise provided in this Agreement. The panel used will be selected from, if available, the "Food Industry Panel" employed by the American Arbitration Association, and the decision of the arbitrators will be final and binding on all parties. All arbitration will be undertaken pursuant to the Federal Arbitration Act, and the decision of the arbitrators will be enforceable in any court of competent jurisdiction.

All arbitrators shall be neutral, impartial, independent of the parties and others having any known interest in the outcome, shall abide by the ABA and AAA code of ethics for neutral arbitrators and shall have no ex parte communications about the dispute with either party.

In any dispute where a party seeks \$50,000 or more in damages, three arbitrators will be employed, with Retailer and Fleming each choosing one arbitrator and with the two chosen arbitrators selecting the third. All costs attendant to the arbitration, excluding attorney's and expert's fees, will be borne equally by the parties. Each party will bear its own attorney's

and expert's fees. The arbitrators will not award punitive, consequential, or indirect damages. Each party has waived such damages and any monetary damages shall be limited to direct damages as aforesaid. However, the arbitrators may award the equitable relief of specific performance to either party, if applicable and if requested. In resolving all disputes between the parties, the arbitrators will apply the law of the Commonwealth of Pennsylvania, except as may be modified by this Agreement. The arbitrators are by this Agreement directed to conduct the arbitration hearing no later than three months from the service of the statement of claim and demand for arbitration unless good cause is shown establishing that the hearing cannot fairly and practically be so convened.

Except as needed for presentation in lieu of a live appearance, depositions will not be taken (unless both parties shall agree). Parties will be entitled to conduct document discovery by requesting production of documents. Responses or objections will be served twenty days after receipt of a request. The arbitrators will resolve any discovery disputes by such prehearing conferences as may be needed. The arbitrators and any counsel of record to the proceeding will have the power of subpoena process as provided by law.

The relationship created by this Agreement could give rise to the need by one or both of the parties for emergency judicial relief. Either party shall be entitled to pursue remedies for emergency or preliminary injunctive relief in any court of competent jurisdiction, but immediately following the issuance of any such emergency or injunctive relief the party obtaining such relief will consent to the stay of such judicial proceedings on the merits of both this Agreement and the related transactions pending arbitration of all underlying claims between the parties.

7 Change of Control Intentionally Omitted

8 Right of First Refusal Intentionally Omitted

9 Amendment or Waiver This Agreement may not be amended, nor any of its terms waived, unless such amendment or waiver is in writing and signed by the parties hereto.

10 Governing Law This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

11 Counterparts This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument and each of which will be considered an original for all purposes.

12 Time is of the Essence Time is of the essence of this Agreement.

13 Notices Whenever any notice is required to be given under this Agreement, then such notice shall be written and shall be given or sent, and the other party shall be deemed to have received it, if delivered personally or by national overnight courier, on the date such notice is delivered personally or by the national overnight courier, or if mailed, on the

third business day after mailing, if sent by first-class certified mail, postage prepaid, return receipt requested, and addressed as follows

(a) Notices to Fleming

Fleming Companies, Inc  
Egypt and Greentree Roads  
P O Box 935  
Oaks, PA 19456

Attn Ray Sprinkle, Division President

With copies to

Fleming Companies, Inc  
5701 North Chartel  
Oklahoma City, Oklahoma 73118  
Attn Assistant General Counsel

Z Edward Heller, Esquire  
Flamm, Boroff & Bacine, P C  
925 Harvest Drive, Suite 220  
Blue Bell, PA 19422

(b) Notices to Retailer

Mr Fozan Ehmedi  
Cousin's Supermarket, Inc No 3  
4037 North Fifth Street  
Philadelphia, PA 19140  
With copies to

Wendy E Bookler, Esquire  
Blank Rome Comisky & McCauley LLP  
One Logan Square  
Philadelphia, Pennsylvania 19103-6998

or to such other address as may be designated on ten days prior notice in writing by such party  
All such notices and communications shall be in writing and signed by the party giving such notice

14 Intentionally omitted



15 Miscellaneous

(a) Authorization Retailer or Fleming will execute and deliver any and all documents that may reasonably be requested by the other in order to properly document this Agreement, including, but not limited to, certified resolutions of a majority of the shareholders in Retailer authorizing the undersigned to enter into this Agreement

(b) Binding Effect This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. Except as expressly provided herein, neither this Agreement nor the rights and obligations of Retailer hereunder shall be assignable by Retailer, and any purported assignment in contravention hereof shall be void without the consent of Fleming. However, if Fleming should consent to an assignment or if without Fleming's consent the rights and obligations of Retailer are transferred by operation of law or otherwise, Retailer shall require that such rights and obligations be assumed by the transferee. Any assignment by Fleming shall not relieve it of its obligations under this Agreement.

(c) Exhibits Any Exhibit attached to this Agreement is made a part hereof and is fully incorporated herein by reference.

(d) Entire Agreement This Agreement is the final expression of the agreement of the parties regarding the purchase of Products by Retailer from Fleming and supersedes any prior or contemporaneous agreement between the parties pertaining to the matters covered by this Agreement. There are no representations, promises, warranties, understandings, or agreements, express or implied, oral or otherwise, except those expressly referred to or set forth in this Agreement. Retailer acknowledges that the execution and delivery of this Agreement is its free and voluntary act and deed and that Retailer's execution and delivery have not been induced by or done in reliance upon any representations, promises, warranties, understandings, or agreements made by Fleming or its agents, officers, employees, or representatives that are not expressly stated in this Agreement. No promise, representation, warranty, or agreement made subsequent to the execution and delivery of this Agreement by either party, and no revocation, partial or otherwise, or change, amendment, addition, alteration, waiver or modification of this Agreement or any of the terms hereof will be enforceable, unless it is in writing and signed by Fleming and Retailer.

(e) Headings Headings or captions of the sections in this Agreement are for convenience of reference only and in no way define or limit or describe the intent of this Agreement or any provision hereof.

(f) Inconsistency with Selling Plan If any of the provisions of this Agreement are inconsistent with the provisions of the Selling Plan, the provisions of this Agreement will govern.

(g) No Effect The length of the term of this Agreement may not correspond with the terms of other agreements between Fleming and Retailer, and nothing shall

be implied therefrom. Furthermore, this Agreement shall have no relevance or effect in determining whether or not a loan, mortgage, sublease, license, franchise, or other agreement, if any, between Fleming and Retailer will be extended or renewed.

(h) Limitation of Actions An action for breach of this Agreement must be commenced within two (2) years after the cause of action has accrued by sending the other party a statement of claim and demand for arbitration. A cause of action is accrued when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(i) Cross Default Any material breach of this Agreement by Retailer will be deemed to be a breach of any and all other agreements by and between Retailer and Fleming and its affiliates, whether now in existence or hereafter entered into, including, with limitation, any and all lease agreements, franchises, licenses, sublease agreements, promissory notes, loan agreements, security agreements, deeds of trust, leasehold deeds of trust, and pledge agreements. Upon breach of any of the agreements referenced in the preceding sentence, Fleming may pursue all remedies legally available to it under those other agreements, including, without limitation, seeking monetary damages and equitable relief.

(j) Force Majeure Neither party, except for the payment of monies that may be due, shall be deemed in default of this Agreement if its non-performance is the result of a condition beyond Fleming's control, including, but not limited to (when applicable to the party), labor strikes, government rationing or other regulations, flood, fuel shortages, earthquake, acts of God, drought, and other weather conditions.

(k) State and Local Taxes Retailer represents and warrants that all Products purchased from Fleming that are tangible personal property shall be purchased for resale in the ordinary course of Retailer's business, and that Retailer shall comply with pertinent state and local laws regarding the collection and payment of sales, use, and other taxes applicable to all such resale transactions and furnish evidence thereof to Fleming. If any such tangible personal property is put to a taxable use by Retailer or is purchased by Retailer other than for resale, Retailer shall make timely return and payment to the proper taxing authority of all sales, use, and like taxes applicable thereto, and shall indemnify Fleming against such taxes and all penalties and interest related thereto.

(l) Confidentiality The terms of this Agreement and the terms of all other documents and agreements between Fleming and Retailer are nonpublic, confidential and proprietary in nature. Retailer and Fleming agree that it will keep such documents and information confidential and will not disclose that information or use that information for any purpose other than the evaluation and consummation of the transactions described in this Agreement. No public disclosure will be made by either Retailer or Fleming of the existence of this Agreement or any of its terms.

16 Definitions Capitalized terms used in this Agreement shall have the following meanings:

"Affiliate" has the meaning set forth in Section 3(c) of this Agreement.

"Effective Date" shall have the meaning stated in the first paragraph of this Agreement

"Facility Stand By Fee" shall have the meaning described in Section 3(a) of this Agreement

"Fleming" means Fleming Companies, Inc., an Oklahoma corporation, or any Person that succeeds to the rights and obligations of Fleming Companies, Inc. under this Agreement.

"Estimated Purchase Level" shall have the meaning described in Section 3(b) of this Agreement

"Period" means any of the 13 four-week periods into which Fleming divides each calendar year for Fleming's internal accounting purposes

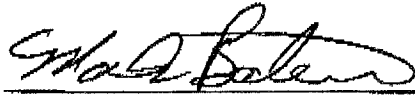
"Products" means food, grocery, meat, perishables, non-food and other related products, supplies, and merchandise described in the Selling Plan that Fleming offers for sale to its other retail customers, or any one or more such items

"Retailer" means the person identified in the first paragraph of this Agreement and any successors thereof

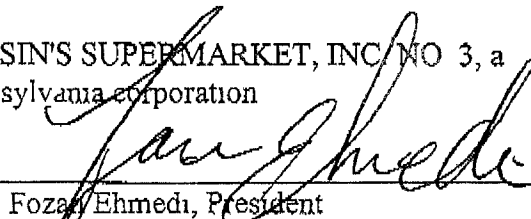
"Selling Plan" shall have the meaning described in Section 2 of this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written

FLEMING COMPANIES, INC., an Oklahoma corporation

By 

COUSIN'S SUPERMARKET, INC. NO 3, a Pennsylvania corporation

By   
Fozar Ehmedi, President

**EXHIBIT A**

**Cousins Supermarkets, Inc. No. 3  
5th and Berks Streets  
Philadelphia, PA 19122**

EXHIBIT "B"

December 8, 2000

Mr Fozan Ehmedi, a/k/a Steve Cousins  
c/o Cousins Supermarket, Inc No 3  
4037 North Fifth Street  
Philadelphia, PA 19140

Re Cousins Supermarket, Inc No 3 ("Retailer") and Fleming Companies,  
Inc ("Fleming")

Dear Mr Ehmedi:

This letter will serve to confirm the terms and conditions as presented in a letter dated November 7, 2000 from Fleming, and acknowledged by Retailer on November 13, 2000, pertaining to the conversion of the Grocery Store located at 5<sup>th</sup> and Berks Streets, Philadelphia, PA ("Grocery Store") from Berks Supermarkets, Inc d/b/a Brown's Thriftway ("Brown") to Retailer

1. Purchase of Inventory Fleming shall sell and Retailer shall purchase the inventory determined to be located at the Grocery Store pursuant to an inventory performed on November 30, 2000, at the following percentages of retail value

Grocery	70%
Dairy	60%
Frozen	55%
GM/HBC	66%
Meat (if any)	55%
Deli (if any)	54%

Fresh Meat, Deli and Produce will not be part of the Inventory Purchase. This product will be transferred out prior to conversion of the Grocery Store. In no event shall Retailer be obligated to purchase any inventory, regardless of its category, which is short coded or out of date, as shall be determined by Retailer in its sole discretion

2. Equipment Price. Retailer agrees that if Retailer remains the operator at the Grocery Store following the initial trial period of 24 months from the date Retailer commences operations in the Grocery Store (the "Initial Term"), Retailer shall pay to Fleming the sum of \$1,000,000 ("Equipment Purchase Price") for the equipment located on the premises, which equipment is listed on Exhibit "A" attached hereto and made a part hereof (the "Equipment"). Fleming shall provide purchase money financing for a term of 60 months without interest (the "Equipment Loan"). Financing approval and documentation shall be based on the normal and customary Fleming credit terms and

policies in effect at the time of application. The \$1,000,000 note which Retailer will be expected to sign for purchase of the Equipment shall be a demand note, payable on an annual basis. Payments for the Equipment, should Retailer remain the operator for an additional five (5) year period (the "Extended Term"), shall begin in the first month of the Extended Term. Notwithstanding the foregoing, if Retailer enters into a new five (5) year Facility Standby Agreement naming Fleming as Retailer's primary supplier at all stores owned by Retailer or affiliates of Retailer, at the end of each year during the Extended Term, one-fifth (1/5) of the original indebtedness due under the note shall be forgiven. If Retailer remains the operator at the end of the Initial Term but does not enter into a new Facility Standby Agreement with Fleming, Retailer shall have the option of purchasing the Equipment for the Equipment Purchase Price, payable in cash within thirty (30) days of the end of the Initial Term. A walk through of the store will occur on the day Retailer takes possession in order to verify that the Equipment is still located within the Grocery Store or to modify Exhibit "A" to accurately reflect the equipment located therein at such time.

**[NOTE: If equipment is missing at the time of this walk through, Steve reserves the right to renegotiate the \$1,000,000 purchase price.]**

3 Personal and Corporate Guaranties Mr. Fozan Ehmedi shall personally execute a Guaranty, in form and substance reasonably acceptable to the parties, for the benefit of Fleming for the payment of all open accounts receivable created after Retailer takes possession and opens for business in the Grocery Store. In the event the Equipment Loan is made to Retailer, Cousins Supermarket, Inc. No. 1 and Cousins Supermarket, Inc. No. 2 shall jointly and severally guaranty the Equipment Loan.

4 Lease Retailer agrees to assume the terms and conditions of the existing lease for the Grocery Store dated May 5, 1997, as amended on March 27, 1998 and on \_\_\_\_\_, 2000 (the "Lease"), for the balance of the term, except as noted below in paragraph 10, subject to Retailer's right to terminate the Lease, upon the giving of no less than 60 days written notice, at the end of the initial trial period of 24 months from the date Retailer commences operations in the Grocery Store but in no event later than February 1, 2000. Retailer and Fleming agree to enter into an acknowledgement of the date in which Retailer commences operations in the Grocery Store.

5 Advertising and Promotions Fleming's Super Plus Ad Group team develops and negotiates a two (2) week advertising plan for non-banner retail support. Retailer's agreement to comply with the advertising of these items will produce a Fleming Marketing Fund of \$6,100 per month for years 1 and 2. Retailer will be able to maintain its local performance monies from vendors not participating in this group.

6 Indebtedness of Brown Retailer shall not assume any of the indebtedness of Brown to Fleming or to the landlord under the Lease.

7 Teamsters Contract Retailer shall not assume the existing contract dated February 28, 1999 between Brown and Teamsters Local Union No. 929. Fleming agrees

to use reasonable efforts to obtain from Brown their agreement to re-position all of their employees and to supply Retailer with written confirmation thereof. In the event such a written confirmation is not received, Retailer shall not be obligated to take possession of the Grocery Store until such letter is forthcoming.

8 Account Executive A Fleming account executive will be assigned to Retailer to provide such support as Retailer reasonably requests in an effort to grow Retailer's business at the Grocery Store.

9 Growth Rebate A growth rebate of 15% will be paid on qualified purchases over \$6,000,000 based on the total purchases made by the stores operated by Retailer and its affiliates for the 24-month period following the opening of the Grocery Store.

10 Rent and Security Fleming shall pay all rent and other payments due under the Lease for the three (3) month period commencing on December 10, 2000 and two (2) months of security costs for December, 2000 and January, 2001 to protect the Grocery Store (if Retailer executes all of the necessary documents and take possession of the store by December 10, 2000).

11 Notices Whenever any notice is required to be given under this Agreement, then such notice shall be written and shall be given or sent, and the other party shall be deemed to have received it, if delivered personally or by national overnight courier, on the date such notice is delivered personally or by the national overnight courier, or if mailed, on the third business day after mailing, if sent by first-class certified mail, postage prepaid, return receipt requested, and addressed as follows:

(a) Notices to Fleming

Fleming Companies, Inc  
Egypt and Greentree Roads  
P O, Box 935  
Oaks, PA 19456

Attn: Ray Sprinkle, Operating Group President

With copies to

Fleming Companies, Inc  
5701 North Chartel  
Oklahoma City, Oklahoma 73118  
Attn: Assistant General Counsel

Z Edward Heller, Esquire  
Flamm, Boroff & Bacine, P C  
925 Harvest Drive, Suite 220  
Blue Bell, PA 19422

## (b) Notices to Retailer

Mr Fozan Ehmedi  
 Cousin's Supermarket, Inc No 3  
 180 West Duncannon Avenue  
 Philadelphia, PA 19120

With copies to

Wendy E Bookler, Esquire  
 Blank Rome Comisky & McCauley LLP  
 One Logan Square  
 Philadelphia, Pennsylvania 19103-6998

or to such other address as may be designated on ten (10) days prior notice in writing by such party. All such notices and communications shall be in writing and signed by the party giving such notice.

The foregoing terms of this letter are subject to and contingent upon the timely payment of all indebtedness and performance of all obligations owed to Fleming and/or its affiliated companies by Retailer, including without limitation, payment of all trade accounts in accordance with payment terms set forth in Fleming's billing statements.

Fleming and Retailer acknowledge that the terms of this Letter Agreement and the terms of all other documents and agreements between Fleming and Cousins Supermarket No 3, Inc. are nonpublic, confidential and proprietary in nature. Fleming and Retailer agree that each will keep such documents and information confidential and will not disclose that information or use that information for any purpose other than the evaluation and consummation of the transactions described in this letter. No public disclosure will be made by either Retailer or Fleming of the existence of this Letter Agreement or any of its terms.

If the foregoing agreement is acceptable to you and confirms our understanding, please indicate your acceptance and agreement to be legally bound hereby by signing and dating this letter and the enclosed copy in the space provided and returning the executed copy to the undersigned. Intending to be legally bound hereby, we are

Very truly yours,

FLEMING COMPANIES, INC

By \_\_\_\_\_  
 Title



Accepted and agreed to this \_\_\_\_\_ day of December, 2000

COUSINS SUPERMARKET, INC NO 3

By \_\_\_\_\_  
Fozan Ehmedi, President

GUARANTOR

\_\_\_\_\_  
Fozan Ehmedi